

**SUBCHAPTER J: ADMINISTRATION OF RIO GRANDE BED AND BANKS PERMITS
FOR WATER-IN-TRANSIT
§303.91, §303.92
Effective October 26, 2006**

§303.91. Water-in-Transit Permit Accounts.

(a) Purpose. The purpose of this section is to provide the administrative responsibilities of the watermaster regarding any water-in-transit permits.

(b) Storage and losses. For the purpose of establishing accounts in Amistad and Falcon Reservoirs, the two reservoirs are considered to constitute a single storage system.

(1) The watermaster shall establish an account of water stored in the Amistad - Falcon system for these water-in-transit permits only if there is storage space available in the reservoirs.

(2) The water stored shall be based upon the amount of water discharged into the Rio Grande minus appropriate losses to either Falcon or Amistad Reservoir.

(3) All associated losses will be calculated by the method specified in the permit. The water-in-transit storage accounts shall be subject to reductions as determined by the watermaster to cover losses while water is in storage. Any water diverted downstream from water released from these accounts will be reduced by the appropriate losses, including conveyance losses, from either Falcon or Amistad Reservoir. These losses will also be calculated by the method specified in the permit and by the 1944 Treaty.

(4) If and when Rio Grande treaty inflows to the reservoirs reach the point where the storage space occupied by the transit water authorized by these permits is required to store these inflows, the transit water accounts will be reduced or eliminated on a priority date basis to enable these inflows to be stored. Water lost due to storage space limitations will not be restored by the watermaster.

(c) Records of inflows/diversions.

(1) The watermaster shall locate, number by river mile or other method, and rate as to capacity all authorized discharges and diversions associated with a permit for water transit, and the owner or operator of the water-in-transit shall be advised in writing of these facts.

(2) All discharges into the Rio Grande and all diversions from the Rio Grande pursuant to these permits shall be metered or measured by a method approved by the watermaster.

(3) When a permanent facility is replaced at the same location or when any changes in rating are made, the water-in-transit permittee must immediately inform the watermaster prior to diversion.

(4) Any change in the location of the discharges or diversion facilities and place of use on the Middle or Lower Rio Grande must be made pursuant to §295.71 of this title (relating to Applications to Amend a Permit) and §295.158(c) of this title (relating to Notice of Amendments to Water Rights), not requiring mailed and published notice.

(5) Any change in the location of the discharge or diversion facilities and place of use on the Upper Rio Grande and tributaries to the Rio Grande must be made pursuant to §295.71 and §295.158(b) of this title, requiring mailed and published notice.

(d) Consistency with the Treaty. The watermaster will request releases from Amistad and Falcon Reservoirs in such a manner that promotes the efficient use and optimum yield of the United States' share of water in the Amistad/Falcon System, consistent with the 1944 Treaty between the United States and Mexico. Any water inflows, conveyance losses, and water stored in these water-in-transit accounts must be consistent with any accounting of waters by the International Boundary and Water Commission (IBWC) relating to the 1944 Treaty with Mexico. No water can be credited to such accounts unless it has first discharged to the Rio Grande under a water-in-transit permit. Water-in-transit will be subject to allocation under the Treaty. The watermaster will only credit water-in-transit accounts with the amount of water-in-transit included in the United States' share of water by the IBWC.

(e) Certification.

(1) Each diverter must request written certification from the watermaster prior to diverting water-in-transit by identifying the specific permit to be used and the pump number of the pump to be used.

(2) Certifications will be granted only for diversion from authorized diversion points associated with that permit.

(3) Any diversion of water released from an account for water-in-transit in Falcon or Amistad Reservoir will be subject to transportation losses to the point of diversion as specified by the permit.

(4) Each reach of the river shall constitute one day of travel time from Amistad Dam downstream.

(5) Certifications are limited to a maximum diversion period of one calendar week.

(f) Diversions. Diversions shall be charged against the appropriate accounts as follows.

(1) A diverter shall be charged with the actual amount diverted, without being penalized, if the total diversion is within plus or minus 10% of the amount requested, minus conveyance losses, pursuant to certification.

(2) A diverter shall be charged with 90% of the certification amount if the total diversion is less than 90% of the amount requested, minus conveyance losses.

(3) If the quantity of water diverted is more than 110% of the amount requested according to the certification, then the diverter will be charged with the actual amount of water diverted and the provisions of §303.31 of this title (relating to General) will apply.

(4) The watermaster shall have the discretion to waive the penalties for excessive or inadequate diversions due to circumstances beyond the control of the diverter.

(5) No certification will be issued that exceeds the maximum annual authorization of the permit. The watermaster is authorized to cancel a certification or to refuse or modify a request for the diversion of water.

(g) Ownership records. Except as provided in §303.44 of this title (relating to the Administration by Watermaster), the watermaster will refuse a request of a diverter if the water rights holder whose water is to be diverted does not have complete ownership records on file with the commission. The watermaster will maintain a list of all water rights holders with incomplete ownership records and will remove names from that list after the executive director notifies the watermaster that the ownership record has been completed.

(h) Certification to be posted.

(1) Each diverter must post at or near his diversion facility the watermaster certification authorizing the diversion of water.

(2) In the event the certification has been granted but is not received by the diverter by the time diversion is authorized, the diverter must post a written note at or near the diversion facility in lieu of the watermaster certification, stating the pump number and the dates and hours of the request and that verbal authority was given by the watermaster.

(3) The diverter must ensure that the written note conforms to the time and conditions shown on the watermaster certification.

(4) The diverter must replace the written note with the watermaster certification, upon receipt.

(i) Measuring devices.

(1) Each diverter must install and maintain meters or other measuring devices at the authorized point of discharge and diversion which will provide for accurate measurement and accounting of the quantities of water diverted.

(2) The installation, maintenance, and operation of measuring devices by the diverter must be subject to approval of the watermaster.

(3) The diverter must ensure the accessibility of the measuring device, so it can be conveniently and safely located and checked by the watermaster.

(4) The diverter must be liable for all expenses incurred in the acquisition, installation, maintenance, and operation of measuring devices.

(j) Diversion. Each diverter must divert water in accordance with the watermaster certification.

(k) Report by water-in-transit permittee.

(1) Each water right holder or his designated agent must submit to the watermaster a written report of the amount of water actually discharged, diverted, and used during the reporting period. All pumps used during the reporting period, including borrowed and rented pumps, must be shown by number on the pump operation report with metered readings or with the number of hours operated for each reporting period. The watermaster will accept as timely all pump operation reports for each diversion pump received within seven days or postmarked within five days from the termination of the certification period. If the pump operation report is incomplete or not timely filed, the watermaster will refuse to issue a new certification until the complete report is filed. Pump operation reports, other than International Boundary and Water Commission diversion reports, received in the watermaster's office are unacceptable:

(A) if unsigned; or

(B) if the measuring device reading is not shown.

(2) The water right holder is responsible for reporting actual use based on the records kept by the water right holder or diverter.

(3) The watermaster shall not prepare annual surface water use reports.

(l) Inventory of water in Falcon and Amistad Reservoirs. The watermaster shall maintain an accurate inventory of water in Falcon and Amistad Reservoirs including water-in-transit accounts and shall maintain records and institute necessary procedures with the International Boundary and Water Commission as may be appropriate to perform this function.

(m) Report by watermaster.

(1) The watermaster shall submit a monthly report to each water-in-transit permittee, or his designated agent, showing the current status of each water-in-transit permittee's account.

(2) The period of time covered by each report shall be from the last Saturday of a month at midnight to the last Saturday of the following month at midnight. The watermaster shall provide the date for the end of the watermaster's next reporting period.

(3) Each water-in-transit permittee must apply in writing to the watermaster for correction of any alleged errors in the report within 20 consecutive days following distribution of the monthly report.

(n) Request for travel time.

(1) A diverter must request written certification in advance to allow travel time for the released water to reach the river diversion point as scheduled.

(2) Each reach of the river shall constitute one day of travel time from Amistad Dam downstream.

(3) Whenever there is a flow of water in the Rio Grande in excess of downstream requirements, the watermaster may waive travel time requirements to allow immediate diversions, provided that the diverter shall post the certification at or near his diversion facility.

(o) No charge water. The watermaster shall not authorize no charge water as described in the August 4, 1981, Texas Water Commission order and any subsequent orders relating to the intermittent temporary diversion and use of Rio Grande waters, to water-in-transit accounts.

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§303.92. Appeal of Watermaster Actions.

Any person dissatisfied with any action of a watermaster may apply to the executive director for relief under Texas Water Code, §11.326.

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