

SUBCHAPTER B: WATERMASTER-REGULATORY FUNCTIONS
§§303.11 - 303.18
Effective October 26, 2006

§303.11. Records of Diversions-General.

(a) The watermaster shall locate, number by river mile or other method, and rate as to capacity all authorized diversion facilities on the Texas bank along the Rio Grande and tributaries, and the owner or operator thereof shall be advised in writing of these facts. When a permanent diversion facility is replaced at the same location or when any changes in rating are made, the diverter shall immediately inform the watermaster prior to diversion. Any change in the location of the diversion facilities and place of use on the Middle or Lower Rio Grande shall 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. Any change in the location of the diversion facilities and place of use on the Upper Rio Grande and tributaries to the Rio Grande shall 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; or §295.158(b) of this title (relating to Notice of Amendments to Water Rights), requiring mailed and published notice.

(b) Each diverter shall request written certification from the watermaster prior to diverting water by identifying the specific certificate of adjudication to be used and the pump number of the pump to be used. When a diverter orders water for a nondiverter, the diverter may request written certification under such diverter's certificate of adjudication or under the certificate of adjudication of the nondiverter to which the diverter is delivering water, but shall report the amount of water diverted for the nondiverter as provided in §303.12(d) of this title (relating Mainstem Middle and Lower Rio Grande). Certifications will be granted only for diversion from authorized diversion points associated with that water right. Certifications for irrigation water rights will be granted only for delivery of water to the authorized tract(s) covered by the water right or approved contractual sale. Certifications are limited to a maximum diversion period of one calendar month on the mainstream of the Lower and Middle Rio Grande and to one year on the Upper Rio Grande and all tributaries of the Rio Grande.

(c) No certification will be issued which exceeds maximum annual authorization, in combination with any other certifications issued for that certificate of adjudication in any one year. The watermaster is authorized to cancel a certification or to refuse or modify a request for the diversion of water. Except as provided in §303.44 (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.

(d) Each diverter shall post at or near his diversion facility the watermaster certification authorizing the diversion of water. In the event the certification has been granted but is not received by the diverter by the time diversion is authorized, the diverter shall 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. It is the responsibility of the diverter to make certain that the written note conforms to the time and conditions shown on the watermaster certification. The watermaster certification, upon receipt, shall replace the written note.

(e) Each diverter shall install and maintain measuring devices at the authorized point of diversion which will provide for accurate measurement and accounting of the quantities of water diverted. The installation, maintenance, and operation of measuring devices by the diverter shall be subject to approval of the watermaster. The diverter must ensure the accessibility of the measuring device, so it can be conveniently and safely located and checked by the watermaster. The diverter shall be liable for all expenses incurred in the acquisition, installation, maintenance, and operation of measuring devices.

(f) Each diverter whose diversions are not measured and reported by the International Boundary and Water Commission shall maintain accurate records of water diverted. All pumps used during the reporting period, including borrowed and rented pumps, shall 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:

(1) if unsigned; or

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

(g) Each diverter shall divert water in accordance with the watermaster certification.

(h) Each water right holder or his designated agent shall submit to the commission a written report of the amount of water actually diverted and used during the preceding calendar year under a specific water right in accordance with §295.202 of this title (relating to Reports) and/or §303.54(d) of this title (relating to Responsibilities of Buyer and Seller). The water right holder is responsible for reporting actual use based on the records kept by the water right holder or diverter. The watermaster will not fill out annual surface water use reports.

§303.12. Records - Mainstem Middle and Lower Rio Grande.

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

(b) The watermaster shall timely submit a monthly report to each allottee, or his designated agent, showing the current status of each allottee's account. 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 report shall designate the date for the end of the watermaster's next reporting period. Each allottee shall 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.

(c) A diverter shall request written certification in advance to allow travel time for the released water to reach the river diversion point as scheduled. Each reach of the river shall constitute one day of travel time from Amistad Dam downstream. 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.

(d) Nondiverters who have water diverted and transported for them from the Rio Grande by an authorized diverter or carrier shall have the diverter place the order with the watermaster for the amount of water desired. Each diverter or carrier furnishing water to a nondiverter is required to furnish a report within five days of the last Saturday of the month to the watermaster showing the amount of water in acre-feet delivered to the nondiverter including transportation losses. If a nondiverter uses in excess of the amount to which he is entitled the excess amount shall be charged against the account of the diverter.

(e) 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 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 pursuant to certification.

(3) If the quantity of water diverted is more than 110% of the amount requested pursuant to 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 contained herein for excessive or inadequate diversions due to circumstances beyond the control of the diverter.

(5) In accordance with Texas General Law, 2, Chapter 35, 1981, at page 75, water diverted by Maverick County Water Control and Improvement District Number 1 through its gravity irrigation diversion system that is returned to the stream from which it was taken at specific metered points or places operated by the International Boundary and Water Commission is surplus water as defined in said law and is not appropriated water. For water accounting and reporting purposes, surplus water shall not be counted as a part of the total amount of water authorized to be diverted for beneficial use under the district's water rights. Surplus water does not include water flowing into the Rio Grande from tributaries which flow into the Maverick system.

(f) The burden shall be upon the diverter on the Middle and Lower Rio Grande to satisfy the watermaster that the diverter could not receive his total requested amount of water during the certification period because of the acts of other diverters or because of other clearly shown extenuating circumstances, and if such is shown, appropriate adjustments may be made by the watermaster.

(g) If an allottee on the Middle or Lower Rio Grande has to terminate pumping before the end of the certification period, the allottee shall notify the watermaster as soon as possible. The effect of the termination in pumping is a termination in the certification. A new certification must be issued before the diverter may renew pumping.

(h) Use of no charge water shall not be charged against the allottee's annual surface water use limit or against the allottee's account. The total amount of no charge water diverted must be stated separately in the annual surface water use report sent to the Commission.

§303.13. Records - Upper Rio Grande and All Rio Grande Tributaries.

(a) Diverters from the Upper Rio Grande and all Rio Grande tributaries must comply with the requirements of §303.11 of this title (relating to Records of Diversions-General).

(b) A request for releases from Falcon and Amistad Reservoirs is not applicable. The watermaster will coordinate with the International Boundary and Water Commission regarding stored water released by Mexico to the Rio Conchos which contributes to the flow of the Rio Grande in the reach from Presidio to Amistad Reservoir.

(c) Diverters shall make reports to the watermaster based on the information recorded on the pump operation report. The watermaster will advise these diverters of the report schedule (monthly, quarterly, yearly) required.

(d) Diverters may be issued a one-year certification by the watermaster for up to the total annual authorized amount of the diverter's water right.

(e) If complaints are received by the watermaster concerning insufficient water to satisfy senior and superior water rights, the watermaster will conduct an investigation and may institute procedures to distribute the available waters, such as:

- (1) order alternate pumping days for specified diverters;
- (2) limit the pumping time;
- (3) impose streamflow restrictions;
- (4) order pumping to cease or pump at a decreased diversion rate until the situation is improved; and/or

(5) any other procedures needed to ensure water use is protected based on the priority system in the Texas Water Code.

§303.14. Appeal of Watermaster Actions.

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

§303.15. Appointment of An Agent.

An agent for a water right holder who requests water shall submit to the watermaster a document signed by all the water right holders indicating the owner-agent relationship and the duration of the agent authorization. The owner is responsible for the designation of one agent for the payment of assessments

§303.16. Amistad/Falcon System.

The watermaster will request releases from Amistad and Falcon Reservoirs for authorized domestic, municipal, industrial, irrigation, and other uses in such a manner which 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.

§303.17. Diversion Facilities.

It is the responsibility of all diverters to insure that their diversion facilities are capable of diverting the quantity of water authorized pursuant to certification, even under low or high water levels.

§303.18. Threats to Public Health and Safety and the Environment.

(a) The watermaster shall implement the procedures adopted by the agency during times of threats to public health and safety and the environment related to the waters of the Rio Grande below Fort Quitman, Texas.

(b) The watermaster shall report activities that pose a threat to public health, safety, and the environment regarding waters of the Rio Grande under the watermaster's jurisdiction as required by the agency's procedures regarding homeland security.

(c) The watermaster shall gather and distribute information from and to the Rio Grande water users, and assist water users in efforts to recover from an emergency.

(d) The watermaster shall require water users to immediately cease any and all diversions of water during emergency periods when the watermaster declares that continued diversion and use of water would pose a hazard to public health and safety and the environment.

(e) The watermaster shall maintain records of water users to enable the watermaster to provide notification of a threat to the water users in the watermaster's division.

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