

SUBCHAPTER I: RIO GRANDE BED AND BANKS PERMITS FOR WATER-IN-TRANSIT

§§303.74 - 303.90

Effective October 26, 2006

§303.74. General.

This subchapter is applicable to water rights permits for water-in-transit in the Rio Grande below Fort Quitman, Texas. All other rules, regulations, or orders promulgated or issued by the commission regarding water rights are also applicable to water-in-transit water rights unless in conflict with the provisions of this subchapter, in which event this subchapter shall govern.

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§303.75. Requirements for an Application to Convey Water-in-Transit in the Bed and Banks of the Rio Grande.

(a) The purpose of this section is to provide the application content requirements for a bed and banks permit authorization for water-in-transit in the Rio Grande under Texas Water Code, §11.3271.

(b) A person who intends to discharge private water that originates from an underground reservoir into the Rio Grande and wishes to divert and use the discharged water must submit an application to the commission containing the following information:

- (1) the name, mailing address, and telephone number of the applicant;
- (2) the location(s) of the proposed groundwater reservoir from which the water will originate identified on a United States Geological Survey (USGS) 7.5 minute topographical map(s);
- (3) the location(s) of the point of the proposed discharge(s) into the Rio Grande and diversion(s) as identified on a USGS 7.5 minute topographical map(s);
- (4) the appropriate ownership or lease documents evidencing applicant's authority to develop the proposed project;
- (5) the source, including a hydrological determination regarding any interaction between the groundwater source and state waters, amount, and rates of the proposed discharge and diversion;
- (6) a description of the quality of the water proposed to be discharged and a description of the Rio Grande water quality at the proposed discharge point with documentation that the discharge will not degrade the Rio Grande;
- (7) the date of the proposed discharge of the groundwater into the Rio Grande;

(8) an analysis of the amount of water that will be lost under differing flow regimes to transportation, evaporation, seepage, channel, treaty accounting, or other associated losses for each reach of the Rio Grande from the point of discharge to Amistad or Falcon Reservoir, including losses associated with storage in these reservoirs, and carriage losses from these reservoirs to the point of diversion. The losses shall be quantified for each reach of the Rio Grande below Amistad Reservoir as listed in §303.2 of this title (relating to Definitions) and for the appropriate reaches above Amistad Reservoir.

(9) the maximum amount of water which may be stored in Amistad and/or Falcon Reservoir;

(10) any other information the executive director may need to complete an analysis of the application.

(c) The method and calculation of any losses including, but not limited to, carriage, treaty accounting completed by the International Boundary and Water Commission (IBWC), storage, and that are associated with any permit issued under this section shall be quantified and made a provision of the permit and shall be subject to the review and approval of the executive director. The method of loss calculation shall be consistent with procedures used by the IBWC.

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§303.76. Use of Forms.

The executive director will furnish, without charge, forms and instructions for preparing an application. The use of such forms is not mandatory, but the information required by such forms must be provided. Supplements may be attached if there is not sufficient space on the printed form. If supplements are used, the data and information entered on the form must be separated into paragraphs numbered to correspond with those on the printed form. A supplement explaining the project and planned operation may be attached to an application.

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§303.77. Preparation of Application.

(a) All applications must be typewritten or printed legibly in ink. Illegible applications will be returned to the applicant.

(b) Applicants will be notified if additional information is needed to process an application.

(c) Upon express written or verbal approval of the applicant or the applicant's agent, any employee of the commission may make non-substantive changes in any documents submitted by the applicant.

(d) Substantive changes in an application may be made only by the applicant or the applicant's agent who submitted the application and only in the form of a written, notarized amendment to the application signed by the proper person; provided, however, that no substantive changes may be made after an application has been filed with the chief clerk by the executive director.

(e) The executive director shall file the application with the chief clerk once the application has been determined to be administratively complete.

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§303.78. Name and Address.

(a) Each applicant must provide its full name, post-office address, telephone number, and social security or federal identification number.

(b) If the applicant is a partnership, it must be designated by the firm name followed by the words "a partnership."

(c) If the applicant is acting as trustee for another, it must be designated by the trustee's name followed by the word "trustee."

(d) If one other than the named applicant executes the application, the name, position, post-office address, and telephone number of the person executing the application must be given.

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§303.79. Source of Supply.

The applicant must clearly state the name and location of the underground reservoir from which the water will originate. If the source has no name, it may be designated as "an unnamed reservoir."

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§303.80. Amount of Discharge and Diversion.

The total amount of water to be discharged and diverted must be stated in cubic feet per second and acre-feet annually.

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§303.81. Rate and Method of Diversion.

The application must:

- (1) include the maximum rate of diversion for each diversion point in gallons per minute or cubic feet per second;
- (2) describe the method to be used as portable pump, stationary pump, or gravity flow;
- (3) include the location of point(s) of discharge and diversion. These locations must also be shown on the application maps with reference to a corner of an original land survey and/or other survey point of record, giving both course and distance; and
- (4) include the distance and direction from the nearest county seat or town.

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§303.82. Signature of Applicant.

The application must be signed as follows.

- (1) If the applicant is an individual, the application must be signed by the applicant or the applicant's duly appointed agent. An agent must provide written evidence with the application of his or her authority to represent the applicant. If the applicant is an individual doing business under an assumed name, the applicant must attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.
- (2) A joint application must be signed by each applicant or each applicant's duly authorized agent, with written evidence of such agency to be submitted with the application. If land is owned by both husband and wife, each must sign the application. Joint applicants must select one among them to act for and represent the others in pursuing the application with the commission, with written evidence of such representation to be submitted with the application.
- (3) If the application is by a partnership, the application must be signed by one of the general partners. If the applicant is a partnership doing business under an assumed name, it must attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.
- (4) If the applicant is an estate or guardianship, the application must be signed by the duly appointed guardian or representative of the estate, and a current copy of the letters issued by the court must be attached to the application.
- (5) If the applicant is a corporation, public district, county, municipality, or other corporate entity, the application must be signed by a duly authorized official. Written evidence in the form of by-laws, charters, or resolutions which specify the authority of the official to take such action must be submitted. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(6) If the applicant is acting as trustee for another, the applicant must sign as trustee, and in the application must disclose the nature of the trust agreement and give the name and current address of each trust beneficiary.

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§303.83. Sworn Application Required.

Each applicant must subscribe and swear to the application before any person entitled to administer oaths, who must also sign his or her name and affix his or her seal of office to the application.

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§303.84. Consistency With State And Regional Water Plans.

An application must contain information describing how it addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement.

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§303.85. Fees for Filing an Application.

(a) Fees. Statutory fees must accompany an application in order for it to be considered by the commission. The executive director's staff are expressly prohibited from processing any application unless the proper fees are tendered. The executive director shall charge and collect for the benefit of the state the applicable fees, and it shall be his duty to make a record at the time same becomes due and to render an account to the party charged. Each fee is a separate charge and is in addition to other fees, unless provided otherwise.

(b) Filing, recording, and notice fees. The following fees must be submitted with any application for a water-in-transit permit or any application for an amendment to a water-in-transit permit.

(1) Application filing fees are established as follows.

(A) Fees for a water-in-transit permit application must be based upon the total amount of water requested to be discharged for transit as follows:

(i) less than 100 acre-feet - \$100;

(ii) 100 - 5,000 acre-feet - \$250;

(iii) 5,001 - 10,000 acre-feet - \$500;

(iv) 10,001 - 250,000 acre-feet - \$1,000; and

(v) greater than 250,000 acre-feet - \$2,000.

(B) Fees to amend a water-in-transit right are \$100 per right requested to be amended.

(2) Recording fees are \$1.25 per page of the application.

(3) The applicant must pay the total cost of mailing notice to persons in the Rio Grande water division. The executive director will advise the applicant of the number of persons to whom notice is mailed and the total mailing cost. A water-in-transit permit or amendment will require notice to all owners of water rights within the Rio Grande water division of any such application.

(c) Publication. The cost of any required publication must be paid by the applicant directly to the newspaper involved. Publication is required in newspapers of general circulation throughout the basin.

(d) One-time transit fees. A use fee of \$1.00 per acre-foot of water discharged for transit shall be charged.

(e) Payment of fees exceeding \$1,000. If the total fee for a permit exceeds \$1,000, the applicant must pay at least one-half of the use fee when the application is filed, and one-half within 180 days after notice is mailed to the applicant that the permit is granted. If the applicant does not pay all of the amount owed before beginning to use state water under the permit, the permit is annulled and reverts to the status of a pending, filed application requiring notice, the payment of notice fees, and the balance of the use fees.

(f) Maximum fees. The one-time transit use fee shall not exceed \$50,000.

(g) Inquiries as to fees. Any inquiries as to fees must be made in advance to the executive director. The applicant is charged with the duty of tendering correct fees according to law. In case of disagreement between the applicant and the executive director over the proper amount of the fees required, the application will be filed "under protest" and the fees paid by the applicant will be placed in suspense until the issue is resolved.

(h) Return of fees.

(1) Other than the filing and recording fees required by statute, all fees paid pertaining to an application for a water-in-transit permit which have not been expended in the processing of the application will be placed in suspense until action is taken by the commission upon the application.

(2) If the permit is not granted, unexpended fees will be returned to the applicant.

(3) If the application is granted in part, excess use fees will be returned to the applicant.

(4) No fees will be returned to any applicant who has failed to notify the executive director of the applicant's social security or federal identification number.

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§303.86. Notice Requirements for Water-in-Transit Applications.

(a) At the time an application for a water-in-transit permit has been filed by the executive director with the chief clerk, the commission shall give notice by mail to those persons specified in subsection (d) of this section. At such time, the chief clerk shall furnish a copy of the notice to the applicant, and the applicant must publish notice, pursuant to subsection (c) of this section.

(b) A notice of application and commission action must:

(1) include the name and address of the applicant;

(2) include the date on which the application was received by the commission;

(3) include the date the application was filed by the executive director with the chief clerk;

(4) include that the executive director has determined that the application is administratively complete;

(5) include the application number;

(6) include the type of permit the applicant is seeking;

(7) include the purpose and extent of the proposed transfer of water;

(8) identify the source of supply, place of discharge, and the place where the water is to be diverted;

(9) specify the time and location where the commission will consider the application;

(10) identify all potentially affected groundwater districts;

(11) give any additional information the executive director considers necessary.

(c) The applicant must publish the notice in newspapers of general circulation in each county within the Rio Grande water division. The date of publication must be on or before the date of publication directed by the chief clerk.

(d) Notice by mail.

(1) The commission shall mail the notice by first-class mail, postage prepaid, to persons listed in this subsection after the executive director has declared the application administratively complete.

(2) For an application for a water-in-transit permit pursuant to Texas Water Code, §11.3271 or for an amendment to a Texas Water Code, §11.3271 permit, notice must be mailed to:

(A) each claimant or appropriator of water within the Rio Grande water division below Fort Quitman, Texas, the record of whose claim or appropriation has been filed with the commission or its predecessor agencies;

(B) all groundwater districts potentially impacted by the application; and

(C) other persons who in the judgment of the commission might be affected.

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§303.87. Notice of Hearing.

A hearing on an application may be held without the necessity of issuing further notice other than advising the applicant, executive director, public interest counsel, all hearing requestors, and all persons who have in writing notified the commission of their interest in the application of the time and place where the hearing is to convene. The chief clerk will mail such notice to these persons not less than 30 days before the date of the hearing.

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§303.88. Request for Public Hearing.

A request for public hearing on an application for a water-in-transit permit or amendment is governed by Chapter 55, Subchapter G of this title (relating to Requests for Contested Case Hearing and Public Comment on Certain Applications).

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§303.89. Public Hearing.

The commission may conduct a public hearing as provided by in Chapter 80 of this title (relating to Contested Case Hearings).

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§303.90. Action on Application Without Public Hearing.

If no hearing requests are filed as provided for in §303.88 of this title (relating to Request for Public Hearing) the executive director may issue the permit if the requirements of Chapter 50 of this title (relating to Action on Applications and Other Authorizations) are met.

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