

**BARTON SPRINGS-EDWARDS AQUIFER CONSERVATION DISTRICT
RESOLUTION AND ORDER NO. 091026-01**

**A RESOLUTION AND ORDER ESTABLISHING INTERIM PROCEDURES FOR
ACCEPTANCE AND PROCESSING OF CERTAIN PERMIT APPLICATIONS DURING
STAGE 3 DROUGHT AND PENDING COMPLETION OF RULEMAKING TO
CONFORM THE DISTRICT RULES TO LAWS ENACTED BY THE 89TH TEXAS
LEGISLATURE AND TO MAKE OTHER CHANGES TO THE DISTRICT'S
REGULATIONS AND PERMITTING SYSTEM IMPLEMENTING THE DISTRICT'S
MANAGEMENT PLAN**

WHEREAS, the Barton Springs-Edwards Aquifer Conservation District (the "District") was created in 1986 by the Texas Water Commission, validated in 1987 by the 70th Texas Legislature under Senate Bill 988, now codified at Chapter 8802, Special District Local Laws Code, and confirmed by the voters in an election held August 8, 1987;

WHEREAS, in 2015 the 84th Texas Legislature, by House Bill 3405, expanded the District's jurisdictional area to include the Trinity Aquifer and all other aquifers other than the Edwards Aquifer in the portion of Hays County located within the boundaries of the Edwards Aquifer Authority and outside the Plum Creek Conservation District, and added Section 8802.0035, Special District Local Laws Code;

WHEREAS, Section 36.0015, Texas Water Code, provides that groundwater conservation districts created under Chapter 36 are the state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district;

WHEREAS, Section 36.101(a), Texas Water Code, empowers the District to make and enforce rules to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions, and to carry out the powers and duties provided by Chapter 36;

WHEREAS, Section 36.116, Texas Water Code, authorizes the District to regulate the production of groundwater by, among other methods, limiting the amount of water produced based on acreage or tract size, including based on contiguous surface acreage, limiting the maximum amount of water that may be produced on the basis of acre-feet per acre, managed depletion, or any combination of those methods, and authorizes the District to adopt different rules for each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the District;

WHEREAS, Section 36.1071(f), Texas Water Code, requires the District to adopt rules necessary to implement its comprehensive management plan;

WHEREAS, the District's comprehensive management plan, approved by the Texas Water Development Board, establishes goals, objectives, and management strategies for achieving the desired future conditions adopted for Groundwater Management Area 10, for managing production within the modeled available groundwater determined by the Texas Water Development Board, for the District's management zones, and for the District's obligations under its federal habitat conservation plan and incidental take permit;

WHEREAS, the 89th Texas Legislature enacted amendments to Chapter 36, Texas Water Code, effective September 1, 2025, that require conforming amendments to the District Rules, including the following:

- (a) House Bill 1633, which amends Section 36.113(d)(2), Texas Water Code, to require a district, before granting or denying a permit or permit amendment, to consider whether the proposed use of groundwater would unreasonably affect registered exempt wells;
- (b) House Bill 2078, which amends Sections 36.1071 and 36.108, Texas Water Code, to require the identification of interim desired future condition values for periods not exceeding 10 years and to require review during joint planning of the degree to which each district is achieving the applicable desired future condition through implementation and enforcement of its management plan and rules; and
- (c) House Bill 5560, which amends Section 36.102, Texas Water Code, to increase the maximum civil penalty a district may assess, to establish factors a court must consider in determining a penalty, to authorize penalties exceeding the statutory maximum where the violator's economic benefit is greater, to authorize deferral of a portion of a penalty in exchange for corrective action, and to authorize a water or sewer utility to recover a penalty from a customer whose conduct caused the violation;

WHEREAS, conforming the District Rules to the statutory amendments described above requires revisions to, among other provisions, the criteria the District applies in acting on permit applications, the provisions governing production limits keyed to the applicable desired future condition, and the District's enforcement and civil penalty provisions;

WHEREAS, the Board has directed District staff and counsel to prepare comprehensive amendments to the District Rules that would, among other matters, (i) conform the District Rules to amendments to Chapter 36, Texas Water Code, enacted by the 89th Texas Legislature, and (ii) make other amendments necessary to implement the District's Management Plan, including without limitation the establishment of Historical Trinity Production Permits for wells permitted before a date certain, and establishment of Conditional Trinity Production Permits subject to a production allowable per acre of contiguous controlled acreage (the "Pending Amendments");

WHEREAS, the District's management zones contain a substantial number of registered exempt domestic and livestock wells whose owners are directly affected by the consideration required under Section 36.113(d)(2), Texas Water Code, as amended by the legislature;

WHEREAS, the Pending Amendments would establish the criteria and procedures by which the District will make the determination now required by Section 36.113(d)(2), Texas Water Code, as amended, regarding unreasonable effects on registered exempt wells, and the Board has determined that applications for new nonexempt authorizations are more appropriately considered under District Rules that incorporate those criteria and procedures;

WHEREAS, the consideration required by Section 36.113(d)(2), Texas Water Code, as amended, applies to every permit and permit amendment decision of the District without regard to the aquifer or management zone in which a well is or will be completed;

WHEREAS, the Pending Amendments also revise provisions of the District Rules governing withdrawals from the Edwards Aquifer, including the definitions of Extreme Drought Managed Available Groundwater and the Extreme Drought Withdrawal Limitation, and the retirement of Historic Use into the Conservation Permit and the Ecological Flow Reserve;

WHEREAS, firm-yield availability from the Freshwater Edwards Aquifer has been fully appropriated since the District established the Extreme Drought Withdrawal Limitation, new authorizations from the Eastern and Western Freshwater Edwards Management Zones are issued as Conditional Edwards Production Permits subject to curtailment up to and including cessation, and the District's obligations under its habitat conservation plan and incidental take permit depend upon aggregate Edwards production during a recurrence of the drought of record;

WHEREAS, Section 36.116(b), Texas Water Code, provides that in promulgating any rules limiting groundwater production, a district may preserve historic or existing use before the effective date of the rules to the maximum extent practicable consistent with the district's comprehensive management plan;

WHEREAS, Section 36.113(e), Texas Water Code, authorizes a district to impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations (1) apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use, (2) bear a reasonable relationship to the existing district management plan, and (3) are reasonably necessary to protect existing use;

WHEREAS, the production limitations based upon the contiguous controlled acreage of an applicant that are included in the Pending Amendments implement the authority granted by Sections 36.113(e) and 36.116(b), Texas Water Code, and will constitute more restrictive permit conditions upon new users in the Trinity Aquifer Management Zones and upon applications to increase production by holders of Historical Trinity Production Permits; will apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use; bear a reasonable relationship to the existing District Management Plan; and are reasonably necessary to protect existing use;

WHEREAS, authorizations issued during the pendency of the rulemaking would not be subject to the acreage-based limitations included in the Pending Amendments, would commit additional groundwater available under the applicable desired future condition before those limitations take effect, and would themselves constitute existing uses, thereby reducing the groundwater available to the historic and existing users the Pending Amendments are intended to protect;

WHEREAS, the Barton Springs Segment of the Edwards Aquifer and the Trinity Aquifer are the primary or sole sources of drinking water for a substantially large population within the District's jurisdiction;

WHEREAS, the Barton Springs Segment of the Edwards Aquifer discharges at Barton Springs, which provides critical habitat for the Barton Springs Salamander (*Eurycea sosorum*) and the Austin Blind Salamander (*Eurycea waterlooensis*), each of which is listed as an endangered species and protected under the federal Endangered Species Act;

WHEREAS, the District holds an incidental take permit issued by the United States Fish and Wildlife Service and implements a habitat conservation plan under which the District has committed to manage groundwater production so as to maintain springflow at Barton Springs during a recurrence of the drought of record, and the continued availability of that habitat depends upon springflow that is directly affected by aggregate withdrawals from the aquifer;

WHEREAS, authorizations issued during a Stage 3 Exceptional Drought under District Rules the Board has formally proposed to replace could increase aggregate withdrawals in a manner inconsistent with the District's obligations under its habitat conservation plan and incidental take permit and with the protection of the drinking water supplies described above;

WHEREAS, the District is presently in a Stage 3 Exceptional Drought, and groundwater levels, springflow, and aquifer conditions throughout the District warrant careful management of new authorizations;

WHEREAS, the Edwards Aquifer and the Trinity Aquifer are vertically adjacent and hydrologically connected within the District, the Trinity Aquifer Management Zones underlie the Edwards Aquifer Management Zones, the Eastern and Western Freshwater Edwards Management Zones by definition include the portion of the Upper Trinity Aquifer where there is significant hydrological connection to the overlying Edwards Aquifer, and the District considers hydrologic interconnection among aquifers in its management of the aquifers, such that authorizations affecting withdrawals from either aquifer may have consequences for water levels, well yields, and springflow in the other;

WHEREAS, the Board finds that publication of the Pending Amendments is reasonably likely to prompt an accelerated volume of applications submitted in anticipation of the more restrictive limitations, that such applications would seek authorizations under District Rules the Board has formally proposed to replace, that the resulting authorizations would commit groundwater in a manner inconsistent with the Pending Amendments and could not thereafter be easily withdrawn, and that this would thwart the purpose of the rulemaking and has a strong potential to cause severe and lasting consequences for the aquifers of the District, which are already experiencing a Stage 3 Exceptional Drought;

WHEREAS, under District Rule 3-1.23, total permitted pumpage from the Middle and Lower Trinity Management Zones, including that from both exempt and nonexempt users, shall not exceed the amount required to achieve the applicable desired future condition adopted by Groundwater Management Area 10 for the Trinity Aquifer;

WHEREAS, the Board has authorized publication of the Pending Amendments and has set a public hearing on their adoption, and intends to act on the Pending Amendments as expeditiously as practicable;

WHEREAS, acting on applications for new nonexempt authorizations during the pendency of the rulemaking, under rules the Board has formally proposed to replace, would authorize withdrawals inconsistent with the framework under consideration, would impair the District's ability to achieve the applicable desired future conditions, and would confer an advantage upon applicants able to file in anticipation of the Pending Amendments over similarly situated landowners, based upon

the timing of filing rather than upon any difference in their circumstances or in the groundwater available to them under their property rights;

WHEREAS, current District Rule 3-1.4(E) provides that applications to drill any well requiring a Production Permit that are submitted during a District-declared drought will be referred to the Board for consideration and/or public hearing, and that the Board may require additional information, place special conditions on the application or permit, authorize drilling but modify the Production Permit, or delay or deny the application;

WHEREAS, current District Rule 3-1.6(A)(12) provides that, in order to protect the public health and welfare and to conserve and manage the groundwater resources in the District during times of drought, the District may prioritize groundwater use, place special requirements on, modify, delay, or deny a Production Permit for a new well during a District-declared drought;

WHEREAS, current District Rule 3-7.7(F) provides that all applications for wells that require the issuance of a Production Permit or an amended Production Permit submitted during any District-declared drought will be referred to the Board for consideration and/or public hearing;

WHEREAS, for the foregoing reasons, and in the exercise of the authority conferred by District Rules 3-1.4(E), 3-1.6(A)(12), and 3-7.7(F) to delay action upon applications during a District-declared drought, the Board hereby delays the District's acceptance and processing of the applications described in this Resolution and Order during the pendency of the Stage 3 Exceptional Drought and the rulemaking on the Pending Amendments, and reserves to the Board alone the authority to accept any such application for filing and processing during that period;

WHEREAS, this Resolution and Order does not adopt a new rule, but implements existing District Rules and directs the manner in which the General Manager shall refer covered applications to the Board during the limited period provided herein;

WHEREAS, because no application within the scope of this Resolution and Order will be accepted or deemed filed during the temporary period provided herein, no such application will become administratively complete, the deadlines under Section 36.114, Texas Water Code, will not be triggered, and no right will vest by reason of the submission of such an application;

WHEREAS, this Resolution and Order does not affect wells exempt from permitting under Section 36.117, Texas Water Code, and District Rule 3-1.3, does not affect any existing permit or authorization, and preserves each person's right to submit an application after the termination of this Resolution and Order for consideration under the District Rules then in effect;

WHEREAS, the Board finds that the limited and temporary procedures established by this Resolution and Order are necessary, are narrowly drawn to applications proposing new production, an increase in production, or the drilling of a new well, provide for an exception under which the Board may accept an application to protect public health, safety, and welfare, and will terminate automatically without further Board action;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE BARTON SPRINGS-EDWARDS AQUIFER CONSERVATION DISTRICT:

1. Covered Applications. This Resolution and Order applies to each of the following applications submitted to the District on or after the effective date of this Resolution and Order and before its termination, for a well completed or proposed to be completed in any management zone of the District: (a) an application for a Well Drilling Authorization for a new nonexempt well; (b) an application for a new Production Permit; (c) an application to amend a Production Permit to increase authorized annual production; (d) an application for authorization under the Limited Production Permit general permit by rule, District Rule 3-1.20.B; and (e) an application that proposes the drilling of a new Test Well under District Rule 3-1.20.D (collectively, “Covered Applications”).
2. Delay of Acceptance and Processing. In the exercise of its authority under District Rules 3-1.4(E), 3-1.6(A)(12), and 3-7.7(F), the Board delays the District’s acceptance and processing of Covered Applications during the term of this Resolution and Order. The General Manager shall not accept for filing, file, docket, review for administrative completeness, or otherwise process a Covered Application, and only the Board may accept a Covered Application for filing and processing during that period, as provided in Paragraph 5. A Covered Application submitted to the District during the term of this Resolution and Order shall not be deemed filed or administratively complete for any purpose unless the Board accepts it under Paragraph 5.
3. Return of Submissions; Right to Submit After Termination. The General Manager shall promptly return to the submitting person any Covered Application submitted during the term of this Resolution and Order that the Board has not accepted under Paragraph 5, together with any fee tendered with it, and shall provide written notice stating the basis for the return under this Resolution and Order and the person’s right to submit the application after its termination. An application submitted after the termination of this Resolution and Order shall be accepted and processed in the ordinary course and considered under the District Rules then in effect.
4. Applications Not Affected. This Resolution and Order does not apply to, and the District shall continue to accept, process, and act upon in the ordinary course: (a) registrations of and authorizations for wells exempt from permitting; (b) renewals of existing permits; (c) change of ownership amendments; (d) applications for replacement wells that do not increase authorized production; (e) amendments that do not increase authorized annual production, including reductions and retirements; (f) plugging authorizations; (g) aquifer test work plans, and aquifer test permits and aquifer tests conducted on existing wells or on wells for which a Well Drilling Authorization was issued before the effective date of this Resolution and Order; (h) applications relating solely to wells in the Saline Edwards Management Zone; (i) any other application that does not propose new production, an increase in production, or the drilling of a new well; and (j) any application that was administratively complete before the effective date of this Resolution and Order.
5. Public Health and Safety Exception. Notwithstanding Paragraphs 2 and 3, the Board, and only the Board, may accept a Covered Application for filing and processing, direct the General Manager to process it, and act upon it before the termination of this Resolution and Order, upon a finding that the delay of acceptance and processing would create a threat to public health, safety, or welfare. A person may request consideration under this

Paragraph in writing at any time, and the General Manager shall place the request on the agenda of the next regular Board meeting.

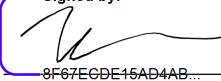
6. **Diligence and Reporting.** The General Manager shall report to the Board at each regular meeting during the term of this Resolution and Order on (a) the status and progress of the Pending Amendments, (b) the number and nature of Covered Applications submitted and returned, and (c) any request submitted under Paragraph 5 and its disposition. The Board directs the General Manager, staff, and legal counsel to proceed with the Pending Amendments as expeditiously as practicable.
7. **Term and Automatic Termination.** This Resolution and Order takes effect immediately upon adoption and terminates automatically, without further action by the Board, upon the earliest of (a) the effective date of the Pending Amendments; (b) the sixtieth consecutive day on which the District is neither in Stage 3 Exceptional Drought or a Stage 4 Emergency Response Period; or (c) December 11, 2026. No renewal or extension of this Resolution and Order shall occur by operation of law, and the Board may terminate this Resolution and Order earlier by subsequent order.
8. **Construction.** This Resolution and Order shall be construed consistently with Chapter 36, Texas Water Code, Chapter 8802, Texas Special District Local Laws Code, and the District Rules. Nothing in this Resolution and Order limits the authority of the Board or the General Manager under the District Rules, waives the District's immunity, or creates any right or remedy not otherwise provided by law.
9. **Severability.** If any provision of this Resolution and Order or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Resolution and Order that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution and Order are severable.

ADOPTED this 10 day of September, 2026.



President, Board of Directors

ATTEST:

Signed by: 

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Secretary, Board of Directors