



REAL-EDWARDS CONSERVATION AND RECLAMATION DISTRICT RULES

The rules of the Real-Edwards Conservation and Reclamation District were adopted in an open meeting held in accordance with the Texas Open Meetings Act, following public notice and public hearing.

In accordance with Section 59 of Article XVI of the Texas Constitution, Acts of the 56th Legislature (1959), Ch. 341, and Chapter 36 of the Texas 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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SECTION 1 DEFINITIONS AND CONCEPTS

RULE 1.1 DEFINITIONS

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

“Abandoned Well” means a well, including a cistern or a hand-dug well that for at least six (6) consecutive months has been left unused, unattended, and improperly protected from contamination or sources of pollution.

A well is considered to be in use in the following cases:

- (a) a non-deteriorated well that contains the casing, pump and pump column in good condition; or
- (b) a non-deteriorated well that has been capped.

“Acre” means the unit of measure used to calculate the total land surface area.

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

“Affected Person” means, with respect to a Groundwater Management Area:

- (a) an owner of land in the Groundwater Management Area;
- (b) a district in or adjacent to the Groundwater Management Area;
- (c) a regional water planning group with a water management strategy in the Groundwater Management Area;
- (d) a person who holds or is applying for a permit from a district in the Groundwater Management Area;
- (e) a person who has groundwater rights in the Groundwater Management Area; or
- (f) or any other person defined as affected by a TCEQ rule.

“Agent” means any individual or entity that has provided the District with a power of attorney to act on behalf of an owner, except that a licensed well driller or a licensed pump installer may act as an agent for an owner for the purpose of signing an application to drill a well.

“Aggregate Withdrawal” means the total amount of water withdrawn from two or more permitted wells that are permitted for a total pumpage volume of all wells in the aggregate.

“Agricultural Use or Purpose” means any use or activity involving agriculture, including irrigation.

“Alluvial/Alluvium” means a geological deposit composed of sediment deposited by a stream or river. The alluvium may be in direct hydraulic connection with the rivers and streams that meander through the area.

“Alluvial Aquifer” means a minor aquifer(s) in the District that is mostly composed of gravel and sands eroded from the surrounding limestone hills and deposited along the flood plains near rivers and streams.

“Alluvial Well” means a well drilled and completed in an alluvial aquifer or an alluvial flood plain deposit. Most such wells are shallow with water levels that tend to fluctuate with rainfall conditions.

“Annular Space” means the space between two concentric cylindrical objects, one of which surrounds the other, such as the space between the walls of a drilled hole and the installed casing.

“Applicant” means the owner of the land on which the well(s) or proposed well(s) are located, unless the landowner authorizes another person to file the application or own the permit or registration.

“Application” means a form approved by the District and used by the applicant to apply for:

- (a) The registration of an existing well;
- (b) the construction of a new well or the modification of an existing well that will substantially change the size or production capability of that well;
- (c) the operation and production from a Non-Exempt well;
- (d) the export of groundwater outside the boundaries of the District;
- (e) the amendment of a permit;
- (f) the transfer of a permit; and
- (g) other uses as deemed necessary by the District.

“Aquifer” means a geologic formation, group of formations, or part of a formation that is capable of yielding a sufficient amount of groundwater to make the production from this formation feasible for beneficial use.

“Aquifer Mining” means the existence of that condition where the average annual available recharge of an aquifer or portion of an aquifer is less than the annual production from that aquifer. For purposes of these rules the terms “aquifer overdrafting”, “reduction of artesian pressure”, and “the drawdown of the water table or aquifer”, means aquifer mining.

“Aquifer Storage and Recovery Project” or “ASR Project” means a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator.

“ASR” means aquifer storage and recovery.

“ASR Injection Well” means a Class V injection well used for the injection of water into a geologic formation as part of an ASR Project.

“ASR Recovery Well” means a well used for the recovery of water from a geologic formation as part of an ASR Project.

“Artesian Pressure” means the pressure in a confined aquifer created by the overlying and underlying confining units.

“Artesian well” means a well completed in the confined portion of an aquifer such that, when properly cased, water will rise in the well, by natural pressure, above an overlying impermeable stratum.

“Beneficial Use” means the use of groundwater for:

- (a) agricultural use, gardening, domestic, raising stock, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
- (b) sustaining natural environmental flows such as: downstream uses, water quality, aquatic and wildlife habitat, or freshwater inflows to bays and estuaries; and
- (c) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
- (d) any other purpose that is useful and does not constitute Waste as defined by these rules.

“Bentonite” means a sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

“Best available science” means conclusions that are logically and reasonably 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.

“Borehole” means an artificial excavation of earth drilled to a depth sufficient to penetrate an aquifer.

“Business day” means a weekday, Monday through Friday, excluding District holidays.

“Capped well” means a well that is closed or capped with a covering capable of preventing surface pollutants from entering the well; and sustaining a weight of at least 400 pounds, and is constructed in such a way that the covering cannot be easily removed by hand.

“Casing” means a watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, in order to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing or bentonite grouting to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

“Cement” means a neat portland or construction cement mixture of not more than seven gallons of water per 94 pound sack of dry cement, or a cement slurry which contains bentonite, gypsum, or other additives which may be included.

“Cistern” means an in-ground storage facility for water, or an above-ground waterproof receptacle for storing water.

“Closed Loop Well” means a well constructed for circulating water through a continuous length of tubing, generally for earth coupled heat exchange purposes. 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. The same as Earth Coupled Heat Exchange or Closed Loop System.

“Commercial Use or Purpose” means the use of groundwater to supply water to properties or establishments that use water in those processes that are in business to build, supply or sell products, provide goods, services or repairs, or to supply water to the business establishment primarily for employee and customer conveniences (i.e. flushing of toilets, sanitary purposes, or limited landscape watering).

“Conservation” means 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 Hearing or Contested Case” means a hearing in which at least one party has qualified to protest the matter before the Board or in which the General Manager desires a contested case hearing because of his position on the application.

“Contiguous” means property within a continuous perimeter boundary situated within the District. Contiguous may also apply to properties that are divided by a road or highway if the properties border one another.

“Contiguously owned Acreage” means adjoining land owned or leased by the same person or persons that is associated with the right to produce groundwater and that touches along a minimum common boundary of 300 feet or is separated only by a road or highway or similar right of way as long as there is a minimum common boundary of 300 feet. Acreage is considered to be contiguously owned for purposes of Rule 9.1 if the same person or persons own or lease property for the right to produce groundwater that is located within the same continuous boundary or perimeter of the same surface estate plat, deed, section, or other legally recognized surface estate property description filed in the county deed records as the acre on which the well is located, including property that is described in separate plats or deeds. Land within a road or right of way is not considered contiguous with other land alongside a road or right of way. Acreage on two otherwise non-contiguous tracts of land shall not be considered contiguous simply because they are joined by the length of a public right of way or easement.

“Critical Alluvial Management Area” means an area of alluvium within the District designated by the District as being critical for maintaining the minor alluvial aquifers within the District.

“Days” means, for the purposes of these rules unless otherwise stated, calendar days, NOT excepting holidays and weekends unless the period ends on one. All legal holidays are to be determined by the District and a notice of legal holidays will be available for public review. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday; in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

“Desired Future Condition” (DFC) means a quantitative description, adopted in accordance with Section 36.108 of the Texas Water Code, 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 shall cause, or is likely to cause, pollution of any groundwater in the District.

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

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

“Director” means a person elected or appointed to serve on the Board of Directors of the District.

“District” means the Real-Edwards Conservation and Reclamation District.

“District Act” means Chapter 341, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-233, Vernon's Texas Civil Statutes), including all amendments thereto, and the non-conflicting provisions of Chapter 36, Texas Water Code.

“District boundaries” means the boundaries of the District, and such boundaries that are coexisting with the outside boundary lines of Edwards and Real Counties.

“District Official” means District Directors and Officers.

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

“Domestic Activity, Use or Purpose” means use of groundwater by an individual or a household to support essential domestic activity and is produced from a well drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater per day and meets the requirements set forth in production limits under these rules. Such essential domestic activity includes water for uses inside the home; for irrigation of lawns, flower beds, shrubs, trees shading the home, or a family garden or orchard; for watering of domestic animals; for protection of foundations; and for recreation specifically only for swimming pools. Essential domestic activity does not include:

- (a) water used to support activities for which consideration is given or for which the product of the activity is sold;
- (b) pond, lake, tank, reservoir, or other confinement that has a capacity greater than 50,000 gallons;
- (c) non-closed system geothermal heating/cooling systems;
- (d) the watering of lawns of greater than one (1) acre in size.

“Drill” means drilling, equipping, completing wells, or modifying the size of wells or well pumps or motors (resulting in an increase in production volume capability) whereby a drilling or service rig must be on location to perform the activity.

“Drought” means that term as defined in the District’s Drought Contingency Plan.

“Drought Contingency Plan” (DCP) means a plan by the District that is designed to reduce demand on the available water supply through a process that becomes more restrictive as drought conditions worsen.

“Drought Stage” means one of the designated drought conditions listed in the District’s Drought Contingency Plan.

“Earth Coupled Heat Exchange” or “Closed Loop System” means the same as a “Closed Loop Well”.

“Edwards Trinity (Plateau) Aquifer” means the major aquifer within the District. The Edwards Trinity Aquifer extends from the Texas Hill Country to the Trans-Pecos area of West Texas.

“Employee” means any person employed by the District, but does not include independent contractors or professionals hired by the District as outside consultants.

“Environmental Flow” means the stream flow necessary to sustain habitats (including channel morphology and substrate), encourage spawning and the migration of fauna species to previously unpopulated habitats, enable the processes upon which succession and biodiversity depend, and maintain the desired nutrient structure within lakes, streams, wetlands and riparian areas. Environmental flows may comprise elements from the full range of flow conditions which describe long term average flows, variability of flows including low flows and irregular flooding events.

“Evidence of historic or existing use” means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by District rule that regulates groundwater based on historic use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

“Exempt Well” means a well that is exempt pursuant to Rule 7.3.

“Excluded Well” means a well that is equipped so that it is incapable of producing greater than 25,000 gallons per day and qualified for an exemption pursuant to Rule 7.3(a)(4)(iii).

“Fiscal Year” means the business year of the District begins on October 1st of each year and ends on September 30th of the following year.

“Fresh Water” means water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

“Frio River Alluvial Aquifer” means the minor aquifer in central Real County that extends over an area of approximately 1,220 acres and is mostly composed of gravel and sands eroded from the surrounding limestone hills and deposited along the floodplain of the Frio River.

“Groundwater” means water percolating beneath the surface of the earth.

“Groundwater Export” means pumping, transferring, or transporting groundwater out of the District. The terms “transfer,” “transport,” and “export” of groundwater are used interchangeably within Chapter 36 of the Texas Water Code and these rules.

“Hand-Dug Well” means a well installed by hand digging, auger drilling, or by digging with mechanical means other than a well drilling rig.

“Hazardous Groundwater Conditions” means any groundwater quality condition that may be detrimental to the health, safety, and welfare of the residents, livestock and indigenous flora and fauna of the District.

“Hazardous substances” means any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 CFR Part 302, as amended.

“Hazardous wastes” means any “solid waste,” as that term is defined by 30 Texas Administrative Code 335.1, identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

“Hydrogeological Report/Study” means a report that identifies the availability of groundwater in a particular area and formation, and which also addresses the issues of quantity and quality of that water and the impacts of pumping that water on the surrounding environment including impacts to nearby or adjacent wells.

“Injection well” means a well used for injecting fluids including, but not limited to:

- (a) 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;
- (b) a cooling water return flow well used to inject water previously used for cooling;
- (c) a drainage well used to drain surface fluid into a subsurface formation;
- (d) a recharge well used to replenish the water in an aquifer;
- (e) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;
- (f) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
- (g) 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; or
- (h) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

“Landscape Irrigation” means systems or devices used to deliver water to lawns and shrubbery at private residences and at commercial establishments solely for ornamental purposes.

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

“Licensed Water Well Driller” means any person who holds a license issued by the State of Texas pursuant to the provisions of the Texas Water Well Drillers Act and the substantive rules of the Texas Department of Licensing and Regulation’s Water Well Drillers and Pump Installers Program.

“Licensed Water Well Pump Installer” means any person who holds a license issued by the State of Texas pursuant to the provisions of HB 1648, 72nd Texas Legislative Session and the substantive rules of the Texas Department of Licensing and Regulation’s Water Well Drillers and Pump Installers Program.

“Lot” means any single contiguous parcel of land covered by deed.

“Modeled Available Groundwater” (MAG) 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.

“Mediation” means a confidential, informal, dispute resolution process in which an impartial person, the mediator, facilitates communication between or among the parties to promote reconciliation, settlement, or understanding among them.

“Metering or measuring device” means a water flow measuring device that can measure within +/- 5% of accuracy the instantaneous rate of flow and record the amount of groundwater produced from a well or well system during a period of time; provided that any such meter shall be calibrated from time to time to register accurately and within not less than plus or minus five percent (5%) of actual flow.

“Minimum Tract Size” means the minimum lot size allowed by the District for the construction of a well site and that meets distance requirements from property lines and points of potential contamination and that is in compliance with current minimum tract sizes or other tract, lot requirements, or restrictions imposed by Edwards County or Real County.

“Modify” means to alter the physical or mechanical characteristics of a well, its equipment, or production capabilities. This does not include repair of

well equipment, well houses or enclosures, or replacement with comparable equipment.

“Mud” means a relatively homogeneous, relatively viscous fluid produced by the suspension of clay-size particles in water. Specifically, it shall be a nine and two-tenths (9.2) pounds per gallon mud or heavier, with a marsh funnel viscosity of 50 seconds or equivalent.

“Municipal or Public Water Supply Use” means the use of groundwater through public water systems that are authorized for providing potable water to the public by the State of Texas.

“New Well Application” means an application to drill a water well or the modification of an existing well that will substantially change the size or production capabilities of that well.

“Non-Exempt Well – Non-Excluded Well” means a well required to obtain an Operating Permit for the production of groundwater from within the District and required to report groundwater use.

“Nueces River Alluvial Aquifer” means the minor aquifer within the District extending into both Edwards and Real Counties that extends over an area of approximately 17,115 acres and is mostly composed of gravel and sands eroded from the surrounding limestone hills and deposited along the floodplain of the Nueces River.

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

“Open or Uncovered Well” means an artificial excavation at least 10 feet deep that is dug or drilled for the purpose of producing groundwater, or for injection, monitoring, or de-watering purposes, and is not closed, capped, or covered as required by these rules.

“Operating Permit” means the type of a permit that authorizes the operation and production from a Non-Exempt Well or “Non-Excluded Well”.

“Overpumpage” means to produce water from a well in excess of the amount authorized to be withdrawn in accordance with the permitted pumpage volume issued by the District.

“Owner” means the person who owns a possessory interest in:

- (a) the land upon which a well or well system is located or is to be located;
- (b) the well or well system; or
- (c) the legal right to occupy the property and to capture groundwater withdrawn from a well or well system located on the property.

“Party” means any person or entity named or admitted as a party to a contested case hearing conducted by the District.

“Permitted Well” means all wells not classified as exempt or excluded under these rules and that is required to have an Operating Permit.

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

“Plugging” means absolute sealing of the well bore in accordance with standards set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Chapter 76, Texas Administrative Code.

“Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the District that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose including the alteration of groundwater by saltwater or other deleterious matter admitted from another stratum or from the surface of the ground.

“Presiding Officer” means the President, Vice President, Secretary, or other Board Member or attorney of the District presiding or co-presiding at any hearing or other proceeding.

“Project operator” means a person holding an authorization under this subchapter to undertake an aquifer storage and recovery project.

“Protestant” means any person or entity that files a protest or opposition to a permit application or other request for relief from the District.

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

“Pump test” means a test involving the withdrawal at a constant discharge rate of measured quantities of water from a well and the measurement of resulting changes in water level in the aquifer both during and after the period of discharge for the purpose of determining the characteristics of the aquifer.

“Recharge” means the amount of water that infiltrates into the water table of an aquifer from the surface of the ground or from other underground formations.

“Registration” means a certificate issued by the District for an exempt or excluded well, or the initial registration of a well that upon completion is to

be determined by the District to be non-exempt.

“Repair” means the procedures employed in the restoration or replacement of damaged or deteriorated equipment and materials used to obtain water from an existing well; or the construction involved in establishing seals and safeguards as necessary to protect the groundwater from contamination, provided that the repairs do not alter the original state of the well and do not increase the original production capacity of the well.

“Respondent” means the individual who receives a notice of violation under the rules of the District.

“Re-work” means to alter a well; either by mechanical or chemical means.

“Rules” means the rules of the District compiled in this document and as may be supplemented, repealed or amended from time to time.

“Seal” means an official seal, tag, or label placed on a well or its equipment, or the act of placing the tag or label, to indicate that further pumping of groundwater, or operation of the well, or continuing with other District regulated activities is not permitted by the District, shall be in violation of District Rules, and may subject the well owner to civil suit or penalties.

“Section” when referring to land means one square mile or approximately 640 acres.

“Special Provisions” means conditions or requirements added to a permit, which may be more or less restrictive than the rules as a result of circumstances unique to a particular situation.

“SOAH” means the State Office of Administrative Hearings.

“Spring” means a point of natural discharge from an aquifer.

“Substantial Interest” means that term as defined in Chapter 171 of the Local Government Code regulating conflicts of interest of District Officials.

“Surface Completion” means sealing off access of undesirable water, surface material, or other potential sources of contamination to the well bore by proper casing or cementing procedures.

“Test Well/Test Hole” means an artificial excavation created from drilling, boring or coring for the purpose of securing geological, hydrological or other information which may be obtained by penetrating the earth.

“Texas Rules of Civil Procedure” and **“Texas Rules of Civil Evidence”** mean 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 acting under those rules.

“Export Facility” means a facility that serves to export groundwater, which may include a pipeline, channel, ditch or other artificial facilities, pump stations, pipelines, storage tanks, water tanks, water trucks, or other water transportation systems used to export water produced from a well or wells located or to be located within the District to a place of use outside the boundaries of the District.

“TWDB” means the Texas Water Development Board.

“Undesirable Water” means water that is injurious to vegetation, land, fresh water, or water that can cause pollution.

“Waste” means any one or more of the following:

- (a) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural use, gardening, domestic or stock watering 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 that does not contain groundwater;
- (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 Texas Commission on Environmental Quality under Chapter 26, Texas Water Code;
- (f) groundwater pumped for irrigation that escapes as irrigation tail water onto land other than that of the owner of the well, unless the occupant of the land receiving the discharge has granted permission;
- (g) for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205 of the Texas Water Code.

In event of a conflict between “Beneficial Use” or “Beneficial Purposes” and “Waste,” “Beneficial Use” or “Beneficial Purposes” shall be subordinate to “Waste”.

“Water Meter or Water Monitoring Device” means a water flow measuring device that measures the amount of groundwater produced during a measured time within +/- 5% accuracy.

“Water Table” means the upper boundary of the saturated zone in an unconfined aquifer.

“Water Tight Seal” means a seal that prohibits the entrance of liquids or solutions, including water, which may enter through the wellhead and potentially, contaminate the well.

“Well” means any facility, device, or method used to withdraw groundwater; or any artificial excavation or borehole constructed for the purposes of exploring for or producing groundwater, or for injection, monitoring, or dewatering purposes, or a leachate or remediation well.

“Well Completion” means the act of completing a newly drilled well as outlined in Section 13 of these rules.

“Well Location” means the location of a proposed well on an application duly filed until such application is granted or denied, or the location of a well on a valid permit.

“Well Log-Well Report” means an accurate record made during drilling on a form prescribed by the Water Well Drillers Rules (16 Texas Administrative Code Chapter 76), showing the depth of the well bore, thickness of the formations, character of casing installed, and any other data required by the Water Well Drillers Rules. It also includes any special purpose well log that may be available for any given well, such as a gamma ray log, a temperature log, an electric log, or a caliper log.

“Well owner” means the person who owns a possessory interest in:

- (a) the land upon which a well or well system is located or is to be located;
- (b) a well or well system; or
- (c) the legal right to occupy the property and to capture groundwater withdrawn from a well or well system located on the property.

The term “well owner” includes, but is not limited to, a person that holds an Operating Permit for the well; a person who owns or has leased the water rights for the property on which the well is located; and the landowner if the water rights have not been leased or otherwise severed.

“Well Pumps and Equipment” means devices and materials used to obtain water from a well, including the seals and safeguards necessary to protect the water from contamination.

“Well Registration” means the creation of a record of a well, as determined by its use, and a well identification number for purposes of registering the well as to its geographic location, and for notification to the well owner in cases of spills or accidents, data collection, record keeping, or future planning purposes.

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

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

“Xeriscape” means a landscape practice combining the use of low water use plants, design, conservation, and other landscaping principles to conserve water and energy.

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

- (a) 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. These rules 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. These rules are effective April 13, 2016, and amend those rules previously in effect. These rules have been adopted to simplify procedures, avoid delays, save expense, and facilitate the administration of the applicable laws of the State by the District. These rules are to be construed to attain those objectives.

- (b) In accordance with the terms and provisions of Section 59 of Article XVI of the Constitution of Texas, Chapter 36 of the Texas Water Code, and the District Act, these rules are hereby adopted by the Real Edwards Conservation and Reclamation District to carry out the mandate of the District to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions. These rules were developed through a public process involving public hearing and public input, with the intent to develop a regulatory program that is fair and impartial. In developing these rules, the District considered all groundwater uses and needs, groundwater ownership and rights established by law, and the public interest in conservation, preservation, protection, recharging, and prevention of

waste of groundwater and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59 of Article XVI of the Texas Constitution.

- (c) These rules govern, among other things, the drilling, spacing, location, and completion of wells; withdrawal from wells, and other activities associated with wells. Consequently, these rules place the burden of compliance with many of these rules on well owners, well operators, and well drillers. If a well owner does not own the relevant groundwater rights and property associated with the well, that well owner must provide documentation to the District demonstrating who has authority to drill and operate the well, and to withdraw and use the groundwater located beneath the property on which the well is located. The well operator must provide documentation to the District of his or her authority to operate the well.
- (d) These rules shall not be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights established by law recognizing, however, that Section 36.002 does not: prohibit the District from limiting or prohibiting the drilling of a well for failure or inability to comply with minimum well spacing or tract size requirements adopted by the District; affect the ability of the District to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122, or otherwise under Chapter 36, of the Texas Water Code, or a special law governing the District; or require that a rule adopted by the District allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner.

RULE 1.4 AMENDING OF RULES

The Board may, following notice and hearing, amend these rules or adopt new rules from time to time. All of the previous rules and regulations of the District have been revised and amended, and except as they are herein republished, they are repealed. Any previous rule or regulation which conflicts with or is contrary to these rules is hereby repealed.

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 CONSTRUCTION

A reference to a section or rule without further identification is a reference to a rule in these rules, unless the context of usage clearly implies otherwise. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Government Code. The singular includes the plural, and the plural includes the singular. The words "and" and "or" are interchangeable and shall be interpreted to mean and/or.

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 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, by email to the recipient's email address on file with the District if written consent is granted by the recipient, or by telephonic document transfer to the recipient's current facsimile number. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service, unless otherwise specified by Chapter 36 of the Water Code or by these rules. 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 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 a generally circulated newspaper in Real County and in a generally circulated newspaper in Edwards County.

RULE 1.8 FILING OF DOCUMENTS AND TIME LIMIT

Applications, requests, or other papers or documents shall be filed either by hand delivery, mail, or telephonic document transfer to the District Office. The document shall be considered filed as of the date received by the District; and, for telephonic document transfers, as of the date on which the telephonic document transfer is complete as reflected by the District's facsimile machine, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. A document may be filed by electronic mail ("email") only if the Board or Presiding Officer has expressly authorized filing by email for that particular type of document and expressly established the appropriate date and time deadline, email address, and any other appropriate filing instructions.

RULE 1.9 COMPUTING TIME

In computing any period of time specified by these rules, by a Presiding Officer, by the Board, or by law, the period shall begin on the day after the act, event, or default in question, and shall conclude on the last day of that designated period, unless the last day is a Saturday, Sunday, or legal holiday on which the District Office is closed, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday on which the District Office is closed.

RULE 1.10 PROCEDURES NOT OTHERWISE PROVIDED FOR

This Section 1 shall apply to all types of proceedings conducted by the District to the extent this Section is not inconsistent with any other section of these rules that applies to the type of proceeding at issue. If, in connection with any proceeding, the Board determines that there are no statutes or other applicable rules resolving particular procedural questions then before the Board, the Board will direct the parties to follow procedures consistent with the purpose of these rules, the District Act, and Chapter 36 of the Texas Water Code.

RULE 1.11 CONTINUANCE

Unless provided otherwise in these rules, any meeting, workshop, or hearing may be continued from time to time and date to date without published notice after the initial notice, in conformity with the Texas Open Meetings Act.

RULE 1.12 REQUEST FOR REHEARING AND APPEAL

To appeal a decision of the Board concerning any matter, a request for rehearing must be filed with the District within 20 calendar days of the date of the Board's decision. Such request for rehearing must be in writing and must state clear and concise grounds for the request. The Board's decision is final if no request for rehearing is timely filed, upon the Board's denial of the request for rehearing, or upon rendering a decision after conducting the rehearing. If the rehearing request is granted by the Board, the rehearing will be conducted within 45 calendar days thereafter. The failure of the Board to grant or deny the request for rehearing within 90 calendar days of the date of submission shall constitute a denial of the request. After all administrative remedies are exhausted with the District and the Board's decision is final, suit may be filed in a court of competent jurisdiction in Real County or Edwards County to appeal the Board's decision. The deadline for filing this suit is 60 calendar days after the Board's decision is final. A suit challenging any decision of the Board is prohibited if a request for rehearing was not timely filed.

RULE 1.13 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.

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 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 and applicable law. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules, orders, and the District's Management Plan.

RULE 2.2 BOARD STRUCTURE, OFFICERS

The Board consists of the members elected 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; one 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 other officers as deemed necessary. The Board shall elect Officers biannually at the first Board meeting held after January 1st in odd numbered years. Members and officers serve until their successors are elected or appointed, qualified and sworn in accordance with the District Act, these Rules, and applicable law.

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 call of the President, or request of the General Manager, or by written request of at least three members of the Board, the Board may hold special meetings. All Board meetings will be held according to the Texas Open Meetings Act.

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.

RULE 2.5 EX PARTE COMMUNICATIONS

Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested case before the Board with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. This rule does not apply to a Board member who abstains from voting on any matter in which ex parte communications have occurred or to communications between the Board and staff or consultants of the District.

**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 may delegate to the General Manager full authority to manage and operate the affairs of the District subject only to order of the Board. The Board will determine the salary and review the position of General Manager each year. The General Manager, with approval of the Board, may employ all persons necessary for the proper handling of business and operation of the District.

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 in accordance with the Texas Public Information Act. Upon written application of any person, the District will furnish copies of its public records as required by the Texas Public Information Act. Persons who are furnished copies may be assessed a copying charge, pursuant to the Texas Public Information Act and the regulations established by the Office of the Texas Attorney General.

RULE 4.2 CERTIFIED COPIES

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

RULE 4.3 DISTRICT MANAGEMENT PLAN

- (a) The Board shall adopt a Management Plan that addresses the following management goals as applicable: providing the most efficient use of groundwater; controlling and preventing waste of groundwater; controlling and preventing subsidence; addressing conjunctive surface water management issues; addressing natural resource issues; addressing drought conditions; addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and addressing in a quantitative manner the Desired Future Conditions adopted pursuant to Section 36.108, Texas Water Code. The Management Plan forms the basis of the District's regulatory program and permitting requirements. The Board will review the plan at least every fifth year. The Board, after review and based on evidence presented at hearing, may amend the plan or adopt a new plan if the Board considers such amendment or adoption necessary or desirable. A plan, once adopted, remains in effect until the amendment of the plan or adoption of a new plan.
- (b) The Board will review the Management Plan at least once every five years after the last approval by the TWDB. The District will amend its Management Plan to address the goals and objectives consistent with achieving the Desired Future Conditions within two years of the adoption of the Desired Future Conditions by the Groundwater Management Area. If the Board considers a new Management Plan necessary or desirable prior to the deadlines provided in this rule, a new Management Plan will be adopted.
- (c) The notice of a hearing on any adoption or amendment of the Management Plan shall include the time, date, and place of the hearing, location or Internet site (if the District has a functioning Internet site) at which a copy of the proposed plan may be reviewed or copied, and any other information deemed relevant by the General

Manager or the Board. Not less than 10 days prior to the date of the hearing, and subject to the notice requirements of the Texas Open Meetings Act, 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 Real County and Edwards County; and
 - (3) make available a copy of the proposed Management Plan at a place accessible to the public during normal business hours, and post an electronic copy on the District's Internet site, if the District has a functioning Internet site.
- (d) The hearing may be continued from time to time and date to date without notice after the initial notice, in compliance with the Texas Open Meetings Act. The District must conduct at least one hearing prior to adopting the Management Plan or any amendments to the Management Plan.

**SECTION 5
FEES & DEPOSITS**

RULE 5.1 FEE SCHEDULE

- (a) The Board shall establish a schedule of fees and deposits. The Board will set fees that do not unreasonably exceed the costs incurred by the District of performing the administrative function for which the fee is charged.
- (b) The Board shall establish a schedule of fees and deposits for an Application for New Well Registration; an Application for Operating Permit; and any other Application for permit(s) provided for in these rules to cover all reasonable and necessary costs to the District of processing such application. The fee and deposit shall be sufficient to cover actual costs incurred by the District for activities associated with processing the application including, as appropriate: hydrogeological studies and modeling, field inspections, cost benefit analysis and economic modeling, professional fees, and cost of a contested case hearing including costs incurred by the District for a presiding officer, expert witnesses, attorneys for the District or District Board, and transcript costs.
- (c) The Board may set and collect fees for all services provided by the District outside of the boundaries of the District. The fees may not unreasonably exceed the cost to the District of providing services outside of the District.
- (d) The District may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount of water actually withdrawn. Production fees may not exceed the amount authorized by law.
- (e) If initially deposited funds are determined to be insufficient to cover costs incurred by the District in processing the application, an additional deposit may be required.
- (f) If the applicant fails to deposit funds as required by the District, the application will be considered inactive until funds are received in the District Office.
- (g) Registration of Wells in existence on or before January 1st, 2003:

Filing Fee: None
- (h) Well Registration/Application for well drilled, equipped, completed or modified in size and/or capacity after January 1st, 2003:

Filing Fee: \$100.00 Nonrefundable
- (i) Application for Operating Permit:

Filing Fee: \$250.00 Nonrefundable
Deposit: \$500.00 Any funds remaining on deposit after conclusion of

the application processing shall be returned to the applicant.

(j) Application for Recharge Facility Permit:

Filing Fee: \$250.00 Nonrefundable
Deposit: \$500.00 Any funds remaining on deposit after conclusion of the application processing shall be returned to the applicant.

(k) Application for Aquifer Storage and Recovery Permit:

Filing Fee: \$250.00 Nonrefundable
Deposit: \$500.00 Any funds remaining on deposit after conclusion of the application processing shall be returned to the applicant.

(l) Application for Transfer of Permit:

Filing Fee: \$100.00 Nonrefundable
Deposit: \$250.00 Any funds remaining on deposit after conclusion of the application processing shall be returned to the applicant.

(m) Application to Amend a Permit:

Filing Fee: \$200.00 Nonrefundable
Deposit: \$500.00 Any funds remaining on deposit after conclusion of the application processing shall be returned to the applicant.

(n) Contested Hearing:

Notwithstanding the above, in any case in which a contested hearing is anticipated, the District may require the applicant to post a deposit, in an amount established by the District's schedule of fees, to cover anticipated processing costs. As the District incurs cost in processing the application, said costs may be reimbursed from funds deposited by the applicant. The applicant shall be provided an accounting of billings against the application processing deposit. Any funds remaining on deposit after conclusion of the application processing shall be returned to the applicant. If initially deposited funds are determined to be insufficient to cover cost incurred by the District in processing the application, an additional deposit may be required. If the applicant fails to deposit funds as required by the District, the application may be dismissed.

SECTION 6 REGISTRATION

RULE 6.1 REGISTRATION OF WELLS

- (a) All new wells and wells existing in the District on or before the effective date of these rules must be registered with the District on a form prescribed by the District. A registration number will be issued for each well registered under this Rule 6.1 after the location of such well has been established by the landowner or determined by District personnel. All wells so registered shall be equipped and maintained so as to conform to the standards of the Texas Water Well Drillers and Pump Installers Rules in place at the time the well was/is drilled.

- (b) If the owner or operator of a registered well plans to change the type of use of the groundwater, increase the withdrawal rate, or substantially alter the size of the well or well pump, the well must be re-registered on a new registration form.

- (c) The District staff will review the submitted registration form and will make a preliminary determination as to whether the application meets the exemptions provided in Rule 7.3. If the preliminary determination of the District staff is that the request filed on the registration form is exempt, the registrant may begin drilling or operating the well immediately upon receiving approval from the District. If the preliminary determination of the District staff is that the request filed on the registration form is not exempt, then the registrant must file an Application for an Operating Permit and receive said permit from the District prior to drilling or producing from the well.

- (d) The driller of any exempt or nonexempt well shall file with the District the well log required by Section 1901.251, Texas Occupations Code, and, if available, the geophysical log and electric log.

SECTION 7 PERMITS

Rule 7.1 PERMIT REQUIRED

- (a) Except as provided in Rule 7.8, the owner or operator of a nonexempt well, or any other person acting on behalf of the well owner or operator, must obtain a permit before the well may be drilled or operated. A well must be permitted prior to drilling and must remain permitted unless and until the well plumbing and power source are disconnected and the well casing or discharge pipe is capped.
- (b) The District shall issue the following types of permits:
 - (1) Operating Permits; and
 - (2) Temporary and Emergency Permits.
- (c) Operating a well or well field without a required permit is a violation of these rules, and each day of operation is a separate violation. Exporting groundwater outside the boundaries of the District without authorization from the District is a violation, and each day of export is a separate violation.

RULE 7.2.1 GENERAL PERMIT POLICIES AND PROCEDURES

- (a) **Application:** Each original Application for an Operating Permit, a Temporary Emergency Permit, a Permit Renewal or a Permit Amendment requires a separate application. Application forms will be provided by the District and furnished to the applicant upon request. After the application form and fee are submitted, the District may request additional information to complete its review of the application. Any additional information received will become part of the application. An application is not considered administratively complete until all requested information is submitted. Each application for a permit shall include the following information relevant to the appropriate type of application to be filed, as that information is identified and requested on the District's application form:
 - (1) be in writing and sworn to;
 - (2) contain the name, mailing address and place of residence or principal office of the applicant;
 - (3) if the applicant is other than the owner of the property on which the well is located, documentation establishing the applicable authority to construct and operate each well for the proposed use;
 - (4) identify the location, pump size, and production capacity of the well or well field from which the water is to be produced, and identify the depth of the water-bearing formation from which the applicant proposes to produce the well(s);
 - (5) state the total number of acres of land contiguous in ownership with the land where the well or well field is located;
 - (6) state the nature and purpose of the proposed use and the amount of water to

- be used, including a demonstration of the need for the water;
- (7) state the time within which the proposed construction or alteration is to begin;
 - (8) state the duration required for the proposed use of the water, including information substantiating any request for permit term longer than one year and the need to put groundwater to beneficial use throughout the proposed permit term;
 - (9) provide information showing the effect of the proposed production on the quantity and quality of water available for future use both inside and outside the District;
 - (10) identify any other presently owned sources of water, the availability of which is both technically feasible and economically reasonable for the applicant, that could be reasonably used for the stated purposes, including quality and quantity of such alternate sources;
 - (11) identify any other liquids, the availability of which is both technically feasible and economically reasonable for the applicant, that could be reasonably substituted for the fresh ground water, and possible sources of such liquid including quantity and quality;
 - (12) provide information showing what water conservation measures applicant has adopted, what water conservation goals applicant has established, and what measure and time frames are necessary to achieve the applicant's established water conservation goals;
 - (13) if the water is to be resold to others, provide a description of the applicant's service area, applicant's metering and leak detection and repair program for its water storage delivery and distribution system, and information on each customer's water demands, including population and customer data, water use data, water supply system data, wastewater data, water conservation measures and goals, and the means for implementation and enforcement;
 - (14) submit a drought management plan that will meet or exceed the requirements of the District's Drought Contingency Plan;
 - (15) identify any and all registered well(s) within one-half (1/2) mile of the well or well field, and the owner(s) of said well(s); (16) for applications requesting authorization to produce more than 28 acre feet per calendar year, the applicant must conduct a District-approved pump test on the well(s) to be produced that shall include any data on any drawdown on registered wells within one-half (1/2) mile of the test well(s);
 - (17) be accompanied by a map or plat drawn on a scale that adequately details the proposed project, showing:
 - (i) the location of the well or well field;
 - (ii) the location of the existing or proposed production monitoring device(s) for compliance with section (i) of this Rule;
 - (iii) the location of the existing or proposed water use facilities;
 - (iv) the location of the proposed or increased use or uses; and
 - (v) the location of and District Assigned Well Number for all existing wells located on the property where the proposed production is to occur.
 - (18) if groundwater is proposed to be exported out of the District, the applicant shall describe the following issues and provide documents relevant to these

issues:

- (i) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
- (ii) the projected effect of the proposed export on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
- (iii) how the proposed export is consistent with the approved regional water plan and certified District Management Plan.

(b) **Evaluation of Permit Application and Issuance of Permit:** In deciding whether or not to issue a permit, and in setting the terms of the permit, the Board will consider the relevant criteria and observe the relevant restrictions and may exercise the authority set forth in Sections 36.113, 36.1131, and 36.122 of the Texas Water Code, and will consider whether:

- (1) the application contains accurate information and conforms to the requirements prescribed by Chapter 36, Texas Water Code;
- (2) the water well(s) complies with spacing and production limitations identified in these rules;
- (3) the proposed use of water does or does not unreasonably affect existing groundwater and surface water resources or existing permit holders;
- (4) the proposed use of water is dedicated to a beneficial use;
- (5) the proposed use of water is consistent with the District Management Plan;
- (6) the applicant agrees to avoid waste and achieve water conservation;
- (7) 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
- (8) for those hearings conducted by SOAH under Rule 15.5, the Board shall consider the Proposal for Decision and Findings of Fact and Conclusions of Law issued by SOAH.

(c) **Modifying Permits:** In deciding whether or not to modify a permit, and in setting the modified permitted volume and other terms of a permit, the Board must consider whether the evidence reflects:

- (1) an unacceptable level of decline in water quality of the aquifer;
- (2) that modification of the permit is necessary to prevent waste and achieve water conservation;
- (3) that modification of the permit will minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure;
- (4) that modification of the permit will lessen interference between wells;
- (5) that modification of the permit will control and prevent subsidence; and
- (6) that modification of the permit is necessary to avoid impairment of Desired Future Conditions.

(d) **Management to Achieve Desired Future Condition:** In making decisions on permit applications, the District shall manage total groundwater production on a long-term basis to achieve the applicable Desired Future Condition and will consider:

- (1) the Modeled Available Groundwater;
- (2) the TWDB Executive Administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by District Rule 7.3 and Section 36.117, Texas Water Code;
- (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.

The District shall, to the extent possible, issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable Desired Future Condition for each aquifer or its subdivision in the District.

(e) **Contesting an Application:** If no person notifies the District staff of their intent to contest the application in writing under Rule 15.4, and if the General Manager does not contest the application, the application will be presented directly to the Board for a final decision. The Board may grant the application or refer the application to the Presiding Officer for a complete hearing. Hearings shall be conducted in accordance with provisions stipulated in these rules.

(f) **Aggregation of Withdrawal:** In determining whether to grant an Operating Permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District. Rule 8.1 (Required Spacing) and Rule 9.1 (Maximum Allowable Production) will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production. This will allow a well owner, with a number of water wells which supply a single well system, to apply for an Operating Permit for the well system; consequently, the well owner will not be required to apply for a separate Operating Permit for each individual well.

(g) **Permit Limitations:** On approval of an application, the District shall issue an Operating Permit to the applicant. The permit holder's right to produce shall be limited to the extent and purposes stated in the Operating Permit. The Operating Permit shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed as outlined in Rule 7.7. An Operating Permit may not be transferable except as provided in Rule 7.6.

(h) **Permit Provisions:** The permit shall be in writing and shall contain the following information:

- (1) the name of the person/party to whom the permit is issued;
- (2) the date the permit is issued;
- (3) the date the permit is to expire if no well is drilled;
- (4) the term for which the permit is issued;
- (5) the number, location, and production capacity of the wells from which water is to be produced;
- (6) the total number of acres of land contiguous in ownership with the land where the production is located;
- (7) the destination and use or purpose for which the water is to be produced;
- (8) the maximum quantity of water to be produced annually;
- (9) the permit is issued subject to the rules of the District and to the continuing right of the District to manage the aquifer within the District's boundaries as authorized by Chapter 36, Texas Water Code, as amended; and
- (10) any other information the District prescribes.

The Operating Permit will also contain the standard provisions listed in Rule 7.2.2. The permit may also contain provisions relating to the means and methods of export of water produced within the district.

- (i) **Effect of Acceptance of Permit:** Acceptance of the permit by the person to whom it is issued constitutes acknowledgment of an agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions of the permit.
- (j) **Reporting:** The permit holder is responsible for measuring the withdrawal of groundwater from each nonexempt well through a monitoring device as set forth under Subsection (k) of this rule. By January 31st each year, permit holders authorized to produce water shall file with the District on a form(s) provided by the District:
 - (1) an annual report describing the amount and purpose of use for the water produced each month during the previous calendar year; and
 - (2) a separate report indicating the water level of the aquifer from which the permit holder is producing the water under the permit at the end of each quarter during the previous calendar year (end of March, June, September and December).
- (k) **Monitoring Devices:** All production facilities or wells subject to the requirements of this rule shall be equipped with production monitoring devices approved by the District and available for District inspection at any time during normal business hours. The devices must be accurate within plus or minus 5% of actual flow. An hour meter may be considered as a production monitoring device on the well, if the well output in gallons-per-minute (gpm) can be accurately determined.

RULE 7.2.2 STANDARD PERMIT PROVISIONS

All permits are granted subject to the District Act, these rules, the District Management Plan, orders of the Board, the laws of the State of Texas, and the District's Desired Future Conditions, and are subject to terms and provisions with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence. In addition to any special provisions or other requirements incorporated into the permit, each permit issued shall contain the following standard permit provisions:

- (a) This permit is granted in accordance with the provisions of the District Act, Texas Water Code, the rules, Management Plan, orders of the District, and the Desired Future Conditions applicable to the aquifers in the District. Acceptance of this permit constitutes an acknowledgment and agreement that the permit holder will comply with the Texas Water Code, the District Act, the District Rules, Management Plan, orders of the District Board, and all the terms, provisions, conditions, requirements, limitations and restrictions embodied in this permit. Failure to comply with any of these provisions may result in cancellation or revocation of the permit.
- (b) This permit confers no vested rights in the holder, and it may be revoked or suspended, or its terms may be modified or amended pursuant to the provisions of the District Act. This permit confers only the right to operate under the terms and conditions of the permit, and its terms may be modified or amended pursuant to the District Rules, Chapter 36, Texas Water Code, and the directives of the Texas Legislature, or if necessary to achieve the goals and objectives of the District Management Plan, to achieve the Desired Future Conditions applicable to the aquifers in the District, based on management zones created by the District, if any, or to address water quality issues. To protect the permit holder from the illegal use of a new landowner, within 10 days after the date of sale, the Operating Permit holder must notify the District in writing the name of the new owner. Furthermore, the owner of the permit shall inform the new landowner that should the new landowner wish to produce from the permitted well or well field under conditions of the permit, then the new landowner must file an "Application for Permit Export" as outlined in Rule 7.6.
- (c) The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner and the water withdrawn under the permit be put to beneficial use at all times. In the event that groundwater is to be transported a distance greater than one-half (1/2) mile from the well, it must be transported by a method to prevent waste caused by evaporation and percolation.
- (d) The permit holder must keep records of the amount of groundwater produced, the purpose of the production, and the water level of the aquifer from which the water is being pumped, and such records shall be available for inspection by District representatives. Immediate written notice must be given to the District in the event

production exceeds the quantity authorized by this permit, or the well is either polluted or causing pollution of the aquifer.

- (e) The well site must be accessible to District representatives for inspection during normal business hours, and the permit holder agrees to cooperate fully in any reasonable inspection or tests of the well(s) and well site(s) by District representatives. The permit holder is required to comply with all applicable well plugging guidelines at the time of well closure.
- (f) The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application and in any amendments to the application. A finding that false information has been supplied is grounds for immediate revocation of the permit. In the event of conflict between the provisions of this permit and the contents of the application, the provisions of this permit shall prevail.
- (g) Violation of this permit's terms, conditions, requirements, or special provisions, may lead to revocation of permit and is punishable by civil penalties as provided by the District Rules.
- (h) Wherever special provisions are inconsistent with other provisions or District Rules, the special provisions prevails.

RULE 7.3 PERMIT EXCLUSIONS AND EXEMPTIONS

- (a) The District will not require an Operating Permit for any of the following (provided, however, that the following must be registered in accordance with and remain subject to the other requirements of these rules, and provided that the exemption is no longer in effect if the well is no longer used for the exempt purposes described below):
 - (1) The District may not require an Operating Permit for producing from a well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day, pursuant to Texas Water Code Section 36.117(b)(1).
 - (2) The District may not require an Operating Permit for producing from a 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 water well is located on the same lease or field associated with the drilling rig, pursuant to Texas Water Code Section 36.117(b)(2).
 - (3) The District may not require an Operating Permit for producing from a well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any

- subsequent use of the water.
- (4) In addition to the exceptions required by law in Texas Water Code, Section 36.117, and by Section 7.3 (a) and (b) of these rules, the District also excludes requiring an Operating Permit for producing from a well:
- i. on lot sizes of 10 acres or less insofar as there shall be only one well per lot that is either drilled, completed or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day and the well is used to supply groundwater for five or fewer households if each of the households is for the well owner, a person related to the well owner within the second degree of affinity or consanguinity, or an employee of the well owner and the water is for Domestic Use only. Wells completed within alluvial deposits or alluvial aquifers shall be limited to no more than 10 gpm as required in Rule 13.4.2;
 - ii. that is equipped so that it is incapable of producing greater than 25,000 gallons per day and is used to supply water for Camp Grounds, Beds and Breakfast, Hunting Camps and other such related activities;
 - iii. that is registered, equipped so that it is incapable of producing greater than 25,000 gallons per day and in existence prior to April 24th, 2013.
- (5) Well to supply water for a subdivision of land for which plat approval as required by Chapter 232, Local Government Code, and is not exempted under Subsections (i) and (iii) above.
- (6) Monitoring wells and leachate wells.
- (b) A person or entity that is exempt from permitting under Subsections (a)(2) and (a)(3) above shall report annually to the District in accordance with Rule 7.2.1(j):
- (1) the total amount of water withdrawn each month over the course of the year;
 - (2) the quantity of water necessary for the exempt activities; and
 - (3) the quantity of water withdrawn for other purposes, if any.
- (c) Nothing in these exemptions may be construed to allow waste of groundwater.
- (d) At any time the production of a well exempted or excluded by this rule no longer meets the exemption or exclusion, an application must be made for an Operating Permit.
- (e) Water wells exempted under this section shall be equipped and maintained so as to conform to District Rule 13.4.

RULE 7.4 EXPORT AUTHORIZATION REQUIRED

Any person who seeks to export groundwater produced from a well within the District's boundaries to a place of use outside the District's boundaries must first obtain authorization from the District. The Operating Permit authorizing the production of groundwater shall also contain provisions relating to the means and methods of export outside the District of groundwater produced within the District, if authorization to export is approved by the Board.

RULE 7.4.1 BASIS FOR ACTION ON EXPORT

In reviewing a proposed export of groundwater outside of the District's boundaries, the Board shall consider the following criteria:

- (a) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
- (b) the projected effect of the proposed export on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
- (c) how the proposed export is consistent with the approved regional water plan and approved District Management Plan.

The District may not impose any restrictions on the production of groundwater for use outside of the District other than imposed upon production for in-district use, and shall be fair, impartial, and nondiscriminatory. The District may periodically review the amount of water that may be exported out of District and may limit the amount as authorized by these rules, Chapter 36 of the Texas Water Code, or the District Act.

RULE 7.4.2 FEES AND PERMIT PROVISIONS

The District may impose an export fee or surcharge for export of groundwater out of the District using one of the following methods:

- (a) a fee negotiated between the District and the exporter; or
- (b) a rate not to exceed the equivalent of the district's tax rate per hundred dollars of valuation for each thousand gallons of water exported from the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation.

Payment of the Groundwater Export Fee shall be made either monthly or quarterly as outlined in the permit.

RULE 7.4.3 MONITORING AND REPORTING

- (a) All groundwater export facilities shall be equipped with flow monitoring devices approved by the District and shall be available at all reasonable times for inspection by District personnel. The flow monitoring devices must accurately measure all groundwater exported.
- (b) The operator of a groundwater export facility shall be required to keep records and make reports to the District as to the operation of the export facility.
- (c) Permitted groundwater export facilities shall submit reports to the District on a monthly basis, beginning at the time of registration. Such reports shall include, but not be limited to, the volume of water exported during the preceding month.
- (d) The owner and operator of a groundwater export facility shall be charged with strict liability for the prevention of pollution and waste, as these terms are defined in Rule 1 herein, by reason of the operations of said facility.

RULE 7.5 PERMIT AMENDMENT

A permit may be amended to modify the existing conditions of the permit by the original permit holder. The applicant to amend a permit shall complete an "Application to Amend a Permit" on forms provided by the District. The District shall, as deemed necessary, conduct a hearing as outlined in Rule 15.2.

- (a) **Application:** Each Application to Amend a Permit must be filed with the District on the form(s) provided by the District, and must:
 - (1) be in writing and sworn to;
 - (2) contain the name, mailing address and place of residence or principal office of the Applicant;
 - (3) identify the type of permit to be amended;
 - (4) state the original permit number issued by the District;
 - (5) have the original permit attached.
- (b) **Amendment to an Operating Permit:** In addition to the information listed in 7.5 (a) above, the Application to Amend an Operating Permit must:
 - (1) list the current permitted production in Acre Feet per Year;
 - (2) list the requested change in permitted production in Acre Feet per Year;
 - (3) attach a summary of the proposed amendment and the need for a change of the permit;
 - (4) attach a complete description of any increase in production included but not limited to:
 - i. any change in the number of wells or well filed(s) to be used in the production and the capacity of that or those wells to be added or deleted along with a copy of the well report/log and a copy of the results from a District approved pump test for the additional well(s);

- ii. if wells are to be added, a listing of all registered wells producing from the same formation within one-half (½) mile of the proposed well(s) and the owner(s) of said wells;
- iii. any change in the distance to property lines, other wells or well fields, and or points of potential contamination;
- iv. information showing effects of the proposed change in production on the quantity and quality of water available for future use both inside and outside the District;
- v. information showing any change in water conservation measures Applicant has adopted, what water conservation goals Applicant has established, and what measures and time frames are necessary to achieve Applicant’s established water conservation goals;
- vi. applicant must include with this application a map or plat drawn on a scale that adequately details the proposed project showing:
 - (a) the location of existing wells or well fields;
 - (b) the location of existing or proposed production monitoring devices for compliance with District Rules;
 - (c) the location of existing or proposed water use facilities; and
 - (d) the location of the proposed or increased use or uses.
- vii. a copy of the reports submitted to the District required under 7.2.1, (j), (1),(2).

(c) a permit amendment is effective once it is approved by the District.

RULE 7.6 TRANSFER OF A PERMIT

Any person who becomes the new owner of property where a well that has a District-issued Operating Permit is located must, within 20 calendar days from the date of the change in ownership, file an “Application for Permit Transfer” to effect a transfer of the permit. This application must be completed on a form or forms provided by the District. Upon receipt of the completed application the District will review the application to ensure it is administratively complete. The General Manager may grant such an amendment without notice, hearing, or further action by the Board. If the General Manager believes the application merits review and action by the Board, the General Manager may issue notice and set the hearing in accordance with Section 15 of these rules.

- (a) **Application:** Each application to transfer a permit must be filed with the District on the form or forms provided by the District, and must:
- (1) be in writing and sworn to;
 - (2) contain the name, mailing address and place of residence or principal; office of the Applicant;
 - (3) contain the name, mailing address and place of residence or principal; office of the Original Permit Holder;
 - (4) identify the type of permit to be transferred;
 - (5) state the original permit number issued by the District;
 - (6) have the original permit attached;
 - (7) attach documentation showing proof of ownership of the permit to be

- transferred; and
- (8) attach documentation establishing the transferee's ownership of the groundwater and right to produce the groundwater.
- (b) Should the new owner of the permit wish to change the conditions of the original permit, the new owner must file for a new Permit as outlined in these rules.
- (c) If the Permit to be transferred is an Operating Permit, the new owner may not produce water in quantities greater than allowed for an Exempt Well until the Board has approved the transfer and issued a permit to the new owner.

RULE 7.7 PERMIT RENEWAL

- (a) **Application Required:** Permit Holders shall make application to renew permits required under these rules within 90 calendar days prior to the expiration of the permit term on an "Application to Renew a Permit" form provided by the District. The permit holder shall indicate on the form whether any changes to the permit, purpose of use, or special conditions have occurred. Applications must:
 - (1) be in writing and sworn to;
 - (2) contain the name, mailing address, and place of residence or principal office of the applicant;
 - (3) identify the type of permit to be renewed;
 - (4) state the original permit number issued by the District;
 - (5) have the original permit attached;
 - (6) list, in acre-feet per year, the total amount of groundwater permitted;
 - (7) list, in acre-feet per year, the total amount of groundwater produced or exported outside the District.
- (b) The District shall, without a hearing, renew or approve an application to renew a production permit before the date on which the permit expires, provided that:
 - (1) the application is submitted in a timely manner; and
 - (2) the permit holder is not requesting a change related to the renewal that would require a permit amendment under the District's rules.
- (c) The District is not required to renew a permit under District Rule 7.7(b) if the applicant:
 - (1) is delinquent in paying a fee required by the District;(2) 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; or
 - (3) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or District Rule.

- (d) If the District is not required to renew a permit under District Rule 7.7(c), the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.
- (e) If the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District Rule 7.5, the permit as it existed before the permit amendment process remains in effect until the later of:
 - (1) the conclusion of the permit amendment or renewal process, as applicable; or
 - (2) a final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.
- (f) 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 District Rule 7.7 without penalty, unless subsection (c) of District Rule 7.7 applies to the applicant.
- (g) The District may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with District Rule 7.5. 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.
- (h) The application to renew a permit shall be accompanied by payment of the application processing fee established by the Board.
- (i) A notice and hearing on a permit renewal shall be required:
 - (1) If the applicant for renewal seeks to change any of the permit terms or conditions in the renewal application, or
 - (2) If, in review of the application, the General Manager has reason to believe that there is evidence of drawdown of the water table, reduction of artesian pressure, interference between wells, degradation of water quality, or waste by the permit holder.
- (j) Notice and hearing on the Application to Amend a Permit, if required shall follow the guidelines set out in Section 15 of these rules.

RULE 7.8 TEMPORARY AND EMERGENCY PERMITS

- (a) Upon application, the General Manager may grant a Temporary or Emergency Permit that authorizes the withdrawal of water from a well not currently drilled or permitted, or authorizes drilling a new well or altering an existing well to increase the well capacity.

- (1) An application for a Temporary Permit must present sufficient evidence that:
 - (i) no suitable alternative water supply is immediately available to the applicant;
 - (ii) the need for the well and subsequent withdrawals will not exceed 120 days; and
 - (iii) the well will meet all other standards and requirements of these rules.

- (2) An application for an Emergency Permit must present sufficient evidence that:
 - (i) no suitable alternative water is immediately available to the applicant;
 - (ii) an emergency need for the groundwater exists;
 - (iii) the well will provide water necessary to protect human health, safety or welfare; and
 - (iv) the well will meet all other standards and requirements of these rules.

- (b) **Action on Requests:** The General Manager may rule on any application for a Temporary or Emergency Permit authorizing the withdrawal of groundwater without notice, hearing, or further action by the Board, or with such notice and hearing as the General Manager deems practical and necessary under the circumstances. The General Manager may deny an application for a Temporary or Emergency Permit on any reasonable ground including, but not limited to, a determination that the applicant is currently in violation of these rules or that the applicant has a previous, unresolved violation on record with the District. Notice of the ruling shall be served upon the applicant. Any applicant may appeal the General Manager's ruling by filing, within 10 business days of the General Manager's ruling, a written request for a hearing before the Board. The General Manager shall place the applicant's appeal on the agenda for the next Board meeting. The General Manager shall inform the Board of any Temporary or Emergency Permits granted, and shall include a list of the Temporary or Emergency Permits granted on the agenda for the next board meeting. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager.

- (c) **Term of Temporary or Emergency Permit:** The term of a Temporary Permit granted by the General Manager under this rule shall be 120 days. The permit holder may convert a Temporary Permit into a permanent permit by filing an application for an Operating Permit, and the Board may extend the period for a temporary permit until the Board takes final action on the Operating Permit application. An applicant for an Emergency Permit must simultaneously file an application for an Operating Permit. The term of an Emergency Permit granted by the General Manager under this rule shall extend until the Board takes final action on the application for an Operating Permit.

- (d) **Permit Provisions:** The General Manager may add any special provisions to the Temporary or Emergency Permits granted to ensure compliance with these rules,

the District Act, and Chapter 36, Texas Water Code.

RULE 7.9 AQUIFER STORAGE AND RECOVERY (ASR) PROJECTS

- (a) As a general matter, TCEQ has exclusive jurisdiction over the regulation and permitting of ASR Injection Wells. However, the District has concurrent jurisdiction over an ASR Injection Well that also functions as an ASR Recovery Well. The District is entitled to notice of and may seek to participate in an ASR permitting matter pending at TCEQ and, if the District qualifies as a party, in a contested hearing on an ASR application.
- (b) The provisions of District Rule 7.9 apply to an ASR recovery well that also functions as an ASR injection well.
- (c) A project operator shall:
 - (1) register an ASR injection well and ASR recovery well associated with the aquifer storage and recovery project if a well is located in the District;
 - (2) submit to the District the monthly report required to be provided to TCEQ under Section 27.155, Texas Water Code, at the same time the report is submitted to TCEQ; and
 - (3) submit to the District the annual report required to be provided to TCEQ under Section 27.156, Texas Water Code, at the same time the report is submitted to TCEQ.
- (d) If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by 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 District Rule 7.9(c)(2).
- (e) Except as provided by District Rule 7.9(f), 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 TCEQ.
- (f) Each ASR recovery well that is associated with an aquifer storage and recovery project is 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 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 well that exceeds the volume authorized by TCEQ to be recovered.
- (g) A project operator may not recover groundwater from an aquifer storage and recovery project in an amount that exceeds the volume authorized by TCEQ to be recovered under the project unless the project operator complies with the applicable requirements of the District as described by this rule.
- (h) The District may not assess a production fee 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 TCEQ to be recovered.

- (i) 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.

SECTION 8 WELL LOCATION AND SPACING REQUIREMENTS

RULE 8.1 REQUIRED SPACING

- (a) A new well may not be drilled within:
 - (1) 50 feet from the property line of any adjoining landowner provided the well is located at the minimum horizontal distance from the sources of potential contamination as outlined in 8.1, (c).
 - (2) 100 feet of an existing well, except Replacement Wells as outlined in Section 12 of these rules.

- (b) A well must be located a minimum horizontal distance of 50 feet from any watertight septic tank.

- (c) Water wells shall be a minimum horizontal distance of 150 feet from any concentrated source of pollution, such as existing or proposed livestock or poultry yards. A well shall be located a minimum horizontal distance of 100 feet from an existing or proposed septic system absorption field. The distances given for separation of wells from sources of potential contamination may be decreased to a minimum of 50 feet provided the well is cemented with positive displacement technique to a minimum of 100 feet to surface or the well is tremie pressured filled to the depth of 100 feet to the surface provided the annular space is three inches larger than the casing. For wells less than 100 feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata. Wells that are subject to completion standards of the Texas Commission on Environmental Quality under 30 TAC, Chapter 331 for class V injection wells, are exempt from this section.

- (d) A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal, so as to maintain a junction between the casing and pump column, and a steel sleeve extending a minimum of 36 inches above ground level and 24 inches below the ground surface.

- (e) No well may be located within 500 feet of a sewage treatment plant, solid waste disposal site, or land irrigated by sewage plant effluent, or within 300 feet of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.

- (f) In addition to the requirements of 8.1 (a) thru (e), the following well spacing shall be required for wells requiring a Permit.

Actual Pumping Capacity	Minimum Distance From Existing Permitted Wells and Between Proposed Wells	Minimum Distance From Property Line
Non-essential Use Only (Less than 17.36 gpm)	150 ft	100 ft
17.36 gpm – 200 gpm	300 ft	100 ft
200 gpm – 400 gpm	750 ft	200 ft
400 gpm – 800 gpm	1200 ft	400 ft
More than 800 gpm	1500 ft	400 ft

RULE 8.2 EXCEPTIONS TO SPACING REQUIREMENTS

- (a) If the Applicant presents written waivers signed by the adjoining landowner(s) stating that they have no objection to the proposed location of the well site, the spacing requirements in Rule 8.1(a)(1) will not apply to 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 the request shall be considered by the Board at a regularly scheduled Board Meeting, subject to protests and possible contested case hearing. If the Board chooses to allow an applicant 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 may, if good cause is shown by clear and convincing evidence, enter special orders or add special conditions increasing or decreasing spacing requirements for drilling a specific well.

SECTION 9 PRODUCTION LIMITATIONS

RULE 9.1 MAXIMUM ALLOWABLE PRODUCTION

In an effort to protect the aquifers in the District by minimizing the drawdown of the water table, preventing the reduction of artesian pressure, preventing the interference between wells, preventing the degradation of water quality and to prevent waste, the maximum allowable production shall be as follows:

- (a) Production limits for permitted well(s) or well fields shall be 2 Acre-Feet per contiguously owned acre per year, as that term is defined by these rules. A contiguous acre shall only be counted one time for purposes of determining the amount of groundwater production authorized under this rule. Production limits as defined above are based on the total acreage in the District. This amount may be lowered by the Board as necessary to achieve the Desired Future Conditions for the aquifers in the District and for areas where depletion is a factor and is reasonably necessary to protect existing use (36.116(a)(2)(A)(B)(C)(D)(E)). This amount may be increased by the Board on a case by case basis, provided the applicant or permit holder conducts a minimum of 36-hour pump test. A licensed engineer or geoscientist shall oversee the test and provide a certified report of the finding. The Board after reviewing the report shall decide the production limit.

- (b) In establishing production limits the Board will consider:
 - (1) The modeled available groundwater established by the TWDB;
 - (2) the desired future condition established by the appropriate groundwater management area;
 - (3) the District Management Plan;
 - (4) the quality, quantity, and availability of alternative water supplies;
 - (5) the sustainable yield of the aquifer;
 - (6) the impact on other landowners' rights in groundwater from grant or denial of the permit or the terms prescribed by the permit;
 - (7) the quantity of water proposed to be produced;
 - (8) the term for which production is requested;
 - (9) the safety of the proposed production with respect to the contamination of the aquifer;
 - (10) the actual number, location, pump size and production capacity of the wells from which water is to be produced;
 - (11) the nature of the proposed use;
 - (12) the effect of the proposed use of the water on municipal, agricultural use, industrial, recreational and other categories of use; and
 - (13) such other factors as are consistent with the purposes of the District.

- (c) Wells that, upon review, are considered to be exempt shall be drilled and equipped

for the production of no more than a total of 17 gallons per minute (gpm) or a maximum of 25,000 gallons per day.

- (d) Wells completed within alluvial aquifers and deposits shall meet the requirements set forth in this rule and Rule 13.4.2.
- (e) Public water supply well(s) or well fields shall be exempt from the 2 acre-foot limitation set forth in 9.1(a).

RULE 9.2 RULES FOR PRODUCTION LIMITATION

The District may limit production by amending the District Management Plan, amending these rules, or modifying Operating Permits if it appears, from new data, that:

- (a) the aggregate of all permitted and exempt uses will exceed the modeled available groundwater and will impair the District's achievement of its Desired Future Conditions;
- (b) there is drawdown of the water table within the common aquifer;
- (c) there is reduction of artesian pressure;
- (d) there is interference between wells;
- (e) there is a degradation of water quality; or
- (f) that waste will occur in an ascertainable geographic area.

RULE 9.3 LIMITATIONS ON PRODUCTION LIMITS; MANAGEMENT ZONES

- (a) Any limitations on production, whether established by permit modification under this rule or by the adoption of a new rule, shall be no more than shall be necessary to meet the modeled available groundwater to allow the District to achieve its Desired Future Conditions, prevent the drawdown of the water table within the common aquifer, prevent the reduction of artesian pressure, prevent interference between wells, prevent a degradation of water quality, or prevent waste. Any limitations on production may be limited to a specific time period within which additional data may be generated. All limitations on production shall treat all landowners and well owners within the affected area as equally as practicable.
- (b) The Board may, after appropriate rulemaking notice and hearing, establish management zones using the best available hydrogeologic and geographic data available, for the administration of groundwater management and regulation in the District. Designated management zones shall serve as areas for which the District shall determine water availability if necessary to avoid impairment of and to be consistent with the achievement of the applicable Desired Future Conditions established for the aquifers located in whole or in part within the boundaries of the District, authorize total

production, establish proportional reduction regulations, and within which the District may allow the transfer of wells and/or the right to produce water as set forth in these rules. The District shall attempt to delineate management zones along boundaries that, to the extent practicable, will promote fairness and efficiency by the District in its management of groundwater, while considering hydrogeologic conditions, and the ability of the public to identify the boundaries based upon land surface features.

**SECTION 10
CAPPING AND COVERING OF WELLS**

RULE 10.1 CAPPING AND CLOSING SPECIFICATIONS

Every owner or operator of any land within the District, upon which is located any open or uncovered well or artesian well is, and shall be, required to close or cap the same permanently or temporarily as set forth below and in accordance with Chapter 36, Texas Water Code and subsequent changes thereto:

- (a) The District may require the owner or lessee of land on which an open or uncovered well or artesian well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use by the owner or operator thereof.
- (b) As used in this section, “open or uncovered well” means an artificial excavation that is dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required.
- (c) If the owner or lessee fails or refuses to close or cap the well in compliance with this rule within 10 days after being requested to do so in writing by an officer, agent, or employee of the District; any person, firm, or corporation employed by the District may, following due process, go on the land and close or cap the well safely and securely.
- (d) Expenses incurred by the District in closing or capping a well may be recovered as outlined in Rule 16 INVESTIGATIONS AND ENFORCEMENT.

Nothing in this rule affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

SECTION 11 PLUGGING OF ABANDONED OR DETERIORATED WELLS

RULE 11.1 RESPONSIBILITY

A deteriorated or abandoned well must be plugged in accordance with (13.2) through (13.4) of these rules and the Texas Department of License and Regulation, Water Well Drillers and Pump Installers Rules (16 TAC Chapter 76).

Water may not be produced from an abandoned or deteriorated well. A well identified as an abandoned or deteriorated well, or a borehole, must be plugged, capped or re-completed in accordance with the requirements of the District Rules and any statewide law, agency or political subdivision having jurisdiction including, but not limited to, the Texas Water Well Drillers Act, and the Texas Commission on Environmental Quality.

It is the responsibility of the landowner to see that such a well is plugged to prevent pollution of the underground water and to prevent injury to persons and animals. Registration of the well is required prior to, or in conjunction with, well plugging.

RULE 11.2 ABANDONED OR DETERIORATED WELL

If a well that does not penetrate any undesirable water zone(s) is deteriorated or abandoned, all removable casing shall be removed from the well and the entire well pressure filled with cement to the land surface. In lieu of filling the entire well with cement to the land surface, one of the following procedures may be followed:

- (a) the well may be filled with mud, as defined herein, followed by a cement plug not less than 10 feet in length, extending down from the land surface;
- (b) the cement plug may be started from a depth of 4 feet below land surface and extended not less than 10 feet in length; or
- (c) wells in potable water formations may be filled with rock or gravel through the water bearing formation, then filled with mud to a level 20 feet below ground level to ten (10) feet below ground level. Dirt or topsoil shall be filled to the surface of the well. Hand dug wells may be filled with rock or gravel through the water bearing formation, then filled with mud to a level 20 feet below ground level and cemented from 20 feet below ground level to 18 feet below ground level, then filled with dirt to the surface of the well.

RULE 11.3 PENETRATION OF UNDESIRABLE WATER

If a well that penetrates any undesirable water zone(s) is deteriorated or abandoned, all removable casing shall be removed from the well and the entire well pressure filled with cement to the land surface. In lieu of filling the entire well with cement to land surface, one of the following procedures may be followed:

- (a) either the zone(s) contributing undesirable water or the fresh water zone(s) shall be Isolated with cement plugs and the remainder of the well bore filled with mud to form a base for a cement plug not less than 10 feet in length, extending down from the land surface; or
- (b) the cement plug may be started from a depth of 4 feet below the land surface and extended down not less than 10 feet in length.

RULE 11.4 REPORT ON PLUGGING OF WELLS

The person that plugs an abandoned or deteriorated well shall, within 60 days after plugging is complete, submit a copy of the plugging report (on forms furnished by the Texas Water Well Drillers Board) to the District.

RULE 11.5 FAILURE TO COMPLY

If the owner or lessee fails or refuses to plug or cap the well in compliance with this rule and District standards within 30 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 and plug or cap the well safely and securely, pursuant to Texas Water Code Chapter 36.118 and District Rule SECTION 16. INVESTIGATIONS AND ENFORCEMENT.

SECTION 12 REWORKING AND REPLACING A WELL

RULE 12.1 REWORKING A WELL

- (a) An existing well may be reworked, redrilled, or re-geared without obtaining a permit or permit amendment if the work will not increase the existing well's depth or production capabilities.
- (b) Reworking, redrilling or reequipping a well that will increase the well depth or production capability will require the filing of a new well registration/application or permit amendment.
- (c) Wells under this section must comply with requirements under Rule 13.5.
- (d) Under this section, Existing Wells that were completed in alluvial aquifers or alluvial deposits shall be limited to Exempt Use as defined in Rule 7.8.

RULE 12.2 REPLACEMENT WELL

- (a) An existing well may be replaced by a new well without need for a new permit or hearing as long as the well is registered prior to drilling and the new well meets the requirements of this rule.
- (b) A replacement well, in order to be considered such, must be drilled within 10 yards 30 feet of the existing well and may not be drilled any nearer to the closest property line.

SECTION 13 WELL COMPLETION

RULE 13.1 DRILLER'S LOG, CASING AND PUMP DATA

The District must approve the registration of all exempt and non-exempt new wells prior to the commencement of drilling. Once the District has approved a registration for an exempt well or permit or permit amendment application for a nonexempt well, as applicable, the applicant must notify the District at least 24 hours prior to commencing the drilling, repairing, capping or plugging of the well. Complete records must be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled in the District. Such records must include an accurate Driller's log required by Section 1901.251, Texas Occupations Code, and any mechanical, electric or geophysical log that may have been made. Such reports and logs, if available, must be filed within **60 calendar days** after completion of the well.

RULE 13.2 QUALIFICATION REQUIRED

- (a) Only persons qualified in accordance with the Texas Department of Licensing and Regulation are allowed to drill water wells within the District.
- (b) Only persons qualified in accordance with the Texas Department of Licensing and Regulation are allowed to commercially install water well pumps within the District.

RULE 13.2.1 REGISTRATION OF WATER WELL DRILLERS

- (a) It is a violation of District rules for any person to be actively engaged in the commercial drilling of a well in the District without first having been registered with the District.
- (b) Registration with the District shall be on forms provided by the District and be in accordance with and contain information called for on the form.

RULE 13.2.2 REGISTRATION OF WATER WELL PUMP INSTALLERS

- (a) It is a violation of District rules for any person to be actively engaged in the commercial installation of a water well pump in the District without first having been registered with the District.
- (b) Registration shall be on forms provided by the District and shall be in accordance with the information called for on the form.

RULE 13.3 RESPONSIBILITY

After a New Well Registration Application has been approved, the well, if drilled, must be drilled within ten (10) yards (30 feet) of the location specified in the application and not elsewhere. If the well should be commenced or drilled at a different location, the Board

pursuant to Chapter 36, Texas Water Code, may enjoin the drilling or operation of such well. 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 rule prescribing the location of wells and proper completion.

RULE 13.4 STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS

RULE 13.4.1 STANDARDS FOR ALL WELLS

Water well drillers must indicate the method of completion performed on the Texas Department of License and Regulation Well Report Form. Surface Completion, Domestic, industrial, injection, and irrigation wells must be completed in accordance with the following specifications and in compliance with local county or incorporated city ordinances: Monitor wells are exempt from these rules; however, their construction must follow state guidelines.

- (a) The diameter of the drilled hole shall be a minimum of 3 inches larger than the outside diameter of the casing to be used down to a depth of 10 feet except that wells drilled on tracts of five acres or fewer the diameter of the drilled hole shall be a minimum of 3 inches larger than the outside diameter of the casing to be used down to a depth of 50 feet or to the top of the first potable water bearing strata above 50 feet.
- (b) Either steel pipe or polyvinyl chloride (PVC) casing may be used. PVC casing shall meet minimum specifications as defined by the Department of Licensing and Regulations Water Well Drillers and Pump Installers.
- (c) The borehole casing annulus shall be filled with cement slurry or bentonite from ground level to a depth of not less than 10 feet except that wells drilled on tracts of five acres or less the diameter of the drilled hole shall be a minimum of 3 inches larger than the outside diameter of the casing to be used down to a depth of 50 feet or to the top of the first potable water bearing strata above 50 feet.
- (d) All wells must satisfy all District and State water well completion and annular space sealing requirements.
- (e) The casing shall extend at least 18 inches above land surface at a site not generally subject to flooding; provided however, that if a well must be placed in a flood prone area, it shall be completed with a water tight sanitary well seal and steel casing extending a minimum of 36 inches above known flood levels.
- (f) All wells completed with plastic casing shall be completed according to one of the three surface completion methods as described by the following:

- (1) Slab - The slab or block shall extend at least 2 feet from the well in all directions and have a minimum thickness of 4 inches, and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing. The surface of the slab shall be sloped to drain away from the well. The top of the casing shall extend a minimum of 1 foot above the top of the slab.
 - (2) Steel and PVC Sleeve - The steel sleeve shall be a minimum of 3/16" in thickness or the plastic sleeve shall be a minimum of schedule 80 sun resistant and 24 inches in length and shall extend 12 inches into the cement, except when steel casing or a pitless adapter is used. The casing shall extend a minimum of 1 foot above the original ground surface, and the steel sleeve shall be 2 inches, larger in diameter than the plastic casing being used.
 - (3) Pitless Adapters - In wells with Steel or Plastic Casings completed with pitless adapters, the adapters shall be welded to the casing or fitted with another suitably effective seal, and the borehole-casing annulus filled with cement slurry or bentonite to a depth of not less than 50 feet below land surface, or to the top of the first potable water bearing strata above 50 feet. All wells completed with pitless adapters must satisfy all State water well completion and annular space sealing requirements that pertain to pitless adapters.
- (g) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.
- (h) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

RULE 13.4.2 COMPLETION STANDARDS FOR WELLS DRILLED IN THE ALLUVIAL DEPOSITS OR ALLUVIAL AQUIFERS

- (a) Wells completed in the alluvial aquifers or alluvial deposits, other than public water supply wells, shall be limited to "Exempt Wells" and "Excluded Wells" as defined in Section 1 of these rules. Wells completed within the alluvial aquifers or alluvial deposits and located on tracts of land of 10 acres or less, other than public water supply wells, shall be equipped so as to be incapable of producing more than 10 gallons of groundwater per minute.
- (b) Wells completed to depths below the alluvial aquifers and alluvial deposits are exempt from this section. However, such wells shall seal or cement the well to a depth of 50 feet or to a depth beyond the alluvial aquifer or alluvial deposit, whichever is greater, to ensure no contribution to the well from the alluvial formations.

RULE 13.4.3 COMPLETION STANDARDS FOR PUBLIC WATER SUPPLY WELLS

Public Water Supply Wells shall be drilled and completed to meet the requirements of the Texas Commission of Environmental Quality Chapter 290, "PUBLIC DRINKING SUPPLY" , Subchapter D, "RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS", Rule 290.41, "Water Sources".

RULE 13.5 RECOMPLETIONS

- (a) The landowner shall have the continuing responsibility of ensuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the wellbore 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 of Directors may direct the landowner to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

SECTION 14 WASTE

RULE 14.1 WASTE PREVENTION

- (a) Groundwater may not be produced within, or used within or without the District, in such a manner as to constitute waste as defined in Rule 1.1 hereof. No person shall commit waste as that term is defined in Rule 1.1 Definitions.
- (b) No person shall pollute or harmfully alter the character of any groundwater 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) Any person producing or using groundwater shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of such groundwater.

SECTION 15 HEARINGS

RULE 15.1 TYPES OF HEARINGS

The District conducts the following types of hearings:

- (a) Hearings involving permit-related matters and exceptions to well spacing and production requirements, which are governed by Rules 7.1-7.8, Rules 8.1-8.2, and Rules 9.1-9.3;
- (b) Rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District, which are governed by Rule 15.6;
- (c) Hearings on the District Management Plan, which are governed by Rule 4.3;
- (e) Hearings on the Desired Future Conditions, which are governed by Rule 15.9;
- (f) Hearings on the Appeal of Desired Future Conditions, which are governed by Rule 15.10;
- (g) Enforcement hearings, which are governed by Rule 16.5; and
- (h) All other hearings not described by this rule, which are governed by Rule 15.7.

Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearings Examiner.

RULE 15.2 PERMIT HEARINGS

- (a) **Generally:** The General Manager is authorized to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings as the General Manager deems administratively feasible and appropriate. Other hearings may be scheduled at the dates, times, and locations set at a regular Board meeting. The Board shall set a preliminary hearing within 60 days of declaring an application as administratively complete, and the preliminary hearing must be set within 35 days of the setting of the hearing date. All hearings must be held before a quorum of the Board, a Hearings Examiner, or SOAH in accordance with Rule 15.5. A Presiding Officer appointed by the Board shall have all of the authority of the Presiding Officer under these Rules.
- (b) **Scheduling of Permit Hearings and Request for Contested Case Hearing:** The General Manager may schedule as many applications at one hearing as the General Manager deems necessary. Any person that wishes to be heard as a potential party to a hearing must appear at the hearing and contest the application.

- (c) **Content of Permit Hearing Notice:** Once the District has received an administratively complete permit or permit amendment application, or if the Board desires to modify or revoke an existing permit, the General Manager shall prepare the notice that includes, at a minimum, the following information:
- (1) the name and address of the applicant or permit holder;
 - (2) the name or names of the owner or owners of the land if different from the applicant or permit holder;
 - (3) the time, date, and location of the hearing;
 - (4) the address or approximate proposed location of the well(s), if different than the address of the applicant or permit holder;
 - (5) 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, or if the Board desires to modify an existing permit, a brief explanation of the proposed permit modification and the basis for the proposed modification; and
 - (6) any other information the Board or General Manager deems appropriate to include in the notice.
- (d) **Issuance of Permit Hearing Notice:** Not less than 10 calendar days prior to the date of the permit hearing, notice shall be:
- (1) posted by the General Manager at a place readily accessible to the public in the District Office;
 - (2) provided by the General Manager to the County Clerk in the county the well is located; and
 - (3) provided to the applicant by regular mail.
- (e) **Requests to Receive Notice of Permit Hearing:** A person may submit to the District a written request for notice of a hearing on a permitting matter. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice 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 email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure to provide notice under this subsection does not invalidate an action taken by the District on a permitting matter.

RULE 15.3 UNCONTESTED PERMIT HEARINGS PROCEDURES

- (a) **Informal Hearings:** Uncontested permit hearings may be conducted informally when, in the judgment of the Presiding Officer, the conduct of the proceeding under informal procedures will result in a savings of time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- (1) The Board may take action on any 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 Board may issue a written order to:

- (i) grant the application;
 - (ii) grant the application with special conditions; or
 - (iii) deny the application.
- (2) An applicant may, not later than the 20th day after the date the Board issues an order granting the application, demand a contested case hearing if the order:
- (i) includes special conditions that were not part of the application as finally submitted; or
 - (ii) grants a maximum amount of groundwater production that is less than the amount requested in the application.

(b) **Agreement of Parties:** If, during a contested case hearing, all interested persons contesting the application withdraw their protests or are found by the Board not to have a justiciable interest affected by the application, or the parties reach a negotiated or agreed settlement that, in the judgment of the Board, settles the facts or issues in controversy, the proceeding will be considered an uncontested hearing and the Board may take any action authorized under District Rule 15.3(a).

(c) **Decision to Proceed as Contested Case:** If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy, a party or the General Manager files a notice of contested case in accordance with Rule 15.2(b), the Board may declare the case to be contested and convene a preliminary hearing as set forth in Rule 15.4(a). Any case not declared a contested case under this provision will be an uncontested case.

RULE 15.4 CONTESTED PERMIT HEARINGS PROCEDURES

(a) **Preliminary Hearing:** An initial, preliminary hearing shall be held in a contested permit hearing to consider any matter that may expedite the hearing, determine party status, or otherwise facilitate the hearing process. The Board shall conduct an evidentiary hearing if a person other than the applicant is designated as a party, or if the General Manager proposes to deny that application in whole or in part, unless the applicant or other party in a contested hearing requests the District to contract with SOAH to conduct the evidentiary hearing under Rule 15.5. Unless one of the parties in a contested hearing requests a continuance and demonstrates good cause for the continuance, the Board may conduct the preliminary and evidentiary hearings on the same date. If at the initial, preliminary hearing the Board determines that no person who requested a contested case hearing has standing or that no justiciable interests are raised, the Board may take any action authorized under District Rule 15.3(a)(1).

(b) **Matters Considered:** Matters that may be considered at an initial, preliminary

hearing include, but are not limited to:

- (1) designation of parties;
- (2) formulation and simplification of issues;
- (3) necessity or desirability of amending applications or other pleadings;
- (4) possibility of making admissions or stipulations;
- (5) scheduling discovery;
- (6) identification of and specification of the number of witnesses;
- (7) filing and exchange of prepared testimony and exhibits; and
- (8) procedure at the hearing. Action taken at a prehearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.

(c) **Assessing Reporting and Transcription Costs:** Upon the timely request of any party, or at the discretion of the Board, the Board may assess reporting and transcription costs to one or more of the parties. The Board will consider the following factors in assessing reporting and transcription cost:

- (1) the party who requested the transcript;
- (2) the financial ability of the party to pay the cost;
- (3) the extent to which the party participated in the hearing;
- (4) the relative benefits to the various parties of having a transcript;
- (5) the budgetary constraints of a governmental entity participating in the proceeding;
- (6) any other factor that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of reporting or transcription costs is an issue, the Board will provide the parties an opportunity to present evidence and argument on the issue.

(d) **Designation of Parties:** Parties to a hearing may be designated at the initial, preliminary hearing or at such other times as the Board determines. The General Manager and any person specifically named in a matter are automatically designated as parties. Persons other than the General Manager or a person specifically named must, in order to be admitted as a party, file the notice of contested case under Rule 15.2(b) and appear at the proceeding in person or by a representative and seek to be designated. After the parties are designated, no other person may be admitted as a party unless, in the judgment of the Board, there exists good cause and the hearing will not be unreasonably delayed. A person will only be designated as a party to a hearing if that person demonstrates a justiciable interest related to a legal right, duty, privilege, power or economic interest that is within the District's regulatory authority that would be adversely affected by the action proposed by the application. A justiciable interest does not include persons who have only an interest common to members of the general public.

(e) **Rights of Designated Parties:** Subject to the direction and orders of the Presiding Officer, parties have the right to conduct discovery, present a direct case, cross

examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.

- (f) **Persons Not Designated as Parties:** At the discretion of the Presiding Officer, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing, but shall be subject to cross examination.
- (g) **Furnishing Copies of Pleadings:** After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or the party's representative in the methods prescribed by Rule 15.8(h). Failure to provide copies or evidence thereof to other parties may be grounds for withholding consideration of the pleading or the matters set forth therein.
- (h) **Interpreters for Deaf Parties and Witnesses:** If a party or subpoenaed witness in a contested case is deaf, the District will provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment that inhibits the person's comprehension of the proceedings or communication with others.
- (i) **Agreements to be in Writing:** No agreement between parties or their representatives affecting any pending matter will be considered by the Board unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered of record.
- (j) **Discovery:** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Presiding Officer. Unless specifically modified by these rules or by order of the Presiding Officer, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Presiding Officer.
- (k) **Discovery Sanctions:** If the Presiding Officer finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Presiding Officer may:
 - (1) suspend processing of the application for a permit if the applicant is the offending party;
 - (2) disallow any further discovery of any kind or a particular kind by the offending party;
 - (3) rule that particular facts be regarded as established against the offending party for the purpose of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
 - (4) limit the offending party's participation in the proceeding;
 - (5) disallow the offending party's presentation of evidence on issues that were

the subject of the discovery request; and
(6) recommend to the Board that the hearing be dismissed with or without prejudice.

- (l) **Compelling Testimony; Swearing Witnesses and Subpoena Power:** The Presiding Officer may compel any person to testify who is necessary, helpful, or appropriate to the hearing. The Presiding Officer shall administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The Presiding Officer may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in a manner provided in the Texas Rules of Civil Procedure.
- (m) **Evidence:** Except as modified by these rules, the Texas Rules of Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Evidence may be admitted if it is relevant to the hearing and of the type commonly relied upon by reasonable prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties. Evidence that is irrelevant, immaterial, or unduly repetitious may be excluded.
- (n) **Written Testimony:** When a proceeding will be expedited and the interests of the parties not substantially prejudiced, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- (o) **Requirements for Exhibits:** Exhibits of a documentary character must be of a size that will not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
- (p) **Abstracts of Documents:** When documents are numerous, the Presiding Officer may receive in evidence only those that are representative and require the abstract of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.
- (q) **Introduction and Copies of Exhibits:** Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the Board and to each of the parties, unless the Presiding Officer rules otherwise.
- (r) **Excluding Exhibits:** In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose

of preserving the objection to excluding the exhibit.

- (s) **Official Notice:** The Presiding Officer may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- (t) **Documents in District Files:** Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.
- (u) **Oral Argument:** At the discretion of the Presiding Officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Presiding Officer may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the board for final decision, further oral arguments may be heard by the Board.
- (v) **Closing the Record; Proposal for Decision:** At the conclusion of the presentation of evidence and any oral argument, the Presiding Officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Presiding Officer. If the hearing was conducted by a quorum of the Board and if the Presiding Officer prepared a record of the hearing, the Presiding Officer shall determine whether to prepare and submit a Proposal for Decision ("PFD") to the Board under this rule. If a PFD is required, the Presiding Officer shall submit a PFD to the Board within 30 days after the date the hearing is finally concluded. The PFD must include a summary of the subject matter of the hearing, the evidence or public comments received, and the Presiding Officer's recommendations for Board action on the subject matter of the hearing. A copy of the PFD shall be provided to the applicant and each designated party. The applicant and any party may submit to the Board written exceptions to the PFD. The Presiding Officer may direct the General Manager or another District representative to prepare the PFD and recommendations required by this rule. The Board shall consider the PFD at a final hearing. Additional evidence may not be presented during this final hearing, however, the parties may present oral argument to summarize the evidence, present legal argument, or argue an exception to the PFD. A final hearing may be continued in accordance with District Rule 15.8(g) and Section 36.409, Texas Water Code.
- (w) **Request for Rehearing or Written Findings and Conclusions:** 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 matter by requesting written findings and conclusions or a rehearing before the Board not later than the 20th calendar day after the date of the Board's decision. Alternatively, an applicant in an uncontested hearing may request a contested case hearing if the District's decision includes a special condition that was not part of the application as finally submitted or grants a maximum amount of groundwater production that is less than the amount requested in the application. The District's decision reached

after conducting a contested case hearing under the alternative procedure provided for under this Rule may be appealed by requesting written findings and conclusions or a rehearing before the Board not later than the 20th calendar day after the date of the Board's decision. 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 party who requested them, and to each designated party, not later than the 35th calendar day after the date the Board receives the request. A party to the contested case hearing may request a rehearing before the Board not later than the 20th calendar day after the date the Board issues the findings and conclusions. If the Board grants a request for rehearing, the Board shall, after proper notice, schedule the rehearing not later than the 45th calendar day after the date the request is granted. The failure of the Board to grant or deny a request for rehearing before the 91st calendar day after the date the request is submitted is a denial of the request.

- (x) **Time for Board Action on Certain Permit Matters:** The Board shall act on a permit or permit amendment application, permit revocation or modification, or permit renewal within 60 calendar days after concluding the final hearing. Requests for rehearing and final action on a permit matter shall be conducted under Rule 15.8.

- (y) **Final Decision:** After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, deny or grant the action sought in whole or part, or take any other appropriate action upon consideration of the factors in Section 7. 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 and the Board denies the request for rehearing, on the date the Board denies the request for rehearing; or
 - (3) if a request for rehearing is filed on time and the Board grants the request for rehearing;
 - (4) on the final date of the rehearing if the Board does not take further action;
 - (5) if the Board takes further action after rehearing, on the expiration of the period for filing a request for rehearing on the Board's modified decision if a request for rehearing is not timely filed; or
 - (6) if the Board takes further action after rehearing and another request for rehearing on this Board action is timely filed, then Subsections y(1) and (3) of this rule shall govern the finality of the Board's decision.

The applicant or party to a contested case hearing must exhaust all administrative remedies with the District prior to seeking judicial relief from a District decision on a permit or permit amendment application. An applicant or a party to a contested case hearing dissatisfied with the District's decision must file a written request for a rehearing or for written findings and conclusions within 20 days of the Board's

decision in order to seek reconsideration of the District's decision in accordance with Subsection (w) of this Rule. Once all administrative remedies are exhausted with the District, an applicant or a party to a contested case hearing must file suit in a court of competent jurisdiction in Real County or Edwards County to appeal the District's decision on a permit or permit amendment application within 60 days after the date the District's decision is final. An applicant or party to a contested case hearing is prohibited from filing suit to appeal a District's permitting decision if a request for rehearing was not timely filed.

RULE 15.5 PERMIT HEARINGS CONDUCTED BY SOAH

- (a) **Generally:** If an application is contested, any party to the hearing may request that the District contract with SOAH to conduct further proceedings in the hearing. A request for a SOAH hearing under this rule must be made to the Board at the initial, preliminary hearing and is untimely if submitted after the conclusion of the initial, preliminary hearing. The Board shall determine whether the SOAH hearing will be held in Travis County or at the District Office or other regular meeting place of the Board, after considering the interests and convenience of the parties, and the expense of a SOAH contract.
- (b) **Costs:** The party requesting that the hearing be conducted by SOAH shall pay all costs associated with the contract for the hearing and shall make a deposit with the District in an amount that is sufficient to pay the estimated SOAH contract amount before the hearing begins. If the total cost for the contract exceeds the amount deposited by the paying party at the conclusion of the hearing, the party that requested the hearing shall pay the remaining amount due to pay the final price of the contract. If there are unused funds remaining from the deposit at the conclusion of the hearing, the unused funds shall be refunded to the paying party.
- (c) **Referral and Procedure:** Upon execution of a contract with SOAH and receipt of the deposit from the appropriate party or parties, the District's Presiding Officer shall refer the application to SOAH.
 - (1) The Presiding Officer's referral to SOAH shall be in writing and shall include procedures established by the Presiding Officer under Subsection (c)(2) below; a copy of the permit application, all evidence admitted at the preliminary hearing, the District's rules and other relevant policies and precedents, the District Management Plan, and the District Act; and guidance and the District's interpretation regarding its regulations, the permitting criteria, and other relevant law to be addressed in a Proposal for Decision and Findings of Fact and Conclusions of Law to be prepared by SOAH. (2) A hearing conducted by SOAH is governed by SOAH's procedural rules; Subchapters C, D, and F, Chapter 2001, Texas Government Code; and, to the extent, not inconsistent with these provisions, any procedures established by the Presiding Officer. (3) The District or Presiding Officer 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. SOAH may certify one or more questions to the District's

Board seeking the District Board's guidance on District precedent or the District Board's interpretation of its regulations or other relevant law, in which case the District's Board shall reply to SOAH in writing.(4) The District's Board shall conduct a hearing within 45 days of receipt of SOAH's Proposal for Decision and Findings of Fact and Conclusions of Law, and shall act on the application at this hearing or no later than 60 days after the date that the Board's final hearing on the application is concluded in a manner consistent with Section 2001.058, Texas Government Code.

- (i) At least 10 days prior to this hearing, the Presiding Officer shall provide written notice to the parties of the time and place of the Board's hearing under this subsection by mail.
- (ii) 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 Law Judge, only if the Board determines: (A) that the Administrative Law Judge did not properly apply or interpret applicable law, District rules, written policies, or prior administrative decisions;(B) that a prior administrative decision on which the Administrative Law Judge relied is incorrect or should be changed; or(C) that a technical error in a finding of fact should be changed.

RULE 15.6 RULEMAKING HEARINGS

- (a) **Generally:** A rulemaking hearing involves matters of general applicability that implement, interpret, or prescribe the law or District's policy, or that describe the procedure or practice requirements of the District. The District will update its rules to implement the Desired Future Conditions before the first anniversary of the date that the TWDB approves the District Management Plan that has been updated to reflect the adopted Desired Future Conditions.
- (b) **District Management Plan:** At its discretion, the Board may hold a hearing to consider adoption of a new District Management Plan in accordance with the procedures for rulemaking hearings, except that notice for the hearing on the management plan shall be governed by Rule 4.3.

Notice of Rulemaking Hearings: For all rulemaking hearings, the notice shall include a brief explanation of the subject matter of the hearing, the time, date, and place of the hearing, location or Internet site at which a copy of the proposed rules may be reviewed or copied, if the District has a functioning Internet site, and any other information deemed relevant by the General Manager or the Board. Not less than 20 days prior to the date of the hearing, and subject to the notice requirements of the Texas Open Meetings Act 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 Clerks in Real County and Edwards County;
 - (3) publish notice in one or more newspapers of general circulation in the District;
 - (4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and
 - (5) make available a copy of all proposed rules at a place accessible to the public during normal business hours, and post an electronic copy on the District's Internet site, if the District has a functioning Internet site.
- (c) **Requests to Receive Notice of Rulemaking Hearing:** 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 email to the person in accordance with the information provided by the person is proof that notice was provided by the district. Failure to provide notice under this subsection does not invalidate an action taken by the District at a rulemaking hearing.
- (d) **Scheduling of Rulemaking Hearings:** Any hearing may or may not be scheduled any day of the week, except District holidays. Any hearing may be continued from time to time and date to date without published notice after the initial published notice in conformity with the Texas Open Meetings Act. The District must conduct at least one hearing prior to adopting amendments to the District's rules.
- (e) **Conclusion of Rulemaking Hearing:** At the conclusion of the hearing, the Board may take action on the subject matter of the hearing, take no action, or postpone action until a future meeting or hearing of the Board. When adopting, amending, or repealing any rule, the District shall:
- (1) consider all groundwater uses and needs;
 - (2) develop rules that are fair and impartial;
 - (3) consider the groundwater ownership and rights described by Section 36.002, Texas Water Code;
 - (4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater reservoirs or their subdivision, consistent with the objectives of Section 59, Article XVI, Texas Constitution;
 - (5) consider the goals developed as part of the District Management Plan under Section 36.1071, Texas Water Code; and
 - (6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

RULE 15.7 OTHER MATTERS

A hearing may be held on any matter beyond rulemaking, the District's Management Plan, permitting, enforcement, and Desired Future Conditions, within the jurisdiction of the District, if the Board, or the General Manager when authorized by the Board, deems a hearing to be in the public interest, or if the Board or the General Manager, when authorized by the Board, deems a hearing necessary to effectively carry out the duties and responsibilities of the District. Not less than 10 days prior to the date of a public hearing under this rule, the District shall publish notice of the subject matter of the hearing, the time, date, and place of the hearing, in a newspaper of general circulation in the District, in addition to posting the notice in the manner provided by the Texas Open Meetings Act.

RULE 15.8 GENERAL HEARING PROCEDURES

- (a) **Authority of Presiding Officer:** The Presiding Officer may conduct the hearing or other proceeding in the manner the Presiding Officer deems most appropriate for the particular proceeding. The Presiding Officer has the authority to:
- (1) set hearing dates, other than the preliminary hearing date for permit matters set by the General Manager;
 - (2) convene the hearing at the time and place specified in the notice for public hearing;
 - (3) establish the jurisdiction of the District concerning the subject matter under consideration;
 - (4) rule on motions and on the admissibility of evidence and amendments to pleadings;
 - (5) designate and align parties and establish the order for presentation of evidence;
 - (6) administer oaths to all persons presenting testimony;
 - (7) examine witnesses;
 - (8) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
 - (9) require the taking of depositions and compel other forms of discovery under these rules;
 - (10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 - (11) conduct public hearings in an orderly manner in accordance with these rules;
 - (12) prescribe reasonable time limits for testimony and the presentation of evidence;
 - (13) determine how to apportion among the parties the costs related to a contract for the services of a Presiding Officer and the preparation of the official hearing record;
 - (14) recess any hearing from time to time and place to place;
 - (15) reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
 - (16) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer.

- (b) **Hearing Registration Forms:** Each individual attending a hearing or other proceeding of the District must submit a form providing the following information: name; address; whether the person plans to testify; and any other information relevant to the hearing or other proceeding.
- (c) **Appearance; Representative Capacity:** Any interested person may appear in person or may be represented by counsel, engineer, or other representative provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.
- (d) **Alignment of Parties; Number of Representatives Heard:** Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The Presiding Officer may require the participants of an aligned class to select one or more persons to represent them in the proceeding or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.
- (e) **Appearance by Applicant or Movant:** The Applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to so appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the Presiding Officer deems it necessary in order to fully develop the record.
- (f) **Reporting:** Hearings and other proceedings will be recorded by an audio device or, at the discretion of the Presiding Officer, may be recorded by a certified shorthand reporter. The District does not prepare transcripts of hearings or other proceedings recorded on audio on District equipment for the public, but the District will arrange access to the recording. Subject to availability of space, any party may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 15.5(b). If a reporter records a proceeding other than a permit hearing, and any person orders a copy of the transcript of testimony, the testimony will be transcribed and the original transcript filed with the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.
- (g) **Continuance:** The Presiding Officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing,

serving, mailing or otherwise issuing a new notice, except as required by the Texas Open Meeting Act. If a hearing or other proceeding is continued and a time and place (other than the District Office) for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the Presiding Officer before it is recessed, a notice of any further setting of the hearing or other proceeding will be delivered at a reasonable time to all parties, persons who have requested notice of the hearing, and any other person the Presiding Officer deems appropriate, but it is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.

- (h) **Filing of Documents; Time Limit:** Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these rules or by law must be received in hand at the District's Office within the time limit, if any, set by these rules, applicable law, or by the Presiding Officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.
- (i) **Affidavit:** Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.
- (j) **Broadening the Issues:** No person will be allowed to appear in any hearing or other proceeding that in the opinion of the Presiding Officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
- (k) **Conduct and Decorum:** Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer deems necessary.

RULE 15.9 HEARINGS ON DESIRED FUTURE CONDITIONS

Notwithstanding any other provision of this Section 7 to the contrary, all hearings conducted by the District for the adoption of Desired Future Conditions shall be conducted in accordance with this Rule 15.11.

- (a) **Public Comment:** Upon receipt of proposed Desired Future Conditions from the Groundwater Management Area's district representatives, a public comment period of 90 days commences, during which the District will receive written public comments and conduct at least one hearing to allow public comment on the proposed Desired Future Conditions relevant to the District. The District will make available at the District Office a copy of the proposed Desired Future Conditions and

any supporting materials, such as the documentation of factors considered under Section 36.108(d), Texas Water Code, and groundwater availability model run results.

- (b) **Notice of Hearing on Desired Future Conditions:** At least 10 days before a hearing or meeting under this Rule 15.9, the District must post notice that includes:
- (1) the proposed Desired Future Conditions and a list of any other agenda items;
 - (2) the date, time, and location of the hearing;
 - (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
 - (4) the names of the other districts in the District's Groundwater Management Area; and
 - (5) information on how the public may submit comments.

Except as provided by Subsection (a) of this rule, the hearing and meeting notice must be provided in the manner prescribed for a rulemaking hearing under Rule 15.6.

- (c) **Hearing:** The District shall hold a public hearing to accept public comments on the Desired Future Conditions using procedures prescribed in Rule 15.6.
- (d) **Summary Report:** After the public hearing, the District shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed Desired Future Conditions, and the basis for any suggested revisions.
- (f) **Adoption of Desired Future Conditions:** As soon as possible after the District receives the Desired Future Conditions resolution and explanatory report from the Groundwater Management Area's district representatives pursuant to Subsection 36.108(d-3), the Board shall adopt the Desired Future Conditions in the resolution and explanatory report that apply to the District. The Board shall issue notice of its meeting at which it will take action on the Desired Future Conditions in accordance with the Texas Open Meetings Act.

RULE 15.10 APPEAL OF DESIRED FUTURE CONDITIONS

- (a) Not later than 120 calendar days after the date on which the District adopts a Desired Future Condition under Subsection 36.108(d-4), Texas Water Code, a person determined by the District to be an affected person may file a petition appealing the reasonableness of a Desired Future Condition. The petition must include:
- (1) evidence that the petitioner is an affected person;
 - (2) a request that the District contract with SOAH to conduct a hearing on the petitioner's appeal of the reasonableness of the Desired Future Condition; and

- (3) evidence that the districts did not establish a reasonable Desired Future Condition of the groundwater resources within the relevant Groundwater Management Area.
- (b) Not later than 10 calendar days after receiving a petition described by Subsection (a), the District's Presiding Officer shall determine whether the petition was timely filed and meets the requirements of Rule 15.10(a) and, if so, shall submit a copy of the petition to the TWDB. If the petition was untimely or did not meet the requirements of Rule 15.10(a), the District's Presiding Officer shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than 60 calendar days after receiving a petition under Rule 15.10(a), the District shall:
 - (1) contract with SOAH to conduct the requested hearing; and
 - (2) submit to SOAH a copy of any petitions related to the hearing requested under Rule 15.10(a) and received by the District.
 - (c) A hearing under District Rule 15.10 must be held:
 - (1) at the District office, Real County Courthouse or Edwards County Courthouse unless the District's Board provides for a different location; and
 - (2) in accordance with Chapter 2001, Texas Government Code, and SOAH's rules.

Not less than ten (10) calendar days prior to the date of the hearing, notice may be provided by regular mail to landowners who, in the discretion of the General Manager, may be affected by the application.
 - (d) Not less than ten (10) calendar days prior to the date of the SOAH hearing under this rule, notice shall be issued by the District and meet the following requirements:
 - (1) state the subject matter, time, date, and location of the hearing;
 - (2) be posted at a place readily accessible to the public at the District's office;
 - (3) be provided to the County Clerk of Real or Edwards County, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the County Courthouse; and
 - (4) be sent to the following individuals and entities by certified mail, return receipt requested; hand delivery; first class mail; facsimile; email; FedEx; UPS; or any other type of public or private courier or delivery service:
 - (A) the petitioner;
 - (B) any person who has requested notice in writing to the District;
 - (C) each nonparty district and regional water planning group located within the same Groundwater Management Area as a district named in the petition;
 - (D) TWDB's Executive Administrator; and
 - (E) TCEQ's Executive Director.

If the District is unable to provide notice by any of these forms of notice, the District may tape the notice on the door of the individual's or entity's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the person or entity resides or which the person's or entity's office is located.

- (e) Before a hearing is conducted under this rule, SOAH shall hold a prehearing conference to determine preliminary matters, including:
 - (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
 - (2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and
 - (3) which affected persons shall be named as parties to the hearing.
- (f) The petitioner shall pay the costs associated with the contract for the hearing conducted by SOAH under this Rule. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, SOAH may assess costs to one or more of the parties participating in the hearing and the District shall refund any money exceeding actual hearing costs to the petitioner. SOAH shall consider the following in apportioning costs of the hearing:
 - (1) the party who requested the hearing;
 - (2) the party who prevailed in the hearing;
 - (3) the financial ability of the party to pay the costs;
 - (4) the extent to which the party participated in the hearing; and
 - (5) any other factor relevant to a just and reasonable assessment of costs.
- (g) On receipt of the SOAH Administrative Law Judge's findings of fact and conclusions of law in a proposal for decision, which may include 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), Texas 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 60th calendar day after the date of the final order, the District shall coordinate with the districts in the Groundwater Management Area at issue to reconvene in a joint planning meeting for the purpose of revising the Desired Future

Condition found to be unreasonable in accordance with the procedures in Section 36.108, Texas Water Code.

- (j) The Administrative Law Judge may consolidate hearings requested under this rule that affect two or more districts. The Administrative Law Judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

SECTION 16 INVESTIGATIONS AND ENFORCEMENT

RULE 16.1 NOTICE AND ACCESS TO PROPERTY

Board Members and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District Rules. 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, or information otherwise publicly available. 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 Section 36.102, Texas Water Code, as the same may be hereafter amended or modified.

RULE 16.2 CONDUCT OF INVESTIGATION

Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the well or property.

RULE 16.3 SEALING OF WELLS

Following due-process, the District may, upon orders from the judge of the courts, seal, cap or plug 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:

- (a) no application has been made to drill or operate a new water well or
- (b) no application has been made for an Operating Permit to withdraw groundwater from an existing well that is not exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater;
- (c) the Board has denied, canceled or revoked an Operating Permit or other applicable permit; or
- (d) the owner or operator has failed to act upon the District's request to seal, cap, or plug an abandoned or deteriorated well.

The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District, and 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 16.4 EMERGENCY ORDERS

After providing 15 days notice to affected parties and an 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 consideration and decision on the entry of such an order. If the Board President or his or her designee 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, he or she may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of 15 days or until a hearing can be conducted. In such an emergency, the Board President or his or her designee is also authorized, without notice or hearing to pursue a temporary restraining order, injunctive, and other appropriate relief in a court of competent jurisdiction.

RULE 16.5 RULE ENFORCEMENT AND ENFORCEMENT HEARING

- (a) District employees, director, or agents may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the District. District employees, directors and agents are entitled to enter any public or private property within the boundaries of the District or adjacent to any reservoir or other property owned by the District at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water or the compliance with any rule, regulation, permit, or other order of the district. District employees, directors or agents acting under this authority who enter private property shall observe the owner's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.
- (b) If it appears that a person has violated or is violating any provision of the District's rules, the District may employ any of the following means, or a combination thereof, in providing notice of the violation:
 - (1) Informal Notice: The officers, staff or agents of the District acting on behalf of the District or the Board may inform the person of the violation via telephone by informing, or attempting to inform, the appropriate person to explain the violation and the steps necessary to cure the violation. The

information received by the District through this informal notice concerning the violation and the date and time of the telephone call will be documented and will remain in the District's files. Nothing in this subsection shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

(2) **Written Notice of Violation:** The District may inform the person of the violation through written notice of violation. Each notice of violation issued herein shall explain the basis of the violation, identify the rule or order that has been violated or is currently being violated, and list specific required actions that must be satisfactorily completed to cure a past or present violation to address each violation raised, and may include the payment of applicable civil penalties. Notice of a violation issued herein shall be provided through a delivery method in compliance with these rules. Nothing in this Subsection shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

(3) **Compliance Meeting:** The District may hold a meeting with any person whom the District believes to have violated, or to be violating, a District rule or order to discuss each such violation and the steps necessary to satisfactorily remedy each such violation. The General Manager may conduct a compliance meeting without the Board, unless otherwise determined by the Board or General Manager. The information received in any meeting conducted pursuant to this subsection concerning the violation will be documented, along with the date and time of the meeting, and will be kept on file with the District. Nothing in this subsection shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

(c) **Show Cause Hearing:**

(1) Upon recommendation of the General Manger to the Board or upon the Board's own motion, the Board may order any person that it believes has violated or is violating any provision of the District's rules a District order to appear before the Board at a public meeting, held in accordance with the Texas Open Meetings Act, and called for such purpose and to show cause of the reasons an enforcement action, including the assessment of civil penalties and initiation of a suit in a court of competent jurisdiction in Real County or Edwards County, should not be pursued against the person made the subject of the show cause hearing. The Presiding Officer may employ the procedural rules in Rule 15.8.

(2) No show cause hearing under subsection (b) of this rule may be conducted unless the District serves, on each person made the subject of the show cause hearing, a written notice 30 days prior to the date of the hearing. Such notice shall include all of the following information:

- (i) the time, date, and place for the hearing; and
 - (ii) the basis of each asserted violation; and
 - (iii) the rule or order that the District believes has been violated or is currently being violated; and
 - (iv) a request that the person duly appear and show cause of the reasons an enforcement action should not be pursued.
 - (3) The District may pursue immediate enforcement action against the person cited to appear in any show cause order issued by the District where the person cited fails to appear and show cause of the reasons an enforcement action should not be pursued.
 - (4) Nothing in this rule shall constrain the authority of the District to take action, including emergency actions or any other enforcement action, against a person at any time, regardless of whether the District decides to hold a hearing under this Section.
- (d) Remedies:
- (1) The Board shall consider the appropriate remedies to pursue against an alleged violator during the show cause hearing, including assessment of a civil penalty, injunctive relief, or assessment of a civil penalty and injunctive relief. In assessing civil penalties, the Board may determine that each day that a violation continues shall be considered a separate violation. The civil penalty for a violation of any District rule is hereby set at the lower of \$10,000.00 per violation or a lesser amount determined after consideration, during the enforcement hearing, of the criteria in subsection (b) of this rule.
 - (2) In determining the amount of a civil penalty, the Board of Directors shall consider the following factors:
 - (i) compliance history;
 - (ii) efforts to correct the violation and whether the violator makes a good faith effort to cooperate with the District;
 - (iii) the penalty amount necessary to ensure future compliance and deter future noncompliance;
 - (iv) any enforcement costs related to the violation; and
 - (v) any other matters deemed necessary by the Board.
- (e) The District shall collect all past due fees and civil penalties accrued that the District is entitled to collect under these rules. The District shall provide written notice by certified mail, return receipt requested, of a violation of the District's rules and the civil penalties assessed against the person or entity in violation of the District's rules. Any person or entity in violation of these rules is subject to all past due fees and civil penalties along with all fees and penalties occurring as a result of any violations that ensue after the District provides written notice of a violation. Failure to pay required fees will result in a violation of the District's rules and such failure is subject to civil penalties.

- (f) The District may afford an opportunity to the alleged violator to cure a violation through coordination and negotiation with the District. Upon written notification and after 15 days have passed since the date of the certified mailing of the notice of violation without a response or effort to correct a violation and cooperate with the District, the District may initiate a show cause hearing.
- (g) After conclusion of the show cause hearing, the District may commence suit. Any suit shall be filed in a court of competent jurisdiction in Real County or Edwards County. If the District prevails in a suit brought under this section, the District may seek and the court shall grant, in the interests of justice and as provided by Subsection 36.066(h), Texas Water Code, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the Court.

RULE 16.6 CIVIL ACTION

- (a) The District may enforce the provisions of Chapter 36, Texas Water Code and its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- (b) If the District prevails in such a suit, it may, in the same action, recover a fine of up to \$10,000.00 for each violation of a District rule, and for each day a violation continues, reasonable fees for attorneys, expert witnesses, and all other costs incurred by the District before the court.

SECTION 17

ADMINISTRATIVE PENALTIES

RULE 17.1 BOARD POWERS

The District shall have the power to assess administrative penalties to property owners, well owners (or their assignees), Water Well Drillers, Pump Installers, or other persons who are in violation of District Rules. Such penalties will be assessed after completion of an Administrative Hearing as set forth in these rules and upon evidence from that hearing that a violation has occurred.

Nothing in this section shall nullify powers given to the Board in Chapter 36 of the Texas Water Code or other sections of the District rules.

Nothing in this section shall disallow the Board from seeking an immediate injunction against the property owner, Well Driller, Pump Installer, or other persons if there is an immediate threat to the health and safety of the public.

RULE 17.2 PENALTIES FOR LANDOWNERS, WELL OWNERS AND OTHER PERSONS

The Board may assess penalties against property owners, well owners (or their assignees) or other individuals for, but not limited to the following:

- (a) For Failure to “plug” an abandoned or deteriorated well or failure to close or cap a well as outlined in District Rule 10 within required period an administrative penalty of up to \$2,000.00 per day may be assessed by the Board until the violation has been corrected; or
- (b) For having a well drilled, altered or re-equipped without obtaining a well registration / application, permit amendment or operating permit an administrative penalty of up to \$2,000.00 per day may be assessed by the Board until the violation has been corrected. The normal repair of an existing well is excluded under this section unless such repair to the well would alter the size, pumping capacity or depth of the well and require the owner or operator to apply to the District as outlined in these rules.
- (c) For the Waste of water as defined in Section 1.1 of these rules an administrative penalty of up to \$2,000.00 per day may be assessed by the Board until the violation has been corrected.
- (d) For the withdrawal of groundwater in excess of the amount authorized or permitted by the District, an administrative penalty of up to \$2,500.00 per day may be assessed by the Board until the violation has been corrected.
- (e) For the pollution/contamination of groundwater, an administrative penalty of up to \$2,500.00 per day may be assessed by the Board until the violation has been

corrected.

- (f) For knowingly falsifying records or providing inaccurate information & documentation to the District an administrative penalty of up to \$2,000.00 per violation may be assessed by the Board.
- (g) For the violation of any District Rule not otherwise addressed in this section, an administrative penalty of up to \$1,000.00 per day may be assessed by the Board until the violation has been corrected.

RULE 17.3 PENALTIES FOR WELL DRILLERS AND PUMP INSTALLERS

- (a) For falsification of records or providing inaccurate information and documentation to the District, an administrative penalty of up to \$2,000.00 per violation may be assessed by the Board.
- (b) For performing services as a Driller without a License issued by the Texas Department of Licensing and Regulation an administrative penalty of up to \$3,000.00 per violation may be assessed by the Board and the well shall be plugged at the owner's expense.
- (c) For performing services as a Pump Installer without a License Issued by the Texas Department of Licensing and Regulation an administrative penalty of up to \$2,000.00 per violation may be assessed by the Board.
- (d) For failure to drill or complete well as outlined in District Rules the following administrative penalties may be assessed by the Board:
 - (1) 1st Offense up to \$2,500 + remediation;
 - (2) 2nd Offense up to \$3,500 + remediation + Formal complaint with Texas Board of License and Regulation + One year ban from drilling within the District boundaries;
 - (3) 3rd Offense \$5,000 + remediation + Formal Complaint with Texas Board of License and Regulation + permanent ban from drilling within the District boundaries.
- (e) For Failure to file applications, well logs or other documentation as required by the District within specified time period or for failure to insure that proper authorization or permits had been received prior to drilling, the following administrative penalties shall be assessed by the Board:
 - (1) 1st Offense up \$1,500;
 - (2) 2nd Offense up to \$2,500 + formal complaint with Texas Board of License and Regulation + One year ban from drilling within the District boundaries;
 - (3) 3rd Offense \$5,000 + formal complaint with Texas Board of License and Regulation + permanent ban from drilling within the District boundaries.
- (f) For the pollution/contamination of groundwater, an administrative penalty of up to

\$2,500.00 per day may be assessed by the Board until the violation has been corrected.

- (g) For the violation of any District Rule not otherwise addressed in this section 17.3, an administrative penalty of up to \$1,000.00 per day may be assessed by the Board until the violation has been corrected.