



**NOTICE OF SPECIAL MEETING OF THE  
BARTON SPRINGS EDWARDS AQUIFER CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

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**Tuesday, April 16, 2024**

**5:00 PM**

**IN-PERSON**

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Notice is given that a **Special-Called Meeting** of the Board of Directors (Board) of the Barton Springs/Edwards Aquifer Conservation District will be held on **Tuesday, April 16, 2024** commencing at **5:00 p.m.** at the **District office, located at 1124 Regal Row, Austin, Texas.**

This meeting will be audio recorded and the recording will be available on the District’s website after the meeting.

Public Comments at the Board Meeting – Please complete a comment card prior to the start of the meeting. Each registered person will be recognized and identified by the Presiding Officer or staff moderating the communications when it is their turn to speak. **Public comment is limited to 3 minutes per person.**

**AGENDA**

Note: The Board of Directors of the Barton Springs/Edwards Aquifer Conservation District reserves the right to meet in Executive Session at any time during the course of this meeting to discuss any of the matters listed on this agenda, as authorized by the Texas Government Code Sections §551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Homeland Security). No final action or decision will be made in Executive Session.

- 1. Call to Order.**
- 2. Citizen Communications (Public Comments of a General Nature).**
- 3. Discussion and possible action.**
  - a. Discussion and possible action related to a Report of Investigation, Notice of Alleged Violation, and Draft Agreed Order for initiation and resolving enforcement proceeding concerning Ruby Ranch Water Supply Corporation for failure to reduce pumping during District declared drought.
  - b. Discussion and possible action related to a variance request by Ruby Ranch Water Supply Corporation under District Rule 3-7.9 to allow exception to District Rule 3-7.6.C.1.b.iii which requires Class D Conditional production permits to completely curtail monthly permitted pumpage upon entering Stage II Alarm District-declared drought.

#### 4. Adjournment.

**Please note:** This agenda and available related documentation, if any, have been posted on the District website, [www.bseacd.org](http://www.bseacd.org). If you have a special interest in a particular item on this agenda and would like any additional documentation that may be developed for Board consideration, please let staff know at least 24 hours in advance of the Board Meeting so that we can have those copies made for you. The Barton Springs/Edwards Aquifer Conservation District is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable accommodations and equal opportunity for effective communications will be provided upon request. Please contact the District office at 512-282-8441 at least 24 hours in advance if accommodation is needed.

Item 1

Call to Order

## Item 2

### Citizen Communications

## Item 3

### Board Discussion and Possible Action

- a. Discussion and possible action related to a Report of Investigation, Notice of Alleged Violation, and Draft Agreed Order for initiation and resolving enforcement proceeding concerning Ruby Ranch Water Supply Corporation for failure to reduce pumping during District declared drought.



## BSEACD STAFF INVESTIGATION REPORT

### I. Basic Information

Report Date: April 16, 2024

Permittee/Respondent: Ruby Ranch Water Supply Corporation

Permittee Contact 1: Thomas Doebner  
 Phone: (866) 643-3472  
 Mailing Address: PO Box 1585  
 Buda, TX  
 Property Address: Ruby Ranch Road  
 Lat: 30.0621° Long: -97.92007°  
 and Lat: 30.05853° Long: -97.92112°

BSEACD Staff: Jacob Newton, Regulatory Compliance Specialist  
 Erin Swanson, Regulatory Compliance Manager

### II. Investigation Summary

The District declared Alarm Stage Drought at the June 9, 2022 Board meeting, followed by a declaration of Critical Stage Drought on October 20, 2022. On December 14, 2023 the District declared Exceptional Stage Drought and then declared Critical Stage Drought at the February 8, 2024 board meeting. The District’s enforcement plan<sup>1</sup> provides for monthly review of permittee drought target production allocation. The evaluations of Ruby Ranch Water Supply Corporation began with the month of July because the month of June was the initial month of a Drought Stage, which is not reviewed under the District’s enforcement plan.

Under section 3.0 of the District’s enforcement plan, permittees are evaluated during drought according to three permitted pumpage tiers (See table 1). Ruby Ranch Water Supply Corporation’s Historical and Class B Edwards permit falls under Tier 2 because it is permitted for 32,000,000 gallons per year.

Permittees are further evaluated based upon three levels (A, B and C). Each level is associated with how much a permittee over pumps its drought target allocation.

Permitted Pumpage (gallons/year)		% Pumpage over Monthly Limits	
Tier 1:	<12,000,000	Level A:	<25%
<b>Tier 2:</b>	<b>≥ 12,000,000 and &lt; 120,000,000</b>	Level B:	≥ 25% and 100%
Tier 3:	≥ 120,000,000	Level C:	≥ 100%

Table 1:

Permitted Pumpage and % pumped over drought target volumes

<sup>11</sup> Staff used the Enforcement Plan in effect at the time of violations in its review of Ruby Ranch Water Supply Corporation

Under the District’s enforcement plan, only Tier 3 permittees (the largest volume permittees) will be evaluated during the first three months of drought, excluding the initial month. After the 3<sup>rd</sup> month of drought, evaluation of Tier 2 permittees began during month 4 -6.

Ruby Ranch Water Supply Corporation’s pumping was assessed during month 18, December of 2023, of District declared drought due to over pumping the drought target allocation since month 17, November of 2023 (See table 2). The evaluation of Ruby Ranch Water Supply Corporation under the process described above follows:

Year	Month	Drought Stage	Target	Pumpage	Level	% To Target	Notes
2022	July	Alarm	3,097,600	3,682,100		19%	Not assessing Tier 2 permittees.
2022	August	Alarm	3,072,000	2,703,100		-12%	Not assessing Tier 2 permittees.
2022	September	Alarm	2,560,000	1,709,900		-37%	Not assessing Tier 2 permittees.
2022	October	Alarm	2,124,800	2,986,700		41%	Assessment expansion to Tier 2 permittees begins; in compliance.
2022	November	Critical	1,568,000	1,955,900		25%	Not assessing this month of non-compliance due to database error
2022	December	Critical	1,411,200	1,531,900		9%	Not assessing this month of non-compliance due to database error
2023	January	Critical	1,411,200	1,836,700		30%	Not assessing this month of non-compliance due to database error
2023	February	Critical	1,456,000	1,388,800		-5%	In compliance.
2023	March	Critical	1,478,400	1,442,100		-3%	In compliance.
2023	April	Critical	1,657,600	1,687,100		2%	Not assessing this month of non-compliance due to database error
2023	May	Critical	1,792,000	1,093,600		-39%	In compliance.
2023	June	Critical	2,128,000	1,420,400		-33%	In compliance.
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2023	August	Critical	2,688,000	3,546,500	B	32%	Not assessing this month of non-compliance due to database error
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2023	October	Critical	1,859,200	1,816,600		-2%	Not assessing this month of non-compliance due to database error
2023	November	Critical	1,568,000	1,688,500	A	8%	1 <sup>st</sup> occurrence of non-compliance
2023	December	Critical	1,411,200	1,729,600	A	23%	2 <sup>nd</sup> occurrence of non-compliance
2024	January	Exceptional	914,760	2,781,200	C	204%	3 <sup>rd</sup> occurrence of non-compliance
2024	February	Critical	1,227,850	1,303,900	A	6%	4 <sup>th</sup> occurrence of non-compliance

Table 2: Ruby Ranch Water Supply Corporation’s monthly pumpage during declared Drought Stages.

Under section 4.0 of the District’s enforcement plan, staff reached out to Ruby Ranch Water Supply Corporation representatives in attempt to coordinate a pre-enforcement meeting to discuss over pumpage of allotment and lack of implementation of its User Drought Contingency Plan. This meeting was held on 2/1/2024.

Below describes the dates and discussions District Staff had with Ruby Ranch Water Supply Corporation regarding meeting drought target allocations.

On 06/09/2022, the Board of Directors declared Stage II Alarm drought.

On 08/05/2022, per the District’s enforcement plan, section 3.0, staff was to consider the month of July as the initial drought stage month to begin assessing compliance. This allows time for the permittees to start implementing UDCP measures to start reducing its monthly pumpage at/or below the target curtailed drought allotments.

10/20/2022, the Board of Directors declared Stage III Critical drought.

On 12/05/2023, District staff reviewed Ruby Ranch Water Supply Corporation’s pumping for the month of November and observed that the permittee had over pumped the target drought volume by 8% for that month. Per the District’s enforcement plan section 3.0, the permittee was eligible to be reviewed for potential enforcement and was issued its first occurrence of non-compliance.

On 12/14/2023, District Staff informed Ruby Ranch Water Supply Corporation over a phone call that the permittee had over pumped the target drought volume by 8% for the month of November.

On 12/14/2023, the Board of Directors declared Stage IV Exceptional drought.

On 12/14/2023, Ruby Ranch Water Supply Corporation’s Class A permit is reclassified as a Class B permit due to the declaration of Stage IV Exceptional drought.

On 1/25/2024, District staff sent an email to Ruby Ranch Water Supply Corporation to arrange a pre-enforcement meeting to discuss the causes of the non- compliance. The email was sent to



Thomas Doebner (Mr. Doebner) Ruby Ranch Water Supply Corporation Board President, Zach King (Mr. King) of PGMS, and Timothy Young (Mr. Young) of PGMS, via email (Attachment A).

On 1/30/2024, District staff sent a follow-up email to Ruby Ranch Water Supply Corporation to arrange a pre-enforcement meeting to discuss the causes of the non-compliance. The email was sent to Thomas Doebner (Mr. Doebner) Ruby Ranch Water Supply Corporation Board President, Zach King (Mr. King) of PGMS, and Timothy Young (Mr. Young) of PGMS, via email (Attachment A). Mr. Doebner responded the same day with a list of actions that have already been implemented to curtail water use and prompted staff to schedule a meeting with Timothy Young.

2/01/2024, Timothy Young of PGMS met via Zoom with Erin Swanson and Jacob Newton and provided District staff with some additional details of their conservation efforts. These efforts included a direct phone call to any end user that uses more than 10,000 gallons in a month, increases in their drought water rates that rise based on the severity of drought, and monthly line loss checks.

On 2/05/2024, District staff reviewed Ruby Ranch Water Supply Corporation's pumping for the month of January and observed that the permittee had over pumped the target drought volume by 204% for that month. Per the District's enforcement plan section 3.0, the permittee was eligible to be reviewed for potential enforcement and was issued its second occurrence of non-compliance.

On 2/08/2024, the Board of Directors declared Stage III Critical drought.

On 3/05/2024, District staff reviewed Ruby Ranch Water Supply Corporation's pumping for the month of February and observed that the permittee had over pumped the target drought volume by 6% for that month. Per the District's enforcement plan section 3.0, the permittee was eligible to be reviewed for potential enforcement and was issued its third occurrence of non-compliance.

### III. Alleged Violations:

The District has recorded violations of the following District rules:

- §3-1.11 (A)(11)** Violation of the permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawal or transporting amounts outside of the District in excess of the amount authorized for transport, shall be punishable by civil penalties as provided by the Act and these Rules.
- §3-7.6 (A)(1)** All permittees not granted a variance from the Drought Rules shall achieve individual monthly (prorated for partial months) target pumpage volumes for each drought stage by reducing established monthly baseline pumpage by the respective percentage reductions associated with each drought stage.

### IV. Chronology of Events:

- 06/09/22: The Board of Directors declared Stage II Alarm drought.
- 07/05/22: Meter Readings were considered initial month.

- 10/20/22: General Manager, Dr. Tim Loftus, declares Stage III Critical drought.
- 12/05/23: Ruby Ranch Water Supply Corporation over pumped the drought target amount by 8% for the month of November.
- 12/14/23: The Board of Directors declared Stage IV Exceptional drought.
- 2/05/24: Ruby Ranch Water Supply Corporation over pumped the drought target amount by 204% for the month of September.
- 2/08/24: The Board of Directors declared Stage III Critical drought.
- 3/05/24: Ruby Ranch Water Supply Corporation over pumped the drought target amount by 6% for the month October.

**V. Documentation**

- Attachment A - 01/25/2024 & 01/30/2024 Pre-Enforcement is Initiated and Response Emails
- Attachment B – 01/11/2024 Board Meeting Minutes

## Attachment A: 01/25/2024 & 01/30/2024 Pre-Enforcement is Initiated and Response E-mails

Jacob,

I added Joe Vickers to this email. I will not be able to be very involved with this issue but if you work with Joe and Tim Young they can answer your questions. I will list a few things that have been done.

1. Joe and Tim are working with Kendall to request a variance to allow RRWSC to inject ASR water into well #5. We will use this ASR water to reduce our regular usage this summer. Kendall thought it would be good to get David Pyne involved in commenting on our need to inject more ASR water at this time. Our board has agreed to hire Pyne and Joe will be working with him and Kendall.
2. We have put out drought signs in the neighborhood.
3. We have sent a letter to each of our customers explaining the drought conditions and requesting lower water usage.
4. We have posted drought information on our website to encourage lower water usage.
5. We have implemented significant increases in our drought water rates to force lower usage. It usually takes a couple of months of the increased water rates to see a significant reduction in usage.

*Thanks and God Bless*

*Thomas Doebner*

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**From:** Jacob Newton <[jnewton@bseacd.org](mailto:jnewton@bseacd.org)>

**Sent:** Tuesday, January 30, 2024 9:34 AM

**To:** [tdoebner@msn.com](mailto:tdoebner@msn.com) <[tdoebner@msn.com](mailto:tdoebner@msn.com)>; 'Zach King' <[zach@pgms.net](mailto:zach@pgms.net)>; [timothy@pgms.net](mailto:timothy@pgms.net) <[timothy@pgms.net](mailto:timothy@pgms.net)>

**Cc:** Erin Swanson <[eswanson@bseacd.org](mailto:eswanson@bseacd.org)>; Kendall Bell-Enders <[kbellenders@bseacd.org](mailto:kbellenders@bseacd.org)>

**Subject:** RE: Ruby Ranch Overpumpage

Good Morning,

I just wanted to follow up about setting up a meeting before our February 8<sup>th</sup> Board meeting. It is imperative that we get together and talk about what Ruby Ranch is doing to reduce water use at this time, any neighborhood outreach that is going on, and anything else that we can present the board while the ASR/supply issues are happening. If we do not hold a pre-enforcement meeting before the Board meeting on 8<sup>th</sup> the Board may choose to go straight into enforcement due to lack of response which I would like to avoid. Let us know a time that works for you so we can set this up.

Thank you,



**Jacob Newton**

Regulatory Compliance Specialist

512-282-8441 Ext. 109

1124 Regal Row Austin, TX 78748

[www.bseacd.org](http://www.bseacd.org)



**From:** Jacob Newton

**Sent:** Thursday, January 25, 2024 3:26 PM

**To:** [tdoebner@msn.com](mailto:tdoebner@msn.com); 'Zach King' <[zach@pgms.net](mailto:zach@pgms.net)>; [timothy@pgms.net](mailto:timothy@pgms.net)

**Cc:** Erin Swanson <[eswanson@bseacd.org](mailto:eswanson@bseacd.org)>; Kendall Bell-Enders <[kbellenders@bseacd.org](mailto:kbellenders@bseacd.org)>

**Subject:** Ruby Ranch Overpumpage

Good Afternoon,

I was hoping we could set up a meeting to discuss the overpumpage by the Ruby Ranch system.

We know things are in a tight spot with the ASR issues going as well, but the goal is to hopefully discuss what reduction measures are being taken and what your per capita usage is or any other information that would be helpful for us to give the board. Also, if you feel Joe Vickers should be involved in this conversation feel free to invite him.

Our schedules are open anytime on January 30<sup>th</sup> and 31<sup>st</sup> before 12 and after 1pm, let us know if that would work for you and any times that are available or if there is another day of preference.

Thank you,



**Barton Springs  
Edwards Aquifer**  
CONSERVATION DISTRICT

**Jacob Newton**

Regulatory Compliance Specialist

512-282-8441 Ext. 109

1124 Regal Row Austin, TX 78748

[www.bseacd.org](http://www.bseacd.org)



**Attachment B – 01/11/2024 Board Meeting Minutes**

**Barton Springs/Edwards Aquifer Conservation District**  
**Board of Directors Meeting Minutes**  
**Regular Meeting & Public Hearing**  
**January 11, 2024**

Board members present at commencement: Blayne Stansberry, Lily Lucas, Vanessa Puig-Williams, and Dan Pickens. Christy Williams arrived at 5:31pm. Staff present included: Tim Loftus, Kendall Bell-Enders, Erin Swanson, Jacob Newton, Justin Camp, Jeff Watson, and Hannah Riggs. These minutes represent a summarized version of the meeting; the complete discussion of the following items is recorded digitally.

**Note:** The Board of Directors of the Barton Springs/Edwards Aquifer Conservation District reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on this agenda, as authorized by the Texas Government Code Sections §551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development) 418.183 (Homeland Security). No final action or decision will be made in Executive Session.

**1. Call to Order.**

President Stansberry called the meeting to order at 5:05pm.

**2. Citizen Communications (Public Comments of a General Nature).**

There were no citizen communications on items not listed on the agenda.

**3. Consent Agenda. (Note: These items may be considered and approved as one motion. Directors or citizens may request any consent item be removed from the consent agenda, for consideration and possible approval as a separate item of Regular Business on this agenda.)**

**a. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000.**

President Stansberry brought up note that in the future credit card statements should be added to this section.

**b. Approval of minutes of the Board's December 14, 2023, Regular Meeting and Public Hearing.**

Vice President Pickens moved to accept items 3a and 3b. Director Lucas seconded. The motion passed 4-0.

**4. General Manager's Report. Discussion and possible action.**  
**Topics**

**a. New staff/staff changes**

Welcomed Hannah Riggs and spoke on process improvements being made to admin tasks.

b. **Leadership training**

Leadership training had wrapped up.

c. **Database**

Update on Database progress was given. The task is moving along. Dr Loftus felt he learned from Leadership Training on better time management within this project.

d. **Monitoring Wells in City Parks project**

New amendment will be proposed later in meeting with Magellan Pipeline Company, L.P. that will get this process underway. Drilling will start the week of 1/15/2024 at Garrison Park and Zilker will be after. Need to get grant approval for funds for the Zilker well.

e. **Well-impact analysis**

Justin gave an update on well-impact analysis.

b. Aquifer status update.

c. Upcoming events of possible interest.

5. **Presentation.**

**Trinity Sustainable Yield staff presentation**

The board moved from Item 7a to the presentation.

Kendall Bell-Enders gave a presentation on the Trinity Sustainable Yield.

6. **Public Hearing.**

**Paradis Vineyard and Winery, LLC, (7585 Ranch Road 12, San Marcos, TX 78666) filed a well-drilling application on September 29, 2023 with the Barton Springs/Edwards Aquifer Conservation District for one new nonexempt well. The well is proposed to be discretely completed in the Middle Trinity Aquifer. The well is planned to be used as a public water supply well for the winery's tasting room and the domestic needs of a single home located on the property. The well will also be used to irrigate the vineyard's grape vines. A separate Production Permit Application will be required in order to operate and produce groundwater from the well in the future. The proposed well is to be located in Hays County at 7585 Ranch Road 12, San Marcos, TX (29.925706°, -98.066992°).**

President Stansberry opened the public hearing at 5:21pm.



Erin Swanson presented on the well-drilling application of Paradis Vineyard and Winery, LLC. Staff recommendation is to approve the application. The applicant, Alan Paradis, was in attendance.

Secretary Williams arrived at 5:31pm.

Vice President Pickens has questions around the use of the water. President Stansberry moved the conversation to Item 7a.

President Stansberry closed the Public Hearing at 5:37pm.

**7. Discussion and possible action.**

**7a. Discussion and possible action on a new nonexempt well drilling application filed by Paradis Vineyard and Winery, LLC, as described in the Public Hearing agenda item above.**

Alan Paradis, the applicant, spoke on his plans for his business and uses of the potential well. Director Puig-Williams moved to approve the application. Director Lucas seconded the motion. The motion passed 5-0.

**7b. Discussion and possible action on EEOC No. 451-2024-00138 charge of discrimination by Brian Smith against the District.**

Executive session began at 6:22pm.

Executive session ended at 7:26pm.

No final decision or action was made.

**7c. Discussion and possible action on amendment to the April 15, 2013 Letter Agreement between the BSEACD and Magellan Pipeline Company, L.P.**

Vice President Pickens moved to approve the changes. Secretary Williams seconded. The motion passed 5-0.

**7d. Discussion and possible action on resolutions to remove/recognize staff members, former staff members, and/or Directors from having signature authority on the District's Truist bank accounts and TexPool accounts.**

There was discussion about changing the signatories on the Truist account, but it was decided to table that discussion for another meeting.

Director Puig-Williams moved to approve the changes. Director Lucas seconded. The motion passed 5-0.

**7e. Discussion and possible action related to the performance and compliance of District permittees with their User Drought Contingency Plan curtailments.**

Jacob Newton presented on overages.

**8. Director Reports.**

Directors may report on their involvement in activities and dialogue that are of likely interest to the Board, in one or more of the following topical areas:

- Meetings and conferences attended or that will be attended;
- Board committee updates;
- Conversations with public officials, permittees, stakeholders, and other constituents;
- Commendations; and
- Issues or problems of concern.

Board members had no updates.

9. **Adjournment.**

With no objection, President Stansberry adjourned the meeting at 8:03 p.m.

Approved by the Board on February 8, 2024.

By:   
Dan Pickens, Board Vice President

Attest:   
Christy Williams, Board Secretary

\*\*\* MEMORANDUM \*\*\*

**Date:** April 16, 2024  
**To:** District Board of Directors  
**From:** Jacob Newton, Regulatory Compliance Specialist  
Erin Swanson, Regulatory Compliance Manager  
**Subject:** Staff enforcement recommendations for Ruby Ranch Water Supply Corporation

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**Background:**

The District declared Alarm Stage Drought at the June 9, 2022 Board meeting, followed by a declaration of Critical Stage Drought on October 20, 2022. On December 14, 2023 the District declared Exceptional Stage Drought and then declared Critical Stage Drought at the February 8, 2024 board meeting. The District’s enforcement plan provides for monthly review of permittee drought target production allocation. The evaluations of drought curtailment compliance began with the month of July 2022 because the month of June was the initial month of Drought Stage, which is not reviewed under the District’s enforcement plan.

Under section 3.0 of the District’s enforcement plan, permittees are evaluated during drought according to three permitted pumpage tiers and levels (See Table 1). Ruby Ranch Water Supply Corporation’s Historical and Class B Edwards permit falls under Tier 2 because it is permitted for 32,000,000 gallons per year. Permittees are further evaluated based upon the percentage and magnitude of overpumpage (A, B and C).

<b>Permitted Pumpage (gallons/year)</b>		<b>% Pumpage over Monthly Limits</b>	
Tier 1:	< 12,000,000	Level A:	< 25%
<b>Tier 2:</b>	<b>≥ 12,000,000 and &lt; 120,000,000</b>	Level B:	≥ 25% and < 100%
Tier 3:	≥ 120,000,000	Level C:	≥ 100%

*Table 1. Pumpage matrix used in potential penalty calculation.*

Under the District’s enforcement plan, Tier 3 permittees will be evaluated during the first three months of drought, excluding the initial month. After the third month of drought, only Tiers 2 and 3 permittees are evaluated during 4 – 6 months. Ruby Ranch Water Supply Corporation overpumpage was assessed for noncompliance during month 17 (November), month 18 (December), month 19 (January), and month 20 (February) see Table 2.0. Months of overpumpage before November of 2023 were not considered due to a database error that was incorrectly undercounting the pumpage of Ruby Ranch Water Supply Corporation’s pumpage. The enforcement process was not initiated until the error was found in December of 2023 when inputting the meter readings for the month of November.

Pursuant to section 4.0 of the District’s enforcement plan, staff reached out to Ruby Ranch Water Supply Corporation representatives in attempt to coordinate a pre-enforcement meeting to discuss over pumpage of allotment and lack of implementation of its User Drought Contingency Plan. This meeting was held on 2/1/2024.

## Confidential Attorney Client Privilege

Year	Month	Drought Stage	Target	Pumpage	Level	% To Target	Notes
2022	July	Alarm	3,097,600	3,682,100		19%	Not assessing Tier 2 permittees.
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2022	September	Alarm	2,560,000	1,709,900		-37%	Not assessing Tier 2 permittees.
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2023	January	Critical	1,411,200	1,836,700		30%	Not assessing this month of non-compliance due to database error
2023	February	Critical	1,456,000	1,388,800		-5%	In compliance.
2023	March	Critical	1,478,400	1,442,100		-3%	In compliance.
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2024	February	Critical	1,227,850	1,303,900	A	6%	4 <sup>th</sup> occurrence of non-compliance

*Table 2. Pumpage history since drought was declared in June 2022.*

**Alleged Violations:**

District records also indicated approximately thirty-three (33) alleged daily violations of **District Rule §3-7.6** for failure to reduce pumpage during District declared drought in accordance with monthly pumpage limits of the UDCP. District Rule §3-7.6(A)(1) provides all permittees shall achieve individual monthly target pumpage volumes for each drought stage by reducing established monthly baseline pumpage by the respective percentage reductions associated with each drought stage. Daily violations related to Rule 3-7.6 were calculated for each occurrence of noncompliance per the enforcement plan. Ruby Ranch Water Supply Corporation was informed of the drought overpumpage violations and staff-initiated pre-enforcement notifications in December of 2023. Pumping is recorded on a monthly basis. Staff calculated an average daily usage, therefore, to determine the number of days that the drought-curtailed volume was exceeded for each month of noncompliance. For November, staff calculated overpumpage occurred on the 28<sup>th</sup> day of the month resulting in 3 days of overpumpage. For December, overpumpage occurred on day 26 resulting in 6 days of alleged violations. For January, overpumpage began on day 11 of the month resulting in 22 days of alleged violations. Finally, February overpumpage began on day 28 resulting in 2 days of alleged violations. Consequently, staff calculated a total of thirty-three (33) alleged daily violations.

**Base Penalties:**

Penalties were determined from the ranges specified in District Enforcement Plan guidelines for violations and penalty assessments. Penalties range from \$200 to \$3,200 daily for violations of Rule 3-7.6 for Tier 2 permittees and staff calculated penalties from November 2023 (first occurrence) through February 2024. Penalties are for each alleged daily violation (33 days). Penalties based on three severity options (low, mid, and high) within the specified ranges are provided below (Table 3) for Board consideration.

Rule Violation	Level	Drought Stage	Months	No. of Days in Violation	Daily Penalties			Total Penalties		
					low	mid	High	low	mid	high
<b>§3-7.6</b>	A	Critical	November 28 <sup>th</sup> – 30 <sup>st</sup>	3	\$400	\$600	\$800	\$1,200	\$1,800	\$2,400
<b>§3-7.6</b>	A	Critical	December 26 <sup>th</sup> - 31 <sup>th</sup>	6	\$400	\$600	\$800	\$2,400	\$3,600	\$4,800
<b>§3-7.6</b>	C	Exceptional	January 28 <sup>th</sup> - 31 <sup>st</sup>	22	\$1,600	\$2,400	\$3,200	\$35,200	\$52,800	\$70,400
<b>§3-7.6</b>	A	Critical	February 28 <sup>th</sup> – 29 <sup>th</sup>	2	\$400	\$600	\$800	\$800	\$1,200	\$1,600
<b>Sub Total</b>				33				<b>\$39,600</b>	<b>\$59,400</b>	<b>\$79,200</b>

*Table 3. Drought penalty calculations for months non-compliance occurred.*

In accordance with section 4.1 of the District’s adopted enforcement plan, the amount of the penalties assessed shall be determined considering the following factors:

- (1) **The severity or seriousness of the violation;**
- (2) Whether the violation was willful, intentional, or could have been reasonably anticipated and

avoided;

- (3) Whether the violator acted in good faith to avoid or mitigate the violation, or to correct the violation after it became apparent and compensate those affected;**
- (4) The economic gain obtained by the violator through the violation;
- (5) Whether similar violations have been committed in the past;**
- (6) The amount necessary to deter future violations;
- (7) Any other matter that justice may require;

In consideration of these factors, District staff calculated penalties for each of the 33 daily violations and at three penalty levels (Table 3). The lowest penalty of \$39,600 is recommended, considering the permittee's compliance history and record of working with the District.

**Staff Recommendation:**

Staff recommends that the Board issues a minimum reduced penalty amount of \$20,600, with the potential for further reductions to be determined after Board discussion. This penalty would be issued for overpumpage of the Ruby Ranch Water Supply Corporation production permit's monthly drought curtailment volumes for the months of November, December, January, and February. If any of the special conditions outlined within the Agreed Order are not met, then Ruby Ranch Water Supply Corporation must pay the full penalty amount assessed of \$39,600.

## **Drought Enforcement Plan Excerpts**

### ***Drought Management and Enforcement Process***

#### **1.0 Drought Enforcement Strategy**

The District's approach to drought management described here flows from and is consistent with District Rules 3-7.8 and 3-8. It describes the appropriate implementation mechanisms, public awareness efforts, aquifer and drought monitoring, and permittee performance monitoring and assessment to be used during drought. Compliance and enforcement efforts specified below elaborate District Rule 3-8 and center on assessment of permittee performance on a monthly basis to identify the various levels of non-compliance with mandatory pumpage reductions. This monthly assessment will focus the District's early efforts on permittees with the more egregious levels of over-pumpage, on the basis of both the percentage of pumpage over their monthly pumpage limits and the volumes of their permitted pumpage.

#### **2.0 Implementation Mechanisms**

##### **2.1 Drought Declaration Notices**

The District will declare the commencement of drought by sending written notice to all District permittees when specified aquifer conditions are met in accordance with the approved District drought trigger methodology and after the Board has approved the declaration. The staff will assess the continuation of and stage of an indicated drought continuously, and notify all permittees when a more or less severe drought stage is declared and when the drought no longer exists

##### **2.2 Public Awareness**

Once drought is officially declared by the District, the District will implement measures to provide public awareness including but not limited to:

- Web site updates on aquifer conditions and permittee pumpage performance
- Press releases and guest columns in the local newspapers
- Recurring articles and columns in District newsletter
- Drought and aquifer condition updates provided via e-newsletter to permittees
- Outreach and education by District educators.

##### **2.3 Monthly Compliance Evaluations**

- Monthly evaluations of permittee performance and compliance with monthly drought limits will begin on the latest date that all meters readings are required to be submitted each month (the 5<sup>th</sup> of each month). Staff will identify permittees who have failed to report meter readings by the monthly reporting deadline while in District-declared drought. District will notify all those who have not reported that the District will obtain the meter readings at a fee of \$50 to the permittee. District staff

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will follow up with meter readings for all delinquent permittees to ensure necessary readings are available to assess drought compliance.

- Should a more or less severe drought stage be declared in the middle of a particular month, the District will evaluate and measure compliance with the less stringent drought stage requirements for that month that the status change occurred. Compliance with the measures of the newly declared stage will be required in the following month.
- Staff will generate a list of non-compliant permittees based on permitted volume and percentage over-pumped. Non-compliance will be categorized in tiers in accordance with the following criteria:

Permitted Pumpage (gallons/year)		% Pumpage over Monthly Limits	
Tier 1:	< 12,000,000	Level A:	< 25%
Tier 2:	≥ 12,000,000 and < 120,000,000	Level B:	≥ 25% and 100%
Tier 3:	≥ 120,000,000	Level C:	≥ 100%

- Staff will send notices of overpumpage to all non-compliant permittees to notify them of their overpumpage and to inform them of their level of non-compliance. This notice will also include the amount of a drought management fee if a fee is assessed
- Staff will identify and red flag suspect permittee meter readings, on the basis of previous readings, and conduct follow-up meter reading verifications.
- Staff will monitor pumping trends of those permittees that repeatedly over-pump monthly limits while in Drought and take action based on Enforcement Procedures outlined below.
- Staff will evaluate compliance trends of all other permittees to identify efforts to comply or escalating overpumpage.
- Staff will report and update monthly, all non-performing permittees after the third consecutive enforceable month of District declared drought, by posting a list of those permittees not meeting their monthly pumpage limits on the District website and at the District office for public review.

### 2.5 Determination of Occurrence of Non-compliance

Determinations of an occurrence of substantial non-compliance will be made based on 1) repeated events of non-compliance, 2) specific causes of overpumpage, and 3) the permittee's response to the reported overpumpage. In determining an occurrence, the District will take into consideration the permittee's demonstrated efforts to achieve pumpage reductions and any documented trends in prior water use reductions.

### 3.0 Timelines and Phasing of Determinations

**Initial Month of a Drought Stage:** No enforcement will be initiated for non-compliance in the initial month of Alarm Stage Drought if the timing of the declaration does not allow for a full month (after notice has been provided to the permittees) to begin assessing compliance with monthly limits. Overpumpage



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notices will be sent to all permittees who over-pumped their monthly pumpage limits to inform them of the on-going pumpage assessment being conducted by the District during drought and to notify them of the District's authority to enforce against non-compliance. For the initial month of Critical Stage Drought, the permittees will only be subject to the conditions of the Alarm Stage Drought until such time that a full month is available to assess compliance.

**1-3 Months:** Enforcement efforts will focus initially on the more egregious and sustained non-compliance by the large volume permittees. During the first three consecutive enforceable months of District declared drought, monthly assessment of overpumpage violations will focus on *Tier 3* permittees with *Level B/C* non-compliance. As a practical matter, the initial assessment and enforcement activities during this period will focus on *Tier 3* permittees with *Level C* non-compliance plus those who are irrigators.

**4-6 Months:** After the third consecutive enforceable month of District declared drought, monthly assessment of non-compliance will be expanded to include *Tier 2* permittees. Evaluation of compliance with Critical Stage Drought requirements will begin after the first full enforceable month and will focus on *Tier 2* and *Tier 3* permittees with *Level B/C* non-compliance.

**After 6 Months:** After the first six (6) consecutive enforceable months of District declared drought, monthly assessment of non-compliance for *Tier 2* and *Tier 3* permittees will include *Level A/B/C* and will be expanded to include *Tier 1* permittees. Enforcement efforts for *Tier 1* permittees permitted for more than 2,000,000 gallons annually will be reserved for only those occurrences that are egregious and/or recurrent in nature. This will be determined when a *Tier 1* permittee reports six (6) or more months of level B or greater overpumpage or when the monthly volume overpumped equals a volume that would trigger an enforcement action for a *Tier 2* permittee. Enforcement efforts for *Tier 1* permittees permitted for 2,000,000 gallons or less will generally be reserved only for non-compliance that warrants enforcement as determined by the Board.

### 4.0 Drought Enforcement Procedures

Levels of non-compliance will be assessed with actions taken in accordance with the Districts Enforcement Plan and Procedures and the following enforcement protocol for those permittees with consistent or increasing levels of non-compliance\*.

**1<sup>st</sup> Occurrence:** For the initial occurrence of non-compliance, a meeting or teleconference will be arranged with the permittee representative and the District GM and staff to discuss the particular causes of the non-compliance. The discussion will focus on compliance with the measures of the UDCP and identifying causes of excessive water use/loss or other possible relevant causes for overpumpage. Specific commitments and timelines to achieve pumpage reductions will be requested and documented.

**2<sup>nd</sup> Occurrence:** For those permittees with a first occurrence of non-compliance and recurrent months of reported non-compliance, staff may refer the case to the Board with a recommendation to issue a NOAV. Further enforcement efforts will proceed in accordance with the District *Enforcement Procedures* and the *Penalty Assessment Guidelines*.

For those permittees with a first violation who continue to have recurrent months of reported non-compliance but with some improvement, a meeting will be arranged with the permittee representatives, GM and staff, and the appropriate District Director at the District office. Discussion will focus on the implementation of the documented measures, the success or failure of those specific measures, and the

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commitments to achieve pumpage reductions resulting from the first violation discussions. More detailed analysis of causes for continued non-compliance will be conducted to result in more specific and binding measures for committed pumpage reductions by the permittee.

### **3<sup>rd</sup> Occurrence:**

For permittees with a second occurrence who continue to have multiple months of reported non-compliance, the GM may refer the case to the Board with a recommendation to issue an NOAV. Further enforcement efforts will proceed in accordance with the District *Enforcement Procedures* and the *Penalty Assessment Guidelines*.

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\* If a permittee is non-responsive to any of the bulleted elements of these enforcement procedures, the GM may recommend to Board that either an NOAV be issued, a Show Cause Hearing be conducted, or an enforcement action be pursued on the violation immediately, whichever is more likely to elicit a constructive response.



**Barton Springs  
Edwards Aquifer**  
CONSERVATION DISTRICT

**NOTICE OF ALLEGED VIOLATION**

April 16, 2024

*Regular US Mail & Electronic Mail*

Ruby Ranch Water Supply Corporation  
Attn: Thomas Doebner  
PO Box 1585  
Buda, TX

RE: Notice of Alleged Violations of District Rules & Bylaws.

Dear Permittee:

On February 8, 2024 the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District (District) determined that sufficient information exists to warrant this notice, alleging that the well owner of the wells off Ruby Ranch Road at Lat: 30.0621° Long: -97.92007° and Lat: 30.05853° Long: -97.92112° violated the District Rules & Bylaws. District records demonstrably indicate alleged violation of **District Rule §3-7.6** for failure to reduce pumping during District declared drought. A copy of the District's investigation report is enclosed.

The District expects complete compliance with all District Rules, and your permit with the District is predicated on that compliance. Pursuant to §36.102 of the Texas Water Code and the penalty schedule contained in §3-7.10 of the District's Rules, the District is authorized to assess civil penalties of up to \$10,000 for each act of violation and for each day of violation for Rule §3-7.6. The indicated penalties are based on several factors including: (1) the severity, seriousness, or magnitude of the violations; (2) whether the violation was willful, intentional, or could have been reasonably anticipated and avoided; (3) whether the violator adequately responded and communicated with the District and acted in good faith to avoid or mitigate the violation; (4) the violation was during a District declared drought, (5) the history of past violations; (3) the amount necessary to deter future violations; (4) efforts made to correct the violations; and (6) any other matters that justice may require. Accordingly, the District Staff is recommending to the Board of Directors **the assessment of a penalty of \$39,600 unless the matter is resolved by agreement.** A copy of the District penalty calculation is enclosed.

If necessary, the District will file civil suit to enforce and achieve compliance with its rules but prefers to resolve the case without the need for litigation. **As an incentive to achieve immediate compliance and early resolution of the violations, the District will agree to a reduced penalty of no more than \$20,600 if you agree, execute, and comply with the enclosed Agreed Order.**

- 1) The maximum penalty of \$39,600 is contingent upon Ruby Ranch Water Supply Corporation's timely and satisfactory compliance with all the terms of the Agreed Order.

- 2) Ruby Ranch Water Supply Corporation must pay the reduced penalty amount of \$20,600 within 30 days of the Effective Date.
- 3) The deferred amount of \$19,000 will be waived upon full compliance with the terms of the Agreed Order.
- 4) Ruby Ranch Water Supply Corporation must pay the difference between the reduced penalty amount of \$20,600 and the maximum penalty of \$39,600 if Ruby Ranch Water Supply Corporation violates the terms of the Agreed Order. Payment of this difference must be made within 30 days of the notification of noncompliance by the General Manager.

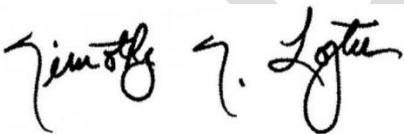
Please note that the offer made here for early resolution of these violations should not be construed as an admission by the District and is inadmissible under Texas Rules of Evidence to prove invalidity of the alleged violations or the amount of the penalty. Moreover, the District has no obligation to reduce penalties associated with these violations after the early resolution period terminates.

**IF YOU ACCEPT THE SETTLEMENT OFFER, PLEASE SIGN THE ATTACHED AGREEMENT AND RETURN TO BSEACD WITHIN THIRTY (30) DAYS. AFTER 30 DAYS, THE OFFER WILL BE WITHDRAWN AND THE DISTRICT WILL PURSUE OTHER ENFORCEMENT MEANS.**

If you choose to contest these allegations, notify the District within thirty (30) days of this notice. You will be cited to appear and will be provided a hearing before the Board where you may show cause why an enforcement action should not be initiated against you. Failure to respond to this notice in the specified timeframe will result in the referral of this matter to the District Board of Directors and the scheduling of a formal public hearing at which time the District Staff will provide a recommendation to the Board to file a lawsuit against you and seek civil penalties, court costs and attorney's fees.

If you have any questions regarding this matter, contact the Regulatory Compliance Team, by phone at (512) 282-8441.

Sincerely,



Timothy T. Loftus, Ph.D.  
General Manager

cc: Mr. Bill Dugat, Esq., District Co

**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING RUBY RANCH  
WATER SUPPLY CORPORATION**

§  
§  
§  
§  
§

**BEFORE THE BARTON  
SPRINGS/EDWARDS  
AQUIFER  
CONSERVATION  
DISTRICT**

**AGREED ORDER**

**I.  
JURISDICTION AND STIPULATIONS**

The Board of Directors (“Board”) of the Barton Springs/Edwards Aquifer Conservation District (“District”) has considered this agreement of the parties resolving an enforcement action regarding the Ruby Ranch Water Supply Corporation under the authority of Texas Water Code Ch. 36. The General Manager of the District and Ruby Ranch Water Supply Corporation appear before the Board and together stipulate that:

1. Ruby Ranch Water Supply Corporation owns and operates the wells located off Ruby Ranch Road at Lat: 30.0621° Long: -97.92007° and Lat: 30.05853° Long: -97.92112°
2. Ruby Ranch Water Supply Corporation utilizes water supplied by public water supply wells permitted by the District as Commercial Wells.
3. Ruby Ranch Water Supply Corporation’s Historical and Class B Edwards permit issued by the District includes standard Permit Conditions and Requirements in accordance with District Rule 3-1.11.
4. The District and Ruby Ranch Water Supply Corporation agree that the District has jurisdiction to enter into this Agreed Order and that Ruby Ranch Water Supply Corporation is subject to the District’s jurisdiction.
5. Ruby Ranch Water Supply Corporation received notice of the violations alleged in Section II on or about December 14, 2023.

6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ruby Ranch Water Supply Corporation of any violation alleged in Section II, nor of any statute or rule.
7. A penalty in the amount of \$39,600 is assessed by the District for the violations alleged in Section II. A penalty amount of \$19,000 is deferred contingent upon Ruby Ranch's timely and satisfactory compliance with all the terms of this Agreed Order. The balance of the penalty, \$20,600, is due within 30 days. The penalty is partially deferred to reach an early resolution, promote compliance with the technical requirements of this Agreed Order, and to establish an agreed process and penalty determination for failure by Ruby Ranch Water Supply Corporation to reduce pumpage in accordance with monthly pumpage limits beginning March 1, 2024 under its User Drought Contingency Plan ("UDCP"). The deferred amount of \$19,000 will be waived upon full compliance with the terms of this Agreed Order. If Ruby Ranch Water Supply Corporation fails to timely and satisfactorily comply with all requirements of this Agreed Order, Ruby Ranch Water Supply Corporation must pay the deferred penalty.
8. Any notice and procedure that might otherwise be authorized or required in this action are waived in the interest of a timelier resolution of the matter.
9. The General Manager of the District and Ruby Ranch Water Supply Corporation have agreed on a settlement of the matters alleged in this enforcement action, subject to approval of the Board.
10. The General Manager may, without further notice or hearing, seek further enforcement proceedings in a court of competent jurisdiction if the General

Manager determines that Ruby Ranch Water Supply Corporation has not complied with one or more of the terms or conditions of this Agreed Order.

11. This Agreed Order shall terminate five years from its Effective Date or upon compliance with all of the terms and conditions set forth in this Agreed Order, whichever occurs sooner.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.
13. Notice to Ruby Ranch Water Supply Corporation required under this Agreed Order shall be made as follows:

Thomas Doebner  
PO Box 1585  
Buda, TX  
O: (866) 643-3472  
Email: tdoebner@msn.com

## **II.** **ALLEGATIONS**

As a permittee of the District, Ruby Ranch Water Supply Corporation is alleged to have violated District Rule §3-7.6 for failure to reduce pumpage during District-declared drought in accordance with monthly pumpage limits of the UDCP as required by District Rule §3-7.6(A)(1) for the months of November 2023 - February 2023.

## **III.** **DENIALS**

Ruby Ranch Water Supply Corporation generally denies each allegation in Section II.

## **IV.**

## ORDERING PROVISIONS

The Board orders the following:

1. A penalty of \$20,600 is assessed and due within 30 days. A deferred penalty amount of \$19,000 is contingent upon Ruby Ranch Water Supply Corporation's timely and satisfactory compliance with all the terms of this Agreed Order.
2. The deferred amount will be waived upon full compliance with the terms of this Agreed Order.
3. Ruby Ranch Water Supply Corporation must pay the deferred penalty of \$19,000 if Ruby Ranch Water Supply Corporation violates the terms of this Agreed Order. Payment must be made within 30 days of notification of noncompliance by the General Manager.
4. The payment of any penalty and Ruby Ranch Water Supply Corporation's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The District shall not be constrained in any manner from requiring corrective action or penalties for violations that are not raised here.
5. Penalty payments, if any, shall be made payable to Barton Springs/Edwards Aquifer Conservation District and shall be sent with notation "Ruby Ranch Water Supply Corporation's Agreed Enforcement" to:

Barton Springs/Edwards Aquifer Conservation District  
ATTN: General Manager  
1124 Regal Row  
Austin, TX 78748



6. Penalties for Ruby Ranch Water Supply Corporation's failure to reduce pumpage during District declared drought beginning March 1, 2024 will be determined as follows:
  - a. Ruby Ranch Water Supply Corporation will report monthly pumpage to the District as required by its permit and District Rules.
  - b. District staff will calculate an average daily usage by dividing the monthly total pumpage by the number of days in the month.
  - c. The average daily usage will be summed until the total equals Ruby Ranch Water Supply Corporation's monthly target (i.e., drought curtailed) for that month under its UDCP (referred to as "First Day of Exceedance").
  - d. Each day that the average daily usage exceeds the target monthly pumpage on the First Day of Exceedance constitutes a separate daily violation.
  - e. Daily penalties will be \$400.00 per day for overpumpage during Alarm Stage Drought and \$800.00 per day for overpumpage during Critical Stage and Exceptional Drought.
  - f. The product of the number of days of overpumpage multiplied by the appropriate daily penalty amount constitutes the total monthly penalty.
  - g. The District staff will provide notice of the total monthly penalty, if any, for every full month after the Effective Date within 30 days of the receipt of Ruby Ranch Water Supply Corporation's monthly pumpage. The District staff will provide notice of the total monthly penalty, if any, for the months beginning March 1, 2024 and ending with the first full month of the month of the Effective Date within thirty days of the Effective Date. For example,

if the Effective Date is March 22, 2024 then by April 22, 2024 the staff will provide notice of the total monthly penalty, if any, for overpumpage for the period from March 1, 2024 to March 31, 2024. Using the same example, staff will provide notice of the total monthly penalty, if any, for the month of March 2024 and every full month thereafter within 30 days of the receipt of Ruby Ranch Water Supply Corporation's monthly pumpage.

- h. Payment must be made by Ruby Ranch Water Supply Corporation within 30 days of notification of the total monthly penalty amount by the General Manager.
7. The above-described process to calculate and notify Ruby Ranch Water Supply Corporation of future violations of Rule 3-7.6 will be used in lieu of District staff preparing a monthly investigation and Notice of Alleged Violation.
8. The above-described process to calculate and notify Ruby Ranch Water Supply Corporation of future violations of Rule 3-7.6 will end the first full month that the District is in No Drought Stage I Water Conservation Period.
9. Ruby Ranch Water Supply Corporation shall comply with the following technical requirements:
  - a) Within 30 days of the effective date of this Order, Ruby Ranch Water Supply Corporation shall combine and amend its User Drought Contingency Plan (UDCP) documentation in all its District-issued permits modifying language to implement a no more than once-a-week watering schedule for automatic irrigation systems year-round. Outdoor watering with automatic irrigation systems must cease if the District declares Stage

III Critical drought or worse (i.e., Stage IV Exceptional or Stage V Emergency drought). Watering by hand or with a hand-held hose with a shut off valve will be allowed as needed.

- b) Within 30 days of the Effective Date, Ruby Ranch Water Supply Corporation shall provide documentation of water conservation messaging/communication with its ratepayers and an accompanying explanation for how the messaging/communication is being implemented (e.g., delivery mechanism, frequency of delivery, etc.) and how it informs end users to meet conservation goals.
- c) . Within 30 days of the effective date of this Order, Ruby Ranch Water Supply Corporation shall combine and amend its User Drought Contingency Plan (UDCP) documentation in all its District-issued permits modifying language to prescribe modified excessive monthly consumption use numbers outlined within the “Utilities Initiated Penalties or Consequences” section of the UDCP for each drought stage and update the outdoor irrigation allowance schedule to reflect the lack of water availability during the various stages of drought.
- d) Within 30 days of May 1<sup>st</sup>, 2026, Ruby Ranch Water Supply Corporation shall provide the District documentation of the 2025 water loss audit and/or water balance data, as required by the Texas Water Development Board (TWDB) of all retail public water systems with less than 3,300 service connections every 5 years. This provision is required and survives even if

the Agreed Order terminates sooner than the date that this provision is to be completed.

**V.**  
**ADDITIONAL TERMS**

1. The provisions of this Agreed Order shall apply to and be binding upon Ruby Ranch Water Supply Corporation. Ruby Ranch Water Supply Corporation is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.
  - a) If Ruby Ranch Water Supply Corporation fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe (not including drought), Ruby Ranch Water Supply Corporation's failure to comply is not a violation of this Agreed Order. Ruby Ranch Water Supply Corporation shall have the burden of establishing to the General Manager's satisfaction that such an event has occurred. Ruby Ranch Water Supply Corporation shall notify the General Manager within seven days after Ruby Ranch Water Supply Corporation become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
  - b) The General Manager may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Ruby Ranch Water Supply Corporation shall be

made in writing to the General Manager. Extensions are not effective until Ruby Ranch Water Supply Corporation receives written approval from the General Manager. The determination of what constitutes good cause rests solely with the General Manager.

2. This Agreed Order, issued by the Board, shall not be admissible against Ruby Ranch Water Supply Corporation in a civil proceeding, unless the proceeding is brought by the District to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the District’s jurisdiction, or of a rule adopted or an order or permit issued by the District under such a statute.
3. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
4. The Effective Date is the date the District signs the Agreed Order.

**SIGNATURE PAGE**

**Barton Springs/Edwards Aquifer Conservation District:**

\_\_\_\_\_  
Blayne Stansberry  
Board President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Timothy T. Loftus, Ph.D.  
General Manager

\_\_\_\_\_  
Date

**ATTEST:**

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Signature

---

Date

---

Name (printed)

---

Title (printed)

DRAFT

**Ruby Ranch Water Supply Corporation:**

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the District, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by Ruby Ranch Water Supply Corporation;
- Lawsuit for contempt, injunctive relief, additional penalties, and/or attorney fees, or referral to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to civil trial for any future enforcement actions; and
- District seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

\_\_\_\_\_  
NAME  
TITLE

\_\_\_\_\_  
Date

## Item 3

### Board Discussion and Possible Action

- b. Discussion and possible action related to a variance request by Ruby Ranch Water Supply Corporation under District Rule 3-7.9 to allow exception to District Rule 3-7.6.C.1.b.iii which requires Class D Conditional production permits to completely curtail monthly permitted pumpage upon entering Stage II Alarm District-declared drought.





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Phone 352-336-3820  
Fax 352-373-2381  
www.asrsystems.ws

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February 28, 2024

Ms. Kendall Bell-Enders  
Regulatory and Policy Project Manager  
Barton Springs Edwards Aquifer Conservation District  
1124 Regal Row, Austin Texas 78748

Re: Ruby Ranch Water Supply Corporation  
Class D Conditional Permit \_ Variance Request

Dear Ms. Bell-Enders:

On behalf of Ruby Ranch Water Supply Corporation, ASR Systems LLC submits the following request for a variance regarding certain Class D Conditional Permit drought curtailments. The variance is needed so that RRWSC can meet customer water supply requirements during and beyond Summer 2024.

The requested variance is an interim measure through June 2025. It would provide for a recharge goal of 8 MG during March through June 2024: recovery of about 4 to 7 MG during summer peak demand months, and a recharge goal of 14 MG during October 2024 through June 2025. Net recharge during this period would be approximately 15 to 18 MG. We propose that during 4Q2025 the District and RRWSC would review hydraulic and water quality data to date and make whatever adjustments to ASR operations are deemed appropriate at that time, considering any changes in drought intensity, ASR hydraulics and recovered water quality. The variance would provide for the following:

1. Restoration of the Buffer Zone (BZ) volume of 22 MG established several years ago, that is a current best estimate of the volume needed so that recovered water quality remains acceptable, including total dissolved solids (TDS), sulfate and arsenic concentrations.
2. At the end of the Summer 2024 peak demand season, recharge would resume, followed by ASR recovery during the Summer 2025 peak demand season. During 4Q2025 RRWSC and BSEACD would review the situation and determine whether any further variance or adjustments are needed. If the drought continues but RRWSC can maintain the BZ while meeting its own water needs with acceptable water quality and steadily increasing the cumulative stored water volume, a supplemental variance would be unnecessary. If on the other hand it is apparent that the BZ volume needed exceeds 22 MG, or that more water is needed to build the Target Storage Volume more rapidly, such an adjustment would then be made.

## **Background:**

Prior to Summer 2022, a cumulative volume of approximately 26.1 MG had been recharged, slightly exceeding the previously-established Buffer Zone Volume of 22 MG. However, during the following months no water was recharged due to Class D drought restrictions, and 7.9 MG was recovered to meet customer water demand, reducing the BZ volume below 22 MG. As a result, arsenic concentrations increased, with one sample measuring 12.6 µg/l, exceeding the drinking water standard of 10 µg/l. During December 2023, 0.5 MG was recharged. A subsequent sample indicated 4 µg/l arsenic, which is within drinking water standards.

Subsequent investigations indicated that Edwards Aquifer Well 4, which supplies water for ASR storage, has the pump set at the bottom of the well at a depth of about 400 feet, instead of where a pump is normally set at the base of the well casing. As a result, the water has been cascading about 220 feet of free-fall down the well, entraining air. Furthermore, the pump was cavitating, entraining additional air. Dissolved oxygen concentrations for the recharge water entering ASR Well 5 were quite high, within a range of 6.0 to 8.0 mg/l. Dissolved oxygen in the recharge water mobilizes any arsenic present in the limestone of the Cow Creek Formation, Middle Trinity Aquifer. Creation of the BZ pushes any mobilized arsenic radially away from the well. In geologic terms this is known as a “rolling front.” If all or part of the BZ is then recovered from ASR storage, there is a risk that arsenic concentrations will increase. That is what happened during the 2023 ASR recovery period. The purpose of maintaining the BZ is to ensure that any poor quality water is kept away from the well during ASR recovery.

To resolve this issue, RRWSC plans to substitute Edwards Aquifer Well 3 for Well 4 as the source of water supply for ASR Well 5. Well 3 is quite productive and the piping to the ASR Well 5 site is already in place. The pump for Well 3 is within the casing so no cascading will occur, most likely eliminating dissolved oxygen in the recharge water entering Well 5. This should address and hopefully resolve the arsenic issue of concern. It will still be essential to maintain and perhaps expand the Buffer Zone so that the “rolling front” of arsenic does not return to the ASR well. Instead, the already existing mobilized arsenic will likely form a ring surrounding the Target Storage Volume in this ASR well. A theoretical radius for the BZ is a few hundred feet.

## **Lateral Velocity of the Stored Water “Bubble:”**

We believe that lateral movement of the stored water “bubble” is probably much slower than previously estimated. A previous estimate was 0.3 feet per day (ft/day) (110 ft/year) to the southeast. However, that calculation was based on an assumed hydraulic gradient in the Middle Trinity Aquifer of 0.008 ft/ft, which is equivalent to 43 feet per mile. That seems highly unlikely. There are no Middle Trinity wells in the vicinity. More likely the lateral movement of the stored water is 11 ft/yr, or perhaps 1.1 ft/yr, not 110 ft/yr. This is important for ASR since the goal is to be able to store water during wet years and be able to recover it years later during droughts. Seasonal storage from winter months to summer months is cost-effective and helpful, but the real need is for long-term storage and the demonstrated ability to recover the stored water. We recommend reevaluation of the hydraulic gradient at this site, and the associated rate of lateral movement of the stored water.

### **Suggested Regulatory Approach:**

It is unfortunate that RRWSC ASR Well 5 started operations just prior to what has become a serious drought, reducing aquifer recharge while increasing the demand for water. One of the primary goals of ASR is to store sufficient water to bridge drought-flood cycles. Formation and maintenance of an adequate buffer zone is essential for successful ASR, particularly in aquifers containing poor water quality. ASR Well 5 achieved its estimated buffer zone volume but was unable to then create a significant volume of stored water available for recovery. Instead, the drought began and some of the buffer zone was recovered, contributing to the arsenic issue. However, this unfortunate circumstance can also be viewed as an opportunity to consider further improvements to long term water management, encouraging more water storage during wet periods so that more water will be available during droughts. A suggested framework includes the following:

- Provide a regional water management incentive or credit for storage of more water in permitted ASR wells than currently needed to meet projected near-term local needs of a permit applicant.
- Provide a further incentive or credit if two or more permit applicants coordinate resources to establish a joint ASR water reserve to meet both of their water demands during droughts, essentially a “Water Bank,” including not only the ASR wells but also the other facilities needed to make this work, such as water sources, connecting pipelines and treatment facilities. This could evolve into a regional water banking system, designed and operated to provide improved regional water supply reliability during droughts.

Regarding the pending penalty charges for RRWSC water usage exceeding authorized volumes during the current drought, RRWPC proposes either a cash payment or an alternative settlement agreement that would potentially provide long term benefits to both BSEACD and RRWSC. Suggested elements of such a settlement agreement might include demonstrated progress by RRWSC and perhaps one or more other permittees, working with BSEACD toward achieving the above two objectives.

New Braunfels Utilities (NBU) has an ASR program in development, with the first ASR well currently in Cycle 3, and with plans for expansion to 9 MGD capacity by 2028. During 2012, as part of an initial ASR feasibility study, an analysis of daily flow records for the “Drought of Record (1946 to 1957)” was conducted, an objective of which was to determine the longest period of no significant rainfall during this drought. This turned out to be nine months duration. Based upon this, the BZ volume and the Target Storage Volume (TSV) were estimated. The TSV is the BZ volume plus the volume needed to provide water supply reliability for nine months, corresponding to the maximum time between significant rainfall events. During the current drought, the Edwards Aquifer Authority (EAA) imposed drought restrictions. ASR recharge for NBU ended June 27, 2023, and has not yet resumed, and no end is anticipated within the next several months. Clearly, the effective drought duration is defined by the duration of regulatory restrictions on water use, not by the duration between significant rainfall events. Consequently, the volume of water in the TSV for ASR projects in central Texas will need to be substantially greater than previously estimated to achieve water supply reliability.

For RRWSC, ASR recharge was terminated due to Class D regulatory restrictions beginning in June 2022, not June 2023. A preliminary estimate for RRWSC might be 10 years of drought restrictions, requiring approximately 8 MG/ year. Including the BZ, the TSV might be 102 MG. That would require a substantial amount of time, and probably an additional ASR well. However, rainfall would be expected during this period, with a significant rainfall event at least every nine months. A regulatory framework that expedites efficient capture and storage of water at such times can improve water supply reliability. The current waiver process is time-consuming; however, it is perhaps an important step in the right direction to develop a suggested ASR regulatory mechanism that expedites ASR recharge based upon significant rainfall and runoff. The aim would be to capture more water for treatment and storage deep underground while the water is available and before it flows away.

### **Variance Alternatives**


- RRWSC has a Middle Trinity Aquifer well permit providing for production of 20.3 MGY. This would meet existing and projected local water needs. However, the water quality is brackish, with a total dissolved solids (TDS) concentration of 1,200 mg/l. The TDS drinking water standard is 1,000 mg/l and customers typically prefer concentrations below about 500 mg/l, which can be achieved by blending with water from the overlying Edwards Aquifer, except at times when withdrawals from the Edwards Aquifer are curtailed such as during drought periods and associated Class D restrictions. Desalination treatment would achieve drinking water standards but would produce a brine requiring disposal. That would likely require either a deep injection well or a long brine disposal pipeline, depending upon whether a very deep aquifer at this location exists that exceeds 10,000 mg/l TDS concentration, which is currently unknown. Either of these options (deep well injection or a long brine disposal pipeline) would cost several million dollars. Desalination also would need to be at a steady flow rate, compared to highly variable customer demand for water, diurnally and seasonally. Additional ground storage capacity would likely be needed to better accommodate this variability. Blending with water from the Edwards Aquifer is already utilized to achieve TDS requirements since the Edwards Aquifer TDS is much lower, around 300 mg/l. However, that blending approach is also constrained by Class D drought curtailment of groundwater production, so is unreliable.
- Conventional water treatment could be implemented to accommodate variable source water quality that would potentially include mostly Edwards Aquifer water during months when it is available, blended with mostly Middle Trinity water during times when regulatory restrictions limit reliance upon the Edwards Aquifer, and with variable arsenic concentrations. ASR would still be a part of the treatment and storage process, however the water quality recovered from ASR Well 5 would be variable, requiring treatment during dry periods and droughts. Treatment would be expensive.
- Make arrangements to purchase water from another water purveyor. Other water users in the area are facing similar water supply issues. A possible regional solution for achieving a reliable water supply should be considered. Such a plan was developed several years

ago that included desalination and an ASR wellfield at the nearby Texas Disposal Systems site, powered by landfill gas, and interconnected with an existing 42-inch City of Austin drinking water pipeline that runs along the northern boundary of the site. Such a plan, if implemented, could potentially provide water supply reliability benefits to the entire region. A deep exploratory well would likely be needed to determine whether brine disposal at the site is viable. If shown to be not viable due to the total dissolved solids concentration being less than 10,000 mg/l in the Middle Trinity or Lower Trinity Aquifer at that site, that aquifer could perhaps also be utilized for ASR storage at the same location, supplementing ASR storage in the brackish Edwards Aquifer.

- Several Lower Trinity Aquifer wells exist in the general vicinity of RRWSC. Available data on water quality is limited but suggests that water quality is variable and, in some locations, may be acceptable for potable purposes. However, natural aquifer recharge is questionable, with some indications that there is little or none, as demonstrated by steadily increasing salinity levels for wells that have been operational for several years. This aquifer may be ideal for ASR purposes, providing large volume regional storage in ASR wells and wellfields. However, considerable time and effort would be required to confirm the viability of the Lower Trinity Aquifer as a large volume subsurface storage reservoir for public water supply purposes.

Each of these alternatives to issuance of a variance would be expensive, complex and time-consuming. Issuance of the proposed variance will provide time for RRWSC to move forward with its current plan, and hopefully store sufficient water to form and maintain an adequate Buffer Zone; build a viable Target Storage Volume, and thereby meet all regulatory requirements.

If there are comments or questions regarding this variance request, I will be pleased to respond.



R. David G. Pyne, P.E.  
President, ASR Systems LLC  
Texas P.E. 91405



**Barton Springs  
Edwards Aquifer**  
CONSERVATION DISTRICT

## MEMORANDUM

Date: April 16, 2024  
To: Board of Directors  
From: Kendall Bell-Enders  
Re: Ruby Ranch Water Supply Corporation (RRWSC) variance request for Class D Conditional Production Permit (ASR) drought curtailment provisions pursuant District Rule 3-7.6 (C)

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**Request:** Attached (Appendix A) is the variance request submitted by the above referenced permittee to allow exception to District Rule 3-7.6 (C) which requires permittees with Class D Conditional production permits to completely curtail monthly permitted pumpage upon entering Stage II Alarm District-declared drought. Class D Conditional permits authorizes the production of Edwards Aquifer water for the purposes of injecting, storage, and recovery from an ASR system. RRWSC is requesting a temporary variance to use their Class D Conditional production permit during drought through June 2025 to inject water into their ASR system to 1.) restore an adequate buffer zone volume to minimize the mobilization of arsenic and 2.) maintain the viability of ASR project and allow recharge of additional water to help meet peak summer demand.

**Background:** Applicants submitting variance requests must provide a demonstration that the criteria for variances pursuant to District rule 3-7.9 are met. The rule state that a variance may be granted by the Board 1) to prevent severe economic hardship or financial hardship, 2) to prevent health hazards, 3) to alleviate immediate and serious threat to public health and safety, 4) to prevent severe property damage, or 5) to enable construction of public works projects by a political subdivision of the State. The rule also states that a variance request must be justified by a unique economic or financial hardship or health hazard, which is not experienced more generally by other similar permittees. Furthermore, in evaluating a request, the District will consider factors such as the permittee's water use, including its amount, its water-use efficiency and its authorized pumpage history; demonstrated health and safety concerns; and economic/financial considerations.

The applicant filed a written variance request and provided information and data indicating a unique health hazard and financial hardship that is not experienced by other permittees that shall be considered by the Board in the evaluation of the request.

In September 2020, the Board approved an ASR Source and Recovery Permit for RRWSC which authorized the annual production of 15,000,000 gallons per year under an Edwards Class D Conditional Production Permit to inject, store, and recovery from an ASR recovery well completed in the Middle Trinity. Recently, RRWSC experienced elevated levels of arsenic in its ASR storage area.

Class D Conditional permit authorizes the production of Edwards Aquifer water for the purposes of injecting, storage, and recovery from an ASR system and requires and RRWSC completely curtails monthly permitted pumpage when the District enters Stage II Alarm District-declared drought. RRWSC produces, injects, and stores Class D Conditional Edwards water during the low domestic water use period between November and April and recover and distribute the stored Edwards water during the usually high domestic water use period between May and October of each calendar year, and to have water available for long periods of drought.

The existing Middle Trinity well #5 is used for injection and recovery and is the ASR well. ASR well #5 is completed in the Cow Creek unit of the Middle Trinity Aquifer at a total depth of 1,140 ft and is about 120 feet from the Edwards source water well #4. Edwards Aquifer well #4 is the source water well and was drilled in 2001 to a depth of 405 feet and is completed within the Edwards Group and Upper Glen Rose. The existing wells and ASR project are located at 2053 Ruby Ranch Road, Buda, TX 78610 on a 0.76-acre lot (water-well easement) within the Ruby Ranch subdivision. The recovered water from well #5 is delivered to a ground storage tank where it is blended with Edwards water from well #4 before it is distributed to the RRWSC service area and subdivision for public-water supply.

At the time of the Class D permit approval, RRWSC's ASR was only the 4th ASR system approved and permitted by the TCEQ for the state of Texas. Currently, RRWSC holds the only ASR Source and Recovery Permit and Class D Conditional Permit in the District. The RRWSC ASR project fulfills the District management plan objectives that the District should assess availability of alternative supplies and encourage and assist permittees to diversify their water supply by assessing the feasibility of alternative water supplies and fostering arrangements with currently available water suppliers. To promote this objective, the District set aside 2 cubic feet per second of Class D Conditional Edwards water to encourage ASR projects, which are essentially a new water source. The District also maintained the production fees for Class D Conditional permits at \$0.17/1000 (vs. \$.48/1000). The District and RRWSC worked very closely on the pilot project studies for its ASR project. The Ruby Ranch ASR project has been important in providing necessary data on ASR feasibility in the area, encouraging other ASR projects.

The total storage volume (TSV) is the sum of the stored water plus the buffer zone volume. The estimated TSV for the RRWSC ASR project was projected to be approximately 50 to 60 million gallons with an annual recovery volume of 10-15 million/gallons and a target buffer zone volume of 22 million. It was estimated to take 3-5 years to build the TSV and buffer. The District's consultant at the time, David Pyne, recommended the formation of an adequate buffer zone as it is essential to increasing recoverability and reducing the mobilization of arsenic and other constituents. Establishment of a buffer zone, which is achieved by leaving some recharge water in the aquifer, ensures that no reaction products are allowed close to the well during recovery and minimizes the mixing. Based on Florida ASR experience, Mr. Pyne recommended that an adequate buffer zone would be at least the volume

associated with recovery at the design capacity of the well for 70 days, ie: 0.32 MGD (220 GPM) x 70 days = 22 million gallons. Forming and maintaining a buffer zone is a proven and inexpensive “rule of thumb” that works in Florida, avoiding the need for deoxygenation of the recharge water, which is complex, expensive, and impractical for larger ASR operations.

Upon approval in 2020, it was estimated the buffer zone will be established within the next 3 to 5 yrs. The District declared drought in July 2022 and therefore the Class D Conditional permit (source water) has not been available for almost 2 years (1 year and 8 months) and the maximum TSV that was established was 34.6 million gallons in May 2022. Therefore, RRWSC did not have adequate time to build up their TSV before an extended drought occurred and they had to recover more water than anticipated to meet their demand. This situation caused them to recover a significant portion of the TSV. In August 2023, with a TSV of approximately 25 million gallons (buffer volume 22 MG) the arsenic concentration begins to increase and exceeded the maximum contamination limit (MCL) of 10 ug/L for 2 months (October and November 2024)(see appendix B). The levels reduced below the MCL in February 2024 after approximately 900,000 gallons were injected in December 2023 and January 2024. Having arsenic concentrations above the MCL is a unique health concern related only to ASR systems and the geochemical reaction when an adequate buffer volume is not maintained.

Regarding the consideration of other factors such as water use and efficiency, it's important to note that RRWSC holds a Middle Trinity permit for 20.3 MGY that has been unavailable to them since the start of the ASR project (2020) and have paid approx. \$19,000 in production fees. RRWSC has also paid approx. \$4,500 in Class D production fees since the beginning of the drought. RRWSC average use is 115 gallons per capita per day (gpcd) with higher usage in the summer (216 gpcd) and lower in the fall/winter (74 gpcd). The Texas Water Development Board estimates that 82 gpcd is the state average for residential use. RRWSC line loss is low at approx. 5 %.

ASR has been identified as a viable water source for Texas. In fact, the Texas Legislature and the TCEQ have been encouraging ASR projects and have made significant progress in updating the statutes and rules associated with ASR projects. ASR projects have been successful around the world, including here in Texas. However, each ASR project has site-specific concerns that may need to be addressed and regulatory flexibility may be necessary to ensure the viability of an ASR project. As ASR projects continue to advance, new projects will be based upon results and “lessons learned” for existing projects. The positive potential of ASR for present and future water storage in Texas is reflected in the large number of proposed water management strategies that include ASR in the State Water Plan. RRWSC has spent about 7 years and approx. \$450,000 on the ASR project (Middle Trinity well and ASR modifications). Other source or variance options presented in the variance letter include desalination treatment, water treatment, purchasing water from another purveyor, or drilling a lower Trinity well; all of which are expensive and time consuming.

**Staff recommendation:** Staff recommends the approval of certain components of variance request under the following conditions:

1. RRWSC shall submit a major amendment application to amend and add the following special provision to their Source and Recovery permit:



1. Water quality samples shall be collected from ASR well upon commencement and conclusion of each recovery cycle. During each recovery cycle, samples shall be taken after 50%, 75%, 90%, and 100% of the total stored water volume has been recovered. Future sampling frequency may be decreased depending on the results of the initial recovery cycle. These recovery samples should be analyzed for water quality parameters that include *arsenic, conductivity, total dissolved solids, dissolved oxygen, iron, and manganese*.
2. Samples shall be collected from the Edwards well prior to or during the initialization of each recharge cycle. The samples should be analyzed for water quality parameters *pH, ORP, and dissolved oxygen*. The goal is to assess the redox potential of the recharge water. Future recharge water sampling requirements will depend on whether water quality changes in the recovery water are observed that are a result of redox reactions.
3. A target buffer volume of at least 25 million shall be established and maintained. Should the total volume in storage drop to the 25 MG buffer zone requirement (indicating recovery of 100% of the recoverable water volume), the RRWSC shall cease recovery operations and contact the District immediately. Water quality samples shall be collected as specified at 100% recovery in Provision #1.
2. RRWSC may produce 9 million gallons of water under the Class D Conditional permit. Production under the variance shall be limited water produced from March 1, 2024 to June 31, 2024 and to Stage II Alarm Drought. RRWSC will receive notice from the District that any source production and storage associated with this variance must cease before the declaration of Critical Stage III Drought. Production shall be allow for injection of source water to:
  1. to increase the buffer to 25 million gallons (~ 800,000 gallons) and;
  2. maintain the viability of the ASR project and allow subsequent recovery in summer months (~ 8 million gallons).
3. Within 30 days of the order date RRWSC shall amend their User Drought Contingency Plan modifying language to implement a no more than once-a-week watering schedule for automatic irrigation systems year-round. Outdoor watering with automatic irrigation systems must cease if the District declares Stage III Critical drought or worse (i.e., Stage IV Exceptional or Stage V Emergency drought). Watering by hand or with a hand-held hose with a shut off valve will be allowed as needed.
4. Within 60 days of the order date RRWSC shall provide documentation of water conservation messaging/communication with its ratepayers and an accompanying explanation for how the messaging/communication is being implemented (e.g., delivery mechanism, frequency of delivery, etc.) and how it informs end users to meet conservation goals.
5. Within 60 days of the approval date RRWSC shall meet with the District staff to discuss, and if necessary, update its User Drought Contingency Plan by modifying its existing excessive monthly consumption among individual ratepayers or prescribed use numbers outlined within the "Utilities Initiated Penalties or Consequences" section of the UDCP for each drought stage and secondly, update the outdoor irrigation allowance schedule to reflect the lack of water availability during the various stages of drought.

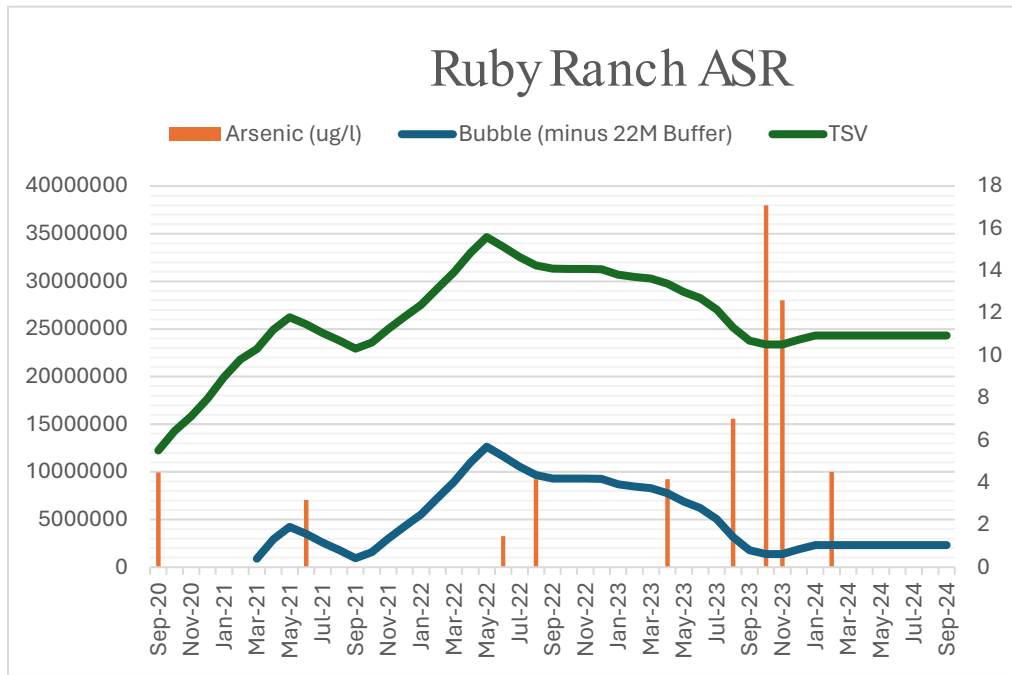
6. Within 6 months of the Order RRWSC shall submit to the District, in writing, a long term plan and solutions to ensure a they have adequate water supply for a prolonged drought.
7. In September 2024, RRWSC shall provide a report summarizing their ASR production and recovery since the variance. If the District declared drought persist the Board may consider a variance extension to allow for subsequent production of the Class D source water.
8. The Board Order expires on December 31, 2024 unless extended by the Board of Directors.

Appendix A – Variance Request

Appendix B

	Month	ASR Recovery/Trinity Master Total Gallons		TSV	Bubble (minus 22M Buffer)	Arsenic (ug/l)
FY 21	Sep-20	711,500		12,249,915		4.48
	Oct-20	0		14,295,715		
	Nov-20	0		15,818,415		
	Dec-20	0		17,711,415		
	Jan-21	0		19,945,915		
	Feb-21	0		21,787,115		
	Mar-21	0		22,891,415	891,415	
	Apr-21	0		24,914,315	2,914,315	
	May-21	0		26,231,815	4,231,815	
	2021	745,000	1,456,500	25,486,815	3,486,815	3.17
FY 22	Jul-21	887,900		24,598,915	2,598,915	
	Aug-21	773,300		23,825,615	1,825,615	
	Sep-21	895,400		22,930,215	930,215	
	Oct-21	300		23,564,615	1,564,615	
	Nov-21	0		25,000,215	3,000,215	
	Dec-21	0		26,284,015	4,284,015	
	Jan-22	0		27,547,715	5,547,715	
	Feb-22	0		29,252,015	7,252,015	
	Mar-22	0		30,965,115	8,965,115	
	Apr-22	0		32,985,815	10,985,815	
FY 23	May-22	0		34,647,515	12,647,515	
	Jun-22	1,031,900	3,588,800	33,615,615	11,615,615	1.47
	Jul-22	1,077,100		32,538,515	10,538,515	
	Aug-22	854,700		31,683,815	9,683,815	4.15
	Sep-22	365,000		31,318,815	9,318,815	
	Oct-22	2,500		31,316,315	9,316,315	
	Nov-22	0		31,316,315	9,316,315	
	Dec-22	61,400		31,254,915	9,254,915	
	Jan-23	545,400		30,709,515	8,709,515	
	Feb-23	253,000		30,456,515	8,456,515	
FY 24	Mar-23	166,100		30,290,415	8,290,415	
	Apr-23	519,800		29,770,615	7,770,615	4.16
	May-23	898,100		28,872,515	6,872,515	
	Jun-23	642,200		28,230,315	6,230,315	
	Jul-23	1,201,200		27,029,115	5,029,115	
	Aug-23	1,878,600		25,150,515	3,150,515	7.01
	Sep-23	1,382,100		23,768,415	1,768,415	

Oct-23	379,100		23,389,315	1,389,315	17.1
Nov-23	2,100		23,387,215	1,387,215	12.6
Dec-23	8,900		23,875,115	1,875,115	
Jan-24	0		24,312,315	2,312,315	
Feb-24			24,312,315	2,312,315	4.5
Mar-24	0		24,312,315	2,312,315	
Apr-24	0		24,312,315	2,312,315	
May-24	0		24,312,315	2,312,315	
Jun-24	0		24,312,315	2,312,315	
Jul-24	0		24,312,315	2,312,315	
Aug-24	0		24,312,315	2,312,315	
Sep-24	0		24,312,315	2,312,315	



**IN THE MATTER OF VARIANCE  
REQUEST CONCERNING RUBY  
RANCH WATER SUPPLY  
CORPORATION**

§  
§  
§  
§  
§

**BEFORE THE BARTON  
SPRINGS/EDWARDS  
AQUIFER  
CONSERVATION  
DISTRICT**

**ORDER GRANTING VARIANCE**

On April 11, 2024 the Board of Directors (“Board”) of the Barton Springs/Edwards Aquifer Conservation District (“District”) considered the February 28, 2024 variance request filed by Ruby Ranch Water Supply Corporation (Variance Request).

**I.  
FINDINGS OF FACT**

The Board makes the following Findings of Fact:

1. Ruby Ranch Water Supply Corporation has an existing Edwards Aquifer well (#4) and a Middle Trinity well (#5) authorized by District permits.
2. In September 2020, the Board approved an Aquifer Storage And Recovery (ASR) Source and Recovery Permit for Ruby Ranch Water Supply Corporation authorizing annual production of 15,000,000 gallons per year under an Edwards Class D Conditional Production Permit to inject, store, and recovery from an ASR recovery well completed in the Middle Trinity.
3. The existing Middle Trinity well #5 is used for injection and recovery and is the ASR well. ASR well #5 is completed in the Cow Creek unit of the Middle Trinity Aquifer at a total depth of 1,140 ft and is about 120 feet from the Edwards source water well #4. Edwards Aquifer well #4 is the source water well and was drilled in 2001 to a depth of 405 feet and is completed within the Edwards Group and Upper Glen Rose.

4. The existing wells and ASR project are located at 2053 Ruby Ranch Road, Buda, TX 78610 on a 0.76-acre lot (water-well easement) within the Ruby Ranch subdivision
5. The recovered water from well #5 is delivered to a ground storage tank where it is blended with 50% Edwards water from well #4 before it is distributed to the Ruby Ranch Water Supply Corporation service area and subdivision for public-water supply.
6. Ruby Ranch Water Supply Corporation utilizes water supplied by public water supply wells permitted by the District.
7. Ruby Ranch Water Supply Corporation's Class D Conditional permits authorizes the production of Edwards Aquifer water for the purposes of injecting, storage, and recovery from an ASR system. The permit issued by the District includes standard Permit Conditions and Requirements in accordance with District Rule 3-1.11.
8. Ruby Ranch Water Supply Corporation Class D Conditional permit requires and Ruby Ranch Water Supply Corporation completely curtails monthly permitted pumpage when the District enters Stage II Alarm District-declared drought.
9. Ruby Ranch Water Supply Corporation experienced elevated levels of arsenic in its ASR storage area.
10. Ruby Ranch Water Supply Corporation is requesting a temporary variance to use its Class D Conditional production permit during drought through June 2025 to inject water into their ASR system to: (a) restore an adequate buffer zone volume to minimize the mobilization of arsenic and (b) maintain the viability of ASR project and allow recharge of additional water to help meet peak summer demand.

11. Ruby Ranch Water Supply Corporation's request is to allow exception to District Rule 3-7.6C.1.b.iii which requires permittees with Class D Conditional production permits to completely curtail monthly permitted pumpage upon entering Stage II Alarm District-declared drought.
12. Ruby Ranch Water Supply Corporation's Class D permit and associated ASR project are distinguishable from other District permits and projects.
13. At the time of the Class D permit approval, Ruby Ranch Water Supply Corporation's ASR was only the 4th ASR system approved and permitted by the TCEQ for the state of Texas.
14. Currently, Ruby Ranch Water Supply Corporation holds the only ASR Source and Recovery Permit and Class D Conditional Permit in the District.
15. The Ruby Ranch Water Supply Corporation ASR project fulfills the District management plan objectives that the District should assess availability of alternative supplies and encourage and assist permittees to diversify their water supply by assessing the feasibility of alternative water supplies and fostering arrangements with currently available water suppliers.
16. To promote this objective, the District set aside 2 cubic feet per second of Class D Conditional Edwards water to encourage ASR projects, which are essentially a new water source.
17. The District and Ruby Ranch Water Supply Corporation worked very closely on the pilot project studies for its ASR project. The Ruby Ranch ASR project has been important in providing necessary data on ASR feasibility in the area, encouraging other ASR projects.



18. The estimated Total Storage Volume (TSV) for the Ruby Ranch Water Supply Corporation ASR project was projected to be approximately 50 to 60 million gallons with an annual recovery volume of 10-15 million gallons and a target buffer zone volume of 22 million.
19. Establishment of a buffer zone, which is achieved by leaving some recharged water in the aquifer, ensures that no reaction products are allowed close to the well during recovery and minimizes the mixing.
20. The District-declared drought in July 2022, which completely curtailed the Class D Conditional permit (source water) so it has not been available for almost 2 years (1 year and 8 months).
21. The maximum TSV established was 34.6 million gallons (MG) in May 2022, which was significantly below the desired levels.
22. Ruby Ranch Water Supply Corporation did not have adequate time to build up its TSV before an extended drought occurred and it had to recover more water than anticipated to meet demand. This situation caused use of a significant portion of the TSV.
23. In August 2023, with a TSV of approximately 25 million gallons (buffer volume 22 MG) the arsenic concentration begins to increase and exceeded the maximum contamination level (MCL) of 10 µg/L for 2 months (October and November 2024). The levels reduced below the MCL in February 2024 after approximately 900,000 gallons were injected in December 2023 and January 2024.

24. Having arsenic concentrations above the MCL is a unique health concern related only to ASR systems and the geochemical reaction when an adequate buffer volume is not maintained.
25. Ruby Ranch Water Supply Corporation holds a Middle Trinity production permit for 20.3 MGY that has been unavailable as a source of supply since the start of the ASR project (2020) because it is used for injection. Even though it is unavailable Ruby Ranch continues to and has paid approximately \$19,000 in production fees.
26. Ruby Ranch Water Supply Corporation has also paid approximately \$4,500 in Class D production fees since the beginning of the drought.
27. Ruby Ranch Water Supply Corporation average use in 2023 is 116 gallons per capita per day (gpcd; based on 250 service connections and an estimated 2.7 persons per household) with higher usage in the summer (216 gpcd) and lower in the fall/winter (74 gpcd). The Texas Water Development Board estimates from data collected in 2020 that 82 gpcd is the state average for residential use.
28. Ruby Ranch Water Supply Corporation line loss is calculated to be approximately 5 percent in 2023.
29. Ruby Ranch Water Supply Corporation has spent about 7 years and approximately \$450,000 on the ASR project (Middle Trinity well and ASR modifications).
30. Other water source or variance options presented in the Variance Request include desalination treatment, water treatment, purchasing water from another purveyor, or drilling a lower Trinity well; all of which are expensive and time consuming.

## **II.** **CONCLUSIONS OF LAW**

The Board makes the following Conclusions of Law:

1. All variance cases will be presented to the Board for approval. Rule 3-7.9. B.
2. The District may, but is not required, to conduct a public hearing on a variance request. Rule 3-7.9. B.
3. The April 11, 2024 Board meeting during which the Variance Request was considered was properly noticed and conducted under the Texas Open Meetings Act.
4. A variance approval must specify the period the variance will be in effect. Rule 3-7.9. B.
5. Applicants submitting variance requests must provide a demonstration that the criteria for variances pursuant to District rule 3-7.9 are met. A variance may be granted by the Board 1) to prevent severe economic hardship or financial hardship, 2) to prevent health hazards, 3) to alleviate immediate and serious threat to public health and safety, 4) to prevent severe property damage, or 5) to enable construction of public works projects by a political subdivision of the State. A variance request must be justified by a unique economic or financial hardship or health hazard, which is not experienced more generally by other similar permittees. Rule 3-7.9. A.
6. The District will consider factors such as the permittee's water use; amount; water-use efficiency; authorized pumpage history; demonstrated health and safety concerns; and, economic/financial considerations. Rule 3-7.9

7. A variance request must be justified by a unique economic or financial hardship or health hazard which is not experienced more generally by other similar permittees.

Rule 3-7.9. A.

### **III. ORDERING PROVISIONS**

The Board orders the following:

1. The variance request is granted and under this Order Ruby Ranch Water Supply Corporation may produce 9 million gallons water under its Class D Conditional permit production from March 1, 2024 to June 31, 2024 during a Stage II Alarm Drought. Ruby Ranch Water Supply Corporation may not produce water under its Class D Production permit in any other drought stage and the District will notify Ruby Ranch Water Supply Corporation that any source production and storage associated with this variance must cease before the declaration of Critical Stage III Drought. The production of 9 million gallons under the Class D permit shall be allowed for recharge of source water to:
  - a. increase the buffer volume; approximately 800,000 gallons is needed to reach 25 million gallon buffer volume and;
  - b. maintain the viability of the ASR project and allow subsequent recovery in the months of July, August, and September 2024.
2. Ruby Ranch must perform the following:
  - a. Water quality samples shall be collected from the ASR well upon commencement and conclusion of each recovery cycle. During each recovery cycle, samples shall be taken after 50%, 75%, 90%, and 100% of the total stored water volume has been recovered. Future sampling

frequency may be decreased depending on the results of the initial recovery cycle. These recovery samples should be analyzed for water quality parameters that include *arsenic, conductivity, total dissolved solids, dissolved oxygen, iron, and manganese.*

- b. Samples shall be collected from the Edwards well prior to or during the initialization of each recharge cycle. The samples should be analyzed for water quality parameters *pH, ORP, and dissolved oxygen.* The goal is to assess the oxidation-reduction (redox) potential of the recharge water. Future recharge water sampling requirements will depend on whether water quality changes in the recovery water are observed that are a result of redox reactions.
  - c. A target buffer volume of at least 25 million shall be established and maintained. Should the total volume in storage drop to the 25 MG buffer zone requirement (indicating recovery of 100% of the recoverable water volume), Ruby Ranch Water Supply Corporation shall cease recovery operations and contact the District immediately. Water quality samples shall be collected as specified at 100% recovery in Provision” a”.
3. Within 90 days of the effective date of this Order, Ruby Ranch Water Supply Corporation shall submit a major amendment application to amend and add the paragraph 2.a.-c. above as special provision to its Class D Source and Recovery permit

4. Within 60 days of the effective date of this Order, Ruby Ranch Water Supply Corporation shall combine and amend its User Drought Contingency Plan (UDCP) documentation in all its District-issued permits modifying language to:
  - a) implement a no more than once-a-week watering schedule for automatic irrigation systems year-round. Outdoor watering with automatic irrigation systems must cease if the District declares Stage III Critical drought or worse (i.e., Stage IV Exceptional or Stage V Emergency drought). Watering by hand or with a hand-held hose with a shut off valve will be allowed as needed.
  - b) prescribe modified excessive monthly consumption use numbers outlined within the “Utilities Initiated Penalties or Consequences” section of the UDCP for each drought stage and update the outdoor irrigation allowance schedule to reflect the lack of water availability during the various stages of drought.
5. Within 60 days of the effective date of this Order Ruby Ranch Water Supply Corporation shall provide documentation of water conservation messaging/communication with special provision to its ratepayers and an accompanying explanation for how the messaging/communication is being implemented (e.g., delivery mechanism, frequency of delivery, etc.) and how it informs end users to meet conservation goals.
5. Within 6 months of the Order Ruby Ranch Water Supply Corporation shall submit to the District, in writing, a long term plan and solutions to ensure it has an adequate water supply for a prolonged drought.

5. No later than September 30, 2024, Ruby Ranch Water Supply Corporation shall provide a report summarizing their ASR production and recovery during the variance period. If the District declared drought persist the Board may, upon request by Ruby Ranch Water Supply Corporation, consider a variance extension to allow for subsequent production of the Class D source water.
6. The Board Order expires on December 31, 2024 unless extended by the Board of Directors.

**V.**  
**ADDITIONAL TERMS**

1. The provisions of this Order shall apply to and be binding upon Ruby Ranch Water Supply Corporation. Ruby Ranch Water Supply Corporation is ordered to give notice of the Order to personnel who maintain day-to-day control over the operations referenced in this Order.
2. If Ruby Ranch Water Supply Corporation fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe (not including drought), Ruby Ranch Water Supply Corporation's failure to comply is not a violation of this Order. Ruby Ranch Water Supply Corporation shall have the burden of establishing to the General Manager's satisfaction that such an event has occurred. Ruby Ranch Water Supply Corporation shall notify the General Manager within seven days after Ruby Ranch Water Supply Corporation becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

3. The General Manager may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Ruby Ranch Water Supply Corporation shall be made in writing to the General Manager. Extensions are not effective until Ruby Ranch Water Supply Corporation receives written approval from the General Manager. The determination of what constitutes good cause rests solely with the General Manager.
4. The Effective Date is the date the District signs the Order.

**SIGNATURE PAGE**

**Barton Springs/Edwards Aquifer  
Conservation District:**

\_\_\_\_\_  
Blayne Stansberry  
Board President

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Christy Williams, Board Secretary

\_\_\_\_\_  
Date



Item 4

Adjournment