

6.5 WATER POLICY

Purpose

This policy supports the Brazos River Authority's mission to develop, manage, and protect water resources in the Brazos River basin.

Water Resource Development and Acquisition

The Brazos River Authority will strive to acquire and develop water resources to meet the needs of the Brazos River basin, while encouraging proper planning and conservation. To accomplish this objective, the Brazos River Authority may purchase, acquire, sell, transfer, lease, or otherwise exchange water or water rights under an agreement with a person or entity that contains terms that are considered advantageous to the Brazos River Authority and that are consistent with its mission. (TEX. SPEC. DIST. CODE §§ 8502.004 and 8502.017; TEX. WATER CODE §§ 49.211, 49.218, and 49.2261.)

Water Sales

The Brazos River Authority has developed water resources to provide water for the beneficial use of its customers. In order to provide equity and consistency in contracting, the Brazos River Authority will contract for the sale of raw water utilizing standard forms for water supply agreements, which shall be adopted and approved by the Brazos River Authority Board of Directors. In addition, all water rates and fees shall be set, from time to time, by the Board of Directors of the Brazos River Authority. (TEX. SPEC. DIST. CODE § 8502.006; TEX. WATER CODE § 49.213(c)(1).)

When entering into new long-term contracts for the sale of raw water or amending existing long-term raw water contracts to provide additional raw water, the Brazos River Authority will limit the amount of water provided under such new contracts or the amount of additional water provided under such amendments to the uncommitted firm supply available from the Brazos River Authority, with such uncommitted firm supply to be determined by the Brazos River Authority in its sole discretion.

In order to achieve equitable pricing among the Brazos River Authority's customers and efficiency in supplying water to those customers, all customers, as a condition of modifying, amending, and/or assigning their contracts or the terms thereof, shall convert all contracts to the standard contractual form in effect at the time of the request, subject to any and all State and Federal mandates. However, the GM/CEO may authorize temporary resales of water for periods up to ten years, including any amendments necessary to accomplish the temporary assignment or resale, without requiring the contractual conversion. If a customer continually requests temporary resales of water, the GM/CEO will determine whether the temporary resales of water are justified or whether the customer is attempting to circumvent the contractual conversion requirement prior to authorizing additional temporary resales of water. If the GM/CEO determines the customer is attempting the latter, the customer will be required to convert their contract

to the standard contractual form in effect prior to authorizing any additional temporary resales of water.

Selling Preferences for the Standard Long-term Contract Form

In selling water, the Brazos River Authority shall give preference to the following uses in the order named:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals, it being the public policy of the state and for the benefit of the greatest number of people that in the appropriation of water as herein defined, the appropriation of water for domestic and municipal uses shall be and remain superior to the rights of the state to appropriate the same for all other purposes;
- (2) agricultural uses and industrial uses, which means processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- (3) mining and recovery of minerals;
- (4) hydroelectric power;
- (5) navigation;
- (6) recreation and pleasure; and
- (7) other beneficial uses. (TEX. WATER CODE § 11.024.)

The Brazos River Authority may, in its sole discretion, also consider the following in making its long-term contracting decisions:

- 1) The ability of the Brazos River system to reliably and efficiently supply the contract request given existing contracts that are in place and other requests being evaluated;
- 2) The water needs of the customer reflected in the current State Water Plan; and
- 3) Other factors including, but not limited to: the immediacy of the customer's need for water; the magnitude of the customer's request; the customer's water conservation efforts; health, safety, and environmental issues (such as contamination of existing sources); and customer's compliance with rules, regulations, and/or contractual provisions.

Conservation and Drought Contingency

In order to manage, protect, and prolong the beneficial use of water resources in the Brazos basin, the Brazos River Authority will maintain Water Conservation and Drought Contingency Plans in accordance with State requirements and its water rights. BRA customers will be required to comply with these plans. (TEX. WATER CODE §§ 11.1271 and 11.1272.)

Assignment and Resale of Brazos River Authority Water

In an effort to better manage the waters in the Brazos basin, the Brazos River Authority will not allow the assignment of a water contract, except as further set forth herein; however, if a customer determines that they no longer need all or a portion of the water they have under contract, such customer may return such water to the Brazos River Authority. If the customer elects to return any such water, their water contract will be terminated or amended to reflect the reduced amount.

The assignment of a contract for Brazos River Authority water by a customer to a third party is prohibited; provided, however, the Brazos River Authority may allow a customer to permanently assign its entire water contract to a third party in the event of the following: 1) name changes, restructuring, mergers, acquisitions, assignments, or other transfers of a business, organization or entity; 2) acquisition, transfer of an interest in the contract through inheritance, change in marital status, or interfamily transfer; 3) the customer has sold the real property underlying the water contract and the new owner desires to continue use of the water; 4) a court order necessitating the assignment of the water contract has been issued; or 5) the customer has a pre-existing contractual right to assignment. Such assignments will only be approved if the diversion location and use remain consistent with the spirit and intent of the original contract.

In the event a customer has contracted for more water than they are currently using and does not wish to return the excess water to the Brazos River Authority, the customer may elect to resell the water on a temporary basis to a third party. Third party resales will only be permitted if: 1) the customer has obtained the prior written approval of the Brazos River Authority; 2) the temporary resale is for a period no longer than ten years; 3) the customer, third party, and Brazos River Authority execute a tripartite agreement, on a Brazos River Authority form, establishing the terms and conditions of the resale; and 4) the customer shall remain responsible for tendering payment to the Brazos River Authority and agrees to monitor the third party's performance, ensuring compliance with all terms of the customer's water contract with the Brazos River Authority. The Brazos River Authority may terminate a third party resale at any time and will not allow customers to resell water if, in the sole discretion of the Brazos River Authority, the Brazos River Authority determines it is in its best interest to terminate the agreement. Circumstances that may lead to termination include, but are not limited to: contractual noncompliance, environmental concerns, and violations of federal, state, or local laws, regulations, ordinances or other requirements. Secondary resales are prohibited. The Brazos River

Authority reserves the right to prohibit or minimize resales to third parties during times of drought.

Contract Terms, Renewals, and Extensions

The maximum term for a new long-term raw water supply contract will be thirty-five years; provided, however, the length of the term for all new long-term contracts will be rounded down to the closest year ending in zero or five. Contract renewals and extensions will also be similarly limited unless an existing contract provides otherwise. Renewals and extensions are at the sole discretion of the Brazos River Authority and will not be considered until three years prior to expiration of an existing contract. (TEX. WATER CODE § 49.213(c)(1).)

In the event a customer requests an extension of a contract prior to three years from its expiration because the extension is necessary to receive funding from the Texas Water Development Board, then the Brazos River Authority, in its sole discretion, will determine whether to grant an early extension.

Authority for Policy 6.5

TEX. SPEC. DIST. CODE § 8502.004, 8502.006; 8502.017

TEX. WATER CODE §§ 11.024, 11.1271, 11.1272, 49.211, 49.218, 49.213(c)(1), 49.2261.