



**RULES OF THE  
BLUEBONNET  
GROUNDWATER CONSERVATION  
DISTRICT**

## RULE ADOPTION AND EFFECTIVE DATE HISTORY

Notice Date(s)	Hearing Date(s)	Adopted Date	Effective Date
Nov. 6, 7, 13, 14, 2003	Nov. 18, 19, 2003; Dec. 4, 2003	Jan. 21, 2004	July 1, 2004
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June 16, 17, 18, 2004	June 23, 2004	June 23, 2004	July 1, 2004
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Sept. 26, 27, 2018	Oct. 17, 2018	Oct. 17, 2018	Oct. 17, 2018

In accordance with Section 59 of Article XVI of the Texas Constitution and Act of May 26, 2001, 77<sup>th</sup> Leg., R.S., ch. 36, September 1, 2001 Tex. Gen. Laws (HB 3655) now codified as Chapter 8825 Special District Local Laws Code, and the non-conflicting provisions of Chapter 36, Water Code the following rules are hereby ratified and adopted as the rules of this District by its Board. Each Rule as worded herein has been in effect since the date of passage and as may be hereafter amended.

The Rules, regulations, and modes of procedure herein contained are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State and the Rules of this District. To the end that these objectives are attained, these Rules will be so construed.

These Rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case may these Rules be construed as a limitation or restriction upon the exercise of powers, duties, and jurisdiction conferred by law. These Rules will not limit or restrict the amount and accuracy of data or information that may be required for the proper administration of the law.

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# **BLUEBONNET GROUNDWATER CONSERVATION DISTRICT**

## **DISTRICT RULES**

The District's Rules are promulgated under the District's statutory authority (primarily House Bill 3655 and Texas Water Code Chapter 36) to protect private property rights, balance the conservation and development of groundwater to meet the needs of this state, use the best available science in the conservation and development of groundwater and to achieve the following objectives: to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater. The District's Orders, Rules, regulation, requirements, resolutions, policies, guidelines, or similar measures have been implemented to fulfill these objectives.

### **SECTION 1. DEFINITIONS AND CONCEPTS**

#### **RULE 1.1 DEFINITIONS OF TERMS**

In the administration of its duties, the District follows the definitions of terms set forth in the District Act, Chapter 36 of the Texas Water Code, and other definitions as follow:

“Abandoned Well” – a well that has not been used for a beneficial purpose for at least one year and/or a well not registered with the District. A well is considered to be in use in the following cases:

1. A non-deteriorated well which contains the casing, pump and pump column in good condition;
2. A non-deteriorated well which has been capped; or
3. An artesian flowing well with casing in good condition.

“Acre-foot” – means the amount of water necessary to cover one acre of land one foot deep, or 325,851 gallons of water.

“Act” – the District's enabling legislation, H.B. No. 3655 of the 77<sup>th</sup> Texas Legislature, now codified as Chapter 8825 Special District Local Laws Code, in conjunction with Chapter 36, Texas Water Code.

“Actual and Necessary Expenses” – expenses incurred while performing duties associated with District business or representing the District for purposes of the District.

“Administratively Complete” – an application containing the information described in Rule 8.5B

“Aggregate Wells” – a well system comprised of two or more wells that are owned and operated by the same permittee and serve the same subdivision, facility, or area served by a Certificate of Convenience and Necessity (CNN) issued by the Texas Commission on Environmental Quality (TCEQ).

“Aggregate Withdrawal” – the amount of water withdrawn from two or more registered wells in a water system that is permitted under a single permit for a total pumpage volume of all wells in the aggregate system.

“Applicant” – means a person who is applying for a permit or permit amendment.

“Agricultural Well” – means a well used for agricultural activities listed under section 36.001 (19) of the Texas Water Code.

“Aquifer” – a geologic formation that will yield water to a well in sufficient quantities to make the production of water from this formation feasible for beneficial use.

“Beneficial Use” or “Beneficial Purpose” – means use of groundwater for:

1. Agricultural, gardening, domestic (including lawn-watering), stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes;
2. Exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals; or
3. For any other non-speculative purpose that is useful and beneficial to the users that does not constitute waste.

“Best available science” means conclusions that are logically and reasonable derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

“Board” – means the Board of Directors of the District.

“Capping” – equipping a well with a securely affixed, removable device that will prevent the entrance of surface pollutants into the well.

“Casing” – a tubular structure installed in the excavated or drilled borehole to maintain the well opening.

“Cement Grout” – a mixture of water and cement, which may also include a bentonite clay compound.



“Certificate of Convenience and Necessity” (CCN) – a permit issued by TCEQ which authorizes and obligates a retail utility to furnish, to make available, to render or extend continuous and adequate retail public water or sewer services to a specified geographic area.

“Cistern” – an in-ground storage facility for water. Abandoned or deteriorated facilities will be treated as hand dug wells for sealing, capping, or plugging purposes.

“Closed Loop Well” – a well constructed for circulating water through a continuous length of tubing, generally for earth coupled-heat exchange purposes. See also Earth Coupled Heat Exchange-Closed Loop System. (An exempt well)

“Column Pipe Diameter” – shall refer to the inside diameter of the pump (discharge) column pipe.

“Commercial Use” – the use associated with supplying water to properties or establishments which are in business to build, supply, or sell products; or provide goods, services or repairs and that use water in those processes or use water primarily for employee and customer conveniences (i.e. flushing of toilets, sanitary purposes, and limited landscape watering). This includes use in any other business enterprise for which monetary consideration is given or received, which will typically increase water demand compared to typical, domestic use.

“Commercial Well” – a well producing groundwater for commercial use. (A nonexempt well.)

“Conservation” – those water saving practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

“Contested Application” or “Contested Hearing” – means a proceeding where an application has been properly contested and for which a hearing is granted under Section 14 of these Rules.

“Desired Future Condition” – means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

“Deteriorated Well” – means a well, the condition of which will cause or is likely to cause waste of groundwater in the District.

“De-watering Well” – means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.

“Director” – means a person appointed to the Board of Directors of the District.

“Discharge” – means the amount of water that leaves an aquifer by natural or artificial means.

“District” – means the Bluebonnet Groundwater Conservation District.

“District Act” – means the Act of May 26, 2001, 77<sup>th</sup> Leg., R.S., Ch. 1361, September 1, 2001 Tex. Gen. Laws (HB 3655) now codified as Chapter 8825 Tex. Special District Local Law Code and the non-conflicting provisions of Chapter 36, Water Code.

“District Office” – means the office of the District as established by the Board.

“District April 17, 2002 Rules” – means rules adopted by the District April 17, 2002 pursuant to resolution No. 2002-01, as amended by Resolution 2003-04 adopted April 16, 2003 which establish exemptions and user fees. Nonexempt existing wells are subject to fees under the District April 17, 2002 rules as amended April 16, 2003 until fees are assessed pursuant to individual permit under these Rules.

“Domestic Purposes (Use)” – means the use of groundwater by a person or a household to support domestic activity and includes the following: water for drinking, washing or culinary purposes; for residential landscape watering, or watering of a family garden and/or orchard; for watering of domestic animals; and for residential water recreation uses (e.g., swimming pool, hot tub). Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold. Domestic use does not include use by or for a public water system.

“Drilling Authorization” – means authorization issued or to be issued by the District allowing a water well to be drilled.

“Drought” – an aquifer-based determination by the Board of Directors represented by conditions of significant declines in groundwater levels over multiple years.

“Earth Coupled Heat Exchange” or “Closed Loop System” – a well system drilled and equipped for the purpose of utilizing the subsurface as a source of energy for heat exchange in heating and cooling systems. These are sealed systems; no water is to be produced or injected. (An exempt well)

“Evidence of historic or existing use” – means the amount of water that an applicant can reasonably demonstrate to the District which was used prior to July 1, 2004.

“Existing Well” – a well completed before the effective date of these Rules.

“Federal Conservation Program” – the Conservation Reserve Program of the United States Department of Agriculture or any successor program.

“Groundwater” – means water located beneath the earth’s surface within the District but does not include water produced with oil in the production of oil and gas.

“Groundwater Reservoir” – a specific subsurface water-bearing reservoir having ascertainable boundaries and containing groundwater.

“Hazardous Conditions” – any groundwater quality condition that may be detrimental to public health or affect the beneficial use of water from the aquifer.

“Hearing” – means a contested hearing when used in the context of a permit or permit amendment application or a show cause proceeding.

“Hearing Body” – means the Board, any committee of the Board, or a Hearing Examiner at any hearing held under the authority of the District Act.

“Hearing Examiner” – means a person appointed by the Board of Directors to conduct a hearing or other proceeding.

“Hydraulic Fracturing” – a process used in the production of oil and gas where water and water mixed with additives injected into the subsurface to hydraulically induce cracks in a target formation through which oil and/or natural gas can be produced.

“Hydrogeological Report” – a report, by a Texas licensed geoscientist or a Texas licensed engineer, that identifies the availability of groundwater in a particular area and formation, addresses the issues of quantity and quality of that water, the impacts of pumping that water on the surrounding environment including impacts to nearby or adjacent wells, and subsidence. The report also will include field data from aquifer testing and geologic samples.

“Inflows” – means the amount of water that leaves an aquifer by natural or artificial means.

“Injection well” – includes:

1. An air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;
2. A cooling water return flow well used to inject water previously used for cooling;
3. A drainage well used to drain surface fluid into a subsurface formation;
4. A recharge well used to replenish the water in an aquifer;
5. A saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;
6. A sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
7. A subsidence control well used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water.

“Landowner” – means the person who bears ownership of the land surface.

“Landscape Irrigation at Athletic and Recreational Facilities” – means wells producing water for

use in landscape and recreational facilities including, but not limited to, golf courses, water parks, campgrounds, athletic fields, and parks. Such wells are not exempt from registration, permitting, and user fees.

“Leachate Well” – means a well used to remove contamination from soil or groundwater.

“Modeled Available Groundwater” – means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108 of the Texas Water Code.

“Monitoring Well” – means a well installed to measure some property of the groundwater or aquifer it penetrates, and does not produce more than 25,000 gallons of groundwater per year.

“New Well Application” – means an application for a permit for a water well that has not yet been drilled.

“Open Meetings Law” – means Chapter 551, Texas Government Code.

“Operating Permit” – means a permit issued by the District for a water well, allowing groundwater to be withdrawn from a non-exempt water well for a designated period.

“Part of a Manufactured Product” – water used in a process occurring within the District where water is a basic material or ingredient and its form, adaptability, or use is transformed from its original state. Subsequent to the transformation, the product for which water is used is transported outside the District. The term includes, but is not limited to, water used in or as a packaged food product. Examples of the term include canned, bottled or packaged water; soft drinks; alcoholic beverages; medicines; paints; cleaning products; and, concrete. The term does not include unpackaged, raw or treated water transported in bulk out of the District via a water course, pipeline, truck or rail; or, raw or treated water transported and used as a part of a manufactured product created outside the District.

“Potential for Measurable Subsidence” -- a threshold estimate based upon results from local and regional scale model simulations and/or actual field conditions used by the District to determine that subsidence would occur.

“Public Information Act” – means Chapter 552, Texas Government Code.

“Person” – includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

“Presiding Officer” – means the President, Vice-President, Secretary, or other Board member presiding at any hearing or other proceeding or a Hearing Examiner conducting any hearing or other proceeding.

“Recharge” – means the amount of water that infiltrates the water table of an aquifer.

“Recreational Water Use” – wells producing water for recreational use, including but not limited to water parks, golf courses, water hazard ponds, and recreational ponds at parks and campgrounds. Such wells are not exempt from registration, permitting and user fees.

“Rules” – means the standards and rules promulgated by the District.

“Section” – means the number section of a survey or block as shown in “Texas Country Farm Plats”, 1996 Edition, (Smith Publishing Co.).

“Subsidence” – means the lowering in elevation of the surface of land by the withdrawal of groundwater.

“Texas Commission on Environmental Quality” – TCEQ.

“Texas Rules of Civil Procedure” and “Texas Rules of Civil Evidence” – means the civil procedure and evidence rules as amended and in effect at the time of the action or proceeding. Except as modified by the Rules of the District, the rights, duties, and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure or the Texas Rules of Evidence are the same as a court, without a jury acting under those rules.

“Total Aquifer Storage” – means the total calculated volume of groundwater that an aquifer is capable of producing.

“Transport” – means pumping, transferring, exporting or moving water outside the District without regard to the manner the water is transferred or moved, including but not limited to discharges into water courses. The terms “transfer” or “export” of groundwater are used interchangeably within Chapter 36, Texas Water Code and these Rules.

“Transport Permit” – means an authorization issued by the District allowing the transfer or transport of a specific quantity of groundwater outside the District for a designated time period. All applicable permit rules apply to transport permits.

“Uncontested Application” – means an application for which a contested hearing is not held before the Board or presiding officer appointed by the Board.

“Variance” – an authorized exception to requirements or provisions of the Rules, granted by the District’s Board of Directors.

“Waste” – means Chapter 36.001 (8) Definitions and Section 13 herein.

“Water Meter” – means a water flow measuring device that can accurately record the amount of water produced during a measured time.

“Water Station Well” – means a well from which water is sold for a use that is not connected with the property where the well is located. It is a non-exempt well requiring an individual permit.

“Well” – means any facility, device, or method used to withdraw groundwater from the groundwater supply within the District.

“Well Abandonment” – leaving a well unused, unattended, and improperly protected from contamination and/or sources of pollution. Abandoned wells must be capped, permanently closed, or plugged in accordance with approved District standards.

“Well Owner” or “Well Operator” – means the person who owns the groundwater where a well is located or is to be located or the person who operates a well or a water distribution system supplied by a well.

“Well System” – means a well or group of wells tied to the same distribution system.

“Withdraw” or “Withdrawal” – means extracting groundwater by pumping or by any other method other than the discharge of natural springs.

“Windmill” – means a wind-driven or hand-driven device that uses a piston pump to remove groundwater.

#### **RULE 1.2     PURPOSE OF RULES**

These Rules are adopted to achieve the provisions of the District Act and accomplish its purposes.

#### **RULE 1.3     USE AND EFFECT OF RULES**

The District uses these Rules as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They may not be construed as a limitation or restriction on the exercise of any discretion nor be construed to deprive the District or Board of the exercise of any powers, duties, or jurisdiction conferred by law, nor be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act.

#### **RULE 1.4     AMENDING OF RULES**

The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time.

#### **RULE 1.5     HEADINGS AND CAPTIONS**

The section and other headings and captions contained in these Rules are for reference purposes only. They do not affect the meaning or interpretation of these Rules in any way.

#### **RULE 1.6     GENDER**

Use of masculine pronouns for convenience purposes in these Rules and Bylaws shall include references to persons of feminine gender where applicable. Words of any gender used in these

Rules and Bylaws shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise.

**RULE 1.7 METHODS OF SERVICE UNDER THE RULES**

Except as otherwise expressly provided in these Rules, any notice or documents required by these Rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three (3) days will be added to the prescribed period. Where service by one of more methods has been attempted and failed, the service is complete upon notice publication in the designated official newspapers for the District in Austin, Grimes and Walker Counties.

**RULE 1.8 SEVERABILITY**

If any one or more of the provisions contained in these Rules are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other rules or provisions of these Rules, and these Rules must be construed as if such invalid, illegal, or unenforceable rules or provision had never been contained in these Rules.

**RULE 1.9 SAVINGS CLAUSE**

If any section, sentence, paragraph, clause, or part of these Rules or Bylaws should be held or declared invalid for any reason by a final judgment of the courts of this state or of the United States, such decision or holding shall not affect the validity of the remaining portions of these Rules or Bylaws, and the Board does hereby declare that it would have adopted and promulgated such remaining portions irrespective of the fact that any other sentence, section, paragraph, clause, or part thereof may be declared invalid.

**RULE 1.10 REGULATORY COMPLIANCE**

All wells shall comply with all applicable Rules and regulations of other governmental entities. Where District Rules and regulations are more stringent than those of other governmental entities, the District Rules and regulations shall control.

**RULE 1.11 COMPUTING TIME**

In computing any period of time prescribed or allowed by these Rules and Bylaws, by order of the Board, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until

the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

**RULE 1.12 TIME LIMITS**

Applications, requests, or other papers or documents required or permitted to be filed under these Rules, Bylaws, or by law must be received for filing at the District within the time limit, if any, for such filing. The date of receipt and not the date of posting are determinative.

**RULE 1.13 WORD USAGE**

The verbs may, can, might, should, or could are used when an action is optional or may not apply in every case.

The verbs will, shall, or must are used when an action is required.

The verb cannot is used when an action is not allowed or is unachievable.

Words not specifically defined herein shall be defined by their standard usage.

**SECTION 2. BOARD**

**RULE 2.1 PURPOSE OF BOARD**

The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District for managing, conserving, preserving, protecting, and recharging the groundwater within the District, and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.

**RULE 2.2 BOARD STRUCTURE, OFFICERS**

The Board consists of the members appointed and qualified as required by the District Act. The Board will elect one of its members to serve as President, to preside over Board meetings and proceedings; two to serve as Vice President to preside in the absence of the President; and one to serve as Secretary to keep a true and complete account of all meetings and proceedings of the Board. The Board may elect officers annually, but must elect officers at the first meeting following the date upon which Board members assume office. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these Rules.

**RULE 2.3 MEETINGS**



The Board will hold a regular meeting at least once each quarter as the Board may establish from time to time. At the request of the President, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held according to the applicable law.

**RULE 2.4 COMMITTEES**

The President may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees. Committee members serve at the pleasure of the President.

**SECTION 3. DISTRICT STAFF**

**RULE 3.1 GENERAL MANAGER**

The Board may employ a person to manage the District, and title this person General Manager. The Board delegates to the General Manager full authority to manage and operate the affairs of the District in accordance with the orders, rules, policies and directives of the Board. The Board will determine the General Manager's salary annually as a part of the budget process and review the position of General Manager each year at the end of the third or beginning of the fourth quarter of every fiscal year. The General Manager, consistent with the budget approved by the Board, may employ all persons necessary for the proper handling of business and operation of the District and their salaries will be set by the Board.

If the Board has not appointed a General Manager, the Board shall act to manage the District and may perform any function of the General Manager identified by these Rules.

**SECTION 4. DISTRICT**

**RULE 4.1 MINUTES AND RECORDS OF THE DISTRICT**

All documents, reports, records, and minutes of the District are available for public inspection and copying following the Texas Public Information Act. Upon written application of any person, the District will furnish copies of its public records. A copying charge may be required pursuant to policies established by the District. A list of the charges for copies will be furnished by the District.

**RULE 4.2 CERTIFIED COPIES**

Requests for certified copies must be in writing. Certified copies will be made under the direction of the General Manager. A certification charge and copying charge may be assessed, pursuant to policies established by the Board of directors.

## **SECTION 5. SPACING REQUIREMENTS**

### **RULE 5.1 REQUIRED SPACING**

To minimize as far as practicable the drawdown of the water table, the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, the District by rule may regulate the spacing of water wells.

- A. All wells drilled prior to the effective date of these Rules, shall be drilled in accordance with state law in effect, if any, on the date such drilling commenced.
- B. All new wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administration Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant.
- C. After authorization to drill a well has been granted under a registration or a permit, the well, if drilled, must be drilled within ten (10) yards (30 feet) of the location specified in the permit, and not elsewhere. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code, and these Rules.
- D. In addition to the requirements of Rule 5.1B and C, spacing of nonexempt wells may be required to prevent interference between wells and impacts to neighboring wells and to prevent measurable subsidence and shall be determined based on a hydrogeological reports required under Rule 8.5F. The Board may, among other things, require wells to be spaced a certain distance from property lines or adjoining wells.

### **RULE 5.2 EXCEPTIONS TO SPACING REQUIREMENTS**

- A. If the applicant presents waivers signed by the adjoining landowner(s) stating that they have no objection to the proposed location of the well site, the spacing requirements may be waived for the new proposed well location.
- B. Providing an applicant can show, by clear and convincing evidence, good cause why a new well should be allowed to be drilled closer than the required spacing of Rule 5.1, the issue of spacing requirements will be considered during the contested case process. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board must limit the production of the well to ensure no injury is done to adjoining landowners or the aquifer.
- C. The Board or General Manager if authorized by the Board, may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing spacing requirements.

## **SECTION 6. PRODUCTION LIMITATIONS**

### **RULE 6.1 MAXIMUM ALLOWABLE PRODUCTION**

To minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to prevent or control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, the District by rule may regulate the production of groundwater.

- A. Before granting or denying a permit for a new well, the District shall consider whether to regulate the production of groundwater by:
  - 1. Setting production limits on wells;
  - 2. Limiting the amount of water produced based on acreage or tract size;
  - 3. Limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;
  - 4. Limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre;
  - 5. Managed depletion;
  - 6. Controlling and preventing measurable subsidence; or,
  - 7. Any combination of the methods listed above in paragraphs (1) through (6).
- B. The District may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic or existing users, provided that:
  - 1. Such limitations apply to all subsequent new permit applications and increased use by historic or existing users, regardless of type or location of use;
  - 2. Such limitations bear a reasonable relationship to the existing District management plan; and
  - 3. Such limitations are reasonably necessary to protect existing use.
- C. In regulating the production of groundwater based on tract size or acreage, the District may consider the service needs of a retail public water utility as defined in these Rules.

- D. To the extent possible, the District shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition. In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider;
1. The modeled available groundwater determined by the executive administrator;
  2. The executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by District Rules and Section 36.117;
  3. The amount of groundwater authorized under permits previously issued by the District;
  4. A reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and
  5. Yearly precipitation and production patterns.
- E. In issuing a permit for a production volume based upon existing or historic use, the District will not discriminate between volume associated with land or wells on land irrigated for production and land or wells on land that was irrigated for production or participating in a federal conservation program.

## **SECTION 7. OTHER DISTRICT ACTIONS AND DUTIES**

### **RULE 7.1 DISTRICT MANAGEMENT PLAN**

- A. Following notice and hearing, the District adopted a comprehensive management plan which was submitted and certified by the Texas Water Development Board on November 18, 2004 and April 7, 2010. The Management Plan was amended and approved by the Texas Water Development Board in October 2013. The management plan was adopted and addresses:
1. Providing the most efficient use of groundwater;
  2. Controlling and preventing waste of groundwater;
  3. Controlling and preventing subsidence;
  4. Addressing conjunctive surface water management issues;

5. Addressing natural resource issues;
6. Addressing drought conditions;
7. Addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and.
8. Addressing the desired future conditions adopted by the District under Section 36.108.

The District will review the plan at least every fifth year and shall adopt amendments as necessary, after notice and hearing, that address, among other things:

1. Recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost effective; and,
  2. The desired future conditions of groundwater resources after desired future conditions of the relevant aquifers within the District are adopted during joint planning in the management area as described in Rule 7.2.
- B. The District Management Plan, and any amendments thereto, shall be developed using the District's best available data and forwarded to the regional water planning group for use in their planning process. The District Management Plan must also use the groundwater availability modeling information provided by the Texas Water Development Board together with any available site-specific information that has been provided by the District to the Executive Administrator of the Texas Water Development Board for review and comment before being used in the plan. The District shall use the Rules of the District to implement the Management Plan.

**RULE 7.2     JOINT PLANNING IN MANAGEMENT AREA**

- A. Upon completion and approval of the District's comprehensive management plan, as required by §§36.1071 and 36.1072, Texas Water Code, the District shall forward a copy of the new or revised management plan to the other groundwater districts in its Texas Commission on Environmental Quality designated management area. The Board shall consider the plans of the other districts individually and shall compare them to other management plans then in force in the management area.
- B. The Board President, or in his absence, the General Manager, or in his absence, the third-party consultant retained by the District (District's Consultant), along with the other districts in the management area, shall meet at least annually to conduct joint planning with the other districts in the management area and to review the management plans and accomplishments for the management area.

- C. The requirements of joint planning are governed by Texas Water Code Section 36.108.

## **SECTION 8. REGISTRATION AND PERMITTING**

### **RULE 8.1 REGISTRATION, AUTHORIZATION AND PERMITS**

- A. All wells within the District are required to be registered with or permitted by the District on Forms approved by the General Manager.
- B. All water wells exempt under these Rules from the requirement to obtain a permit must be registered with the District by either the well owner or the well operator.
- C. Information on the registration form shall include the owner's name, mailing address, well location, well size, use and any other information the General Manager may determine to be of need. Registration forms for exempt wells need not be sworn.
- D. If the exempt well is in existence before July 1, 2004, the well owner or operator shall file with the District on form(s) prescribed by the General Manager an application for certificate of registration. After review and the determination by the General Manager that the well is exempt, the owner or operator shall be issued a certificate of registration. All registrations for existing exempt wells shall be filed with the District on or before July 1, 2005.
- E. For all new exempt wells (not in existence before July 1, 2004) the owner shall apply for a drilling authorization and request that the well be registered. The General Manager shall review the drilling application and make a preliminary determination on whether the well meets the exemptions provided in these Rules. If it is concluded that the applicant seeks a drilling authorization for a well that will be exempt, the General Manager shall issue the drilling authorization to the applicant. After the exempt well is drilled, the drillers log and completion report shall be filed with the District.
- F. No fee will be charged for the registration of exempt wells.
- G. A District well registration identification (ID) number will be issued to each well registered with or permitted by the District.

### **RULE 8.2 AUTHORIZATION TO DRILL, INSTALL PUMPS AND EQUIPMENT**

#### **A. DISTRICT AUTHORIZATION REQUIRED**

No person shall construct, drill, modify, complete, change type of use, perform dye-tracing operations, plug, abandon, or alter the size of a well in the District without

District authorization. Maintenance or repair of a well which does not increase production capability of the well to more than its authorized or permitted production rate does not require District authorization.

**B. DISTRICT APPROVAL REQUIREMENTS**

A District-approved well drilling authorization, application to construct, drill, or modify a well must be obtained prior to drilling, removing casing, boring, altering the size of the bore, re-boring the existing hole, or performing other modification activities. A person who requests authorization to construct, drill, or modify a well that will be used for nonexempt purposes or to transport groundwater out of the District must also obtain a production permit or a transport permit. No drilling or modification activities authorized by the District shall commence until the District has been provided with twenty-four (24) hour advance notification. Upon approval of the application, the General Manager or the General Manager's designated representative shall advise the applicant of the well use classification and whether a permit is necessary. If the well does not have an existing state well number, a temporary well number will be issued along with authorization to drill, plug or modify.

**C. DRILLING AUTHORIZATION TERM**

Unless the Board specifies otherwise, an approved well drilling authorization for an exempt well is effective for one (1) year from date of issuance provided no change in ownership or proposed use occurs prior to drilling. Authorizations may be extended by action of the General Manager upon request of the applicant but not for a period to extend beyond three (3) years total time.

Unless the Board specifies otherwise, an approved well drilling authorization for a non-exempt well is effective for two (2) years from date of issuance provided no change in ownership or proposed use occurs prior to drilling. Authorizations may be extended by action of the General Manager upon request of the applicant but not for a period to extend beyond three (3) additional years.

**D. DRILLING RECORDS**

Complete records shall be kept and reports thereof made to the District concerning the drilling, equipping, and completion of all wells drilled in the District. Such records shall include an accurate driller's log, depth to water, any electric log that shall have been made, and such additional data concerning the description of the well, its discharge, and its equipment as may be required by the Board. Such records shall be filed with the District within sixty (60) days after drilling and/or completion of the well.

No person shall operate any well drilled and equipped within the District, except operations necessary to the drilling and testing of such well and equipment, unless

or until the District has been furnished an accurate driller's log, any special purpose log or data which have been generated during well development, and a registration of the well correctly furnishing all available information required on the forms furnished by the District.

E. DRILLING AND COMPLETION OF WELLS

Drilling and completion of wells must satisfy applicable requirements of the TCEQ, the Texas Department of Licensing and Regulation's Water Well Drillers and Pump Installers Program, and the District Well Construction Standards. The Board of Directors shall adopt, and may periodically amend, Well Construction Standards for wells drilled within the District. Approved Well Construction Standards will be made available to the public at the District office.

F. INSTALLATION OF WELL PUMPS AND EQUIPMENT

Well pumps and equipment shall only be installed or serviced in wells registered with the District.

G. SUSPENSION

The General Manager may suspend an authorization for a well permit, a permit amendment, or a transport permit for failure to comply with the requirements of Rule 8.2

H. APPLICABILITY TO EXEMPT WELLS

The requirements of Rule 8.2 are applicable to all wells drilled in the District, including exempt wells.

I. GROUNDWATER TRACING OPERATIONS PLAN

Prior to performing any type of dye tracing or other form of groundwater tracing operations within the District's jurisdictional boundary where materials are introduced into surface water or groundwater, the person proposing such operations must submit an operations plan for the proposed tracer study to the District for approval at least 30 days before the proposed starting date of the study. This plan must describe the entire proposal including: the responsible party; type of tracer and any visual, taste, chemical, or health considerations; rationale or need for the proposed study; injection and recovery points; methods to be employed; expected flow paths; expected project term; method of notification of affected well, spring, and property owners; any contingency plans; and any other information involving the proposed study. These studies must not conflict with any part of Rule 13 concerning pollution. District approval of any tracing plan may be denied if the District determines that the proposed plan is in conflict with other ongoing tracing studies.



J. **AQUIFER STORAGE AND RECOVER WELLS**

ASR recovery wells that are associated with an aquifer storage and recovery project require an operating permit if the amount of groundwater recovered from the wells exceed the volume authorized by TCEQ to be recovered under the project.

**RULE 8.3 PERMITS AND EXEMPTIONS**

- A. No person shall drill, pump, or operate a well without first submitting and obtaining approval of a well development/registration application, pumpage permit, or transport permit from the District. A violation occurs on the first day the drilling, alteration, or operation begins and continues each day thereafter until the appropriate authorization or permits are approved.
- B. The following wells are required to be registered and to obtain approval for drilling, but are not required to have a pumpage or transport permit from the District:
1. A well or wells used for domestic use on a single tract of land.
  2. Agricultural wells.
  3. A water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas, provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig. Note, if the sole purpose of the well is no longer to supply water for a rig that is actively engaged in drilling or exploration operations, the well is no longer exempt and must be permitted by the District.
  4. The drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from any such well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water. An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code that authorizes the drilling of a water well shall report monthly to the District:
    - a. The total amount of water withdrawn during the month;
    - b. The quantity of water necessary for mining activities; and,
    - c. The quantity of water withdrawn for other purposes.

Note, if the withdrawals from the well are no longer necessary for mining activities or are a greater amount than necessary for mining activities, then the well is no longer exempt and must be permitted by the District. Such well remains exempt from District spacing requirements.

5. Monitoring wells.
  6. Aquifer storage and recovery injection wells and recovery wells (unless the well recovers more than authorized by the TCEWQ, which then requires a permit from the District).
- C. The District may not restrict the production of any well that is exempt from permitting under Subsection (B).
  - D. The District may not deny an application for an authorization to drill and a permit to produce water for hydrocarbon production activities if the application meets all applicable Rules as promulgated by the District.
  - E. A water well exempted under Subsection B shall:
    1. Be registered in accordance with Rules promulgated by the District; and
    2. Be equipped and maintained so as to conform to the District's Rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir
  - F. The driller of a well exempted under Subsection B shall file the drilling log with the District.
  - G. A well to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code, is not exempted under Subsection C.
  - H. Groundwater withdrawn from a well exempt from permitting or regulation under this section and subsequently transported outside the boundaries of the District is subject to any applicable District production and export fees. When groundwater is transported outside the District from an exempt well, the owner is responsible for paying production and transport fees under Rule 9 and must provide monthly water use to the District to be used in calculating fees.
  - I. This Rule applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This Rule does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

**RULE 8.4     TRANSFER OF GROUNDWATER OUT OF THE DISTRICT**

- A. Transport Permit Required

1. Before any person transports any water out of the District from a well that is located within the District, the person must obtain a transport permit from the District. Application for and the granting of a transport permit shall be in accordance with Section 10 of these Rules.

**RULE 8.5 APPLICATION FOR REGISTRATION, PERMITS, WELL PLUGGING, WELL DRILLING, OR WELL MODIFICATION AUTHORIZATION**

A. Application Requirements for Non-Exempt Wells

1. Each original application for well registration, pumpage permits, transport permits, well plugging, well drilling, amendments, or well modification authorization requires a separate application. Application forms will be provided by the District and provided to the applicant by request. An application for a pumpage permit and transport permit shall be in writing and sworn. Applications shall contain:
  - a. The name and mailing address of the applicant and the name and address of the owner of the land, if different from the applicant, on which the well is to be located;
  - b. If the applicant is not the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;
  - c. A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose.
  - d. Availability of feasible and practicable alternative supplies to the applicant.
  - e. A statement of the projected effect of the proposed withdrawal on the aquifer or aquifer conditions, depletion, subsidence, and effects on existing permit holders or other groundwater users in the District; if required under Rule 8.5F an applicant shall submit Phase I and Phase II hydrogeological reports prepared by a Texas licensed geoscientist or Texas licensed engineer to evaluate these factors in accordance with Rule 8.5F;
  - f. The applicant's water conservation plan and, if any subsequent user of the water is a municipality or entity providing retail public water services, the water conservation plan of that municipality or entity shall also be provided. In lieu of a water conservation plan, a declaration that the applicant and/or a subsequent user if any subsequent user is a municipality or entity providing retail public water services will comply with the District's management plan, when one is adopted;
  - g. The location of the well(s), the estimated rate at which water will be withdrawn, the production capacity of the well(s), and where the water is proposed to be used;

- h. A well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the District;
- i. The identity of the well driller, including the well driller's license number;
- j. The names and addresses of the property owners, and the location of water wells within a half-mile radius of the location of the well(s) from which water is to be produced;
- k. To the extent required under Rule 8.5D, proof of notification of the application to all landowners within a half (1/2) mile radius of the property where the well or wells are located and to all well owners and political subdivisions within a half (1/2) mile radius of any of the proposed production wells, along with the publisher's affidavit and tear sheet showing publication of the notice;
- l. For wells requiring hydrogeological reports under Rule 8.5F, an analysis explaining how the groundwater production proposed in the application will impact the desired future conditions applicable to the District; and,
- m. Any other information required by the General Manager or Board that is included in District rules in effect on the date the application is submitted that specifies what information must be included in the application for a determination of administrative completeness and reasonably relates to an issues that the District is by law authorized to consider.

- 2. Applications for well registration, pumpage permits, transport permits, well plugging, well drilling, amendments, or well modification authorization shall be made in the name of the well owner or property owner on a form or forms provided by the District. The sworn, original application must be submitted and signed by the owner or an authorized agent of the owner, who may be required to provide the District with a notarized authorization from the owner. This agent may be the well driller, lessee or renter of the property or well, power of attorney, trustee, or other appropriate agent. District staff will determine if an application is administratively complete.

**B. Completeness of Applications for Non-Exempt Wells**

- 1. An administratively complete application will consist of the submission to the District of an original, completed, signed, and notarized application, payment of all applicable application fees, inspection fees, water use fees, and other District-imposed fees, submission of any required maps, documents, ownership information, or supplementary information required by the District, the Board, the General Manager, or the General Manager's designated representative, the completion of any 20-day public response period initiated through a public notice requirement, mailed notice to the extent required under Rule 8.5D below, and the submission of a

hydrogeological report if required by Rule 8.5F, and any other documentation required by the District as part of the application. The District will not take action on an application which is not administratively complete or which has preceded in a manner not consistent with District Rules. Applicants submitting incomplete applications will be notified by the District in writing. Moreover, as described under Rule 8.5B3 the General Manager will continue a technical review of the application even after it is declared administratively complete.

2. An application for a permit will not be complete until the applicant has provided the District with proof of notice by publication and mail to the extent required by Rule 8.5D below and a twenty (20) day public response period has passed (a) since the first day of publication in a newspaper, designated by the District for the publication of legal notices, in the county where the permit is requested or (b) since the date individual notice is mailed to property and well owners as required under Rule 8.5D, whichever is later.
3. After an application has been determined to be administratively complete, the General Manager will conduct a technical review of the application to determine whether the application satisfies state and District regulatory requirements. If the General Manager determines that additional materials are necessary to complete technical review, the General Manager will notify the applicant by mail of any such deficiencies. Within 10 days of receipt of the letter, the applicant shall submit the additional information. For good cause shown, the General Manager may grant an extension of time for submission of additional information if a request is made within 5 days of the receipt of the General Manager's request. If the additional information is not timely received, and without the information the General Manager is unable to form a recommendation on the application, the General Manager will recommend application denial. If additional information is not required to complete the technical review, the General Manager will provide a statement of position and draft permit including any special conditions for the Board's consideration prior to or at the time the Board acts on an application.

C. Fees Included with Application for Non-Exempt Wells

1. The application must be accompanied by all applicable fees described under Rule 9. The application must be submitted and all applicable fees must be paid to the District before notice is published and mailed, to the extent required by Rule 8.5D below. Payment of all fees, including water use fees, remain the responsibility of the property owner.

D. Notice for Non-Exempt Wells

1. Notice is required for any application to permit new wells or modify existing wells to increase production capacity when the well will be completed with an inside casing diameter of eight (8) inches or greater and will be used for public water supply, municipal, commercial, industrial, or other non-exempt purposes. Such notices shall be published by the Applicant in a newspaper designated by the District for the publication of legal notices in the county where the permit is issued in a form approved by the District. All permit applications described above must provide notice by certified mail, return receipt requested, to all property owners within a half (1/2) mile radius of the well that is the subject of the application and to all well owners and political subdivisions within a half (1/2) mile radius of any of the proposed production wells. Notification of any property owner served by a retail public water utility is not required of any applicant if notice is provided to the retail public water utility.
2. Prior to providing public notice, an applicant must submit the permit application and any District required documents to the District and pay all appropriate fees. All public notice requirements must be completed at least 185 days prior to the applicants anticipated need for groundwater production to allow for public response, scheduling and holding a public hearing, and Board consideration and action.
3. All public notices covered by this section must contain at least the following information:
  - a. The name and address of the applicant,
  - b. The date the application was filed,
  - c. The location and a description of the well that is the subject of the application, and,
  - d. A brief summary of the information in the application.
4. The District must be provided with:
  - a. Proof of publication of public notice,
  - b. Proof of public notice to property and well owners and political subdivisions by certified mail; and
  - c. A list of the names and addresses of the property and well owners

notified by certified mail.

E. Decision to Hold Contested Hearing in Connection with Non-Exempt Wells

1. On any application for well permits, the General Manager will schedule a contested hearing if the General Manager determines that a contested hearing will be beneficial to the District's consideration of the application, if the Applicant request a hearing, or if directed by the Presiding Officer following the receipt of timely requests for a contested hearing from any affected person in accordance with Section 14 of these Rules. The General Manager shall make a determination whether to schedule a preliminary hearing on an application within sixty (60) days of the date the application is complete or, if required, the expiration of the twenty (20) day public response period. A preliminary hearing on an application will be held within thirty-five (35) days of the date the determination to schedule a hearing is made. Under no circumstances will any public hearing be held prior to the termination of the 20 day public response period. The District shall act on the application within sixty (60) days after the conclusion of the final hearing. Except for hearings referred to the State Office of Administrative Hearings, the final hearing may occur at the same time and immediately following the preliminary hearing. The failure of the District to comply with these deadlines shall not affect the District's jurisdiction over or the merits of an application. Action by the District Board may be taken at a regular, special or called Board meeting.
2. The District's Board or the General Manager may consolidate any hearings or actions on an application for a transport permit with any hearings or actions on applications for other permits filed by the same applicant or property owner.

F. Hydrogeological Reports Required for Non-Exempt Wells

1. Applicants seeking to (a) permit a nonexempt well completed with an inside casing diameter of eight (8) inches or greater, (b) permit wells to be completed as an aggregate well system\_or (c) increase production or production capacity of a Public Water Supply, Municipal, Commercial, or Industrial, well with an inside casing diameter of eight (8) inches or greater, shall submit to the District a current Phase I and Phase II hydrogeological report addressing the area of influence, draw down, recovery time, subsidence and other pertinent information in accordance with the guidelines developed and required by the District. Phase I and Phase II reports must include the information required by *Guidelines for Preparation of Hydrogeologic Reports for Submission in Support of Applications for the Permitted Use Of Groundwater*, originally adopted October 15, 2014, as amended, Hydrogeological reports must be prepared

and sealed by a Texas licensed professional geoscientist or a Texas licensed engineer.

2. The Phase I and Phase II reports must include hydrogeologic information addressing, and specifically related to, the proposed water pumpage rate intended for the well. Applicants may not rely solely on reports previously filed with or prepared by the District. If a Phase I hydrogeological report is required by this section, the hydrogeological report is a required component of all administratively complete permit applications.
3. Phase I hydrogeological reports may be supplemented with information such as test-hole, monitor well, and aquifer testing data. An applicant, who incurs the cost to include such supplemental information in a Phase I hydrogeological report, bears the risk that the Board may deny the permit application even with the supplemental data.
4. Phase II hydrogeological reports, if required, must be submitted after permit issuance and must address permitted well(s) equipped and tested for ultimate permitted volume and use. Phase II hydrogeological reports must be submitted within 180 days of well construction. Data and analysis from the Phase II testing will be used to update and refine the analysis of permitted pumpage impacts from the Phase I report. These Phase II data and analyses will also be used to address production parameters and permit conditions.
5. After notice to the applicant and affected persons and an opportunity for a hearing, the Board will consider the results of the Phase II hydrogeological report may modify a permit with special conditions and changes to the permitted volume of groundwater. A Phase II hydrogeological report must address any special conditions in a permit.

#### G. Registration of Exempt Wells

Owners of wells exempted under the Rules from obtaining a permit must still submit a District-approved form for District well registration and well drilling and pay applicable fees. Such exempted wells are still subject to District Well Construction Standards. The form shall be in writing, may be unsworn, and shall contain:

1. The name and mailing address of the applicant and the name and address of the owner of the land, if different from the applicant, on which the well is to be located;
2. If the applicant is not the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;



3. A statement regarding the basis for asserting that the well will be exempt under Rule 8.3.
4. A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose.
5. The location of the well(s), the estimated rate at which water will be withdrawn, the production capacity of the well(s), and where the water is proposed to be used;
6. A well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the District;
7. The identity of the well driller, including the well driller's license number; and
8. Any other information required by the General Manager or Board.

**RULE 8.6 PERMITS FOR EXISTING WELLS**

- A. Any well existing on or before July 1, 2004, which has not been permitted and which is not exempted from permitting under Rule 8.3 (B), is entitled to obtain a permit from the District in the manner provided by this Rule.
- B. Applications for permits for existing nonexempt wells must be filed with the District. For the administrative convenience of the District, and to aid the District in the performance of its duties, the filing and District acceptance of an application for existing nonexempt well permits should be scheduled with the General Manager in accordance with due dates set by the Board. Failure of the District to provide notice of the requirements imposed by District Rules shall not be grounds for existing wells failing to meet the requirements. Any owner of an existing nonexempt well that was not scheduled for permitting by the District and who failed to apply for a permit by one year after the effective date of these Rules, may make application for a permit pursuant to Rule 8.6; provided, however, if the well was in operation during the period from the effective date of these Rules, until the application was made, in addition to the normal requirements, past water use fees shall be paid for each year of operation.
- C. Upon completion of a sworn application under Rule 8.5 containing the information required under Subsection 8.5A.(1), and such other information as may be required by the District, and upon payment of the applicable processing fee, and any required past water use fees, the District will issue a permit to the applicant in accordance with the applicable provisions of these Rules.

**RULE 8.7     ACTION ON PERMITS**

- A. Permits. Before approving, modifying, delaying, or denying a permit, the District shall, at a minimum, consider whether:
1. The application conforms to the requirements of these Rules and is accompanied by the appropriate fees;
  2. The proposed use of water is dedicated to non-speculative, beneficial use at all times;
  3. The proposed use of water would not cause or contribute to waste and the applicant has agreed to avoid waste and achieve water conservation;
  4. The proposed use of water would not present the possibility of unreasonable interference with the production of water from exempt, existing, or previously permitted wells or other surface water resources;
  5. The application satisfies District Rule 8.18 regarding prevention and control of subsidence
  6. The proposed use of water would not be otherwise contrary to the public welfare;
  7. The proposed use of water is consistent with the District’s approved Management Plan or an approved regional water supply plan; and
  8. The applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure and report closure to the District and the TCEQ.
  9. The water is used within the term of the permit.
- B. In order to protect the public health and welfare and to conserve and manage the groundwater resources in the District during times of District-declared drought, the District may, place special requirements on, modify, delay, or deny a pumpage permit for a new well during a District-declared drought.
- C. The District may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations:
1. Apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;

2. Bear a reasonable relationship to the existing District Management Plan; and
3. Are reasonably necessary to protect existing use.

D. Time for Action

After the application is administratively complete the District shall promptly consider and act on each administratively complete application (see Rule 8.5B.). If a hearing is called to consider any of the foregoing applications, the District will conduct a preliminary hearing within thirty-five (35) days after the General Manager determines that a hearing is necessary, and the District's Board will act to approve, modify, delay, or deny the application within sixty (60) days after the date of the final hearing. Except for hearings referred to the State Office of Administrative Hearings, the final hearing may occur at the same time and immediately following the preliminary hearing. The failure of the District to act within this time period shall not affect the District's jurisdiction over or the merits of an application. An administratively complete application requires submission of all information set forth within these Rules. If any applications for nonexempt wells are administratively incomplete 90 days after receipt of the application by the District, the District, by certified mail, return receipt requested, will notify the applicant of the missing documentation and the need to complete the application. Applications that remain administratively incomplete will expire 90 days following the above-mentioned notice to the applicant. Well development/registration applications for exempt wells expire one year from the date of approval (see Rule 8.2 C). The General Manger may extend the review period in this paragraph for a reasonable period upon written notice to the applicant if the General Manager determines that some specific aspect of the application requires a review of more than the two ninety-day periods. Upon expiration of the application, the applicant may request reconsideration by the Board within ten (10) days of receiving notice of an expired application.

E. Action by General Manager

The Board or District's General Manager shall act for the District in approving any application for which a contested hearing is not required. The General Manager will schedule a hearing for permit applications if the General Manager determines that a contested case hearing will be beneficial to the District's consideration of the application or if the General Manager receives timely requests for a contested hearing from any affected person in accordance with Section 14 of these Rules.

F. Action by the District Board

For all applications for which a contested hearing is required, the Board shall act on a permit or permit amendment application no later than the 60<sup>th</sup> day after the

date the final hearing on the application is concluded. For a hearing conducted by the State Office of Administrative Hearings, the final hearing on the application concludes on the date the State Office of Administrative Hearings proposal for decision, any exceptions to the proposal for decision, and any replies to exceptions to the proposal for decision are presented to the Board of Directors. Hearings will be conducted in accordance with Section 14 of these Rules.

**RULE 8.8     TERM OF PERMITS**

- A. Except as provided for in Section C below, all permits are effective for a period of thirty years (30 years) from the date of issuance, unless otherwise stated on the permit. A permit may be issued for a term longer than thirty (30) years, except as provided for in Section C below, when to do so aids the District in the performance of its duties and accomplishing the goals of the Act. The District may stagger permit terms. Permits are subject to modification during the permit term as provided by permit conditions.
- B. A transport permit shall specify the period for which water may be exported. The period specified by the transport permit shall be:
  - 1. At least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or
  - 2. At least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.
- C. Notwithstanding the period specified in Subsection B during which water may be exported under a permit, the District may periodically review the amount of water that may be exported under the permit and may limit the amount if additional factors considered in Rule 10.4E warrant the limitation, subject to Rule 10.4C. The review described by this subsection may take place not more frequently than the period provided for the review or renewal of regular permits issued by the District. In its determination of whether to renew a permit issued under this section, the District shall consider relevant and current data for the conservation of groundwater resources and shall consider the permit in the same manner it would consider any other permit in the District.

**RULE 8.9 PERMIT REVIEW AND RENEWAL**

The General Manager without hearing may renew a permit for wells if the terms and conditions of the permit (including maximum authorized withdrawal) are not changed in accordance with Section 36.1145 of the Water Code. The General Manager will review all permits on an annual basis.

**RULE 8.10 PERMIT AMENDMENTS**

- A. Minor amendments include:
1. Transfers of ownership without any change in use;
  2. Reductions in use or changing use of a well from nonexempt to exempt;
  3. Increases in use of 10% or less of permitted pumpage for users permitted for more than 12,000,000 gallons annually;
  4. Increases of up to 2,000,000 gallons annually for users permitted for 12,000,000 gallons or less; and
  5. Converting two or more wells individually permitted by the same permittee into an aggregate system under one permit.

All other amendments, including all amendments pertaining to transport permits, are major amendments.

- B. The General Manager (or the General Manager's designated representative) may grant minor amendments without public notice and hearing. If two or more minor amendments are requested during any fiscal year for an increase in pumpage, and the combined increase in volume requested in the amendments exceeds the limits described in Section 8.10A, then the amendment which results in a pumpage increase in excess of the limits specified in Rule 8.10A will be considered a major amendment subject to Rule 8.10C.
- C. Major amendments shall be subject to all the requirements and procedures applicable to issuance of a pumpage permit for a new well or, if applicable, a transport permit.
- D. Application for a permit amendment shall be made upon forms supplied by the District and must be accompanied by an application processing fee established by the Board. No application-processing fee will be required from permittees requesting a decrease in permitted pumpage or changing use of a well from nonexempt to exempt.

- E. Permittees requesting an increase in pumpage volume must have a District approved User Conservation Plan and a District approved User Drought Contingency Plan (UDCP) on file at the District office, and must be in compliance with District Rules and policies regarding conservation-oriented rate structures. Permittees will be required to update their UDCP to reflect their new permitted pumpage amount and/or new ownership within ninety (90) days of permit approval.
- F. Amendments to Operating Permits at Time of Renewal.
  - 1. If a permittee, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District rules, the permit as it existed before the permit amendment process remains in effect until the later of:
    - a. The conclusion of the permit amendment or renewal process, as applicable; or
    - b. Final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.
  - 2. If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Rule 8.9 above without penalty, unless the applicant is delinquent in paying a fee or civil penalty or is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication.
  - 3. The District may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the District rules. If the District initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

**RULE 8.11 PERMITS: ISSUANCE AND FORMAT**

- A. Permits. The permit shall include the following information in a format approved by the General Manager: the name and address of the person to whom the permit is issued; the state well number and/or District-assigned ID number of the well(s); the date the permit is to expire; the maximum withdrawal authorized; and any other terms and conditions necessary to accomplish the purposes of the Act.
- B. Transport Permits. A transport permit may be issued as a consolidated permit, including consolidation with an aggregate permit under Rule 8.15 that authorizes drilling, production, and transporting of water from the District. The application for and the granting of a transport permit shall be considered and granted in accordance with the provisions of Section 10 of these Rules.

## **RULE 8.12 PERMIT CONDITIONS AND REQUIREMENTS**

All permits are granted subject to the Rules, regulations, orders, special provisions, and other requirements of the Board, and the laws of the State of Texas. In addition, each permit issued shall be subject to the following conditions and requirements:

- A. The permit is granted in accordance with the provisions of the District Act in conjunction with Chapter 36, Texas Water Code, and the Rules, regulations and orders of the District as may be in effect from time to time, and acceptance of the permit constitutes an acknowledgment and agreement that the permittee will comply with all the terms, provisions, conditions, requirements, limitations, and restrictions embodied in the permit and with the Rules, regulations, and orders of the District.
- B. The permit confers no vested rights in the holder and the permit is non-transferable. Written notice must be given to the District by the permittee prior to any sale or lease of the well covered by the permit. The permit may be revoked or suspended for failure to comply with its terms, which may be modified or amended pursuant to the requirements of the Act and any applicable Rules, regulations and orders of the District.
- C. The drilling and operation of the well for the authorized use shall be conducted in such a manner as to avoid waste, pollution, or harm to the aquifer.
- D. The permittee shall keep accurate records, on a monthly basis, of the amount of groundwater withdrawn, the purpose of the withdrawal, and, for any transporting of water outside the District, the amount of water transported and the identity and location of the recipients, and such records shall be submitted to the District office on a monthly basis, and shall also be available for inspection at the permittee's principal place of business by District representatives. Immediate written notice shall be given to the District in the event a withdrawal or transporting of water exceeds the quantity authorized by the permit or rules. Unless the permittee can present evidence that the pumpage or transport which exceeded the permitted amount is due to an isolated incident that is not likely to be repeated and/or would not result in continued higher demands, the permittee must immediately submit an application to increase the permitted pumpage or transport volume based on the amount of pumpage or transport which exceeded the permitted amount projected for the remainder of the fiscal year.
- E. The well site or transport facilities shall be accessible to District representatives for inspection during normal business hours and during emergencies. The permittee agrees to cooperate fully in any reasonable inspection of the well site or transport facilities and related monitoring or sampling by District representatives. The well owner shall provide a twenty-four (24) hour emergency contact to the District.

- F. The application pursuant to which a permit has been issued is incorporated therein, and the permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application and in any amendments thereof. A finding that false information has been supplied shall be grounds for immediate revocation of a permit. In the event of conflict between the provisions of the permit and the contents of the application, the provisions of the permit shall prevail.
- G. Driller's logs must be submitted within sixty (60) days of the drilling of a well. Monitoring of groundwater pumpage is to be accomplished in the manner specified by the District.
- H. Violation of the permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawal or transporting amounts outside of the District in excess of the amount authorized for transport, shall be punishable by civil penalties as provided by the Act and these Rules.
- I. If special provisions are inconsistent with other provisions or regulations of the District, the Special Provisions shall prevail.
- J. Permittees with annual permitted pumpage volumes greater than 12,000,000 gallons requesting multiple minor amendment pumpage increases that total more than 20% of the permitted pumpage volume for the three years prior to the most recent amendment may be required to submit a current hydrogeological report to the District office. (Example: Permittee A is permitted for 50,000,000 gallons in 2004. He files three minor amendments between 2004 and 2006, one for 5,000,000 gallons, another for 3,000,000 gallons, and another for 4,000,000 gallons, a total of 12,000,000 gallons increase since 2004. The District may require a hydrogeological test as a special condition of the new amendment application.) A current hydrogeological report is one that has been completed within the three years preceding the date of the applications. Reports may be required at the General Manager's discretion based on aquifer condition, type of modification, status of adjacent wells, local water use trends, and other aquifer management considerations.
- K. A permit may contain any term, condition, or limitation determined to be warranted by the District's Board.
- L. Permittees will notify the District upon filing an application with the TCEQ to obtain or modify CCN to provide water or wastewater service in a service area that lies wholly or partly within the District or for which water shall be supplied from a well located inside the District.
- M. If at any time the District receives competent evidence that a non-exempt well or aggregate well system is causing unreasonable interference with the production of water from exempt, existing, or previously permitted wells or other surface water resources, is causing or contributing to waste, or could cause the potential for



measurable subsidence, the Board may, on its own motion, reopen the permit for additional consideration. After notice and opportunity for hearing, the Board may revoke, suspend, terminate, cancel, modify or amend the permit, in whole or in part, as needed. After notice and opportunity for hearing, the permit may be reduced or curtailed for failure to achieve the applicable DFC of the aquifer.

**RULE 8.13 REVOCATION, TERMINATION, CANCELLATION, OR MODIFICATION OF PERMITS**

A permit is not a vested right of the holder. After notice and an opportunity for hearing, a permit may be revoked, suspended, terminated, canceled, modified, or amended in whole or in part for cause, including, but not limited to:

- A. Violation of any terms or conditions of the permit,
- B. Obtaining the permit by misrepresentation or failure to disclose relevant facts, or
- C. Failure to comply with any applicable Rules, regulations, Fee Schedule, special provisions, requirements, or orders of the District.
- D. After notice and an opportunity for hearing, the permit may be reduced or curtailed if the authorized withdrawal is causing unreasonable interference with the production of water from exempt, existing, or previously permitted wells or other surface water resources, is causing or contributing to waste, or could cause the potential for measurable subsidence or failure to achieve the applicable DFC of the aquifer.

The permittee shall furnish to the District upon request, and within a reasonable time, any information to determine whether cause exists for revoking, suspending, terminating, canceling, modifying, or amending a permit.

**RULE 8.14 AGGREGATION**

Multiple wells that are part of an aggregate system that are owned and operated by the same permittee and serve the same end user, subdivision, facility, or area served by a TCEQ issued CCN may be authorized under a single permit. Separate applications and registrations may be authorized under a single permit. Separate applications shall be submitted for each well and the District will maintain separate records of each well's location and characteristics. Geographic location of wells and integrated distribution systems will be considered in determining whether or not to allow aggregation.

For the purpose of categorizing wells by the amount of groundwater production, when wells are permitted with an aggregate withdrawal, the aggregate value shall be assigned to the group, rather than allocating to each well its prorated share or estimated production.

**RULE 8.15 REPORTS**

- A. Pumpage and Transport Reports. Permittees shall submit monthly records of meter readings and information on transporting groundwater outside the District, including all information recorded as required by Rule 8.12(D), to the District on forms approved by the District on or before the 15<sup>th</sup> day of the following month, even if there is zero pumpage or transport for the time period. Reports received after the 30<sup>th</sup> day of the month will be considered late.
- B. Water Quality Reports
  - 1. All permittees required by statute or regulation to conduct water quality analyses (including retail public water utilities) shall, at the time of obtaining results of the analyses, submit a duplicate copy to the District.
  - 2. If a retail public water utility is required by the TCEQ to notify its customers that water fails to meet TCEQ standards, the permittee shall immediately notify the District and submit a copy of the TCEQ notice to the District.

**RULE 8.16 EMERGENCY APPROVALS**

- A. Emergency Transfer of a Permit to another well. Upon application to the District, the General Manager shall authorize a permit, including a permit associated or consolidated with a transport permit, to be transferred to another well, or a replacement well, in the immediate vicinity of the permitted well upon a satisfactory demonstration by the applicant that:
  - 1. The action is necessary in order to alleviate an immediate and serious threat to human life or health, or to prevent extensive or severe property damage to economic loss to the person proposing or requesting to make the transfer, and
  - 2. The replacement or transfer well will not endanger human life or health, and will not cause what would, under the particular circumstance, be unreasonable property damages or economic loss to others.

The General Manager may issue a temporary order authorizing the withdrawal of water without notice and hearing, or with such notice and hearing as the General Manager, in his judgment, deems practical under the circumstances.

- B. Emergency Withdrawals. Upon application to the District, the General Manager shall authorize withdrawal of water not covered by a permit upon a satisfactory demonstration by the applicant that:
  - 1. An emergency exists due to acts of God or nature or other disaster,

2. The withdrawal of water not covered by a permit is necessary in order to alleviate an immediate and serious threat to human life or health or to prevent extensive and severe property damage or economic loss to the person requesting the withdrawals, and
3. The withdrawal will not endanger human life or health and will not cause what would under the particular circumstances be unreasonable property damage or economic loss to others.

The General Manager may issue a temporary order authorizing the withdrawal of water without notice and hearing, or with such notice and hearing as the General Manager, in his judgment, deems practical under the circumstances.

- C. **Procedural Requirements.** A copy of every order entered by the General Manager under this Rule shall be sent by certified mail to the person or persons to whom it is directed. However, when the time factor is critical, the order may be delivered in person, transmitted by telephone or telegram, or delivered by any other satisfactory method; but it shall be promptly followed by the written order sent by certified mail. If the order authorizes a new, transfer, or replacement well, the person to whom the order is issued may not cause or undertake drilling of the well under the order except in strict compliance with its terms and conditions.

Any such emergency ruling by the General Manager shall be approved or disapproved by the Board at its next meeting. Pending the Board's action, the General Manager's order shall be given full effect.

Any applicant receiving a temporary order under this Rule shall make timely application for permit or permit amendment and pay all applicable fees. The application shall be processed in the manner provided in these Rules.

## **RULE 8.17 ABANDONED, OPEN, OR UNCOVERED WELLS**

### **A. REGISTRATION**

Any owner or lessee of land on which an abandoned, open, or uncovered well is located must register the well with the District. Any well not registered with the District shall be classified as abandoned.

B. ABANDONED WELL CAPPING

At a minimum, open or uncovered wells must be capped in accordance with the requirements of the TCEQ, the Texas Department of Licensing and Regulation's Water Well Drillers and Pump Installers Program, and the District Rules and Well Construction Standards. The owner or lessee shall keep the well permanently plugged or capped with a water tight covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use. The covering for a capped well must be constructed with a water tight seal to prevent entrance of surface pollutants into the well itself, either through the well bore or well casing.

C. ABANDONED WELL PLUGGING

Unless granted an exception by the General Manager or Board, all abandoned wells that are not capped in accordance with Rule 8.17B must be plugged in accordance with the requirements of the TCEQ, the Texas Department of Licensing and Regulation's Water Well Drillers and Pump Installers Program, District Rule 8.17, and other applicable Rules and Well Construction Standards adopted by the Board of Directors. Prior to plugging a well, the District Well Construction Standards require as a minimum, registration of the well with the District, a site inspection by District staff, submission to the District for review and approval a Plug and Abandonment Plan by the owner or the well driller, and payment of the Well Abandonment Fee. The General Manager may require a water sample to be taken and have a water quality analysis conducted, at the District's expense, as part of or prior to the plugging operation.

D. REPORTING

In accordance with Section 76.700, Texas Water Well Drillers Rules, within 60 days of completing the plugging of a well located within the District, the well driller shall provide the District a copy of the Plugging Report.

E. ENFORCEMENT

If the owner or lessee fails or refuses to plug or cap the well in compliance with this Rule and District standards within ten (10) days after being requested to do so in writing by an officer, agent, or employee of the District, then, upon Board approval, any person, firm, or corporation employed by the District may go on the land (pursuant to Texas Water Code Chapter 36.118) and plug or cap the well safely and securely.

F. LIEN FOR RECOVERY OF EXPENSES INCURRED BY DISTRICT

1. Reasonable expenses incurred by the District in plugging or capping a well constitute a lien on the land on which the well is located.

2. The District shall perfect the lien by filing in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:
  - i. The existence of the well;
  - ii. The legal description of the property on which the well is located;
  - iii. The approximate location of the well on the property;
  - iv. The failure or refusal of the owner or lessee, after notification, to close the well within ten (10) days after the notification;
  - v. The closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
  - vi. The expense incurred by the District in closing the well.

G. **PENALTIES**

Rule 15.6 penalties shall be applicable in cases of failure or refusal to plug abandoned wells or cap wells not currently in use.

**RULE 8.18 SUBSIDENCE**

Production of groundwater in any manner, including volumes, rate, frequency, duration, or within a concentrated area, that causes the potential for measurable subsidence is prohibited.

Controlling and preventing measurable subsidence will be addressed during review and processing of new, renewed, and amended permit applications. The potential for measurable subsidence must be addressed by applicants and permittees in Phase I and Phase II hydrogeological reports required under Rule 8.5F.

If numerical modeling, local hydrogeological conditions including subsurface clay content, aquifer testing, or other reliable data demonstrate the potential for measurable subsidence, the District will implement actions to address subsidence that may include (a) permit denial, revocation, suspension, cancellation, modification or amendment, (b) production limits, (c) spacing requirements, (d) permit conditions requiring extensometer installation, subsidence monitoring and reporting, (e) the establishment of threshold limits that trigger reduced production based on monitoring results and (f) any other action reasonable necessary to control and prevent measurable subsidence.

If the District has reason to believe that a non-exempt well has the potential to cause measurable subsidence, the District may, after notice and the opportunity for hearing, take all actions it deems necessary, in accordance with this Rule 8.18, to address the potential subsidence.

**RULE 8.19 GENERAL PERMITS BY RULE**

For wells of certain characteristics and in certain prescribed situations, the District may issue several different types of permits by rule, generally with abbreviated application documentation and timelines. General permits by rule do not require notice and public hearings and are used for administrative convenience when their use is not inconsistent with the District's overall mission.

The District may issue a general permit by rule as an administrative action, provided the requirements of the permit are met.

A. General Requirements and Conditions for General Permits by Rule.

1. Unless otherwise prohibited by the District and subject to the conditions and eligibility requirements specified for each general permit, wells are authorized to operate pursuant to this Section without an individual permit from the District.
2. Wells authorized by this Section shall be registered and complete Well Registration form submitted with the appropriate fees in accordance with Rule 8.1.
3. A well authorized pursuant to this Rule is subject to Water Use fees.
4. In lieu of authorization pursuant to this Rule, the Board at its sole discretion may require authorization by obtaining an individual permit.
5. Wells authorized pursuant to this Rule are subject to the Rules, regulations, Orders, special provisions, and other requirements of the Board, and laws of the State of Texas.

B. Water Well for Hydraulic Fracturing of an Oil or Gas Well.

1. Conditions and Requirements. A general permit is authorized for a well used in connection with hydraulic fracturing. The water well must be located on the same lease or field associated with the oil and gas well that is subject to the hydraulic fracturing. This general permit authorization does not include a water station well, which would require an individual permit. Each authorization under this general permit shall be subject to the following conditions and requirements:
  - a. The well shall be completed in accordance with the District completion standards Rule 12 and, at a minimum, shall not be open at the surface or allow water zones of different chemical quality to commingle;
  - b. The well permittee shall keep accurate records and meter readings, on a monthly basis of the amount of groundwater withdrawn, the purpose of the withdrawal, and such records shall be submitted to the District office on a monthly basis;
  - c. The District may require other conditions on the basis of site-specific or use specific circumstances;
  - d. Authorization under the general permit shall be for one year and shall be renewed annually by submission of a letter of renewal in a form approved by the General Manager;
  - e. Any other conditions that the District may require.

2. Wells authorized by this permit are subject to the permit conditions and requirements of Rule 8.12, the well spacing requirements of Rule 5, and the waste prohibitions of Rule 13.

## **SECTION 9. FEES AND DEPOSITS**

### **RULE 9.1 WATER USE FEES**

Water use fees authorized under the District Act shall be paid to the District for water developed from non-exempt wells and exempt wells used to transport water outside the District. The water use fee rate shall be established by Board resolution annually. Following issuance of operating permits, the rate shall be applied to the total actual annual pumpage for each permit (and amendments if appropriate) issued during the fiscal year the rate is in effect. The District will review the account of any permittee changing the use of a well from non-exempt to exempt to determine if additional water use fees are due or if a reimbursement of water use fees is warranted. Reimbursements exceeding \$250 must receive Board approval. Water use fees may be waived by the General Manager in instances where the administrative cost of the District to process the fee exceeds the fees received.

- A. Pursuant to the District Act, the initial water use fee may not exceed:
  1. \$1.00 per acre-foot for water for agricultural use; or
  2. \$0.17 per thousand gallon for water used for any other purpose
- B. The District may impose a reasonable fee or surcharge for an export fee using one of the following methods:
  1. A fee negotiated between the District and the transporter; or
  2. A combined production and export fee not to exceed \$0.17 per thousand gallons of water used.
- C. The District is prohibited from using revenues obtained from export fees to prohibit the transfer of groundwater outside of the District, but may use export fees for paying expenses related to enforcement of Chapter 36 of the Texas Water Code or the District Rules.

### **RULE 9.2 APPLICATION, REGISTRATION, AND OTHER FEES**

The Board, by resolution, shall establish a schedule of fees. The Board will attempt to set fees that do not unreasonably exceed the costs incurred by the District of performing the administrative function which the fee is charged. District Monitor Wells are exempt from application, registration, and well log deposits. The General Manager shall exempt District Monitor Wells

from any other fee if he determines that the assessment of the fee would result in the District charging itself a fee.

### **RULE 9.3 PAYMENT OF FEES**

All fees are due at the time of application, registration, or permitting. Landowners are primarily responsible for payment of fees associated with wells on their property unless it is shown that the landowner has no interest in the well. The water use fee for a permit shall be paid monthly unless the General Manager determines it is in the best interest of the District for fees to be paid quarterly or annually. Following submission of monthly reports to the District as required under Rule 8.15A, the District will invoice permittees for payment based upon actual water use. Payments of fees are due as described below.

- A. Monthly water use fee payments are based on actual water use in the previous month and are due within thirty (30) days of the invoice date.
- B. Payments received within the ten (10) days following the due date will not be subject to a late payment fee. Thereafter, the late payment fees set forth in Rule 15.8 shall be imposed.
- C. All fees other than water use fees are due at the time of assessment and are late after ten (10) days.
- D. Fee payment procedures and schedules in effect at the time of the adoption of these Rules shall remain in effect until permits are issued and become effective in accordance with the procedures and schedules contained herein.

### **RULE 9.4 PERMIT APPLICATION PROCESSING**

The Board, by resolution, may adopt a processing fee for aggregate, transport and permits requiring a Phase I or II hydrogeological report under Rule 8.5F to cover all reasonable and necessary costs to the District of processing the application, including, but not limited to, all costs to the District for application review. The District, in its sole discretion, may require full, up-front payment of the permit application processing fee or may provide for partial payments in installments over the period of application review. The permit processing fee for an application to transport groundwater out of the District may not exceed the fees that the District imposes for processing applications for the use of groundwater within the District.

### **RULE 9.5 MINIMUM WATER USE FEES**

The Board may, by resolution, establish a minimum water use fee.

### **RULE 9.6 INSPECTION AND PLAN REVIEW FEES**

The Board may, by resolution, establish fees for: the inspection of wells, meters, or other inspection activities; plan reviews; special inspection services requested by other entities; or other



similar services that require significant involvement of District personnel or its agents. Fees may be based on the amount of the District's time and involvement, number of wells, well production, well bore, casing size, size of transporting facilities, or amounts of water transported.

**RULE 9.7 SPECIAL FEES**

Wells drilled in aggregate, such as closed loop heat exchange wells, may qualify for reduced fees for review, registration, and inspection. The fee rate will be based on review and inspection time on a case by case basis.

**RULE 9.8 EXCEPTIONS**

If a regulated water utility is unable to pass through pumpage fees due to delay in obtaining regulatory approval, or in other unusual instances of hardship, the General Manager may grant exceptions and establish a payment schedule. Such exceptions shall be applied consistently.

**RULE 9.9 EXCESS PUMPAGE FEES**

To the extent permitted by the District Act, the Board may, by resolution, establish additional water use fees for any pumpage exceeding the permitted pumpage volume.

**RULE 9.10 RETURNED CHECK FEE**

The Board may, by resolution, establish a fee for checks returned to the District for insufficient funds, account closed, signature missing, or any other problem causing a check to be returned by the District's depository.

**RULE 9.11 ACCOUNTING FEE**

The Board may, by resolution, establish a fee for permittee requested accounting of pumpage reports, water use fee payments, or other accounting matters pertaining to the permittee's account which the District does not routinely maintain in its accounting of a permittee's records. Should a District error be discovered, the accounting fee, if any, will be fully refunded. Permittee's may request one review of their account per fiscal year without charge.

**RULE 9.12 WELL LOG DEPOSIT**

The Board may, by resolution, establish a Well Log Deposit to be held by the District for return to the depositor if well logs are submitted to the District within sixty (60) days following surface completion of the well. The depositor will receive one-half the Well Log Deposit for well logs received by the District after the sixty (60) day period. The District will not refund a Well Log Deposit for well logs submitted after 120 days following completion of the well.

**RULE 9.13 STATE OFFICE OF ADMINISTRATIVE HEARINGS HEARING DEPOSIT**

A party requesting a hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for a State Office of Administrative Hearings hearing and shall deposit with the District an amount determined by the District to pay the contract amount on a date determined by the District before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party.

**RULE 9.14 PERMIT REVIEW FEE**

The Board may, by resolution, establish a fee to cover all the costs of the General Manager's annual permit review. The fee will be an annual fee that is divided by twelve and assessed monthly.

**RULE 9.15 NON-EXEMPT UNPERMITTED WELL FEE**

Any non-exempt well that is operating without a permit will be assessed a water use fee that is double the amount of the water use fee for a permitted well, not to exceed the amount authorized by law.

**SECTION 10. TRANSFER OF GROUNDWATER OUT OF THE DISTRICT**

**RULE 10.1 PERMIT REQUIRED**

Groundwater produced from within the District may not be transported outside the District's boundaries unless the Board has issued the well owner an operating permit. The requirements of this Rule are applicable without regard to the manner the water is exported out of the District and specifically includes discharges into watercourses to convey water as well as pipelines and aqueducts.

**RULE 10.2 APPLICABILITY**

A permit for the transport of water outside the District is not required for the transportation of groundwater that is part of a manufactured product, or if the groundwater is to be used on property that straddles the District boundary line, or if the groundwater is to be used within the service area of an existing retail public utility provided that such service area is contiguous to the boundaries of the District. Transportation of groundwater into an area created by the expansion of an existing public utility into non-contiguous counties would require a permit. Also transportation of groundwater into an area that is separated from the utility's service area and not contiguous to the District would require a permit.

### **RULE 10.3 APPLICATION**

An application for a transportation permit must be filed in the District office and must include the information required under Rule 8.3 for a drilling or operating permit , as well as information required by the District to evaluate the proposed transport under the standards of Texas Water Code § 36.122. Except as permitted by the District Act, the application for a transportation permit is considered and processed by the District under the same procedure as a permit for in-District water and is combined with applications filed to obtain a permit for in-District water from the same applicant. The required information for an application include:

- A. A separate application shall be filed for each permit. Applications shall be filed on the form or in the format approved by the District. Each application shall be in written form, sworn to by the applicant and contain:
1. The name and mailing address of the applicant and the name and address of the owner of the land, if different from the applicant, on which the well is to be located.
  2. If the applicant is not the owner of the property, documentation owner's property for the proposed use.
  3. A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose.
  4. A statement of the availability of feasible and practicable alternative water supplies to the applicant.
  5. The availability of water in the District and in the proposed receiving area during the period for which the water supply is requested for the District to consider under Texas Water Code § 36.122(f)(1).
  6. A statement of the projected effect of the proposed withdrawal on the aquifer or aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the District. For non-exempt wells to be completed as aggregate wells or an individual well completed with an inside casing diameter of eight (8) inches or greater, a Phase I and Phase II hydrogeological report by a Texas licensed geoscientist or Texas licensed engineer assessing the impact of the proposed well and transport of water on the existing wells, subsidence, and the aquifer shall be submitted as required under Rule 8.5F.
  7. The applicant's water conservation plan and, if any subsequent user of the water is a municipality or entity providing retail public water services, the water conservation plan of that municipality or entity shall also be provided or a declaration shall be made that the applicant will comply with the District's management plan, when one is adopted.

8. The location of the well(s), the estimated rate at which water will be withdrawn, the production capacity of the well(s), and where the water is proposed to be used.
9. The names and addresses of the property owners, and the location of their wells, within a half mile radius of the location of the well(s) from which water is to be produced that is to be transported out of the District.
10. A well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the District.
11. Proof of notification of the application to all landowners within one-half mile radius of the property where the well or wells are located and to all well owners, along with the publisher's affidavit showing publication of the notice of intent to make application for a permit to transport water outside the District.
12. A description of how the proposed transport is addressed in any approved regional water plan(s) and when adopted, the District management plan for the District to consider under Texas Water Code § 36.122(f)(3).
13. A technical description of the facilities to be used for transportation of water and a time schedule for any construction thereof, so that the District may determine the permit term as authorized under Texas Water Code § 36.122(h)(2) and (i).
14. The identity of the well driller, including the well driller's license number or any other information required by the General Manager of Board.

**RULE 10.4 HEARING AND PERMIT ISSUANCE**

- A. Applications for transportation permits are subject to the hearing procedures provided by these Rules
- B. In determining whether to issue a permit to transfer groundwater out of the District, the Board must be fair, impartial, and nondiscriminatory and shall consider the factors considered when deciding whether to issue a drilling or operating permit under Rule 8 and the following:
  1. The availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;

2. The projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
  3. The approved regional water plan and approved District Management Plan.
- C. The District may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the District and may not impose more restrictive permit condition on transporters than the District imposes on existing in-District users, unless:
1. Such limitations apply to all subsequent new permit applications and increased use by historic users, regardless of type or location of use;
  2. Such limitations bear a reasonable relationship to the existing District management plan; and
  3. Such limitations are reasonably necessary to protect existing use.
- D. In addition to conditions specified for in-District permits, the operating permit for transporting water out of the District shall specify:
1. The amount of water that may be transferred out of the District; and
  2. The period for which the water may be transferred, which shall be:
    - a. At least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit, and shall be automatically extended to the terms 30 years if construction of a conveyance system is begun before the expiration of the initial term; or
    - b. At least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.
- E. The District may periodically review the amount of water that may be transferred under an operating permit to transport water out of the District and may limit the amount after considering factors related to:
1. The availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
  2. The projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and

3. The approved regional water plan and the approved District Management Plan.
- F. Such a review may not take place more frequently than once every five (5) years. After the review, more restrictive permit conditions may only be imposed if:
1. Such limitations apply to all subsequent new permit applications and increased use by historic users, regardless of type or location of use;
  2. Such limitations bear a reasonable relationship to the existing District management plan; and
  3. Such limitations are reasonably necessary to protect existing use.
- G. In its determination of whether to renew a transport operating permit, the District shall consider the permit in the same manner it would consider any other permit in the District.

**RULE 10.5 FEES INCLUDED WITH APPLICATION**

The application must be accompanied by the application processing fee, inspection fee, or other fees as appropriate. Such fees must be paid before notice is published and mailed. Payment of all fees including water use fees remains the responsibility of the landowner.

**SECTION 11. REWORKING AND REPLACING A WELL**

**RULE 11.1 PROCEDURES**

- A. An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well status. The District does not require a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.
- B. A permit must be applied for and consideration given to approving the permit in accordance with Section 8 of these Rules, if a person wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe or g.p.m. rate by reworking, re-equipping, or re-drilling such well as described in this section.
- C. A permit must be applied for and granted in accordance with Section 8 of these Rules if a person wishes to replace an existing well with a replacement well.
- D. A replacement well must be completed in the same aquifer as the well it replaces, and shall not be drilled, equipped, or completed so as to increase the rate of

production of water from the well it replaces. A replacement well must not be located closer to any other well or authorized well site unless the new location complies with the minimum the spacing requirements of Section 5; otherwise, the well shall be considered a new well for which an application must be made.

- E. In the event the application meets spacing and production requirements, and satisfies all requirements of these Rules, the General Manager may grant such application without further notice.

## **SECTION 12. WELL LOCATION AND COMPLETION**

### **RULE 12.1 RESPONSIBILITY**

After an application for a well permit has been granted, the well, if drilled, must be drilled within ten (10) yards (30 feet) of the location specified in the permit, and not elsewhere. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code. As described in the Texas Water Well Drillers Rules, all well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of the District Rule prescribing the location of wells and proper completion.

### **RULE 12.2 LOCATION OF DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS**

With regard to potential sources of contamination, wells shall be located in conformity with the rules and regulations promulgated by the TCEQ and the Texas Department of Licensing and Regulation, as applicable.

### **RULE 12.3 STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS**

Water well drillers must indicate the method of completion performed on the Well Report (TCEQ-0199) Section 10 Surface Completion. Unless otherwise ordered by the Board, domestic, industrial, injection, and irrigation wells must be completed in accordance with all applicable State and local standards, including but not limited to 30 Texas Administrative Code Chapter 290 (TCEQ Water Hygiene Rules for Public Water Supply Systems) and 16 Texas Administrative Code Chapter 76 (Rules for Water Well Drillers and Water Well Pump Installers).

### **RULE 12.4 RE-COMPLETIONS**

- A. The landowner shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the well bore to other porous strata.
- B. If a well is allowing the commingling of undesirable water and fresh water or the

unwanted loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable Rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

- C. The Board may direct the landowner to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

### **SECTION 13. WASTE AND BENEFICIAL USE**

#### **RULE 13.1 WASTE MEANS ANY ONE OR MORE OF THE FOLLOWING**

- A. Withdrawal of groundwater from a groundwater reservoir at a rate in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes.
- B. The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose.
- C. Escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata.
- D. Pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground.
- E. Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 11 or 26.
- F. Groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge.
- G. For water produced from an artesian well, waste has the meaning assigned by Section 11.205 Texas Water Code.
- H. Groundwater that is discharged into a watercourse for transit to another location when the losses in transit exceed 20%.
- I. Potable groundwater shall not be used for secondary recovery of hydrocarbons.



**RULE 13.2 WASTE PREVENTION**

- A. Groundwater shall not be produced within, or used within or outside of the District, in such a manner as to constitute waste as defined in these Rules.
- B. No person shall pollute or harmfully alter the character of the underground water reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata from the surface of the ground.
- C. No person shall commit waste as that term is defined in Section 13.

**RULE 13.3 USE FOR A BENEFICIAL PURPOSE**

- A. Agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
- B. Exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals;  
or
- C. Any other purpose that is useful and beneficial to the user.

**RULE 13.4 ORDERS TO PREVENT WASTE/POLLUTION**

After providing notice to affected parties and opportunity for a hearing, the Board may adopt orders to prohibit or prevent waste or pollution. If the factual basis for the order is disputed, the Board shall direct that an evidentiary hearing be conducted prior to entry of the order. If the General Manager determines that an emergency exists, requiring the immediate entry of an order to prohibit waste or pollution and protect the public health, safety, and welfare, the General Manager may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of fifteen (15) days or until a hearing can be conducted.

**SECTION 14. HEARINGS**

**RULE 14.1 APPLICABILITY**

Except as provided by Rule 14.15, Section 14 of the Rules applies to the notice and hearing process used by the District for permit and permit amendment applications and show cause proceedings.

**RULE 14.2 SCHEDULING OF HEARING**

- A. The General Manager or Board may schedule a hearing on permit or permit amendment applications received by the District as necessary, as provided by Rule 8.5.E.
- B. The General Manager or Board may schedule more than one application for consideration at a hearing.
- C. The location of any hearing held will be at the District office unless the Board or General Manager provides for hearings to be held at a different location. For a hearing conducted by the State Office of Administrative Hearings, the District may hold the hearing in Travis County.
- D. A hearing may be held in conjunction with a regularly scheduled Board meeting.

**RULE 14.3 NOTICE**

- A. If the General Manager or Board schedules a hearing on an application for a permit or permit amendment, the General Manager shall give notice of the hearing as provided by this section.
- B. The notice must include:
  - 1. The name of the applicant;
  - 2. The address or approximate location of the well or proposed well;
  - 3. A brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
  - 4. The time, date, and location of the hearing; and
  - 5. Any other information the General Manager or Board considers relevant and appropriate.
- C. Not later than the 10th day before the date of a hearing, the General Manager shall:
  - 1. Post notice in a place readily accessible to the public at the District office;
  - 2. Provide notice to the county clerk of each county in the District; and
  - 3. Provide notice by:
    - a. Regular mail to the applicant;
    - b. Regular mail, facsimile, or electronic mail to any person who has

requested notice under Subsection (D).

- D. A person may request notice from the District of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.
- E. Failure to provide notice under Subsection C.3.(b) does not invalidate an action taken by the District at the hearing.

**RULE 14.4 HEARING REGISTRATION**

The District requires each person who participates in a hearing to submit a hearing registration form stating:

- A. The person's name;
- B. The person's address; and
- C. Whom the person represents, if the person is not there in the person's individual capacity.

**RULE 14.5 HEARING PROCEDURES**

- A. A hearing must be conducted by:
  - 1. A quorum of the Board;
  - 2. The Presiding Officer who is the Board President or an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or,
  - 3. The State Office of Administrative Hearings if requested and paid for by the requesting party.
- B. Except as provided by Subsection C, the Board president or the hearings examiner shall serve as the presiding officer at the hearing.
- C. If the hearing is conducted by a quorum of the Board and the Board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.
- D. The presiding officer may:

1. Convene the hearing at the time and place specified in the notice;
  2. Set any necessary additional hearing dates;
  3. Designate the parties regarding a contested application;
  4. Permit the receipt of and rule on the admissibility of evidence consistent with Subchapter D, Chapter 2001, Texas Government Code;
  5. Establish the order for presentation of evidence;
  6. Administer oaths to all persons presenting testimony;
  7. Examine and allow cross examination of persons presenting testimony;
  8. Ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
  9. Prescribe reasonable time limits for testimony and the presentation of evidence;
  10. Recess any hearing from time to time and place to place;
  11. Issue subpoenas, require depositions, or order other discovery consistent with Subchapter D, Chapter 2001, Texas Government Code;
  12. Determine how to apportion among the parties costs related to a contract for the services of a presiding officer and the preparation of the official hearing record; and
  13. Exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of the Presiding Officer.
- E. Except as provided by Rule 14.14, the District may allow any person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application.
- F. The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
- G. If the Board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing

by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.

- H. The presiding officer, at the presiding officer's discretion, may issue an order at any time before Board action under Rule 14.10 that:
  - 1. Refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
  - 2. Determines how the costs of the procedure shall be apportioned among the parties; and
  - 3. Appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.
- I. In general, the burden of proof is on the moving party by a preponderance of the evidence, except in an enforcement proceeding, the General Manager has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions. The respondent in an enforcement proceeding has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. The permit applicant bears the burden of proof by a preponderance of the evidence in an application proceeding.

**RULE 14.6 EVIDENCE**

- A. The presiding officer shall admit evidence that is relevant to an issue at the hearing. Evidence may be admitted if it is of that quality upon which reasonable persons are accustomed to rely in the conduct of serious affairs. It is intended that needful and proper evidence shall be conveniently, inexpensively, and speedily provided while preserving the substantial rights of the parties to the proceeding.
- B. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

**RULE 14.7 RECORDING**

- A. Except as provided by Subsection B, the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.
- B. If a hearing is uncontested, the presiding officer may substitute minutes or the proposal for decision required under Rule 14.9 for a method of recording the hearing provided by Subsection (a).

**RULE 14.8 CONTINUANCE**

The presiding officer may continue a hearing from time to time and from place to place without providing notice under Rule 14.3. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.

**RULE 14.9 PROPOSAL FOR DECISION**

- A. Except as provided by Subsection E, the presiding officer shall submit a report to the Board not later than the 30th day after the date the evidentiary hearing is concluded.
- B. The proposal for decision must include:
  - 1. A summary of the subject matter of the hearing;
  - 2. A summary of the evidence or public comments received; and
  - 3. The presiding officer's recommendations for Board action on the subject matter of the hearing.
- C. The presiding officer or General Manager shall provide a copy of the proposal for decision to:
  - 1. The applicant; and
  - 2. Each designated party.

- D. A party may submit to the Board written exceptions to the proposal for decision.
- E. If the hearing was conducted by a quorum of the Board and if the presiding officer prepared a record of the hearing as provided by Subsection A above, the presiding officer shall determine whether to prepare and submit a proposal for decision to the Board under this section.
- F. The board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. For a hearing conducted by the State Office of Administrative Hearings (SOAH), the final hearing on the application concludes on the date the SOAH proposal for decision, exceptions and replies to exceptions to the proposal for decision are presented the Board of Directors. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Rule 14.8.
- G. In a proceeding for a permit application or amendment in which a district has contracted with the SOAH for a contested case hearing, the board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge consistent with Section 2001.058, Government Code. The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines:
  - 1. That the administrative law judge did not properly apply or interpret applicable law, district rules, written policies provided under District Bylaw 14-15., or prior administrative decisions;
  - 2. That a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
  - 3. That a technical error in a finding of fact should be changed.

#### **RULE 14.10 BOARD ACTION**

The Board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

The Board may take action on an uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The public hearing may be held in conjunction with a regularly scheduled or special called board meeting. The Board action may occur at the same board meeting as the public hearing. The board may issue a written order to grant an application, grant the application with special conditions, or deny the application.

Following an uncontested hearing, an applicant may, not later than the 20<sup>th</sup> day after the date the board issues an order granting the application, demand in writing a contested case hearing if the order:

1. Includes special conditions that were not a part of the application as finally submitted; or,
2. Grants a maximum amount of groundwater production that is less than the amount requested in the application.

**RULE 14.11 REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS**

- A. An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings and conclusions not later than the 20th day after the date of the Board's decision.
- B. On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35th day after the date the Board receives the request. A party to a contested hearing may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.
- C. A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.
- D. If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- E. The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

**RULE 14.12 DECISION; WHEN FINAL**

- A. A decision by the Board on a permit or permit amendment application is final:
  1. If a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
  2. If a request for rehearing is filed on time, on the date:
    - a. The Board denies the request for rehearing; or
    - b. The Board renders a written decision after rehearing.



- B. Except as provided by Subsection C, an applicant or a party to a contested hearing may file a suit against the District under Texas Water Code Section 36.251 to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.
- C. An applicant or a party to a contested hearing may not file suit against the District under Texas Water Code Section 36.251 if a request for rehearing was not filed on time.

**RULE 14.13 CONSOLIDATED HEARING ON APPLICATIONS**

- A. Except as provided by Subsection B, the District may process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant for:
  - 1. Drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 8;
  - 2. The spacing of water wells or the production of groundwater under Section 5 and 6; or
  - 3. Transferring groundwater out of the District under Section 10.
- B. The District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board or General Manager determines it cannot adequately evaluate one application until it has acted on another application.

**RULE 14.14 HEARING REQUEST AND AFFECTED PERSON DETERMINATION**

- A. Hearing Requests. The following may request a contested case hearing under these Rules:
  - 1. The Board;
  - 2. The General Manager;
  - 3. The applicant; and
  - 4. Affected persons (as determined in F. below).

- B. Form of Request. A request for a contested case hearing by an affected person (as determined in F. below) must be in writing and be filed by United States mail, facsimile, e-mail, or hand delivery with the District within the time provided by subsection D. of this section.
- C. Requirements for Request. A contested case hearing request by an affected person (as determined in F. below) must be in writing with a duplicate copy to the opposing party or parties and substantially comply with the following:
1. Give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
  2. Identify the person's personal justiciable interest affected by the application, or District action including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application or District action and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
  3. Request a contested case hearing;
  4. If the party requesting a contested case hearing desires for the hearing to be referred to and conducted by the State Office of Administrative Hearings, then the hearing request must include a statement "I/we request that the State Office of Administrative Hearings conduct the contested case hearing."; [Please note that a party requesting a contested case hearing before SOAH shall pay all costs associated with the contract for a SOAH hearing in accordance with Rule 14.15] and,
  5. If applicable, provide any other information specified in the public notice of application.
- D. Deadline for hearing requests. A contested case hearing request by an affected person (as determined in F. below) must be filed with the District within 20 days after the last publication of the notice of application.
- E. A request for a contested case hearing shall be granted
1. By the General Manager if the request is made by the applicant or the General Manager; or
  2. By the Presiding Officer at a preliminary hearing if the request is made by an affected person (as determined using the standards in F. below) other

than the applicant or the General Manager and the request:

- a. Is based solely on concerns within the jurisdiction and authority of the District;
- b. Is supported by competent showing that the person requesting a hearing is likely to be impacted by the proposed regulated activity;
- c. Complies with all of the requirements of A through D above; and,
- d. Is timely filed with the District.

F. Determination of Affected Person and a Party's Right to participate in a Hearing to be made by the Presiding Officer. At a preliminary hearing conducted before the commencement of an evidentiary hearing, the Presiding Officer shall determine whether any person requesting a contested case hearing has standing to make the request, whether a personal justiciable issue related to an application has been raised, and a party's right to participate in a hearing. The preliminary hearing may be conducted as specified in accordance with Rule 14.5. Any "affected person", as determined under this section, may participate in a hearing.

1. For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is within the District's regulatory authority. An interest common to members of the general public does not qualify as a personal justiciable interest.
2. Governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons.
3. Relevant factors shall be considered, including, but not limited to, the following:
  - a. Whether the interest claimed is one protected by the Act or Texas Water Code Chapter 36;
  - b. Distance between the regulated activity and the affected interest;
  - c. Whether a reasonable relationship exists between the interest claimed and the activity regulated;
  - d. Likely impact of the regulated activity on the use of groundwater interests of the person; and
  - e. For governmental entities, their statutory authority over or interest in the issues relevant to the application.
4. An applicant is an affected person.

G. If it is determined at the preliminary hearing that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the board may treat the matter as uncontested as described by Rule 14.10.

**RULE 14.15 HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS**

- A. If requested by an applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct a contested case hearing. A person opposing an application who requests a hearing under Rule 14.14C must include in a timely hearing request the statement “I/we request that the State Office of Administrative Hearings conduct the hearing” in order for the hearing to be referred to and conducted by the State Office of Administrative Hearings.
- B. An applicant desiring that the District refer a contested case to the State Office of Administrative Hearings must make a written request for the State Office of Administrative Hearings referral at the time the applicant requests a contested case or, when a contested case has been requested by a person other than an applicant and the applicant desires for the District to contract with SOAH to conduct the contested case, the applicant must request a SOAH hearing no later than 5 business days after the determination that the District will grant a hearing under rule 14.14E.2.
- C. A party requesting a hearing before the State Office of Administrative Hearings shall pay all costs as provided in Rule 9.13. The cost of the SOAH hearing may be apportioned if multiple parties request a SOAH hearing.
- D. If the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.
- E. An administrative law judge who conducts a contested case hearing shall consider applicable district rules or policies in conducting the hearing, but the district deciding the case may not supervise the administrative law judge. The District shall provide the SOAH administrative law judge with a written statement of applicable rules and policies. The district may not attempt to influence the findings of fact or the administrative law judge’s application of the law in a contested case except by proper evidence and legal argument.

**RULE 14.16 DISCOVERY**

The presiding officer may issue subpoenas, require deposition and order other discovery consistent with the authority granted to a state agency under Subchapters C, D, and F, Chapter 2001, Texas Government Code.

**RULE 14.17. NOTICE AND HEARING IN AN APPEAL OF DESIRED FUTURE CONDITIONS; JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS.**

- A. An affected person may file a petition with the District requiring that the District contract with the SOAH to conduct a hearing appealing the reasonableness of the desired future condition. The petition must be filed not later than the 120<sup>th</sup> day after the date on which the District adopts a desired future condition under Water Code Section 36.108(d-4). The petition must provide evidence that the District did not establish a reasonable desired future condition of the groundwater resources in the management area.
- B. In this Rule, “affected person” means:
1. An owner of land in Ground Water Management Area 14;
  2. A groundwater conservation district or subsidence district in or adjacent to Ground Water Management Area 14;
  3. A regional water planning group with a water management strategy in Ground Water Management Area 14;
  4. A person who holds or is applying for a permit from a district in Ground Water Management Area 14;
  5. A person with a legally defined interest in groundwater in Ground Water Management Area 14; or
  6. Any other person defined as affected by Texas Commission on Environmental Quality rule.
- C. Not later than the 10<sup>th</sup> day after receiving a petition, the District shall submit a copy of the petition to the Texas Water Development Board. The Texas Water Development Board shall conduct an administrative review and study required by Water Code section 36.1083(e), which must be completed and delivered to SOAH not later than 120 days after the date the Texas Water Development Board receives the petition. SOAH shall consider the study described and the desired future conditions explanatory report submitted to the development board under Water Code section 36.108(dd)(3) to be part of the administrative record in the SOAH hearing; and the Texas Water Development Board shall make available relevant staff as expert witnesses if requested by SOAH or a party to the hearing.
- D. Not later than 60 days after receiving a petition appealing the reasonableness of the desired future conditions filed under Water Code section 36.1083(b), the District will submit to SOAH a copy of the petition and contract with SOAH to conduct a contested case hearing.

- E. The petitioner shall pay the costs associated with the contract with SOAH and shall deposit with the District an amount determined by the District, after consultation with SOAH, that is sufficient to pay the contract amount. The deposit must be received within 15 days of written notification by the District to the petitioner specifying the amount of the deposit. Failure to timely pay the deposit may result in dismissal of the petition. After the hearing is completed and all costs paid to SOAH, the district shall refund any excess money to the petitioner.
- F. Unless provided by SOAH, the District shall provide notice of a hearing appealing the reasonableness of the desired future conditions. Not later than the 10th day before the date of a hearing the general manager or board shall provide notice as follows (unless notice provide by SOAH):
1. General Notice:
    - a. Post notice in a place readily accessible to the public at the District office;
    - b. Provide notice to the county clerk of each county in the District; and
  2. Individual notice by regular mail, facsimile, or electronic mail to:
    - a. The petitioner;
    - b. Any person who has requested notice;
    - c. Each nonparty district and regional water planning group located in Groundwater Management Area 14;
    - d. The Texas Water Development Board; and
    - e. The Texas Commission on Environmental Quality.
- G. After the hearing and within 60 days of receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter and the District's findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.
- H. If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.
- I. If the District in its final order finds that a desired future condition is unreasonable, not later than the 60<sup>th</sup> day after the date of the final order, the District shall reconvene in a joint planning meeting with the other districts in Groundwater Management Area 14 for the purpose of revising the desired future condition. The District and other districts in Groundwater Management Area 14 shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to

the District.

- J. A final order by the District finding that desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this Rule.
  
- L. A final District order issued under this Rule may be appealed to a district court with jurisdiction over any part of the territory of the District. An appeal under this subsection must be filed with the district court not later than the 45<sup>th</sup> day after the date the District issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the Groundwater Management Area 14 to reconvene not later than the 60<sup>th</sup> day after the date of the court order in a joint planning meeting for the purpose of revising the desired future condition. The District and other districts in the management area shall follow the procedures in Water Code Section 36.108 to adopt new desired future conditions applicable to the District. A court's finding under this Rule does not apply to a desired future condition that is not a matter before the court.

## **SECTION 15. INVESTIGATIONS AND ENFORCEMENT**

### **RULE 15.1 NOTICE AND ACCESS TO PROPERTY**

Pursuant to Texas Water Code Section 36.123, any authorized officer, agent, employee, or representative of the District, when carrying out technical and other investigations necessary to the implementation of the Rules or the Act, and after reasonable notice to the owner or operator, may enter upon private property for the purpose of inspecting and investigating conditions relating to the withdrawal, waste, water quality, pollution, or contamination of groundwater or other acts covered by these Rules or Texas Water Code.

Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice.

Inhibiting or prohibiting access to any Board Member or District agents or employees who are attempting to conduct an investigation under the District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code Chapter 36.102.

### **RULE 15.2 SHOW CAUSE ORDERS AND COMPLAINTS**

The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may

at any time, after due notice to all interested parties, cite any person owning or operating a well within the District, or any person in the District violating the Act, these Rules, or an Order of the Board. Under the citation, that person is ordered to appear before the Board in a public hearing and require him to show cause why an enforcement action should not be initiated or why his operating authority or permit should not be suspended, cancelled, or otherwise restricted and limited, for failure to abide by the terms and provisions of the permit, these Rules, or the Act. The Board or General Manager may conduct a show cause hearing under the Rules applicable to a contested application.

### **RULE 15.3 CONDUCT OF INVESTIGATION**

When investigations or inspections require entrance upon private property, such investigations and such inspections shall be conducted at reasonable times, and shall be consistent with all applicable rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations shall identify themselves and present District identification upon request by the owner, operator, lessee, management in-residence, or person in charge.

### **RULE 15.4 REQUEST FOR INJUNCTIVE RELIEF AND ASSESSMENT OF PENALTIES**

If it appears that a person has violated, is violating, or is threatening to violate any provision of the Act or any Rule, regulation, permit, Board order, or other order of the District, the Board may institute and conduct a suit in the name of the District for injunctive relief, for recovery of a civil penalty, or for both injunctive relief and penalty.

### **RULE 15.5 SEALING OF WELLS**

Following due-process, the District may, upon orders from the judge of the courts, seal wells that are prohibited from withdrawing groundwater within the District by the District Rules to ensure that a well is not operated in violation of the District Rules. A well may be sealed when: (1) no application has been made for a permit to drill a new water well which is not excluded or exempted; or (2) no application has been made for an operating permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or (3) the Board has denied, canceled, or revoked a drilling permit or an operating permit.

The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District. Other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a well that has been sealed constitutes a violation of these Rules and subjects the person performing that action, as well as any well owner or primary operator who authorizes or allows that action, to such penalties as provided by the District Rules.



**RULE 15.6 CIVIL PENALTIES**

- A. If a person violates any District Rule or Order, the District may assess a civil penalty against that person as provided by this section.
- B. Any person who violates any District Rule is subject to a civil penalty of not less than \$50.00 or more than \$10,000 for each act of violation, as a court of competent jurisdiction may deem proper
- C. Nothing in this Rule shall be construed as a waiver of the District’s right to seek other remedies as allowed by law, including, but not limited to the following:
  - 1. Injunctive relief to prevent specific conduct that violates these Rules of to require specific conduct that is necessary for compliance with these Rules;
  - 2. Mandatory injunctive relief; and
  - 3. Any other appropriate remedy or penalty as provided by law.
- D. All civil penalties recovered by the District shall be paid to the Bluebonnet Groundwater Conservation District.
- E. The District may enforce this section by filing a complaint in the appropriate court of jurisdiction in the county where the District Offices are located.
- F. If the District prevails in any suit to enforce its Rules, the District may seek and the court shall grant, in the same action, recovery for attorney’s fees, costs for expert witnesses, and other costs incurred by the District before the court in accordance with Section 36.066 Texas Water Code.

**RULE 15.7 FAILURE TO REPORT PUMPAGE AND/OR TRANSPORTED VOLUMES**

The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources. Failure of the permittee to submit complete, accurate, and timely pumpage, transport and water quality reports as required by District Rule may result in late payment fees, forfeiture of the permit, or payment of increased meter reading and inspection fees as a result of District inspections to obtain current and accurate pumpage and/or transported volumes and water quality reports.

**RULE 15.8 LATE PAYMENT FEES FOR FAILURE TO PAY WATER USE FEES**

Failure to make complete and timely payments of a fee within 30 days of the invoice date for the fee shall automatically result in a late payment fee of 1.5% (18% per annum) monthly service charge until paid in full. The fee payment plus the late payment fee must be made within thirty (30) days following the date the payment is due, otherwise the permit may be declared void by the Board.

**RULE 15.9 EMERGENCY ORDERS**

The District will develop Emergency Contingency Plans to deal with water quality or water quantity emergencies. Public hearings on Emergency Contingency Plans shall be conducted by the Board prior to adoption. To implement Emergency Contingency Plans, the Board, or the General Manager if specifically authorized by an Emergency Contingency Plan, may adopt emergency orders of either a mandatory or prohibitory nature, requiring remedial action by a permittee or other party responsible for the emergency condition.

**SECTION 16. RULEMAKING**

**RULE 16.1 POLICY**

Rulemaking hearings shall be conducted in the manner the Board deems most suitable to obtain all relevant information and testimony on proposed rules as conveniently, inexpensively, and expeditiously as possible without prejudicing the rights of any person.

**RULE 16.2 NOTICE**

- A. Not later than the 20th day before the date of a rulemaking hearing, the general manager or Board shall:
1. Post notice in a place readily accessible to the public at the District office;
  2. Provide notice to the county clerk of each county in the District;
  3. Publish notice in one or more newspapers of general circulation in the county or counties in which the District is located;
  4. Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection G; and
  5. Make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on a generally accessible Internet site.
- B. The notice provided must include:
1. The time, date, and location of the rulemaking hearing;
  2. A brief explanation of the subject of the rulemaking hearing; and
  3. A location or Internet site at which a copy of the proposed rules may be reviewed or copied.

**RULE 16.3 CONDUCT OF RULEMAKING PROCEEDING**

- A. The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing within any deadline established by the District. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.
- B. The District requires each person who participates in a rulemaking hearing to submit a hearing registration form stating:
  - 1. The person's name;
  - 2. The person's address; and
  - 3. Whom the person represents, if the person is not at the hearing in the person's individual capacity.
- C. The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
- D. A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.
- E. The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the District about contemplated rules.

- F. Failure to provide notice under Subsection A.4 does not invalidate an action taken by the District at a rulemaking hearing.
- G. A person who participates in a rulemaking hearing and who is affected by the rule adopted by the Board may administratively appeal a rulemaking decision of the Board by requesting a rehearing before the Board not later than the 20<sup>th</sup> day after the date of the Board's decision. A request for rehearing must be written, filed in the District office, and must state the grounds for the request. If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45<sup>th</sup> day after the date the request is granted. The failure of the Board to grant or deny a request for rehearing before the 91<sup>st</sup> day after the date the request is submitted is a denial of the request.

A decision by the Board on a rulemaking is final:

- 1. If a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing, or
- 2. If a request for rehearing is filed on time, on the date:
  - a. The Board denies the request for rehearing, or
  - b. The Board renders a written decision after rehearing.

Except as provided below, a person who participates in a rulemaking hearing and who is affected by the rule adopted by the Board may file a suit against the District under Section 36.251, Texas Water Code, to appeal a rulemaking decision not later than the 60<sup>th</sup> day after the date on which the decision becomes final.

A person who participates in a rulemaking hearing and who is affected by the rule adopted by the Board may not file suit against the District under Section 36.251, Texas Water Code, if a request for rehearing was not filed on time.

**RULE 16.4 EMERGENCY RULES**

- A. The Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board:
  - 1. Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
  - 2. Prepares a written statement of the reasons for its finding under Subdivision (1).
- B. Except as provided by Subsection C, a rule adopted under this section may not be effective for longer than 90 days.

- C. If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.
- D. A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

## **SECTION 17. AQUIFER STORAGE AND RECOVERY PROJECTS**

### **17.1. DEFINITIONS**

In this Rule, “aquifer storage and recovery project,” “ASR injection well,” “ASR recovery well,” and “project operator” have the meanings assigned by Water Code Section 27.151.

### **17.2. REGISTRATION AND REPORTING OF WELLS**

- A. A project operator shall:
  - 1. Register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with the District;
  - 2. Each calendar month by the deadline established by the Texas Commission on Environmental Quality (TCEQ) for reporting to the TCEQ, provide the District with a copy of the written or electronic report required to be provided to the TCEQ under Water Code Section 27.155; and
  - 3. Annually by the deadline established by the TCEQ for reporting to the TCEQ, provide the District with a copy of the written or electronic report required to be provided to the TCEQ under Section 27.156.
- B. If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by the TCEQ to be recovered under the project, the project operator shall report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection A.2.

### **17.3. PERMITTING, SPACING, AND PRODUCTION REQUIREMENTS**

- A. Except as provided by Subsection B, the District may not require a permit for the drilling, equipping, operation, or completion of an ASR injection well or an ASR recovery well that is authorized by the TCEQ.
- B. The ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project. A project operator must

submit an operating permit application with the District in accordance with Rule 8.5 within 60 days of the time that the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by the TCEQ to be recovered.

- C. A project operator may not recover groundwater by an aquifer storage and recovery project in an amount that exceeds the volume authorized by the TCEQ to be recovered under the project unless the project operator complies with the applicable requirements of the District as described by this section.

#### **17.4. FEES AND SURCHARGES**

- A. The District may not assess a production fee or a transportation or export fee or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by the commission to be recovered.
- B. The District may assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that the District assesses such a fee for other wells registered with the District.

#### **17.5. CONSIDERATION OF DESIRED FUTURE CONDITIONS**

The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an aquifer storage and recovery project in the planning for and monitoring of the achievement of a desired future condition for the aquifer in which the wells associated with the project are located.