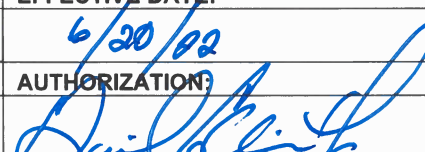


ADMINISTRATIVE PROCEDURES		
OFFICE OF PRIMARY RESPONSIBILITY:	EFFECTIVE DATE:	REVISION #:
Water Services	6/20/02	2
SUBJECT:	AUTHORIZATION:	SSS #:
Interruptible Water Sale Procedure		5840

INTERRUPTIBLE WATER SALE PROCEDURE

OBJECTIVE:

To establish procedures and guidelines for the sale of Interruptible Water.

SCOPE:

This procedure sets forth guidelines, methodologies, and provisions related to determining the allocation of, availability of, and facilitation of sales for Interruptible Water.

DEFINITIONS:

Agricultural Rate-

The rate per acre-foot established by BRA on an annual basis for water made available to purchasers that use the water solely for agricultural purposes.

Application Deadline –

The date established by BRA each calendar year as the deadline to receive timely submitted interruptible water applications.

Board-

The Board of Directors of the Brazos River Authority.

BRA-

The Brazos River Authority.

BRA Water Supply System-

Includes the following: 1) BRA's facilities; 2) infrastructure; 3) water rights permits and certificates of adjudication by the Texas Commission on Environmental Quality or its predecessors; 4) contracts to utilize the storage space in reservoirs owned and operated by the U.S. Army Corps of Engineers for water supply purposes; 5) contractual rights to water supply; and 6) properties insofar as they are related to making water available from the BRA together with all future extensions, improvements, enlargements, and additions to and replacements of the water supply system, whether from surface water supplies, groundwater, or a

combination thereof, unless specifically excluded from the water supply system by resolution of the Board.

Brazos Watermaster-

The individual or entity charged under the Texas Commission of Environmental Quality Brazos Watermaster Program with responsibility for the following: administering and allocating water per the adjudicated water rights; monitoring stream flow, reservoir levels and water use within the basin; enforcing compliance with water rights; and responding to complaints in the Brazos River basin downstream of, and including, Possum Kingdom Lake.

USFWS CCAA-

United States Fish and Wildlife Service Candidate Conservation Agreement with Assurances

Diversion Point-

The location on a reservoir or a River Segment at which a customer withdraws water.

Drought Contingency Plan-

The Brazos River Authority's official drought contingency plan, which the Brazos River Authority must maintain pursuant to statute.

Firm Yield-

The maximum water volume that can be provided from a reservoir or system of reservoirs each year under a repeat of the drought of record without water supply disruptions.

IWAA (Interruptible Water Availability Agreement)-

Water made available by the BRA for a term of no more than one year, which is subject to interruption based on drought conditions, as described within the BRA's Interruptible Water Sale Procedure. The amount of Interruptible Water available for purchase is established annually by the Board.

Interruptible Water-

Water sold on an interruptible basis as contemplated by this procedure.

Long-Term Water-

Water sold to customers on BRA's standard contracting templates for a period up to thirty years.

SWAA (System Water Availability Agreement)-

An agreement executed between the Brazos River Authority and a customer providing the customer access to Long-Term Water.

River Segment-

A defined section of a river within the Brazos River Basin.

System Rate-

The rate for water made available to purchasers on a per acre-foot basis, as established by the Board annually.

Transportation Losses-

Estimated quantity of water lost in the river channel primarily due to natural factors such as seepage, evaporation, and transpiration, which occur as water is delivered from a reservoir to a Diversion Point. Estimated incremental channel losses used for water supply deliveries are summarized in Table 4.7 on page 4-16 in Section 4 of the Conformed Technical Report in Support of the Water Management Plan for the Water Use Permit No. 5851 (Technical Report). Section 4 of the Technical Report is located on the BRA website at: <https://brazos.org/Portals/0/Documents/WMP-2018/TechReport/ConformedWMPTRSection4.pdf>.

Section I. Interruptible Water

Interruptible Water is supplied from water that was unused in previous years and remains in storage.

Section II. Relationship to Firm-Yield Water

BRA's management of Interruptible Water will be performed in a manner that does not negatively affect the availability of water for those customers who purchase water under a System Water Availability Agreement or other long-term contract.

Section III. Determination of Amount Available

By the last Board meeting of each calendar year, the Board shall determine the amount, if any, of Interruptible Water available for the following calendar year. The amount of Interruptible Water shall be determined for each River Segment as defined in the following table:

Segment No.	Extent of Segment
1	Lake Aquilla to the confluence of Aquilla Creek and the Brazos River
2	Little River System <ol style="list-style-type: none"> Lake Proctor to Lake Belton Lake Belton to the confluence of the Little River and the Brazos River Lake Stillhouse Hollow to the confluence of the Lampasas River and the Leon River

	d. Lake Georgetown to Lake Granger e. Lake Granger to the confluence of the San Gabriel River and the Little River
3	Lake Limestone to the confluence of the Navasota River and the Brazos River
4	Lake Somerville to the confluence of Yegua Creek and the Brazos River
5	Brazos River Main Stem a. Possum Kingdom Reservoir to Lake Granbury b. Lake Granbury to Lake Whitney c. Lake Whitney to the confluence of the Brazos River and Aquilla Creek d. The confluence of the Brazos River and Aquilla Creek to the confluence of the Brazos River and the Little River e. The confluence of the Brazos River and the Little River to the confluence of the Brazos River and Yegua Creek f. The confluence of the Brazos River and Yegua Creek to the Gulf of Mexico

The amount of Interruptible Water available for each River Segment will be determined according to the following equation:

$$\text{Segment Interruptible Water} = (\text{Reservoir Yield} - \text{Water Used}) \times \text{Safety Factor}$$

Where:

“Segment Interruptible Water” is the amount of water that is available during the next year from the upstream reservoirs within that segment.

“Reservoir Yield” is the current firm yield estimate of the reservoir.

“Water Used” is the sum of:

1. Maximum water used lakeside from the reservoir in the past three years;
2. The three-year average of downstream water supply releases from the reservoir; and
3. The three-year average net reservoir gain or loss resulting from other non-water supply releases such as environmental flow releases, balancing releases from Possum Kingdom Lake, and/or leakage.

“Safety Factor” is a factor set by the Board that ensures protection of all Long-Term Water contracts.

No Interruptible Water will be made available for sale in the segment from Lake Proctor to Lake Belton when any drought declaration is in effect for Lake Proctor under the BRA Drought Contingency Plan.

The Board may authorize an amount of Interruptible Water that is less than the amount determined in the calculation above depending on drought conditions or other relevant factors that may exist at that time. In such cases, sale and/or use of the remaining Interruptible Water may be authorized when such factors or drought conditions improve. Additionally, if Interruptible Water is not made available at Lake Proctor due to drought conditions and those conditions improve Interruptible Water may be authorized when such factors or drought conditions improve.

The total Interruptible Water for a point below more than one reservoir is the sum of Segment Interruptible Water at all upstream segments.

As referenced within BRA’s USFWS CCAA regarding freshwater mussels, BRA will not make Interruptible Water available within Conservation Zone A. The extent of Conservation Zone A can be found in Figure 6. on page 25 of the CCAA, which can be found on the BRA website at: [https://brazos.org/About-Us/ Environmental/ Species/Species-of-Interest/Candidate-Conservation-Agreement](https://brazos.org/About-Us/Environmental/Species/Species-of-Interest/Candidate-Conservation-Agreement).

Section IV. Application for Interruptible Water

If BRA anticipates Interruptible Water will be available for the following calendar year, BRA may, through whatever form it deems most appropriate, solicit interest among entities who may desire to enter into an IWAA for the following calendar year. Prospective purchasers of Interruptible Water may submit applications, on a form provided by BRA, by the Application Deadline. An application shall not be considered submitted for the purpose of the Application Deadline until a completed Application for Interruptible Water Form, an application fee, and a deposit, if required, are received.

If BRA determines there is sufficient Interruptible Water available to meet a customer’s request for Interruptible Water and the customer decides to cancel its Interruptible Water application, that customer shall lose any right and/or priority to Interruptible Water available in that calendar year; however, a customer who has cancelled an Interruptible Water application shall not be prohibited from applying for a new IWAA.

After going through the annual allocation process described below in Section VII, BRA will submit new IWAAs to applicants who received an allocation of Interruptible Water for the upcoming calendar year. BRA will establish a date by

which applicants must execute the new IWAA and return it and full payment to BRA. BRA will notify applicants of this date upon submitting IWAAs to them for execution. If the executed IWAA and full payment are not received by the date established by BRA, applicant may forfeit its request to purchase Interruptible Water.

Section V. Deposit

Applications for amounts of Interruptible Water in excess of five hundred (500) acre-feet shall include a deposit equal to ten (10) percent of the estimated total payment that would be due under an IWAA. The deposit shall be applied against the amount of the total payment due under that agreement, except as follows:

1. If BRA is unable to make available the amount of Interruptible Water requested by a prospective customer, and that prospective customer decides not to purchase any Interruptible Water for that year, BRA shall refund the full amount of the deposit.
2. If BRA is able to make the full amount of Interruptible Water requested by a prospective customer available, and that prospective customer subsequently decides either to contract for less water than requested or does not enter into an IWAA, then BRA will retain: (1) a percentage of the deposit determined by dividing the difference between the amount originally requested and the amount actually contracted for by the amount originally requested; or (2) the full amount of the deposit if no IWAA is executed.

For example, if a prospective customer desires to enter into an IWAA equal to 1,000 acre-feet, the prospective customer shall remit a non-refundable deposit of \$8,300 (10% of the product of 1,000 acre feet per year times the current System Rate, which for 2022 is \$83.00 per acre-foot). In this example, if BRA makes the full 1,000 acre-feet available to the customer and the customer decides to only purchase 800 acre-feet, \$6,640 (80% of the deposit) will be applied to the total payment due under the IWAA, and \$1,660 (20% of the deposit) will be retained by BRA. By contrast, if BRA is only able to make 900 acre-feet available and the customer decides not to enter into an IWAA, the customer is entitled to a refund of the full \$8,300.

Section VI. Rules for Annual Allocation of Interruptible Water

1. Insufficient Interruptible Water available to satisfy applications received by Application Deadline. If it is determined that insufficient

Interruptible Water is available on a particular River Segment for potential customers who submitted applications and deposits by the Application Deadline, priority for available Interruptible Water shall be given to requests of 1,000 acre-feet or less and to the first 1,000 acre-feet of requests in excess of 1,000 acre-feet. However, customers shall not be permitted to submit multiple applications for requests of 1,000 acre-feet or less with the intent of acquiring more than 1,000 acre-feet while staying below the 1,000 acre-feet threshold for proration. If the total amount of such Interruptible Water requests exceeds the amount of Interruptible Water available, all such requests in the affected River Segment shall be prorated proportionally. A customer shall have twenty (20) calendar days to determine whether they will accept the reduced amount for the IWAA or cancel their IWAA application.

If surplus Interruptible Water is available on a particular River Segment of the basin after all requests of 1,000 acre-feet or less and the first 1,000 acre-feet of requests in excess of 1,000 acre-feet have been considered, the remaining surplus Interruptible Water will be offered to those with requests exceeding 1,000 acre-feet. If the remaining balance of the requests exceeding 1,000 acre-feet exceeds the amount of Interruptible Water available, the requests will be prorated proportionally. A customer shall have twenty (20) calendar days to determine whether they will accept the reduced amount for the IWAA or cancel their IWAA application.

2. Surplus Interruptible Water available after all complete Interruptible Water applications received after the Application Deadline have been processed. If it is determined that surplus Interruptible Water is available on a particular River Segment once the requirements of potential customers who submitted applications and deposits in a timely manner have been satisfied, BRA shall determine whether there is a sufficient amount of Interruptible Water available to satisfy the additional requests made by any potential customers who did not submit applications and deposits by the Application Deadline. If sufficient Interruptible Water is available, BRA will offer any remaining Interruptible Water for sale on a first-come, first-served basis until such time as there is no Interruptible Water available or the end of the current calendar year.

Section VII. Discontinuation in Use Based Upon Drought Conditions

BRA may require any or all customers of Interruptible Water to cease all diversion and use of water when a Stage 3 Drought Condition has been initiated for any reservoir or system of reservoirs pursuant to BRA's current Drought Contingency Plan. The most current Drought Contingency Plan is available on BRA's website

(currently at <https://brazos.org/About-Us/Water-Supply/Drought>) or by request at (254) 761-3100.

Section VIII. Drought Contingency and Water Conservation Plans

BRA requires all Interruptible Water customers to abide by the policies and procedures of its then-current Drought Contingency Plan and Water Conservation Plan, as adopted from time to time by the Board. Copies of the current BRA Drought Contingency Plan and Water Conservation Plan are available for download on BRA's website. In addition, and if required by applicable law or regulation or by BRA, Interruptible Water customers shall develop a drought contingency and/or water conservation plan, submit a copy of each to the BRA for review and acceptance prior to contracting with BRA, and all diversions under an IWAA shall be in accordance with such plans.

Section IX. Overuse

In the event a customer exceeds their contracted amount of water made available, BRA will notify the customer about the overuse, and the customer shall immediately cease diverting or otherwise remedy the overuse in accordance with the provision of their contract. If a customer habitually exceeds their contracted amount of water made available, BRA will notify the customer in writing about the habitual nature of the overuse and may pursue all contractual or legal remedies against the customer and may refuse to contract with the customer in the future.

Section X. Delivery and Diversion

BRA may deliver water from anywhere within the BRA Water Supply System to a customer's Diversion Point.

The determination of the location of the Diversion Point(s) will be made at the BRA's sole discretion in coordination with the customer, which may be the perimeter of reservoirs, downstream of reservoirs, or other points that may be designated by the BRA. The Diversion Point(s) shall be specified in the contract between the BRA and the customer.

All BRA contracts within the jurisdiction of the Texas Commission on Environmental Quality Brazos Watermaster Program (Brazos Watermaster Program), which includes the portion of the Brazos River basin downstream of, and including, Possum Kingdom Lake, are subject to metering and water use reporting requirements of the Brazos Watermaster.

All customers are required to have their meters certified by the Brazos Watermaster prior to diversion of water. This involves a representative of the Brazos Watermaster Program visiting the Diversion Point, recording basic

information about the meter, and ensuring that the customer meets all the necessary requirements to begin pumping.

A customer's ability to change an existing and/or obtain an additional Diversion Point(s) may be limited by the location of the new Diversion Point(s). The determination of whether a customer may change and/or add a Diversion Point(s) will be made by BRA in its sole discretion. Any changes to Diversion Point(s) shall require an amendment to the IWAA.

Subsequent to the initial meter certification, any additional meters added or relocated to a Diversion Point must also be certified by a representative of the Brazos Watermaster Program.

Section XI. Transportation Losses

BRA reserves the right, at its sole discretion, to manage the BRA Water Supply System as it deems to be appropriate, and any resulting Transportation Losses shall be borne by the customer.

Prior to execution of a new or amended IWAA, the BRA will coordinate with the customer to analyze the expectations of the customer with respect to delivery of raw water to that customer's Diversion Point and the impact of Transportation Losses.

When the release of water from a reservoir is needed to supply water to a downstream customer's Diversion Point, BRA will determine which reservoir(s) to make the release from and the rate at which the release will be made in an attempt to accommodate the customer's request. BRA will use Transportation Loss estimates to initially set the release rate; however, the release rate may be adjusted as necessary if actual Transportation Losses are observed to be higher or lower than anticipated. When releasing water for a downstream customer, the amount of water that is released from a reservoir is accounted for against the customer's annual contract amount and shall include Transportation Losses. Irrespective of the amount of water actually diverted by the customer, BRA shall attribute all water released at the customer's request, including the anticipated Transportation Losses, to the water used under the customer's annual contract amount.

Section XII. Metering and Reporting

Meters shall be installed to accurately measure water diverted by customers. Meters shall be capable of measuring the amount of water diverted with an error of less than five percent and shall be calibrated annually.

Customers will be required to report daily meter readings, diversion rates, and diversion volumes as frequently as required by the BRA or for BRA to comply with

BRA and/or Brazos Watermaster Program reporting requirements outlined in Texas Administrative Code Title 30, Part 1, Chapter 304. In addition to any other penalties assessed by the Brazos Watermaster Program, failure to comply with the metering and reporting requirements could result in BRA enforcement actions against the customer. BRA reserves the right to enforce penalties, including but not limited to the following: monetary fines, disruptions in the customer's ability to divert water under the water supply agreement, and/or termination of the water supply agreement.

Section XIII. Term

IWAAs shall not be issued for a term longer than one year and shall expire on December 31st of each year. Customers of Interruptible Water shall not have any right or priority to contract for Interruptible Water after the expiration of their agreement. However, if Interruptible Water is available after expiration of an IWAA, those customers may request Interruptible Water pursuant to this Procedure, as it may be amended from time to time. The term of an IWAA shall not be amended or extended.

Section XIV. Pricing

Water shall be sold at either the System Rate or the Agricultural Rate. Both rates are established annually by the Board. The Agricultural Rate is for Interruptible Water customers who contract for water solely for agricultural purposes. If a customer desires to use their contract for multiple purposes, the customer shall be required to pay the BRA's then-current System Rate for water made available under its IWAA; however, a customer may enter into multiple IWAAs for different uses provided that all water made available under an IWAA solely for agriculture use is not used for any other purpose.

Section XV. Resale to a Third Party

Customers shall not resell Interruptible Water to a third party without first obtaining written BRA consent, which BRA may provide in its sole discretion. If a customer desires to resell Interruptible Water to a third party, the customer shall notify BRA prior to entering into a legally binding contract with the third party and shall notify the third party of the interruptible nature of the water made available under an IWAA. Notice to BRA shall include the subsequent purchaser's name, address, diversion point, term, use, and the amount of water sold. Notice to third-party customers of the interruptible nature of water made available under an IWAA shall be in the form of a letter, sent via certified mail with a copy of the customer's IWAA enclosed, that contains the following language:

"Use of water made available under the Interruptible Water Availability Agreement by and between the Brazos River Authority and *(insert customer's name)* may be discontinued

during drought conditions as they are defined in that Agreement. Further, the amount of water (*insert customer's name*) is authorized to divert may be reduced on an annual basis by BRA due to a variety of factors. Thus, there may be periods of varying frequency and duration where diversion and use of this water is prohibited and, as such, this water may not be appropriate for certain uses requiring a high degree of reliability. A copy of the Agreement is enclosed with this letter. Please read the Agreement carefully to understand the associated rights and obligations."

A copy of this letter shall be sent to BRA. In the event BRA consents to a resale, the resale shall be 1) on a form approved by the BRA; 2) in compliance with the BRA's Operations Policy Manual, as in effect at the time of request; and 3) must have water conservation requirements so that each successive wholesale customer in the resale of the water is required to implement water conservation measures meeting the requirements of the BRA. In addition, the customer shall be held responsible for all contractual requirements including tendering payment to BRA and compliance with Texas Commission on Environmental Quality regulations.

Section XVI. Assignment of Contracted Water

The assignment of an IWAA by a customer to a third party is prohibited; provided, however, the BRA may allow a customer to permanently assign their IWAA to a third party in certain circumstances as stated in the Operations Policy Manual. Assignments are not authorized on a temporary basis and will only be approved if the diversion location and use remain consistent with the spirit and intent of the original IWAA.

Section XVII. Minimum Amount Required

The minimum amount of Interruptible Water a customer may contract for under an IWAA is five (5) acre-feet.

Section XVIII. Waiver Authority

This Procedure establishes consistent guidelines for determining the allocation availability, and facilitation of sales for Interruptible Water. No deviations from this Procedure shall be permissible, without the express written consent from the General Manager/CEO.