
***REAL-EDWARDS CONSERVATION &
RECLAMATION DISTRICT***

***excerpt of
RULES***

Proposed Amendments to Rules
Public Hearing on Wednesday, October 18, 2023
(~~Set for Public Hearing on _____, 2023~~)

Proposed additions reflected in underlined text, and proposed deletions reflected in ~~strike out~~.

*FOR CONVENIENCE OF REVIEW, ONLY THOSE RULES THAT ARE PROPOSED TO BE
AMENDED OR REPEALED OR THAT ARE HELPFUL AND PROVIDE CONTEXT TO
THE PROPOSED AMENDMENTS OR REPEAL HAVE BEEN INCLUDED IN THIS
EXCERPT.*

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PROPOSED AMENDMENT #1

Objective: To create a permit exemption for a temporary use water well used for drilling a permitted groundwater production well permitted by the District (required by SB 1746, 88th Leg., Regular Session).

Proposed Rule: Rule 7.3(a) is proposed to be amended as follows:

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in accordance with and remain subject to the other requirements of these rules, and provided that the exemption is no longer in effect if the well is no longer used for the exempt purposes described below):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) The District may not require an Operating Permit for drilling a water well for temporary use to supply water to a rig that is actively engaged in drilling a groundwater production well permitted by the District except that this exemption may not exceed 180 (one hundred eighty) calendar days but may be extended until the groundwater production well is complete.
 - (5) 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.
- (6) 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.
 - (7) Monitoring wells and leachate wells.

PROPOSED AMENDMENT #2

Objective: To reflect the increase in maximum allowed export fees and automatic annual increase established by HB 3059 (88th Leg., Regular Session) and to specify how revenue from increased fees may be spent.

Proposed Rule: Rule 7.4.2 is proposed to be modified as follows:

RULE 7.4.2 FEES AND PERMIT PROVISIONS

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

(1) a fee negotiated between the District and the exporter; or

(2) a rate not to exceed 20 (twenty) cents for each thousand gallons of water exported from the district.

(b) Effective January 1, 2024, the maximum allowable rate the District may impose for an export fee under District Rule 7.4.2(a)(2) shall increase each calendar year in accordance with Section 36.122(e-1), Texas Water Code. An increase in the export fee is not valid unless it is approved by the Board after a public hearing. The District may only use funds obtained from the rate increase under this subsection for costs related to assessing and addressing impacts associated with groundwater development as provided by Texas Water Code Section 36.207, including:

(1) maintaining operability of wells significantly affected by groundwater development;

(2) developing or distributing alternative water supplies; and

(3) conducting aquifer monitoring, data collection, and aquifer science.

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

PROPOSED AMENDMENT #3

Objective: To provide notice that a continuance for a permit hearing may not exceed the time limit for the issuance of a final decision under Section 36.4165, Texas Water Code (180 days) pursuant to HB 1971 (88th Leg., Regular Session).

Proposed Rule: Rule 15.8(g) is proposed to be modified as follows:

RULE 15.8 GENERAL HEARING PROCEDURES:

(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. A continuance may not exceed the time limit for the issuance of a final decision under Section 36.4165 of the Texas Water Code.

PROPOSED AMENDMENT #4

Objective: To provide notice that the Board is required to consolidate requests for rehearing filed by multiple parties to the contested case hearing pursuant to HB 1971 (88th Leg., Regular Session).

Proposed Rule: Rule 15.4(w) is proposed to be modified as follows:

RULE 15.4 CONTESTED PERMIT HEARINGS PROCEDURES

(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. The Board shall consolidate requests for rehearing filed by multiple parties to the contested case hearing but only one rehearing may be considered per matter.

PROPOSED AMENDMENT #5

Objective: HB 1971 (88th Leg., Regular Session) amended Chapter 36 to expedite the process by which a Board must issue a final decision in a contested case hearing. The following proposed amendments update the District's Rules accordingly and expressly reserve the Board's authority to remand portions of an Administrative Law Judge's (ALJ) proposed final decision (PFD) in light of changes made by HB 1971.

Proposed Rule: Rule 15.5(c) is proposed to be modified as follows:

RULE 15.5 PERMIT HEARINGS CONDUCTED BY SOAH:

- (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 remand an issue germane to the application or the proposed findings of fact and conclusions of law, change a finding of fact or conclusion of law made by the Administrative Law Judge, or 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.
- (iii) A final decision issued by the Board must be in writing and must either adopt the findings of fact and conclusions of law as proposed by the Administrative Law Judge or include revised findings of fact and conclusions of law consistent with District Rule 15.5(c)(1)(ii).
- (iv) Notwithstanding any other rule, for hearings conducted by the State Office of Administrative Hearings, the Board shall issue a final decision

not later than the 180th calendar day after the date of receipt of the final proposal for decision from State Office of Administrative Hearings. The deadline may be extended if all parties agree to the extension.

(v) Notwithstanding any other rule, if a motion for rehearing is filed and granted by the Board under Section 36.412 of the Texas Water Code, the Board shall make a final decision on the application not later than the 90th calendar day after the date of the decision by the Board that was subject to the motion for rehearing.

(vi) Notwithstanding any other rule, the Board is considered to have adopted the final proposed for decision of the Administrative Law Judge as a final order on the 181st calendar day after the date the Administrative Law Judge issued the final proposed for decision if the Board has not issued a final decision by:

1. adopting the findings of fact and conclusions of law as proposed by the Administrative Law Judge; or
2. issuing revised findings of fact and conclusions of law as set forth in this rule and the Texas Water Code.

(vii) A proposed final decision adopted under District Rule 15.5(vi) is final, immediately appealable, and not subject to a request for rehearing.

PROPOSED AMENDMENT #6

Objective: To create a process for a person with a real property interest in groundwater located within the District to petition the District to modify or adopt a District rule (required by HB 2443, 88th Leg., Regular Session), including the procedure for submission, consideration, and disposition of the petition.

Proposed Rule: The following language is proposed to be added as Rule 15.6(f):

RULE 15.6 RULEMAKING HEARINGS:

(f) **Petition to Modify or Adopt a District Rule:** A person with a real property interest in groundwater located within the District's jurisdictional boundaries may file a petition with the District to request the adoption or modification of a rule.

(1) Petitions under this rule must be submitted in writing on the Petition to Adopt or Modify Rules Form appended to these rules to the District office and must comply with the following requirements:

(i) A separate petition must be filed for each general topic proposed to be addressed by a rule modification or change;

- (ii) Each petition must be signed and state the full name of each person signing the petition and the person's contact information, including phone number, physical address, mailing address, and email address, if any;
- (iii) Each petition must include:

 - (1) proof that the person submitting the petition has a real property interest in groundwater located within the District's jurisdictional boundaries;
 - (2) a written explanation of the proposed rule or rule modification's intended purpose;
 - (3) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any; and
 - (4) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.
- (2) If a person is unable to comply with any procedures required under this rule, then the person must submit to the District, on the same day that the person submits a petition under this rule, a written explanation as to why compliance with the required procedure(s) is not possible and must submit a written request that the Board waive the specific procedure(s) at issue. Upon receipt of a written explanation and request as described herein, the Board may, at its sole discretion, waive any procedure set forth under this rule. A petition may be denied for failure to comply with the requirements under this rule.
- (3) Notice of the Board's consideration of and action on a petition shall be included on a Board agenda with three (3) calendar days' notice compliant with the Texas Open Meetings Act.
- (4) Any person desiring to testify on a petition during a hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, and the time period for oral presentations. In addition, the Presiding Officer may limit or exclude question and cumulative, irrelevant, or unduly repetitious presentations.
- (5) Within 90 (ninety) calendar days after submission of a petition that complies with this rule, the Board shall consider the petition at a Board meeting and either:

- (i) grant the petition in part or in its entirety and initiate rulemaking proceedings on the subject matter identified in the granted petition in accordance with the rulemaking procedure set forth in these rules; or
 - (ii) deny the petition in part or in its entirety and provide an explanation for denial in the minutes of the Board meeting or in a separate written statement to be kept in the District's records.
- (6) Nothing in this rule may be construed to create a private cause of action for a decision to accept or deny a petition filed under this rule.

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