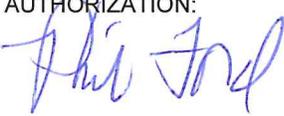


<b>ADMINISTRATIVE PROCEDURES:</b>		No.			
OFFICE OF PRIMARY RESPONSIBILITY: <b>WATER SERVICES</b>	EFFECTIVE DATE:	Page	1	of	9
SUBJECT: <b>BRAZOS RIVER AUTHORITY INTERRUPTIBLE WATER SALE PROCEDURE</b>	AUTHORIZATION: 	DATE: <b>7 JUL 17</b>			

**BRAZOS RIVER AUTHORITY 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:**

**Board-**

The Board of Directors of the Brazos River Authority.

**BRA-**

Brazos River Authority.

**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.

**Interruptible Water-**

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

**IWAA-**

An Interruptible Water Availability Agreement – a one year agreement executed between the Brazos River Authority and a customer providing the customer access to Interruptible Water.

**River Segment-**

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

**System Water Availability Agreement-**

An agreement between the BRA and a customer providing the customer access to water on a long-term basis.

**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 October 31<sup>st</sup> of each 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:

<b>Segment No.</b>	<b>Extent of Segment</b>
1	Lake Aquilla to the confluence of Aquilla Creek and the Brazos River
2	Little River System a. Lake Proctor to Lake Belton b. Lake Belton to the confluence of the Little River and the Brazos River c. 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

	<ul style="list-style-type: none"> <li>c. Lake Whitney to the confluence of the Brazos River and Aquilla Creek</li> <li>d. The confluence of the Brazos River and Aquilla Creek to the confluence of the Brazos River and the Little River</li> <li>e. The confluence of the Brazos River and the Little River to the confluence of the Brazos River and Yegua Creek</li> <li>f. The confluence of the Brazos River and Yegua Creek to the Gulf of Mexico</li> </ul>
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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 of Directors of the Brazos River Authority (“Board”) that ensures protection of all long- term contracts.

The Board of Directors 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.

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

#### **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 no later than August 31<sup>st</sup> of each year. An application shall not be considered submitted for the purpose of the August 31<sup>st</sup> 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 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 in subsequent years.

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 not sooner than December 15 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 will forfeit its right to the 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 \$7,200 (10% of the product of 1,000 acre feet per year times the current Interruptible Water Rate, which for 2017 is \$72.00 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, \$5,760 (80% of the deposit) will be applied to the total payment due under the IWAA, and \$1,440 (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 \$7,200.*

## **Section VI. Existing Multi-year IWAAs**

Prior to 2018, BRA issued IWAAs for multi-year terms of up to five years. All existing multi-year IWAAs in place as of the effective date of this procedure shall remain in effect until expiration of the term as specified in each such IWAA. No multi-year IWAAs shall be extended or issued beyond their current term.

If it is determined that the availability of Interruptible Water on a particular River Segment is less than that currently contracted for in a given year, BRA will reduce the amount of water that customers with existing multi-year IWAAs on that segment may divert and use under their IWAA. In the event of a reduction, payment for that year shall be based on the reduced amount. Additionally, affected customers shall have the option to terminate their IWAA within twenty (20) calendar days of notification from BRA that a reduction will take place. If, however, additional water is available in subsequent years, customers with existing multi-year IWAAs shall have the right to divert and shall be obligated to pay for the increased amount up to the amount originally contracted for.

## Section VII. Rules for Annual Allocation of Interruptible Water

1. Sufficient Interruptible Water available to satisfy existing multi-year IWAA's. So long as any multi-year IWAA's remain in effect, they will receive first priority on Interruptible Water that is made available. If it is determined by BRA that sufficient Interruptible Water is available to meet all current IWAA's on a particular River Segment of the basin, current customers on that segment of the basin may continue to divert and use Interruptible Water under the terms and conditions of their existing agreements.
2. Insufficient Interruptible Water available to satisfy existing multi-year IWAA's. If it is determined that insufficient Interruptible Water is available to meet current IWAA's on a particular River Segment of the basin, current customers on that segment of the basin will be notified of the reduced amount that they may divert and use under their existing agreements. A customer shall have twenty (20) calendar days to determine whether they will accept the reduced amount for the following calendar year or cancel their IWAA. If a customer decides to cancel its IWAA, that customer shall lose any right to future Interruptible Water given in that IWAA; however, a customer who has cancelled an IWAA shall not be prohibited from entering into a new IWAA provided Interruptible Water is available for purchase in subsequent years. Interruptible Water that becomes available due to a cancellation shall first be proportionately allocated to other IWAA holders whose amounts were reduced on that River Segment of the basin. Thereafter, any remaining water will be offered as surplus Interruptible Water to those who submitted completed applications by the August 31 deadline.
3. Surplus Interruptible Water available after current IWAA's are satisfied. If surplus Interruptible Water is available on a particular River Segment of the basin once the contractual requirements of current IWAA's have been satisfied, BRA shall determine whether there is a sufficient amount of Interruptible Water available to satisfy new requests made by potential customers who submitted completed applications and deposits in a timely manner.

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.

4. Surplus Interruptible Water available after all complete Interruptible Water applications received by August 31st 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 August 31st. 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 VIII. 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. Copies of the most current Drought Contingency Plan will be made available for download on BRA's website (currently at <http://www.brazos.org/DroughtContingency.asp>) or by request at (254) 761-3111.

### **Section IX. Term**

IWAAs shall not be issued for a term longer than one year and shall expire on December 31<sup>st</sup> 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 X. Additional Diversion Points**

A customer's ability to change an existing and/or to 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. A customer will be limited to no more than fifteen (15) diversion points under any one (1) IWAA and will be allowed an amendment for the purposes of adding or changing a diversion point(s) once.

#### **Section XI. 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 in accordance with such terms and conditions as BRA determines are in the best interest of the BRA.

## **Section XII. Minimum Amount Required**

The minimum amount of Interruptible Water a customer may contract for under an IWAA is ten (10) acre-feet.

## **Section XIII. Watermaster**

All BRA IWAA's within the jurisdiction of the Brazos Watermaster program shall be subject to requirements of the Brazos Watermaster.

## **Section XIV. Waiver Authority**

The General Manager/CEO may make exceptions to this Operations Procedure when it is deemed in the best interests of the BRA in accordance with Board-approved policies.