

SPECIAL DISTRICT LOCAL LAWS CODE
TITLE 6. WATER AND WASTEWATER
SUBTITLE H. DISTRICTS GOVERNING GROUNDWATER
CHAPTER 8802. BARTON SPRINGS-EDWARDS AQUIFER
CONSERVATION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8802.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "District" means the Barton Springs-Edwards Aquifer Conservation District.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.002. LEGISLATIVE FINDINGS. The legislature finds that the creation of the district:

(1) is feasible and practicable;

(2) will be a benefit to land in the district; and

(3) will be a public benefit and utility.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.003. DISTRICT TERRITORY. The district is composed of the territory described by the Texas Water Commission's August 15, 1986, order, as that territory may have been modified under:

(1) Subchapter J, Chapter 36, Water Code; or

(2) other law.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.0035. SHARED TERRITORY; JURISDICTION. (a) The territory of the district includes any territory that is:

(1) inside the boundaries of:

(A) the Edwards Aquifer Authority; and

(B) Hays County; and

(2) not within the boundaries of the Plum Creek Conservation District as those boundaries existed on February 1, 2015.

(b) The Edwards Aquifer Authority has jurisdiction over any well that is drilled to produce water from the Edwards Aquifer in the shared territory described by Subsection (a).

(c) The district has jurisdiction over groundwater and any well that is drilled to produce water from any aquifer other than the Edwards Aquifer in the shared territory described by Subsection (a).

(d) Except for the district and the Edwards Aquifer Authority, no district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, has authority in the shared territory described by Subsection (a) to regulate the spacing of water wells or the production from water wells.

(e) The district has jurisdiction over any well that is drilled to produce water from the Edwards Aquifer or any other aquifer in the territory described by Section 8802.003.

(f) The district's jurisdiction over any well that is drilled to produce water in the territory described in Section 8802.003, including a well that is used to recover water that has been injected as part of an aquifer storage and recovery project, applies to all wells for which the district has jurisdiction in the shared territory described by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 975 (H.B. 3405), Sec. 1, eff. June 19, 2015.

Sec. 8802.004. EFFECT ON CERTAIN LITIGATION. This chapter does not adversely affect the rights of any parties involved in litigation on or before February 1, 1987, with the Texas Water Commission or the petitioners for the creation of the district.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8802.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors who serve staggered four-year terms.

(b) At least two directors must be elected by voters residing in the city of Austin.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.052. ELECTION DATE. An election shall be held to elect the appropriate number of directors on the spring uniform election date each even-numbered year.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.053. SINGLE-MEMBER DISTRICTS. (a) The district is divided into five numbered, single-member districts for electing directors.

(b) The board may revise the single-member districts as necessary or appropriate.

(c) As soon as practicable after the publication of each federal decennial census, the board shall revise the single-member districts as the board considers appropriate to reflect population changes. When the board revises the single-member districts under this subsection, the board shall place two of the districts:

(1) entirely within the boundaries of the city of Austin, as those boundaries exist at that time; or

(2) within the boundaries of the city of Austin, as those boundaries exist at that time, but also including unincorporated areas or other municipalities that are surrounded wholly or partly by the boundaries of the city of Austin if the areas or municipalities are noncontiguous to the territory of any other single-member district.

(d) Changes in the boundaries of the city of Austin between revisions of the single-member districts under Subsection (c) do not affect the boundaries of the single-member districts.

(e) When the boundaries of the single-member districts are changed, a director in office on the effective date of the change, or elected or appointed before the effective date of the change to a term of office beginning on or after the effective date of the change, is entitled to serve the term or the remainder of the term in the single-member district to which elected or appointed even though the change in boundaries places the person's residence outside the single-member district for which the person was elected or appointed.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8802.101. GENERAL POWERS AND DUTIES. Except as otherwise provided by this chapter, the district has the powers and duties provided by Chapter 36, Water Code, for groundwater conservation districts.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.102. RULES REGULATING ZONING AND SUBDIVISION OF LAND PROHIBITED. The district may not adopt rules regulating zoning or the subdivision of land.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.103. IMPOSITION OF TAXES. (a) The district may impose an ad valorem tax as provided by Subchapter G, Chapter 36, Water Code, only if:

(1) the user fee authorized by this subchapter is held unconstitutional by the Texas Supreme Court; and

(2) a majority of the voters approve the tax at an election held in the district.

(b) The district may impose the ad valorem tax at a rate not to exceed three cents on each \$100 of appraised value.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff.

April 1, 2007.

Sec. 8802.104. USER FEES. (a) The board by rule may impose reasonable fees on each well for which the district issues a permit and which is not exempt from regulation by the district.

(b) The board may assess the fees on an annual basis according to:

- (1) the size of column pipe used in the well;
- (2) the production capacity of the well; or
- (3) the actual, authorized, or anticipated pumpage of the well.

(c) The board may use fees as both a regulatory mechanism and a revenue-producing mechanism.

(d) The board shall adopt rules relating to:

- (1) the rates of fees;
- (2) the manner and form for filing reports of fees; and
- (3) the manner of collecting fees.

(e) The district may use money collected from fees to:

- (1) manage and operate the district; and
- (2) pay all or part of the principal of and interest on district bonds or notes.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.1045. AMOUNT OF ANNUAL PRODUCTION FEE. (a) Except as provided by this section, the board may not charge an annual production fee of more than \$1 per acre-foot for water permitted for agricultural use or 17 cents per thousand gallons for water permitted for any other purpose.

(b) For a permit first issued after September 1, 2007, or a permit first issued after September 9, 2004, and renewed after September 1, 2007, the board may charge, for the amount of water permitted under the permit as issued or renewed if the water is permitted for any purpose other than agricultural use, an annual production fee of not more than the greater of:

- (1) 38 cents per thousand gallons; or
- (2) the raw surface water cost of other wholesale

suppliers serving customers in the district.

(c) For a permit that is materially amended after September 1, 2007, the board may charge, for only the additional amount of water authorized by the material amendment if the water is permitted for any purpose other than agricultural use, an annual production fee of not more than the greater of:

(1) 38 cents per thousand gallons; or

(2) the raw surface water cost of other wholesale suppliers serving customers in the district.

(d) For a permit first issued on or before September 9, 2004, that is renewed without material amendment after September 1, 2007, the board may not charge an annual production fee of more than 17 cents per thousand gallons for the amount of water permitted under the permit as renewed if the water is permitted for any purpose other than agricultural use.

(e) The board may adopt a differential rate structure for the nonagricultural production fees described by this section to promote alternatives to the exclusive use of groundwater resources.

(f) A material amendment under this section is an amendment to a permit that increases the amount of water permitted by more than 10 percent in one fiscal year or by more than 25 percent in any three-year period. The renewal on or after September 1, 2007, of a permit that was issued on or before September 9, 2004, is considered to be a material amendment for purposes of this section if the permit as renewed increases the amount of water permitted by an amount that exceeds the limits specified by this subsection.

(g) This subsection applies only to a well located in the shared territory described by Section [8802.0035](#). Notwithstanding Subsection (b), before September 1, 2023, the district may not charge an annual production fee of more than 17 cents per thousand gallons of water authorized to be produced under a permit from a well under this subsection, if the water is permitted for any use other than agricultural use. The district may increase the annual production fee under this subsection by not more than 10 cents per thousand gallons per year beginning on September 1, 2023, for water permitted for nonagricultural purposes, until the annual production fee is equal to the maximum amount set forth in

Subsection (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1405 (S.B. [747](#)), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 975 (H.B. [3405](#)), Sec. 2, eff. June 19, 2015.

Acts 2023, 88th Leg., R.S., Ch. 926 (S.B. [1745](#)), Sec. 1, eff. June 18, 2023.

Sec. 8802.105. CERTAIN WATER USE FEES PERMITTED. (a) Each year the board may assess against the City of Austin a water use fee in an amount not to exceed 60 percent of the total funding the district expects to receive for the next fiscal year from water use fees assessed against Austin and other nonexempt users in that year, subject to the computation under Subsection (b).

(b) For purposes of computing water use fees under this section, the district shall estimate the amount of permitted pumpage for the next fiscal year by considering various factors including historical growth rates, future growth rates, the amount of permitted pumpage, historical permitted pumpage, and any pending applications for permitted pumpage. The district shall use the estimated amount of permitted pumpage and its water use fee rate to compute the water use fee to be assessed against the City of Austin for the district's next fiscal year. The district shall compute the water use fee assessed against the City of Austin at a rate of 17 cents per thousand gallons for the total amount of water permitted for any nonagricultural purpose, regardless of the rate actually imposed on or remitted by the permittee.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. [2019](#)), Sec. 1.07, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1405 (S.B. [747](#)), Sec. 3, eff. September 1, 2007.

Sec. 8802.106. PRODUCTION CAPACITY OF CERTAIN EXEMPT WELLS. Notwithstanding the 25,000-gallon production capacity restriction provided by Section [36.117](#)(b)(1), Water Code, a well in the

district is exempt under Section 36.117, Water Code, only if the production capacity of the well is 10,000 gallons per day or less. Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.107. ENFORCEMENT. (a) If it appears that a person has violated, is violating, or is threatening to violate Chapter 36, Water Code, or a district permit, rule, or order, the district may file a civil suit in a district court of the county in which the violation occurs to obtain:

(1) injunctive relief to restrain the person from continuing the violation;

(2) a civil penalty of not less than \$50 or more than \$1,000 for each violation and for each day of violation; or

(3) both injunctive relief and a civil penalty.

(b) On application for injunctive relief under Subsection (a)(1) and a finding that a person is violating or threatening to violate this chapter or a district permit, rule, or order, the district court shall grant injunctive relief as the facts may warrant.

(c) Any legal action initiated under this section to obtain penalties must be authorized by a resolution of the board or by the district's general manager, if authorized by the board.

(d) In a civil suit filed under this section, the district:

(1) is not required to post bond or other security; and

(2) may recover reasonable attorney's fees and expert witness's fees.

(e) The remedies provided by this section are in addition to any remedies provided by other law.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.108. BORROWING MONEY. (a) The district may borrow money as provided by Sections 49.152-49.154, Water Code.

(b) The district may not borrow money for a period of more than one year.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff.

April 1, 2007.

Sec. 8802.109. RESTRICTIONS ON PRODUCTION DURING DROUGHT.

(a) During a period declared by the district to be a drought and only as specified in the district's approved management plan, the district may restrict or prohibit groundwater production as provided by this section.

(b) The district may restrict groundwater production on an equivalent, pro-rata basis for permits first issued on or before September 9, 2004, including permits renewed after September 1, 2007.

(c) The district, to protect the conditions of the aquifer, may restrict or prohibit groundwater production:

(1) for permits first issued after September 9, 2004; and

(2) for permits first issued on or before September 9, 2004, and amended after September 9, 2004, for any additional amount of water authorized by the amendment.

Added by Acts 2007, 80th Leg., R.S., Ch. 1405 (S.B. [747](#)), Sec. 4, eff. September 1, 2007.

Sec. 8802.110. RESTRICTIONS ON PRODUCTION DURING EXTREME DROUGHT. (a) During a period declared by the district to be an extreme drought, to maintain groundwater production necessary to sustain human consumption and protect the public's health, safety, and welfare, the district, as provided by this section, may impose greater restrictions on groundwater production for industrial, commercial, or nonagricultural irrigation permits than the district imposes on permits for other uses.

(b) For an industrial, commercial, or nonagricultural irrigation permit first issued on or before September 9, 2004, the district may restrict withdrawals by an amount not to exceed 40 percent of the amount permitted on or before September 9, 2004, retaining at least 60 percent of the total authorized pumpage, if:

(1) an alternative water supply for at least 10 percent of the amount permitted is available and in place during the extreme drought; and

(2) any restriction imposed by the district under Sections 8802.109(b) and (c) remains in effect.

(c) For industrial, commercial, and nonagricultural irrigation permits first issued on or before September 9, 2004, and amended after September 9, 2004, the district may impose greater restrictions, including complete curtailment, for the additional amount of water authorized by the amendment than the district imposes on similarly situated permittees for other uses. Added by Acts 2007, 80th Leg., R.S., Ch. 1405 (S.B. 747), Sec. 4, eff. September 1, 2007.

SUBCHAPTER D. INCLUSION AND EXCLUSION OF LAND IN DISTRICT

Sec. 8802.151. MUNICIPAL APPROVAL NOT REQUIRED. Approval of inclusion of land in the district that is located in the corporate limits or extraterritorial jurisdiction of a municipality does not require the municipality's approval under Subchapter B, Chapter 42, Local Government Code. Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.152. EXCLUSION OF COUNTY AREA. (a) The residents of any county area of the district, on petition of at least 15 percent of the registered voters in that county area, may request that the board, in conjunction with the next regularly scheduled directors' election, hold a referendum to determine whether to exclude that county area from the district.

(b) The petition must be submitted to the board not later than the 45th day before the date of the election.

(c) The board shall call and add a referendum under this section to the ballot of the May directors' election in the county area.

(d) Exclusion of a county area from the district requires approval by a majority of the voters voting on the proposition: "The _____ county area of the Barton Springs-Edwards Aquifer Conservation District shall be excluded from the Barton Springs-Edwards Aquifer Conservation District."

(e) The exclusion of any county area from the district is effective on June 1 following approval of the referendum. On and after that date:

(1) the boundaries of the district shall be redefined to exclude the county area;

(2) the imposition and collection of district taxes or user fees in the county area shall cease;

(3) the offices held by any directors elected from the county area shall terminate; and

(4) any other matters provided by law or by agreement with any person affecting the authority and operations of the district shall be automatically redesignated and redefined to be consistent with the exclusion of the county area.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

SUBCHAPTER E. CONVERSION AND DISSOLUTION OF DISTRICT

Sec. 8802.201. CONVERSION OF DISTRICT PROHIBITED. The district may not be converted to any other type of conservation and reclamation district.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.

Sec. 8802.202. DISSOLUTION OF DISTRICT; ELECTION. (a) The board shall call a dissolution election if:

(1) the board receives a petition signed by a number of registered voters in the district equal to at least 30 percent of the voters in the district's most recent election; and

(2) the district has no outstanding bonds or other long-term indebtedness.

(b) The board shall dissolve the district if at least two-thirds of the voters voting in the election vote in favor of dissolving the district.

Added by Acts 2005, 79th Leg., Ch. 729 (H.B. 2019), Sec. 1.07, eff. April 1, 2007.