

# Lone Star Groundwater Conservation District



## District Rules

As amended, effective November XX, 2014~~May 11, 2010~~

November XX, 2014~~May 11, 2010~~

# Lone Star Groundwater Conservation District

## Table of Contents

\*\*\*\*\*

PREAMBLE .....	<u>21</u>
----------------	-----------

### SECTION 1

DEFINITION, CONCEPTS, AND GENERAL PROVISIONS .....	<u>21</u>
Rule 1.1    Definition of Terms.....	<u>21</u>
Rule 1.2    Authority of District.....	<u>1211</u>
Rule 1.3    Purpose of Rules .....	<u>1211</u>
Rule 1.4    Use and Effect of Rules .....	<u>1211</u>
Rule 1.5    Purpose of District .....	<u>1211</u>
Rule 1.6    Ownership of Groundwater.....	<u>1211</u>
Rule 1.7    Construction.....	<u>1211</u>
Rule 1.8    Methods of Service Under the Rules .....	<u>1312</u>
Rule 1.9    Severability .....	<u>1312</u>
Rule 1.10   Regulatory Compliance .....	<u>1312</u>
Rule 1.11   Computing Time .....	<u>1312</u>
Rule 1.12   Time Limits.....	<u>1413</u>
Rule 1.13   Notification of Rights of Well Owners .....	<u>1413</u>
Rule 1.14   Amending of Rules .....	<u>1413</u>
Rule 1.15   Penalties .....	<u>1413</u>
Rule 1.16   Falsification of Records or Documents .....	14

### SECTION 2

RULES ENFORCEMENT .....	<u>1514</u>
Rule 2.1    Purpose and Policy.....	<u>1514</u>
Rule 2.2    Compliance Monitoring .....	<u>1514</u>
Rule 2.3    Rules Violations.....	<u>1615</u>
Rule 2.4    Notices of Violation .....	<u>1817</u>
Rule 2.5    Show Cause Hearing.....	<u>1918</u>
Rule 2.6    Enforcement Orders .....	<u>2019</u>
Rule 2.7    Demonstrated Repeat Non-Compliance of District Rules .....	<u>2120</u>
Rule 2.8    Non-Compliance Penalties.....	<u>2221</u>
Rule 2.9    Sealing of Wells.....	<u>2322</u>
Rule 2.10   Judicial Relief .....	<u>2423</u>

SECTION 3

PERMITS AND REGISTRATIONS .....	<u>2423</u>
Rule 3.1    General Provisions Applicable to Permits and Registrations .....	<u>2423</u>
Rule 3.2    Transfer of Historic Use Permit and/or Operating Permit .....	<u>2726</u>
Rule 3.3    Application Requirements for all Permits.....	<u>2726</u>
Rule 3.4    Considerations for Granting or Denying a Permit .....	<u>2828</u>
Rule 3.5    Permits Issued by District .....	<u>2928</u>
Rule 3.6    Amendment of Permit.....	<u>2928</u>
Rule 3.7    Completion of Permit Application Required .....	<u>3029</u>
Rule 3.8    Exempt Well Status.....	<u>3029</u>
Rule 3.9    Well Registration .....	<u>3131</u>
Rule 3.10   Authorization for Construction of New Wells.....	<u>3332</u>
Rule 3.11   Operating Permits .....	<u>3433</u>
Rule 3.12   Historic Use Permits .....	<u>3635</u>
Rule 3.13   Aggregation.....	<u>3837</u>
Rule 3.14   Replacement Wells and Substantial Alteration of Existing Wells.....	<u>3837</u>
Rule 3.15   Emergency Permits .....	<u>3938</u>
Rule 3.16   Transfer of Well Ownership .....	<u>4039</u>

SECTION 3A

AWS GROUNDWATER DEVELOPMENT TEST BORES .....	<u>4140</u>
Rule 3A.1  Authorized AWS Groundwater Test Bore Drilling.....	<u>4140</u>
Rule 3A.2  AWS Groundwater Test Bore Drilling Permit Applications.....	<u>4140</u>
Rule 3A.3  AWS Groundwater Test Bore Drilling Permit Term .....	<u>4241</u>
Rule 3A.4  Spacing .....	42
Rule 3A.5  Sealing AWS Test Bores and Reporting Decommissioning .....	<u>4342</u>

SECTION 4

REPORTING REQUIREMENTS.....	<u>4444</u>
Rule 4.1    Purpose and Policy.....	<u>4444</u>
Rule 4.2    Records of Drilling and Pump Installation and Alteration Activity .....	<u>4544</u>
Rule 4.3    Water Production Report .....	<u>4645</u>
Rule 4.4    Groundwater Transport Report.....	<u>4646</u>

SECTION 5

MANAGEMENT ZONES .....	<u>4747</u>
Rule 5.1    Management Zones .....	<u>4747</u>
Rule 5.2    Adjustment of Withdrawal Amount Based on Availability of Groundwater in Management Zone .....	<u>4847</u>
Rule 5.3    When New Operating Permits May be Issued.....	<u>4848</u>

Rule 5.4	Proportional Adjustment.....	<u>4848</u>
----------	------------------------------	-------------

SECTION 6

SPACING AND LOCATION OF WELLS; WELL COMPLETION ..... 5049

Rule 6.1	Spacing and Location of Existing Wells.....	<u>5049</u>
----------	---	-------------

Rule 6.2	Spacing and Location of <del>New</del> Wells .....	<u>5049</u>
----------	--	-------------

<u>Rule 6.3</u>	<u>Gulf Coast Aquifer-Specific Well Spacing, Location, and Tract Size Requirements.....</u>	<u>51</u>
-----------------	---	-----------

<u>Rule 6.4</u>	<u>Catahoula Aquifer-Specific Well Spacing Requirements.....</u>	<u>52</u>
-----------------	--	-----------

Rule 6.5 <del>3</del>	Standards of Completion for All Wells .....	<u>5450</u>
-----------------------	---	-------------

<u>Rule 6.6</u>	<u>Variances to Well Spacing, Location, and Tract Size Requirements.....</u>	<u>54</u>
-----------------	--	-----------

SECTION 7

REGULATION OF WELL OPERATION, PRODUCTION AND MAINTENANCE..... 5850

Rule 7.1	Initial Production Limitations.....	<u>5850</u>
----------	-------------------------------------	-------------

Rule 7.2	Regular Production Limitations.....	<u>5851</u>
----------	-------------------------------------	-------------

Rule 7.3	Open or Uncovered Wells.....	<u>5951</u>
----------	------------------------------	-------------

Rule 7.4	Plugging Water Wells .....	<u>6052</u>
----------	----------------------------	-------------

SECTION 8

TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT..... 6153

Rule 8.1	General Provisions .....	<u>6153</u>
----------	--------------------------	-------------

Rule 8.2	Transport Fee for Exempt Wells; Discharge Under Other Permit.....	<u>6153</u>
----------	---	-------------

SECTION 9

FEES AND PAYMENT OF FEES ..... 6254

Rule 9.1	Water Use Fees .....	<u>6254</u>
----------	----------------------	-------------

Rule 9.2	Application and Other Fees .....	<u>6355</u>
----------	----------------------------------	-------------

Rule 9.3	Groundwater Transport Fee .....	<u>6355</u>
----------	---------------------------------	-------------

Rule 9.4	Returned Check Fee.....	<u>6456</u>
----------	-------------------------	-------------

Rule 9.5	Well Report Deposit .....	<u>6456</u>
----------	---------------------------	-------------

Rule 9.6	Payment of Fees.....	<u>6456</u>
----------	----------------------	-------------

Rule 9.7	Failure of New Permittees to Make Initial Water Use Fee Payment.....	<u>6557</u>
----------	--	-------------

Rule 9.8	Failure to Make Fee Payments.....	<u>6557</u>
----------	-----------------------------------	-------------

SECTION 10

WATER USE FEE REBATE PROGRAM..... 6557

Rule 10.1	General Provisions .....	<u>6557</u>
-----------	--------------------------	-------------

Rule 10.2	Eligibility .....	<u>6658</u>
-----------	-------------------	-------------

SECTION 11



Rule 13.1	Waste Prohibited.....	<u>9083</u>
Rule 13.2	Discharge of Groundwater Into Surface Impoundments.....	<u>9083</u>
Rule 13.3	Conservation Standards for Certain Irrigation Practices .....	<u>9183</u>

SECTION 14

OTHER DISTRICT MANAGEMENT ACTIONS AND DUTIES.....	<u>9285</u>
Rule 14.1 District Management Plan.....	<u>9285</u>

Section 15

APPOINTMENT OF DIRECTORS .....	<u>9385</u>
Rule 15.1 Director Appointments .....	<u>9385</u>
Rule 15.2 Procedure Overview.....	<u>9386</u>
Rule 15.3 Appointment by Form.....	<u>9486</u>
Rule 15.4 Appointment by Ballot.....	<u>9487</u>
Rule 15.5 Miscellaneous Provisions.....	<u>9688</u>

SECTION 16

EFFECTIVE DATE .....	<u>9789</u>
Rule 16.1 Effective Date .....	<u>9789</u>

RULES ADDENDA.....	<u>9890</u>
--------------------	-------------

# **Lone Star Groundwater Conservation District District Rules**

\*\*\*\*\*

## **PREAMBLE**

The Lone Star Groundwater Conservation District (“District”) was created in 2001 by the 77<sup>th</sup> Legislature with a directive to conserve, protect and enhance the groundwater resources of Montgomery County. The boundaries of the District are coextensive with the boundaries of Montgomery County. A confirmation election was held on November 6, 2001, with 73.85 % of the voters casting favorable ballots. The District originally adopted Rules on August 6, 2002.

The District is committed to manage and protect the groundwater resources of Montgomery County and to work with others to ensure a sustainable, adequate, high quality and cost effective supply of water, now and in the future. The Lone Star Groundwater Conservation District will strive to develop, promote, and implement water conservation, augmentation, and management strategies to protect water resources for the benefit of the citizens, economy and environment of Montgomery County. The preservation of this most valuable resource can be managed in a prudent and cost effective manner through conservation, education, management, and permitting. Any action taken by the District shall only be after full consideration and respect has been afforded to the individual property rights of all citizens of Montgomery County.

\*\*\*\*\*

## **SECTION 1**

### **DEFINITION, CONCEPTS, AND GENERAL PROVISIONS**

#### **Rule 1.1      Definition of Terms**

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

- (1) “acre-foot” means the amount of water necessary to cover one acre of land to the depth of one foot, or 325,851 U.S. gallons of water.
  
- (1) “affected person” means, for any application, a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

- (3) “aquifer” means the portions of the Chicot, Evangeline, or Jasper Aquifers located in the District or any other water bearing geologic formation in the District.
- (4) “August 26, 2002” is the date of adoption by the Board of the original District Rules.
- (5) “beneficial use” or “beneficial purpose” means use of groundwater for:
  - (a) agricultural, gardening, domestic (including lawn-watering), stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes;
  - (b) exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals; or
  - (c) any other purpose that is useful and beneficial to the users that does not constitute waste.
- (6) “Board” means the Board of Directors of the District.
- (7) “casing” means a tubular, watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine groundwater to its zone of origin and to prevent the entrance of surface pollutants.
- (8) “column pipe diameter” shall refer to the inside diameter of the pump (discharge) column pipe.
- (9) “completed well,” or a well that has been “completed,” means a well, the construction of which has been completed, with sealed off access of undesirable water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods.
- (10) “deteriorated well” means a well that, because of its condition, will cause or is likely to cause pollution of any water in the District including groundwater.
- (11) “dewatering well” means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.
- (12) “Director” means a person appointed to serve on the Board of Directors of the District.
- (13) “District” means the Lone Star Groundwater Conservation District created in accordance with Section 59, Article XVI, Texas Constitution, Chapter 36, Texas Water Code, and the District Act.
- (14) “District Act” means Act of June 16, 2001, 77<sup>th</sup> Leg., R.S., ch. 1321, 2001 Tex. Gen. Laws 3246, as may be amended from time to time.



- (15) “District office” means the office of the District located in Conroe, Montgomery County, Texas. The location of the District office may be changed from time to time by resolution of the Board.
- (16) “District Rules” means these Rules, as finally adopted by the Board, and all mandatory provisions of the Regulatory Plan.
- (17) “domestic use” means the use of groundwater by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard; for watering of domestic animals; and for water recreation including aquatic and wildlife enjoyment and supplying water for private, residential swimming pools. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold. Domestic use does not include use by or for a public water system. Domestic use does not include water used for open-loop residential geothermal heating and cooling systems, but does include water used for closed-loop residential geothermal systems.
- (18) “effective date” means the most recent date of adoption of these Rules or amendments thereto.
- (19) “emergency permit” means a permit issued by the District for emergency needs, as set forth under Rule 3.16.
- (20) “exempt well” means a new or an existing well that is exempt from permitting under the laws of this State or these Rules and is not required to have an Operating or historic use permit to withdraw water from the aquifer.
- (21) “existing and historic use period” means the time period of January 1, 1992, through August 26, 2002.
- (22) “existing use” means production and beneficial use of groundwater from the aquifer during the existing and historic use period.
- (23) “existing well” means a well that was in existence or for which drilling commenced prior to August 26, 2002.
- (24) “General Manager” The Board may employ a person to manage the District and title this person General Manager. The General Manager, with approval of the Board, may employ all persons necessary for the proper handling of business and operation of the District.
- (25) “groundwater” means water percolating below the surface of the earth.
- (26) “groundwater reservoir” means a specific subsurface water-bearing stratum.

- (27) “groundwater withdrawal amount” means the amount of groundwater from the aquifer, in millions of gallons per annum, that is authorized to be withdrawn under a permit issued by the District.
- (28) “Hearing Body” means the Board, a committee of the Board, and/or a Hearing Examiner serving in a quasi-judicial capacity at a hearing held under Chapter 36, Texas Water Code, and/or these Rules.
- (29) “Hearing Examiner” means a person appointed in writing by the Board to conduct a hearing or other proceeding and who has the authority granted to a Presiding Officer under these Rules, except as that authority may be limited by the Board or pursuant to the appointment.
- (30) “historic use” means production and beneficial use of groundwater from the aquifer during the existing and historic use period.
- (31) “historic use permit” means a permit required by the District for the operation of any non-exempt, existing water well or well system that produced groundwater during the existing and historic use period.
- (32) “impermeable” means having a coefficient of permeability of  $1 \times 10^{-7}$  centimeters per second or less.
- (33) “impounded irrigation water” means groundwater produced from a well that is discharged into or otherwise held in a surface impoundment for subsequent withdrawal and use for irrigation or any other purpose.
- (34) “landowner” means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on the land surface.
- (35) “Large Volume Groundwater Users” shall have the same meaning as provided for in the Regulatory Plan.
- (36) “leachate well” means a well used to remove contamination from soil or groundwater.
- (37) “livestock” means, in the singular or plural, grass or plant-eating, single or cloven-hooved mammals raised in an agricultural setting for subsistence, profit or for its labor or to make produce such as food or fiber, including cattle, horses, mules, asses, sheep, goats, llamas, alpacas, and hogs, as well as species known as ungulates that are not indigenous to this State from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families, but does not mean a mammal defined as a game animal in Section 63.001, Parks and Wildlife Code, or as a fur-bearing animal in Section 71.001, Parks and Wildlife Code, or any other indigenous mammal regulated by the Texas Department of Parks and Wildlife as an endangered or threatened species.
- (38) “livestock use” means the use of groundwater for the open-range watering of livestock.

- (39) “management zone” means one or more of the zones into which the Board may divide the District following the completion of the District Management Plan as set forth under Section 4.
- (40) “Maximum Historic Use” (MHU) means the amount of groundwater from the aquifer as determined by the District that, unless proportionally adjusted or otherwise altered by the District, an applicant for a historic use permit is authorized to withdraw equal to the greater of the following, as may be applicable:
- (a) for an applicant who has beneficial use during the existing and historic use period for a full calendar year, the applicant’s actual maximum beneficial use of groundwater from the aquifer excluding waste during any one full calendar year of the historic use period; or
  - (b) for an applicant who has beneficial use during the existing and historic use period but due to the applicant’s activities not having been commenced and in operation for the full final calendar year of the existing and historic use period the applicant does not have beneficial use for a full calendar year. The applicant’s extrapolated maximum beneficial use will be calculated as follows: the amount of groundwater that would normally have been placed to beneficial use without waste by the applicant for the last full calendar year during the existing and historic use period for the applied-for purpose had the applicant’s activities been commenced and in operation for the full final calendar year during the existing and historic use period.
- (41) “meter” or “measurement device” means a water flow measuring device that can measure within plus or minus five percent (+/- 5%) of accuracy the instantaneous rate of flow and record the amount of groundwater produced or transferred from a well or well system during a measure of time.
- (42) “miscellaneous impoundment losses” means the exfiltration losses or percolation losses of water through the bottom and sides of a surface impoundment, excluding evaporative losses.
- (43) “monitoring well” means a well installed to measure some property of the groundwater or the aquifer that it penetrates, and does not produce more than 5,000 gallons per year.
- (44) “new well” means a well for which drilling commenced on or after August 26, 2002.
- (45) “non-exempt well” means an existing or a new well that does not qualify for exempt well status under the laws of this State or these Rules.
- (46) “Open Meetings Act” means Chapter 551, Texas Government Code, as it may be amended from time to time, also known as the “Texas Open Meetings Act”.
- (47) “Operating Permit” means a permit required by the District for drilling, equipping, completing, substantially altering, operating, or producing groundwater from any non-

exempt water well for which a historic use permit or amendment thereto to include such well has not been issued by the District or timely applied for and awaiting District action.

- (48) “party” means a person who is an automatic participant in a proceeding before the District as set forth under Rule 10 or a person who has been designated as an affected person and admitted to participate in a contested case before the Board, except where the usage of the term clearly suggests otherwise.
- (49) “person” means an individual, corporation, limited liability company, organization, government, governmental subdivision, agency, business trust, estate, trust, partnership, association, or other legal entity.
- (50) “pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any groundwater in the District that renders the groundwater harmful, detrimental, or injurious to humans, animal life, vegetation, property, or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable use.
- (51) “poultry” means, in the singular or plural, a member of the avian species that is raised in an agricultural setting for subsistence or profit or to make produce such as food, eggs, feathers, or pelts, including chickens, turkeys, non-migratory ducks, guineas, and other domestic or non-migratory fowl, but does not mean any bird that is considered wild, as defined in section 1.101 of the Parks and Wildlife Code. The term also does not mean a bird defined by section 64.001 of the Parks and Wildlife Code as a “game bird” or any other indigenous bird regulated by the Texas Department of Parks and Wildlife as an endangered or threatened species.
- (52) “poultry use” means the use of groundwater for the watering of poultry.
- (53) “Presiding Officer” means the President, Vice-President, Secretary, or other Board member presiding at any hearing or other proceeding or a Hearing Examiner appointed by the Board to conduct or preside over any hearing or other proceeding.
- (54) “production” or “producing” means the act of extracting groundwater from an aquifer by pumping or other method.
- (55) “Public Information Act” means Chapter 552, Texas Government Code, as it may be amended from time to time.
- (56) “public water supply well” means a well that produces the majority of its water for use by a public water system.
- (57) “public water system” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water in 30 Texas Administrative Code, Section 290.38. Such a system must have at least fifteen service connections or serve at least

twenty-five individuals at least 60 days out of the year, or utilize 9,125,000 or more gallons of water per year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than fifteen connections or less than twenty-five individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are fifteen or greater or if the total number of individuals served by the combined systems total twenty-five or greater at least 60 days out of the year, or utilize 9,125,000 or more gallons of water per year. Without excluding other meanings of the terms “individual” or “served,” an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

- (58) “pump” means any facility, device, equipment, material, or method used to obtain water from a well.
- (59) “Qualifying Major Violation” means a violation listed in District Rule 2.3(a) that has been made the subject of a written notice of violation issued under District Rule 2.4(b), and has not been dismissed by the Board following a formal protest.
- (60) “registration” means a well owner providing certain information about a well to the District for the District's records, as more particularly described under Rule 3.9.
- (61) “Regulatory Plan” means the District Regulatory Plan, which is incorporated herein by reference as a rule of the District and which sets forth specific regulations or policies related to groundwater management within the boundaries of the District or within a particular management zone, including without limitation the delineation of management zones and the establishment of proportional adjustment regulations or other regulations adopted to conserve groundwater or facilitate the use of surface water within the District.
- (62) “Respondent” shall mean a person to which a notice of violation has been directed, or who is the subject of an enforcement order issued by the Board, and who has submitted a request for a contested case hearing on the matter under Rule 10.5.1.
- (63) “Rule” or “Rules” means rule or Rules of the District.
- (64) “Small Volume Groundwater Users” means all persons who do not meet the definition of Large Volume Groundwater Users.
- (65) “subsidence” means the lowering in elevation of the surface of the land caused by the withdrawal of groundwater from the aquifer.
- (66) “substantially alter” or “substantial alteration” with respect to the size or capacity of a well or pump means to increase the size of the inside diameter of the pump discharge column

pipe of a well in any way, to increase by modification or replacement the maximum designed production capability of a pump or pump motor, or to modify the depth or diameter of a well bore.

- (67) “surface impoundment” means an artificially dug or natural occurring hole, pond, lake, or other land surface depression, including without limitation an impounded stream or other watercourse, used for holding groundwater produced from a non-exempt well.
- (68) “swimming pool” means, in the singular or plural, an artificial basin, chamber or tank, constructed with a complete lining of impermeable material, that is designed to hold water intended for swimming.
- (69) “tamper” means to interfere with, alter, or manipulate in a manner that undermines the accuracy, integrity, functionality or intended purpose of the thing described. Activity conducted in strict accordance with District Rule 9.5 does not constitute tampering.
- (70) “transfer” means a change in a permit or application for a permit or a change in a registration as follows, except that the term “transfer” shall have its ordinary meaning as read in context when used in other contexts:
- (a) ownership;
  - (b) the person authorized to exercise the right to make withdrawals and place the groundwater to beneficial use;
  - (c) point of withdrawal;
  - (d) purpose of use;
  - (e) place of use; or
  - (f) maximum rate of withdrawal.
- (71) “Verification Period” means the period of time from January 1, 2003, to January 1, 2005, during which a historic user shall be required to meter and report to the District their groundwater production and during which such users may amend their historic use permit applications.
- (72) “waste” means one or more of the following:
- (a) withdrawal of groundwater from the aquifer at a rate and in an amount that causes or threatens to cause an intrusion into the aquifer unsuitable for agriculture, gardening, domestic, stock raising, or other beneficial purposes;
  - (b) the flowing or producing of water from the aquifer if the water produced is not used for a beneficial purpose;

- (c) the escape of groundwater from the aquifer to any other reservoir or geologic stratum that does not contain groundwater;
  - (d) pollution or harmful alteration of groundwater in the aquifer 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 road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or other order issued by the Texas Commission on Environmental Quality under Chapters 11 or 26 of the Texas Water Code;
  - (f) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge;
  - (g) for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205, Texas Water Code;
  - (h) operating a deteriorated well;
  - (i) drilling a well within the boundaries of the District without a required permit;
  - (j) operating a well within the boundaries of the District without a required permit;
  - (k) producing groundwater in violation of District Rule 6.2(b) or (c); or
  - (l) producing groundwater in violation of any District rule governing the withdrawal of groundwater through production limits on wells, managed depletion, or both.
- (73) “well” means any artificial excavation located within the boundaries of the District dug or drilled for the purpose of exploring for or withdrawing groundwater from the aquifer.
- (74) “well operator” means the person who operates a well or well system.
- (75) “well owner” means the person who owns a possessory interest in:
- (a) the land upon which a well or well system is located or to be located;
  - (b) the well or well system; or
  - (c) the groundwater withdrawn from a well or well system.

- (76) “well system” means a well or group of wells tied to the same distribution system.
- (77) “withdraw” means the act of extracting or producing groundwater by pumping or other method.
- (78) “year” means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.



## **Rule 1.2 Authority of District**

The Lone Star Groundwater Conservation District is a political subdivision of the State of Texas organized and existing under Section 59, Article XVI, Texas Constitution, Chapter 36, Texas Water Code, and the District Act.

## **Rule 1.3 Purpose of Rules**

These Rules are adopted under the authority of Section 36.101, Texas Water Code, for the purpose of conserving, preserving, protecting, and recharging groundwater in the District in order to prevent subsidence, prevent degradation of water quality, prevent waste of groundwater, and to carry out the powers and duties of Chapter 36, Texas Water Code.

## **Rule 1.4 Use and Effect of Rules**

These Rules are used by the District in the exercise of the powers conferred on the District by law and in the accomplishment of the purposes of the law creating the District. 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 will they, or any part therein, be construed as a limitation or restriction upon the District to exercise powers, duties and jurisdiction conferred by law.

## **Rule 1.5 Purpose of District**

The purpose of the District is 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 the withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution.

## **Rule 1.6 Ownership of Groundwater**

The ownership and rights of the owners of land within the District, and their lessees and assigns, in groundwater are hereby recognized, and nothing in Chapter 36, Texas Water Code, shall be construed as depriving or divesting those owners or their lessees and assigns of that ownership or those rights, except as those rights may be limited or altered by these Rules.

## **Rule 1.7 Construction**

A reference to a title or chapter without further identification is a reference to a title or chapter of the Texas Water Code. A reference to a section or rule without further identification is a reference to a section or rule in these Rules. Construction of words and phrases is governed by the Code

Construction Act, Subchapter B, Chapter 311, Texas Government Code. The singular includes the plural, and the plural includes the singular. The masculine includes the feminine, and the feminine includes the masculine.

### **Rule 1.8 Methods of Service Under the Rules**

Except as provided in these Rules for notice of hearings on permit applications or otherwise, any notice or document required by these Rules to be served or delivered may be delivered to the recipient or the recipient's authorized representative in person, by agent, by courier receipted delivery, by certified or registered mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 p.m. (as shown by the clock in the District's office in Conroe, Texas) on the date which it is due. Service by mail is complete upon deposit in a post office depository box or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer commencing after 5:00 p.m. (as shown by the clock in the District's office in Conroe, Texas) shall be deemed complete 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 period of time after service, three days will be added to the prescribed period. If service by other methods has proved unsuccessful, service will be deemed complete upon publication of the notice or document in a newspaper of general circulation in the District or by such other method approved by the General Manager.

### **Rule 1.9 Severability**

If a provision contained in these Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability does not affect any other Rules or provisions of these Rules, and these Rules shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in these Rules.

### **Rule 1.10 Regulatory Compliance**

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

### **Rule 1.11 Computing Time**

In computing any period of time prescribed or allowed by these Rules, order of the Board, or any applicable statute, the day of the act, event, or default from which the designated period of time begins to run is not included, but the last day of the period so computed is 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 neither a Saturday, Sunday, or legal holiday.

### **Rule 1.12 Time Limits**

Applications, requests, or other papers or documents required or permitted to be filed under these Rules or by law must be received for filing in the District office within the time limit for filing, if any. The date of receipt, not the date of posting, is determinative of the time of filing. Time periods set forth in these Rules shall be measured by calendar days, unless otherwise specified.

### **Rule 1.13 Notification of Rights of Well Owners**

As soon as practicable after August 26, 2002, the District shall publish notice to inform the well owners of the District's existence, the well owner's right to make a claim of historic use, and the management authority of the District.

### **Rule 1.14 Amending of Rules**

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

### **Rule 1.15 Penalties**

- (a) All penalties established by these Rules for the breach of any Rule of the District, including non-compliance penalties, late payment penalties, and disincentive penalties, have been set by the Board based on the authority delegated to the District through Section 36.102(b) of the Texas Water Code. In arriving at each penalty set by these Rules, the Board considered the reasonableness of the penalty in conjunction with the District's express obligation to enforce its Rules and otherwise carry out the powers and duties of the District Act and Chapter 36 of the Texas Water Code.
- (b) No single penalty set by these Rules may accrue in an amount that exceeds \$10,000.00 per violation per day.
- (c) A violation occurs when a person bound by these Rules fails to meet the obligations imposed on the person by Chapter 36 of the Texas Water Code, the District Act, or these Rules. For obligations that impose a continual duty on a person, each day of a continuing violation constitutes a separate violation for purposes of Subsection (b) of this Rule.

### **Rule 1.16 Falsification of Records or Documents**

Falsification of any document or record submitted to the District pursuant to a requirement under the District Rules is hereby prohibited and shall be subject to enforcement under Section 2 as a major violation of these Rules.

## SECTION 2

### RULES ENFORCEMENT

#### **Rule 2.1      Purpose and Policy**

The District's ability to effectively and efficiently manage the limited groundwater resources of Montgomery County depends entirely upon the adherence to the Rules promulgated by the Board to carry out the District's purposes. Those purposes include providing for the conservation, preservation, protection and recharge of the groundwater resources of Montgomery County, to protect against subsidence and degradation of groundwater quality, and to prevent waste of these important resources. Without the ability to enforce these Rules in a fair, effective manner, it would not be possible to accomplish the District's groundwater management purposes. The enforcement Rules and procedures that follow are consistent with the responsibilities delegated to the District by the Texas Legislature through the District Act, and through Chapter 36 of the Texas Water Code.

#### **Rule 2.2      Compliance Monitoring**

- (a) The District, through its officers, employees or agents, is entitled to enter at reasonable times any public or private property within the boundaries of the District for the following purposes:
  - (1) to inspect or otherwise investigate conditions relating to the quality of water in the State; and
  - (2) to determine whether the purpose of these Rules and of Chapter 36, Texas Water Code, and any permit or order lawfully issued by the District pursuant to the same, is being met and whether the appropriate persons are complying with all requirements thereof.
  
- (b) District officers, employees or agents acting under the authority provided by this Rule shall:
  - (1) at all times observe the establishment's rules and regulations concerning safety, internal security, and fire protection;
  - (2) notify any occupant or management of their presence upon entry; and

- (3) exhibit proper credentials upon entry.
- (c) For properties secured by measures that require proper identification and clearance before entry into its premises, the occupant, management, or possessor of the property shall make necessary arrangements with all appropriate personnel so that, upon demonstration of identification, District officers, employees or agents will be permitted to enter the property without delay for purposes of carrying out their official District duties.
- (d) The requirement in Subsection (b)(1) of this Rule that District officers, employees or agents observe at all times the establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the District's duty to observe the appropriate rules and regulations during any inspection conducted pursuant to this Section.
- (e) No person shall:
  - (1) cause or substantially contribute to any unreasonable delay in allowing District officers, employees, or agents access to property within the District for purposes of carrying out Subsection (a) of this Rule, or
  - (2) otherwise unreasonably interfere with any District inspection conducted pursuant to Subsection (a) of this Rule.

### **Rule 2.3 Rules Violations**

- (a) The following acts and omissions each separately constitute a major violation of the District Rules:
  - (1) for each well operating pursuant to a valid permit issued by the District, in addition to the overproduction penalty provided for in Rule 9.1(c), the withdrawal of groundwater from a validly permitted, non-exempt well in an amount that exceeds the authorized permitted amount by ten percent (10%) or greater [District Rules 3.1(k)];
  - (2) failure to timely register a non-exempt well as required by the District's Rules [District Rules 3.9];
  - (3) producing any amount of groundwater from a non-exempt well without first having obtained a valid groundwater production permit or permit amendment issued by the District [District Rules 3.1(a)];
  - (4) drilling or operating a non-exempt well without first obtaining all requisite permits for such activity from the District [District Rules 3.1(a)];
  - (5) drilling an exempt well without first obtaining the required authorization from the District [District Rules 3.1(a), 3.10];

- (6) substantially altering a well without first receiving from the District the required express authorization for the alterations made [District Rules 3.1(a), 3.14];
- (7) the failure to maintain at all times a properly functioning and calibrated meter installed and operational on a non-exempt well, where such a requirement is imposed by these Rules or by order of the District [District Rules 11.1];
- (8) tampering with any meter installed, or required to be installed, on any well in the District [District Rules 11.8];
- (9) tampering with, removing, or in any other way violating the integrity of the seal on a well sealed by the District [District Rules 2.9(c)];
- (10) withdrawing or attempting to withdraw water from a sealed well [District Rules 2.9(d)];
- (11) failure to limit or suspend groundwater production in accordance with any applicable Rules or Orders of the District [District Rules 3.1(n), 5.2];
- (12) the failure to remit all water use fees owed to the District within 60 days after the date any such fees are due pursuant to the terms of these Rules [District Rules 9.8(b)];
- (13) falsification of any documents or records submitted to the District in response to requirements of the District Rules [District Rules 1.16];
- (14) failure to plug or cap an abandoned or deteriorated well in a manner and within the time limits prescribed by law [District Rules 7.4(c)];
- (15) failure to close or cap an open or uncovered well in accordance with District Rules and all other applicable standards [District Rules 7.3];
- (16) causing or substantially contributing to the unreasonable delay, obstruction or interference of any District effort to exercise its duties under District Rule 2.2 [District Rules 2.2(d)];
- (17) engaging in any conduct that constitutes waste [District Rules 13.1];
- (18) the failure to file with the District a Groundwater Transportation Report by March 1st of the calendar year in which it is due [District Rules 4.4(c)];
- (19) the failure to file with the District a water production report by March 1st of the calendar year in which it is due [District Rules 4.3(c)];
- (20) the withdrawal for subsequent use of impounded water without measuring and recording at all times all such withdrawn volumes using a properly installed,

functioning and calibrated flow measurement device, or failure to comply with all calibration testing, installation, notification, and certification requirements [District Rules 13.2];

- (21) the failure to file with the District a true and correct copy of the log required under District Rule 13.2(e) by March 1<sup>st</sup> of the calendar year in which it is due [District Rules 13.2(h)];
  - (22) the incursion of any three minor violations of the District Rules within a period of three consecutive years—for purposes of this subsection only, a minor violation is incurred when a person receives notice of such by the General Manager by any method listed in District Rule 2.4; and
  - (23) any other act or omission not listed in this subsection that is determined by order or resolution of the Board to constitute a major violation.
- (b) The following acts and omissions each separately constitute a minor violation of the District Rules:
- (1) drilling a well at any location on the property identified in the registration or permit other than where authorized by these Rules or by the terms of the applicable District permit [District Rules 6.2(b)];
  - (2) the failure to timely file with the District each well report required to be completed [District Rules 4.2(c)];
  - (3) for each well operating pursuant to a valid permit issued by the District, the withdrawal of groundwater over the permitted term in an amount that exceeds the authorized permitted amount by less than ten percent (10%) [District Rules 3.1(k)];
  - (4) all other acts or omissions that both:
    - (A) constitute violations of these Rules; and
    - (B) do not qualify as major violations under District Rule 2.3(a).

#### **Rule 2.4 Notices of Violation**

Whenever the General Manager determines that any person has violated or is violating any provision of the District's Rules, including the terms of any permit or order issued by the District, the General Manager may use any of the following means of notifying the person or persons of the violation:

- (a) Verbal notice of violation: The General Manager, or members of her/his staff or agents of the District acting on behalf of the General Manager, or the Board of Directors, may inform the person of the violation by telephone by speaking or attempting to speak to the

appropriate person to explain the violation and the steps necessary to satisfactorily remedy the violation. The information received by the General Manager through this informal notice concerning the violation will be documented 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 enforcement action, without first providing notice under this subsection.

- (b) **Written notice of violation:** The General Manager may inform the person of the violation through a written notice of violation issued pursuant to this Rule. Each notice of violation issued hereunder shall explain the basis of the violation, identify the Rule, permit term, and order term that has been violated or is being violated, and list specific required actions that must be satisfactorily completed—which may include the payment of applicable civil penalties—to address each violation raised in the notice. Notices of violation issued hereunder shall be tendered by a delivery method that complies with District Rule 1.8. Nothing in this Rule subsection shall limit the authority of the District to take action, including emergency actions or any other enforcement action, without first issuing a notice of violation.
- (c) **Compliance meeting:** The General Manager may hold a meeting with any person whom the General Manger believes to have violated, or to be violating, a District Rule, or a term of any District permit or order, to discuss each such violation and the steps necessary to satisfactorily remedy each such violation. The information received by the General Manager through any meeting conducted pursuant to this Rule subsection concerning the violation will be documented and will be kept on file with the District. Nothing in this Rule subsection shall limit the authority of the District to take action, including emergency actions or any other enforcement action, without first conducting a meeting under this subsection.

## **Rule 2.5      Show Cause Hearing**

- (a) Upon recommendation of the General Manager to the Board of Directors 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, or any term of a District permit or order, to appear before the Board of Directors at a public meeting called for such purpose and show cause why a proposed enforcement action, including without limitation permit suspension and the initiation of a suit in a court of competent jurisdiction, should not be pursued by the District against the person or persons made the subject of the show cause order.
- (b) A show cause order issued under Subsection (a) of this Rule shall be served on each Respondent named in the order and shall include:
  - (1) the time, place, and nature of the hearing;
  - (2) the proposed enforcement action;
  - (3) a short, plain statement of the basis of each asserted violation;



- (4) the Rule, permit term, or order term that the District believes has been violated or is being violated; and
  - (5) a request that the person cited duly appear and show cause why the proposed enforcement action should not be taken.
- (c) An order issued under Subsection (a) shall be served on each Respondent by depositing the same with the United States Postal Service for delivery by certified mail at least 20 days before the date of the ordered hearing.
  - (d) All documents that a Respondent intends to rely upon in support of his position at the hearing must be submitted to the District no later than 5 days prior to the date of the hearing. No documents submitted after this deadline will be considered by the Board, unless good cause for their untimely filing is shown.
  - (e) 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 so cited fails to appear and show cause why an enforcement action should not be pursued.
  - (f) Nothing in this Rule shall limit 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 holds a hearing under this section.

## **Rule 2.6      Enforcement Orders**

- (a) Consent orders: The General Manager is hereby authorized to enter into consent orders, assurances of voluntary compliance, or other similar orders establishing a voluntary compliance agreement with any person whom the General Manager believes is responsible for non-compliance of any provision of the District's Rules or any term of a District permit or order. Such orders must be signed by all parties agreeing to the terms. Orders entered into under this subsection shall have the same force and effect as a final order of the District.
- (b) Compliance orders: When the Board determines that a person has violated or is violating any provision of the District's Rules, or any term of a District permit or order, the Board may issue a compliance order directing the person or persons named in the order to attain full compliance within the time specified in the order. If each person named in the order does not come into full compliance within the allotted time, additional enforcement action may result, including permit suspension or revocation. Compliance orders issued pursuant to this subsection may also contain other requirements to address the violation or violations at issue, including additional monitoring requirements and management practices designed to reduce the likelihood of future similar recurring violations. A compliance order does not release any person of liability for any violation of any provision of the District's Rules, or any term of a District permit or order, or for continuing violations of the same. Issuance

of a compliance order under this subsection shall not be a prerequisite to any District action, including without limitation permit suspension and the institution of a lawsuit in a court of competent jurisdiction, against any person for violations of the District's Rules, or any term of a District permit or order.

- (c) Cease and desist orders: When the Board determines that a person has violated or is violating any provision of the District's Rules, or any term of a District permit or order, or that the person's past violations are likely to reoccur, the Board may issue an order directing the person to cease and desist all such violations by suspending the person's groundwater production permit, sealing all affected wells, and directing the person to take any appropriate action, including to immediately comply with all requirements identified in the order, to take all appropriate remedial or preventative action to satisfactorily address a continuing or threatened violation—including halting operations that require the use of groundwater—and to immediately stop illegal or unauthorized withdrawals of groundwater. Issuance of a cease and desist order under this subsection shall not be a prerequisite to any District action, including the institution of a lawsuit in a court of competent jurisdiction, against any person for violations of the District's Rules, or any term of a District permit or order.

#### **Rule 2.7 Demonstrated Repeat Non-Compliance of District Rules**

- (a) For purposes of this Rule, a person has demonstrated repeat non-compliance of the District's Rules upon the commission of a second qualifying major violation within a period of three consecutive years.
- (b) Notwithstanding a provision of any other District Rule to the contrary, until compliance has been demonstrated pursuant to Subsection (e) below, persons who have demonstrated repeat non-compliance under Subsection (a):
- (1) shall not be eligible to receive a water use fee rebate under District Rule 10.1;
  - (2) shall not be eligible for installment option payments under District Rule 9.6(b); and
  - (3) shall be required to report water use quarterly by the 1st day of April, July, October, and January, on a form made available by the District for such purposes.
- (c) Persons who commit one Qualifying after they have demonstrated repeat non-compliance under Subsection (a), but before the conclusion of the time period provided for in Subsection (e), shall be subject to a penalty of three times the water use fee rate established by the District under Rule 9.1 for all water authorized to be produced by the terms of each applicable permit.
- (1) The penalties incurred under this subsection shall be assessed in addition to any penalty provided for in Rule 2.8.

- (2) Payment of all penalties incurred under this subsection shall be submitted to the District in the manner provided for payment of water use fees under Section 9.
- (3) All penalties incurred under this subsection shall be assessed in addition to all other water use fees due and owing to the District for the same permit or permits.
- (d) Persons who commit two or more qualifying major violations after they have demonstrated repeat non-compliance under Subsection (a), but before the conclusion of the time period provided for in Subsection (e), shall be required to show cause, pursuant to Rule 2.5, why all applicable permits shall not be suspended. All action taken by the Board under this subsection shall be in addition to all other penalties incurred pursuant to applicable Rules.
- (e) Persons will be considered to have demonstrated repeat non-compliance until the conclusion of the 24th consecutive month with no Qualifying Major Violation committed.

**Rule 2.8 Non-Compliance Penalties**

- (a) Except as otherwise provided for in these Rules, penalty ranges for violations of the District's Rules shall be as follows:

Penalty Schedule		
	Minor Violations	Major Violations
Small Volume Groundwater Users	\$50 - \$100	\$125 - \$1,000
Large Volume Groundwater Users	\$75 - \$275	\$300 - \$5,000

- (1) For purposes of the penalties listed in this subsection, a person who commits a second violation within the same category of violations (Minor / Major) within the three previous years shall be assessed a penalty for that violation within the corresponding range listed in Subsection (a) plus an additional fifty percent (50%) of the base penalty amount.
- (2) For purposes of the penalties listed in this subsection, a person who commits a third violation within the same category of violations (Minor / Major) within the three previous years shall be assessed two times the penalty for that violation within the corresponding range listed in Subsection (a).
- (b) Penalty ranges for persons who are currently subject to the compliance measures provided for in Rule 2.7(b) shall be as follows, unless otherwise specified in these Rules:

Penalty Schedule – Demonstrated Repeat Non-compliance		
	Minor Violations	Major Violations
Small Volume Groundwater Users	\$100 - \$275	\$300 - \$5,000
Large Volume Groundwater Users	\$250 - \$500	\$1,000 - \$10,000

- (1) For purposes of the penalties for minor violations listed in this subsection, a person who commits a minor violation before demonstrating compliance pursuant to Rule 2.7(e) shall be assessed a penalty for that violation within the corresponding range listed in Subsection (b) of this Rule plus an additional one hundred percent (100%) of the base penalty amount.
  - (2) For purposes of the penalties for minor violations listed in this subsection, a person who commits a second minor violation before demonstrating compliance pursuant to Rule 2.7(e) shall be assessed a penalty for that violation within the corresponding range listed in Subsection (b) of this Rule plus an additional one hundred-fifty percent (150%) of the base penalty amount.
- (c) In determining the penalty amount to be assessed within the ranges presented in Subsections (a) and (b) of this Rule, the District shall consider the following factors:
- (1) the severity or seriousness of the violation;
  - (2) whether and how quickly the Respondent acted in good faith to avoid or mitigate the actions that led to the violation, or to correct or remediate any adverse impact of the actions that serve as the basis for the violation after the violation was committed;
  - (3) whether the Respondent has committed similar violations in the past; and
  - (4) whether the proposed penalty is sufficient to deter future violations.

**Rule 2.9      Sealing of Wells**

- (a) The District may seal wells that are prohibited from withdrawing groundwater within the District when the Board determines, pursuant to Rule 2.6(c), that such action is reasonably necessary to assure that a well is not operated in violation of these Rules or any order of the Board.
- (b) A well ordered sealed under this Section shall be sealed by the installation of a seal or tag on the pump, the pump's electrical panel, the meter, or other conspicuous location by authorized District personnel to indicate that the well has been sealed by order of the District. Other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

- (c) No person shall remove or otherwise tamper with, nor shall any well owner allow to be removed or otherwise tampered with, a tag or any other seal installed pursuant to this Section.
- (d) No person shall produce, nor shall any well owner allow to be produced, any groundwater from a well that has been sealed pursuant to this Section.

**Rule 2.10 Judicial Relief**

- (a) Notwithstanding any District Rule to the contrary, if it appears to the Board that a person has violated, is violating, or is threatening to violate any provision of Chapter 36, Water Code, the District Act, these Rules, any Order or Resolution of the Board, or any term of a District permit, the Board may institute and prosecute a suit in the name of the District for all relief made available by the District Act and by the general law.
- (b) If the District prevails in any suit to enforce its Rules, the District may seek, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court.

**SECTION 3**

**PERMITS AND REGISTRATIONS**

**Rule 3.1 General Provisions Applicable to Permits and Registrations**

- (a) No person may:
  - (1) drill a well without first obtaining from the District a permit or other express written authorization, or unless otherwise expressly authorized by these Rules;
  - (2) alter the size of a well or pump such that it would bring that well into the jurisdiction of the District, or would disqualify the well from a permitting exemption, without first obtaining a permit from the District;
  - (3) operate a non-exempt well without first obtaining a permit from the District;
  - (4) substantially alter the size of a well or pump without first obtaining a permit, permit amendment, or other express written authorization from the District; or

- (5) produce water from any non-exempt well without first having obtained from the District a valid Operating Permit, historic use permit, ~~temporary permit~~, emergency permit, or amendment thereto, that authorizes the withdrawal of the amount produced.
- (b) A violation of any of the prohibitions in Subsection (a) of this Rule occurs on the first day that the prohibited drilling, alteration, operation or production begins and continues each day thereafter as a separate violation until appropriate authorization from the District is formally granted by the Board.
- (c) A permit confers only the right to use the permit under the provisions of these Rules and according to its terms. A permit's terms may be modified or amended pursuant to the provisions of these Rules. A permit does not become a vested right of the permit holder. The Board may revoke or amend a permit in accordance with these Rules when reasonably necessary to accomplish the purposes of the District, the District's Rules, Management Plan, Regulatory Plan, or Chapter 36, Texas Water Code.
- (d) An application pursuant to which a permit or registration has been issued is incorporated in the permit or registration, and the permit or registration is granted on the basis of and contingent upon the accuracy of the information supplied in that application. A finding that false information has been supplied in the application may be grounds to refuse or deny the application or for immediate revocation of the permit or registration.
- (e) Violation of a permit's terms, conditions, requirements, or special provisions is a violation of these Rules and shall be grounds for enforcement.
- (f) For any applications submitted to the District and for which the applicant has requested in writing that such applications be processed concurrently, the District will process and the Board will consider such applications concurrently according to the standards and Rules applicable to each.
- (g) All permits issued by the District are subject to the District's Rules, proportional adjustment regulations, Management Plan, and Regulatory Plan.
- (h) Permit term and renewal:
- (1) Term: Historic use and Operating Permits issued by the District shall be valid for a term set by the District or until revoked or amended, which term shall not exceed five years from the date of issuance.
- (2) Notice and application for renewal: ~~No later than October 1~~ ~~At least 90 days~~ prior to the ~~date of~~ expiration of a permit, the District shall provide the permit holder notice that an application for renewal is due, along with a renewal application. Renewal applications shall be submitted to the District no later than ~~60 days~~ November 1 prior to the ~~date of~~ expiration of the permit.

- (3) Action on applications for renewal: An application for renewal shall be considered automatically renewed if the District does not issue notice to the contrary to the applicant within 60 days of filing the application for renewal and all appropriate fees. The General Manager may rule on any renewal application 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 a renewal application on any reasonable ground, including, but not limited to, a determination that the applicant is currently in violation of these Rules or Chapter 36, Texas Water Code, or that the applicant has a previously unresolved violation on record with the District. The General Manager shall inform the Board of any renewal applications granted at the next scheduled 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. The General Manager may authorize an applicant for a permit renewal to continue operating under the conditions of the prior permit, subject to any changes necessary under proportional adjustment regulations, these Rules, the Regulatory Plan, or the District Management Plan, for any period in which the renewal application is the subject of a contested case hearing.
- (4) Appeal of District's ruling: Any applicant may appeal the General Manager's ruling in the manner provided for in Rule 12.5.
- (i) By undertaking any permitted activity once a permit has been issued by the Board, the holder of each permit issued by the District binds itself to adhere at all times to the terms and conditions listed within each respective permit.
- (j) The District may amend any permit, in accordance with these Rules, to accomplish the purposes of the District Rules, Management Plan, Regulatory Plan, the District Act, or Chapter 36, Texas Water Code.
- (k) No person may withdraw, or cause to be withdrawn, groundwater from within the District's boundaries in an amount that exceeds the amount specifically authorized by these Rules, the Regulatory Plan, or in any valid permit issued by the District.
- (1) Persons withdrawing, or causing to be withdrawn, groundwater in an amount that exceeds the specific amount authorized for withdrawal in the applicable District permit by ten percent (10%) or greater of the authorized amount shall be subject to a non-compliance penalty for major violations and may be subject to additional enforcement measures as provided for in these Rules or as determined by the Board.
- (2) Persons withdrawing, or causing to be withdrawn, groundwater in an amount that exceeds the specific amount authorized for withdrawal in the applicable District permit by less than ten percent (10%) of the authorized amount shall be subject to a non-compliance penalty for minor violations and may be subject to additional enforcement measures as provided for in these Rules or as determined by the Board.

- (l) A violation of Subsection (k) of this Rule occurs on the day that the permitted maximum annual production limit is first exceeded in a calendar year of authorized production, and continues thereafter as a separate violation for each day of continued production during the permitted term, until such time that additional production authorization is granted by the Board.
- (m) The penalties provided for in Subsection (k) of this Rule will be assessed in addition to the overproduction disincentive penalty provided for in Rule 9.1(c).
- (n) Any groundwater withdrawals made from a non-exempt well after the applicable permit has been suspended by the Board, in an order issued pursuant to Rule 2.6(c), will be considered to be withdrawals made from an unpermitted, non-exempt well for purposes of Rules enforcement.

### **Rule 3.2 Transfer of Historic Use Permit and/or Operating Permit**

- (a) The District may authorize a permittee to transfer the permittee's historic use permit or Operating Permit and/or wells or groundwater allocation under such permits only within the same management zone, subject to and as provided under these Rules and the Regulatory Plan. If the transferor retains any interest in the permit, the District may issue a second permit to the transferee that contains the benefits severed and transferred and may amend the permit of the transferor accordingly, along with the conditions imposed by the District and these Rules on each. The District may disallow a partial transfer of the right to produce groundwater under a permit in increments of less than 10,000 gallons per year and may round the partial transfer to the nearest 10,000 gallons increment notwithstanding the terms of the transfer.
- (b) If the withdrawal authorized for multiple wells has been aggregated under one permit pursuant to Rule 3.13 and one or more wells under the permit will be transferred, the District will allocate a pro rata share of the total authorized aggregated production to each well transferred unless the conveyance documents transferring the wells clearly provide for a different allocation.

### **Rule 3.3 Application Requirements for all Permits**

- (a) All permits are granted in accordance with the provisions of the District Rules.
- (b) The application for a permit shall be in writing and sworn to.
- (c) The following shall be included in the permit application:
  - (1) the name and mailing address of the applicant and the owner of the land on which the well is or will be located;



- (2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to file the application, hold the permit in lieu of the property owner, and construct and operate a well for the proposed use;
  - (3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
  - (4) a declaration that the applicant will comply with the District's Management Plan and Regulatory Plan;
  - (5) the location of each well and the estimated rate at which water will be withdrawn;
  - (6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
  - (7) a drought contingency plan, if the applicant is required by law to have a drought contingency plan;
  - (8) a statement by the applicant that the water withdrawn under the permit will be put to beneficial use at all times;
  - (9) the location of the use of the water from the well; and
  - (10) any other information deemed necessary by the Board.
- (d) An application shall be accompanied by payment by the applicant of any administrative fees required by the District for permit applicants.
  - (e) An application may be rejected as not administratively complete if the District finds that substantive information required by the permit application is missing, false, or incorrect.
  - (f) An application will be considered administratively complete if it complies with all requirements set forth under this Rule, including all information required to be included in the application.
  - (g) A determination of administrative completeness shall be made by the General Manager.

#### **Rule 3.4 Considerations for Granting or Denying a Permit**

Before granting or denying a permit, the District shall consider whether the application conforms to the requirements prescribed by Chapter 36, Texas Water Code, and the District Rules, including the Regulatory Plan, and is accompanied by the prescribed fees.

### **Rule 3.5 Permits Issued by District**

- (a) Upon the Board's grant of a permit application and prior to issuance of the permit, the General Manager shall promptly provide an invoice to the permit applicant for water use fees due and owing to the District.
- (b) A permit shall not be issued by the District until the District has received from the permit applicant at least the first quarterly payment of the invoiced water use fee, along with full payment of any applicable administrative fees invoiced by the District for permit applicants.
- (c) All permits issued by the District shall state the following:
  - (1) the name of the person to whom the permit is issued;
  - (2) the date the permit is issued;
  - (3) the date the permit is to expire;
  - (4) the conditions and restrictions, if any, placed on the rate and amount of withdrawal of groundwater;
  - (5) any other conditions or restrictions the District prescribes; and
  - (6) any other information the District determines necessary.

### **Rule 3.6 Amendment of Permit**

- (a) A permit amendment is required prior to any deviation from the permit terms regarding the maximum amount of groundwater to be produced from a well, ownership of a well or permit, the location of a proposed well, the purpose of use of the water, the location of use of the groundwater, or the drilling and operation of additional wells, even if aggregate withdrawals remain same. A permit amendment is not required for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well.
- (b) A major amendment to a permit includes, but is not limited to, a change that would substantially alter the size or capacity of a well, an increase in the annual quantity of groundwater authorized to be withdrawn, a change in the type of use of the water produced the addition of a new well to be included in an already permitted aggregate system, or a change of location of groundwater withdrawal, except for a replacement well authorized under Rule 3.15.
- (c) A major amendment to a permit shall not be made prior to notice and hearing.

- (d) Amendments that are not major, as determined by the General Manager and these Rules, such as a change in ownership of the land the well or well system is located on or an amendment sought by the permittee for a decrease in the quantity of groundwater authorized for withdrawal and beneficial use, are minor amendments and may be made by the General Manager.
- (e) The General Manager is authorized to deny or grant in full or in part a minor permit amendment and may grant minor amendments without public notice and hearing. Such decision by the General Manager may be appealed to the Board of Directors. This appeal is a pre-requisite to filing suit against the District to overturn the General Manager's decision. Any minor amendment sent to the Board for consideration shall be set on the Board's agenda and shall comply with the notice requirements of the Texas Open Meetings Act.

### **Rule 3.7 Completion of Permit Application Required**

The District shall promptly consider and act on each administratively complete application for a permit. If an application is not administratively complete, the District shall request the applicant to complete the application. The application will expire if the applicant does not complete the application within 90 days of the date of the District's request.

### **Rule 3.8 Exempt Well Status**

- (a) The permitting, metering, and fee requirements of these Rules do not apply to:
  - (1) wells, including replacement wells, completed on or after April 14, 2009, a well with an inside casing diameter of five inches (5") or less to be used solely for domestic use or livestock use, regardless of the tract size on which the well is drilled;
  - (2) a well that was completed on or before April 14, 2009, and equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day and that is used solely for domestic use, livestock use or poultry use, regardless of tract size, so long as the well or water use is not subsequently altered so that it no longer qualifies under this exemption;
  - (3) a well completed after April 14, 2009, that is incapable of producing more than 25,000 gallons of groundwater a day and that is used solely for domestic use, livestock use or poultry use on a tract of land larger than ten acres;
  - (4) the drilling or operation of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding

the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig;

- (5) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Texas Natural Resources Code, or to production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water;
  - (6) for wells completed before April 14, 2009, a well to be used solely for domestic use or livestock use with the capacity to produce more than 25,000 gallons of water per day that will produce a total of less than 9,125,000 gallons of water per year; or
  - (7) leachate wells, monitoring wells, and dewatering wells.
- (b) A well exempted under Subsection (a) will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt under Subsection (a).
  - (c) The owner of a well that is exempt from permitting under this Rule shall register the well with the District as an exempt well, if required under Rule 3.9.
  - (d) Exempt well status granted under Subsection (a)(6) of this Rule shall be lost if, while the well was registered as an exempt well, the District determines that the well was pumping water in excess of an annualized average of 9,125,000 gallons of water per year.
  - (e) If exempt well status is lost under Subsection (d), the District may initiate an enforcement action against the owner for violating District Rules.
  - (f) A person may claim an exemption for no more than two wells on a tract of land smaller than or equal to ten contiguous acres in size under Subsection (a) based upon water from the well being used solely for domestic use or for purposes of watering livestock or poultry. For a contiguous tract of land larger than ten acres in size, a person may claim one additional well exempted under Subsections (a)(1), (2) or (6) for each additional ten acres owned. The limitation in this subsection shall not apply to a closed-loop residential geothermal system.

### **Rule 3.9 Well Registration**

- (a) Well owners of the following wells shall file an application for well registration with the District and the District shall register:
  - (1) a new exempt well, except those wells exempt under Subsections (a)(5) or (7) of Rule 3.8;

- (2) an existing, exempt well with an inside casing measuring larger than four inches in diameter, except those wells exempt under Subsection (a)(5) or (7) of Rule 3.8; or
  - (3) an existing, non-exempt well for which a historic use permit or Operating Permit has not been issued by the District or timely applied for and awaiting District action.
- (b) A person seeking to register a well shall provide the District with the following information in the registration application:
- (1) the name and mailing address of the registrant and the owner of the land on which the well is or will be located;
  - (2) if the registrant is other than the owner of the property, documentation establishing the applicable authority to file the application for well registration, serve as the registrant in lieu of the property owner, and construct and operate a well for the proposed use;
  - (3) a statement of the nature and purpose of the existing or proposed use and the amount of water used or to be used for each purpose;
  - (4) the location of the well, identified with latitudinal and longitudinal coordinates measured from a properly functioning and calibrated global positioning system unit, and the estimated rate at which water is or will be withdrawn;
  - (5) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
  - (6) a statement that the water withdrawn from the well will be put to beneficial use at all times;
  - (7) the location of the use of the water from the well; and
  - (8) any other information deemed necessary by the Board.
- (c) The timely filing of a sworn application for registration shall provide the owner of a well described under Subsection (a)(2)-(3) with evidence that a well existed before August 26, 2002, for purposes of grandfathering the well from the requirement to comply with any well location or spacing requirements of the District. The timely filing of a sworn application for registration shall provide the owner of a well described under Subsection (a)(3) with evidence that a well existed before August 26, 2002, for purposes of grandfathering the well from the requirement to obtain a permit to drill the well. A well that is registered under Subsection (a)(3) shall not be operated after August 26, 2002, without first obtaining an approved Operating Permit for the well or an amendment to a historic use permit to include the well, if such well is not already included in a historic use permit.

- (d) A proposed new exempt well for which an application to register has been submitted to the District must be drilled and completed within 120 days following the date the appropriate application for well registration is filed.
- (e) The owner of an existing well described under Subsections (a)(2) or (3) of this Rule must register the well with the District on or before December 1, 2002.
- (f) The owner or driller of any new well, including an exempt new well described under Subsection (a)(1) of this Rule or a non-exempt, new well, must register the well with the District as set forth under Rule 3.10 prior to commencing any activity described in Rule 3.11(a) with regard to the well.
- (g) The person who drills or completes a well shall file the well report with the District within 60 days after the date the well is completed as required by Rule 4.2. Upon receipt of the well report required by Rule 4.2, the registration of the well shall be perpetual in nature, subject to enforcement and/or cancellation for violation of these Rules.

### **Rule 3.10 Authorization for Construction of New Wells**

- (a) For all wells except replacement wells proposed to be drilled after August 26, 2002, a landowner or water well driller, or any other person acting on their behalf, must submit an application for well registration with the District, and must receive specific authorization from the District to commence the proposed drilling, before any well may be drilled. Application must be made in accordance with Rule 3.10 using the registration form provided by the District.
- (b) The approval required under Subsection (a) of this Rule does not apply to proposed leachate wells, monitoring wells, or wells described under Rule 3.8(a)(7).
- (c) The District staff shall review the application submitted under Subsection (a) of this Rule and shall determine, based on the information provided by the applicant, whether the proposed well qualifies for a permitting exemption under Rule 3.9. Staff shall inform the applicant of this determination within five business days of the District's receipt of the completed application.
- (d) For proposed wells that qualify for a permitting exemption under Rule 3.9, the applicant may begin drilling upon receipt of the approved registration.
- (e) For proposed wells that do not qualify for permitting exemption under Rule 3.9, application must be made, and fees must be submitted, for all appropriate permits, including a drilling permit and an Operating Permit, required by these Rule.

### **Rule 3.11 Operating Permits**

- (a) An Operating Permit is required by the District for drilling, equipping, completing, substantially altering, operating, or producing groundwater from any non-exempt well for which a historic use permit or amendment thereto to include the well has not been issued by the District or timely applied for and awaiting District action. This requirement is effective on December 1, 2002, for wells that have historic use and on August 26, 2002, for all other wells.
- (b) An application for an Operating Permit shall contain all the information requested in Rule 3.3 and shall be accompanied by all prescribed fees as set forth in Rule 3.3.
- (c) Subject to the considerations listed in Rule 3.6, an application for an Operating Permit submitted under this Rule shall not be unreasonably denied by the District if the application describes a well that meets the District's well completion standards and complies with all location and spacing regulations included in these Rules or required by other State law and:
  - (1) If the application is submitted after the end of the Verification Period, the District has not:
    - (A) determined that there is insufficient groundwater still available in the management zone from which the groundwater is to be produced under the Operating Permit to support the issuance of the Operating Permit within that management zone after considering the claimed or permitted production of all historic use permits, an estimate of total exempt use, and all previously pending or issued Operating Permits within the same management zone as set forth under Section 4 of these Rules; and
    - (B) adopted proportional adjustment regulations for the management zone under Section 4 of these Rules that would prohibit issuance of the permit; or
  - (2) If the application is submitted after the end of the Verification Period and the District has adopted regulations described under Paragraph (1)(B) of this subsection, the applicant has purchased the right to produce water issued under a historic use permit or another Operating Permit from a permittee within the same management zone from which the groundwater is to be produced under the Operating Permit and the application is submitted in conjunction with an application to amend the historic use permit or other Operating Permit to transfer the right to produce water to the Operating Permit being sought, subject to Rule 3.2.
- (d) The Operating Permittee shall equip the well with a meter prior to producing from the well after December 31, 2002, and shall pay to the District fees in accordance with the fee schedule of the District and the requirements of these Rules.

- (e) The District may impose more restrictive permit conditions on Operating Permit applications if the limitations:
  - (1) apply uniformly within the same management zone to all subsequent Operating Permit applications;
  - (2) bear a reasonable relationship to the District's Management Plan; and
  - (3) are reasonably necessary to protect Existing Use.
- (f) An Operating Permit issued in accordance with this Rule that authorizes drilling, equipping, completing, or substantially altering the size or capacity of a well shall be valid for a term not to exceed one year from the date of issuance to complete those activities and begin producing in accordance with the terms of the permit, unless the applicant has applied for and been granted an extension. Such extensions shall only be granted once and shall not be valid for more than an additional one year period. Thereafter, the applicant must file a new Operating Permit application. A well report and report must be filed with the District within 60 days of completion as required by Rule 4.2.
- (g) The owner of an Operating Permit is authorized to produce water in accordance with the terms of the permit and these Rules.
- (h) The validity of an Operating Permit issued by the District is contingent upon payment by the permittee of the applicable fee as set forth under Rule 8.1.
- (i) An Operating Permit is subject to the proportional adjustment regulations of the District and protection of historic use permits issued by the District and exempt uses to the point that production under an Operating Permit may be prohibited in a management zone if the District determines there is no longer sufficient groundwater available for withdrawal under the Operating Permit after considering the claimed or permitted production of all historic use permits and an estimate of total exempt use produced within the management zone, as well as other Operating Permits permitted to produce within the management zone, as set forth under Section 4 of these Rules. The Operating Permit applicant or Operating Permittee expressly assumes the risk of this occurrence in applying for the permit and in drilling, operating, or otherwise investing in the well or the water to be produced from it. An Operating Permit applicant or Operating Permittee has no standing to contest the application or a proposed permit of a historic user on the basis of its effect or potential effect on the rights sought or issued in the Operating Permit.
- (j) The District reserves the right to amend these Rules at any time to allocate water available for production under Operating Permits within a management zone, after considering the claimed or permitted production of all historic use permits and an estimate of total exempt use produced within the management zone, based upon the surface acreage owned by the Operating Permittee or the surface acreage for which the Operating Permittee controls the right to produce groundwater within the same management zone.



- (k) No person shall drill, equip, complete, substantially alter, operate, or produce groundwater from a well in violation of this Rule. A violation of this Rule occurs on the first day the unauthorized activity occurs and continues each day thereafter until the permit is issued.

### **Rule 3.12 Historic Use Permits**

- (a) An owner of an existing, non-exempt water well that was completed and operational prior to August 26, 2002, and that produced and used groundwater at any time during the existing and historic use period, shall apply to the District for a historic use permit on or before September 1, 2003. Failure of an owner of such a well to apply for a historic use permit on or before September 1, 2003, shall preclude the owner from making any future claim or application to the District for historic use under these Rules and shall cause the owner to forfeit his rights and ability to operate the well under these Rules, unless the owner obtains an Operating Permit that authorizes production from the well.
- (b) An application for a historic use permit, in addition to the information required under Rule 3.4, shall include the following information to the extent that the information exists and is available to the applicant through the exercise of reasonable and diligent efforts:
  - (1) the year in which the well was drilled;
  - (2) the purpose for which the well was drilled and types of subsequent use of the water;
  - (3) annual water production history of the well for each year during the existing and historic use period;
  - (4) the Maximum Historic Use of the well or well system;
  - (5) legal description of the tract of land on which the well or well system is located;
  - (6) all information requested by the District in a declaration of historic use form, which shall be prescribed and provided by the District; and
  - (7) any other information determined necessary by the Board.
- (c) During the time between August 26, 2002, and the issuance or denial of the historic use permit, an applicant for a historic use permit may produce and shall pay the water use fee as set forth in Rule 8.1 for the amount of groundwater specified in the applicant's application, or most recent amendment thereto, as the Maximum Historic Use. This interim authorization by Rule based on the information included in the historic use permit application, or most recent amendment thereto, shall constitute the applicant's permit to operate and produce groundwater from the well identified in the application for purposes of Chapter 36, Water Code, until Board action on the application.

- (d) An applicant shall amend the applicant's application to include any new information or to update information that the applicant has determined to be inaccurate or incorrect on or before January 1, 2005.
- (e) After January 1, 2005, the District shall commence its review and determination of the Maximum Historic Use for each applicant as set forth in Section 11A of these Rules. An applicant who withdraws more water than the amount claimed as the Maximum Historic Use in the application or most recent amendment thereto will be assessed a fee for producing the excess amount of water and will be subject to enforcement for violation of the District Rules, unless the applicant is authorized under an Operating Permit to make the withdrawal.
- (f) Notwithstanding Subsection (c) of this Rule or any other rule to the contrary, if the application for a historic use permit is one that has been contested and is still contested one year after the date of publication of the proposed historic use permit, the District may limit the amount of water that the applicant may produce until the contested case has concluded and the Board has made its decision on the application to the amount set forth in the proposed historic use permit. Such an interim production limitation shall be established by the Board only after an expedited interlocutory hearing before the Board to be initiated by motion of the General Manager.
- (g) In the interest of promoting conservation of groundwater, the District shall allow an applicant for a historic use permit to apply for a permit authorization in an amount less than the applicant's Maximum Historic Use. In such a case, the applicant shall only be required to pay fees applicable to the amount applied for.
- (h) The District shall adopt procedures for the processing and determination of claims of persons applying for historic use permits.
- (i) The District may issue all uncontested historic use permits, subject to the District's proportional adjustment regulations, Rules, Management Plan, and Regulatory Plan.
- (j) An applicant for a historic use permit shall install a meter by January 1, 2003, on each well for which an application has been submitted. Failure to timely install such a meter shall be grounds for the District to deny the permit and/or pursue enforcement action for violation of the District's Rules.
- (k) The validity of a historic use permit issued by the District is contingent upon payment by the permittee of the applicable fee as set forth under Rule 9.1.
- (l) The General Manager's determination of administrative completeness for historic use permit applications shall be based upon the General Manager's review of application requirements set forth in Rules 3.3, 3.12, and 11A.2 and this Rule. The General Manager may withhold a determination of administrative completeness for a historic use permit application until the applicant has completed and submitted the reports required under Rule 4.3 for groundwater that was produced prior to January 1, 2005.

### **Rule 3.13     Aggregation**

- (a) Multiple wells that are part of an aggregate well system that are owned and operated by the same permittee and serve the same subdivision, facility, or a certificated service area authorized by the commission may be authorized under a single permit at the sole discretion of the District. Multiple wells that are not part of an aggregate well system but that are located on a single tract of land and owned and operated by the same permittee may be authorized under a single permit at the sole discretion of the District.
- (b) For the purposes of categorizing wells by the amount of groundwater production, when wells are permitted with an aggregate withdrawal, the aggregate value shall be assigned to the group, rather than allocating to each well its prorated share of estimated production.
- (c) Historic use permits issued to an aggregate system will be based on the combined Maximum Historic Use of all wells within the aggregate system, rather than the historic average use of each individual well.

### **Rule 3.14     Replacement Wells and Substantial Alteration of Existing Wells**

- (a) No person may substantially alter a well or pump, or replace an existing well, without first having obtained authorization for such work from the District. Authorization for substantial alterations or replacement wells may only be granted following the submission of an application for such authorization to the District.
- (b) For replacement wells, information submitted in the application must demonstrate to the satisfaction of the General Manager each of the following:
  - (1) the location of the replacement well will be within fifty feet of the location of the well being replaced;
  - (2) the replacement well will not be located any closer to any other permitted well or authorized well site than the well being replaced, unless the new location complies with the minimum spacing and location requirements of these Rules;
  - (3) the replacement well and pump will not be larger in size or designed capacity than the well and pump being replaced; and
  - (4) immediately upon commencing operation of the replacement well, the well owner will cease all production from the well being replaced and will begin efforts to plug the well being replaced.
- (c) For substantial alteration of existing wells, the applicant must provide the following information:

- (1) a description of the features of the well or pump that the applicant proposes to substantially alter, and a description of the same features of the well or pump as they currently exist; and
  - (2) the reasons for the proposed substantial alterations.
- (d) Applications for replacement wells submitted under Subsection (b) may be granted by the General Manager without notice or hearing.
  - (e) The General Manager shall review applications for substantial alteration of existing wells submitted under Subsection (c) to determine whether the proposed substantial alteration would constitute a major or minor permit amendment, or would disqualify an exempt well from the applicable permitting exemption under Rule 3.8.
  - (f) The owner of an existing, exempt well that is not required to be registered with the District shall comply with the registration provisions of Rules 3.9 and 3.10 in the manner set forth for new wells, as well as this Rule, before replacing or substantially altering the existing, exempt well.

### **Rule 3.15      Emergency Permits**

- (a) Upon application, the General Manager may grant an emergency permit that authorizes the drilling, equipping, completion, substantial altering with respect to size or capacity, or operation of a well and production therefrom as set forth under this Rule.
- (b) An application for an emergency permit shall contain the information set forth in Rule 3.3 and present sufficient evidence that:
  - (1) no suitable surface water or permitted groundwater is immediately available to the applicant; and
  - (2) an emergency need for the groundwater exists such that issuance of the permit is necessary to prevent the loss of life or to prevent severe, imminent threats to the public health or safety.
- (c) The General Manager may rule on any application for an emergency permit 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 an emergency permit on any reasonable ground, including, but not limited to, a determination that the applicant is currently in violation of these Rules or Chapter 36, Texas Water Code, that the applicant has a previously unresolved violation on record with the District, or that the application does not meet the requirements of this Rule. Notice of the ruling shall be given to the applicant. Any applicant may appeal the General Manager's ruling by filing, within ten business days of the General Manager's ruling, a written request for a hearing before the Board. The Board will hear the applicant's appeal

at the next available regular Board meeting. The General Manager shall inform the Board of any emergency permits granted. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager.

- (d) The permit fee to be assessed for an emergency permit under this Rule shall be the same as a permit issued under Rule 3.11.
- (e) Emergency permits may be issued for a term determined by the General Manager based upon the nature and extent of the emergency, such term not to exceed 60 days. Upon expiration of the term, the permit automatically expires and is cancelled.
- (f) Notwithstanding Subsection (c), the General Manager may issue an emergency permit for the drilling a well for any applicant who executed prior to August 26, 2002, a written contract to drill a well, where the terms of the contract provide for drilling to be commenced before October 1, 2002.

### **Rule 3.16      Transfer of Well Ownership**

- (a) Within 90 days after the date of a change in ownership of a well that is not exempted under District Rule 3.8 from permitting, metering, or fee requirements, the new well owner (transferee) shall submit to the District, on a form provided by the District staff, a signed and sworn-to application for change of ownership. The application shall conform to the applicable standards for permit applications in Rule 3.3.
- (b) If a permittee conveys by any lawful and legally enforceable means to another person the real property interests in one or more wells or a well system that is recognized in the permit so that the transferring party (the transferor) is no longer the “well owner” as defined herein, and if an application for change of ownership under subsection (a) has been approved by the District, the District shall recognize the person to whom such interests were conveyed (the transferee) as the legal holder of the permit, subject to the conditions and limitations of these District Rules, and the terms and conditions of each applicable permit.
- (c) Where more than one well is authorized under a single permit, but where not all permitted wells are included in a conveyance of real property interests in the wells to another person, the District may allocate the production authorization of the permit among the well owners pursuant to the terms of the conveyance, these Rules, and applicable law.
- (d) The burden of proof in any proceeding related to a question of well ownership or status as the legal holder of a permit issued by the District and the rights thereunder shall be on the person claiming such ownership or status.
- (e) Notwithstanding any provision of this Rule to the contrary, no application made pursuant to Subsection (a) of this Rule shall be granted by the District unless all outstanding fees, penalties, and compliance matters have first been fully and finally paid or otherwise

resolved by the transferring party (transferor) for all applicable permits, and each permit made the subject of the application is otherwise in good standing with the District.

### **SECTION 3A**

#### **AWS GROUNDWATER DEVELOPMENT TEST BORES**

##### **Rule 3A.1 Authorized AWS Groundwater Test Bore Drilling**

- (a) The District may authorize the drilling of test bores for alternative water source groundwater exploration purposes through the issuance of an AWS Test Bore Drilling Permit.
- (b) An AWS Groundwater Test Bore Drilling Permit issued by the District shall only authorize the permit holder to drill one or more test bores for the limited purpose of obtaining necessary and reliable information regarding aquifer characteristics and other relevant subsurface conditions for use in evaluating alternative water source groundwater resources, and potentially subsequently applying to the District to complete and permit a final producing alternative water source groundwater well.

##### **Rule 3A.2 AWS Groundwater Test Bore Drilling Permit Applications**

- (a) No AWS Groundwater Test Bore Drilling Permit shall be issued by the District until after it receives, and has reviewed, an administratively complete application filed pursuant to this section.
- (b) Applications described in Subsection (a) shall be submitted using a form approved by the District and shall include, at a minimum, the following information:
  - (1) the name and physical address of the legal owner of the property on which the proposed test bores will be drilled;
  - (2) a statement affirming that each test bore proposed in the application will be drilled by a licensed Texas water well driller;
  - (3) the legal description of the property on which all test bores will be drilled;
  - (4) the date that the exploratory drilling is estimated to begin;
  - (5) the drilling method proposed to be used;
  - (6) a description of each water-bearing formation that will be penetrated during drilling of the test bores;

- (7) a description of each water-bearing formation that will be explored through the use of the proposed test bores;
  - (8) a declaration that the test bores will be drilled and either completed or sealed in a manner that complies with the requirements of these Rules; and
  - (9) other pertinent information the District requests on a form approved by the District.
- (c) Applications filed pursuant to this section shall be sworn-to by the applicant.
- (d) Within 60 days of the date that an application for a AWS Groundwater Test Bore Drilling Permit is determined to be administratively complete, the General Manager may either approve the application or refer it to the District Board for its consideration. The permitting procedures under Section 12 of these rules do not apply to an application for a AWS Groundwater Test Bore Drilling Permit application that is approved by the General Manager.
- (e) A AWS Groundwater Test Bore Drilling Permit does not authorize any person to access or drill upon property that the person does not otherwise have an independent legal right to access or drill upon.

### **Rule 3A.3 AWS Groundwater Test Bore Drilling Permit Term**

- (a) A AWS Groundwater Test Bore Drilling Permit shall be issued for a period of no more than one year from the date of issuance.
- (b) Notwithstanding Subsection (a), a AWS Groundwater Test Bore Drilling Permit term may be extended if, before the expiration of the one-year permit term, the permit holder submits to the District in writing a request for extension that includes a basis for the requested extension and a reasonably detailed description of why the test bore drilling could not be completed within the one-year permit term.

### **Rule 3A.4 Spacing**

- (a) To the extent practicable, all test bores shall be drilled in a manner that complies with the spacing and location requirements set forth in Section 6.
- (b) Notwithstanding anything to the contrary in Subsection (a), alternative water source groundwater production wells must satisfy the District's spacing requirements provided for in Section 6 of these rules for purposes of applying for and obtaining an Operating Permit for the same.

### **Rule 3A.5 Sealing AWS Test Bores and Reporting Decommissioning**

- (a) Except as otherwise provided in Subsection (e), once testing of an alternative water source groundwater test bore has been completed or upon the expiration of the permit term, whichever occurs first, each test bore drilled pursuant to the applicable AWS Groundwater Test Bore Drilling Permit shall be permanently sealed immediately to:
  - (1) eliminate physical hazards;
  - (2) prevent groundwater contamination;
  - (3) prevent hydraulic communication between water-bearing formations; and
  - (4) preserve aquifer pressure.
- (b) All test bores described in Subsection (a) shall be sealed with cement slurry containing up to six percent gel by placing the material into the test bore from the bottom up to the surface in a manner that:
  - (1) avoids dilution or segregation of the material; and
  - (2) prevents the pollution or harmful alteration of fresh groundwater in a groundwater reservoir by alternative water source groundwater or other deleterious matter admitted from another stratum or from the surface.
- (c) Complete and accurate records of the test bore decommissioning process must be maintained for each test bore that is required to be sealed pursuant to this Section, including a record of:
  - (1) the total depth of placement of all sealing material used; and
  - (2) the quantity of sealing material used.
- (d) For each test bore that is not selected for completion as a producing alternative water source groundwater well, the permit holder shall submit to the District, within 30 days of the date of test bore sealing completion, a compliant well report that includes all applicable information under Rule 4.2 and the information required by Subsection (c) of this rule.
- (e) The AWS Groundwater Test Bore Drilling Permit holder is not required to install a permanent seal on a test bore that has been selected for completion as a producing alternative water source groundwater well if:
  - (1) the test bore has been temporarily cased or otherwise completed as much as economically practicable to prevent wellbore bridging or collapse;



- (2) within 90 days of completion of the test bore, an administratively complete application for an Operating Permit for the well has been submitted to the District; and
  - (3) prior to approval or denial of an Operating Permit, the AWS Groundwater Test Bore Drilling Permit holder takes all appropriate measures in accordance with the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, to protect groundwater quality; and
  - (4) within one year after the issuance of an Operating Permit for the well, the test bore has been further drilled to serve as a well, cased, completed and otherwise made capable of producing water.
- (f) If the Board denies an application for an Operating Permit for a producing alternative water source groundwater well submitted pursuant to this subsection, the AWS Groundwater Test Bore Drilling Permit holder shall seal the test bore in accordance with Subsection (b) within 30 days of the date the decision on the denial becomes effective.

## **SECTION 4**

### **REPORTING REQUIREMENTS**

#### **Rule 4.1 Purpose and Policy**

The accurate and timely reporting to the District of activities governed by these Rules is a critical component to the District's ability to effectively and prudently manage the groundwater resources that it has been charged by law with regulating. The purpose of Section 4 is to require the submission, by the appropriate person or persons, of complete, accurate, and timely records, reports, and logs as required throughout the District Rules. Because of the important role that accurate and timely reporting plays in the District's understanding of past, current and anticipated groundwater conditions within Montgomery County, the failure to comply with these Rules may result in the assessment of penalties, permit suspension or revocation, or both.

## **Rule 4.2      Records of Drilling and Pump Installation and Alteration Activity**

- (a) Each person who drills, deepens, completes or otherwise alters a well shall make, at the time of drilling, deepening, completing or otherwise altering the well, a legible and accurate well report recorded on forms provided by the District or by the Texas Department of Licensing and Regulation.
  
- (b) Each well report required by Subsection (a) of this Rule shall contain:
  - (1) the name and physical address of the well owner;
  - (2) the location of the drilled, deepened, completed or otherwise altered well, including the physical address of the property on which the well is or will be located, and the latitudinal and longitudinal coordinates of the wellhead location, as measured by a properly functioning and calibrated global positioning system unit;
  - (3) the type of work being undertaken on the well;
  - (4) the type of use or proposed use of water from the well;
  - (5) the diameter of the well bore;
  - (6) the date that drilling was commenced and completed, along with a description of the depth, thickness, and character of each strata penetrated;
  - (7) the drilling method used;
  - (8) the borehole completion method performed on the well, including the depth, size and character of the casing installed;
  - (9) a description of the annular seals installed in the well;
  - (10) the surface completion method performed on the well;
  - (11) the location of water bearing strata, including the static level and the date the level was encountered, as well as the measured rate of any artesian flow encountered;
  - (12) the type and depth of any packers installed;
  - (13) a description of the plugging methods used, if plugging a well;
  - (14) the type of pump installed on the well, including the horsepower rating of the pump motor and the designed production capability of the pump, as assigned by the pump manufacturer;

- (15) the type and results of any water test conducted on the well, including the yield, in gallons per minute, of the pump operated under optimal conditions in a pump test of the well; and
  - (16) a description of the water quality encountered in the well.
- (c) The person who drilled, deepened, completed or otherwise altered a well pursuant to this Rule shall, within 60 days after the date the well is completed, file a well report described in Subsections (a) and (b) of this Rule with the District.

#### **Rule 4.3 Water Production Report**

- (a) Not later than February 15th of each year the holder of any permit issued by the District must submit, on a form provided by the District, a water production report containing the following:
- (1) the name of the permittee;
  - (2) the well numbers of each well for which the permittee holds a permit;
  - (3) the total amount of groundwater produced by each well or well system during the immediately preceding calendar year;
  - (4) the total amount of groundwater produced by each well or well system during each month of the immediately preceding calendar year;
  - (5) all purposes for which the water was used;
  - (6) the amount and source of surface water used; and
  - (7) any other information requested by the District.
- (b) The report required by Subsection (a) must also include a true and correct copy of the meter log required by District Rule 11.6.
- (c) Persons failing to submit to the District a water production report by March 1 of the year such reports are due under Subsection (a) of this Rule shall be subject to a non-compliance penalty and may be subject to additional enforcement measures provided for by these Rules or by order of the Board.

#### **Rule 4.4 Groundwater Transport Report**

- (a) Not later than February 15 of each year, the holder of any permit issued by the District that authorizes the transport of groundwater for use outside of the District shall submit to

the District a Groundwater Transport Report describing the amount of water transported and used pursuant to the terms of the applicable permit.

- (b) Each Groundwater Transport Report required by Subsection (a) above shall be submitted on a form made available by District staff and shall contain, at a minimum, the following information:
- (1) the name of the permittee;
  - (2) the well numbers of each well for which the permittee holds a permit;
  - (3) the total amount of groundwater produced from each well or well system during the immediately preceding calendar year;
  - (4) the total amount of groundwater transported outside of the district from each well or well system during each month of the immediately preceding calendar year;
  - (5) the purposes for which the water was transported;
  - (6) the amount and source of surface water transported; and
  - (7) any other information reasonably requested by the District.
- (c) Persons failing to submit to the District a groundwater transport report by March 1 of the year such reports are due under Subsection (a) of this Rule shall be subject to a non-compliance penalty and may be subject to additional enforcement measures provided for by these Rules or by order of the Board.

## SECTION 5

### MANAGEMENT ZONES

#### **Rule 5.1 Management Zones**

Using the best available hydrogeologic and geographic data, the Board shall, by resolution or inclusion in the District's Regulatory Plan, initially no later than January 31, 2007, divide the District into one or more zones for the administration of groundwater management and regulation in the District. These management zones shall serve as areas for which the District shall determine

water availability, authorize total production, implement proportional reduction of production amongst classes of users, 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.

#### **Rule 5.2      Adjustment of Withdrawal Amount Based on Availability of Groundwater in Management Zone**

- (a) Initially no later than January 31, 2007, and every five years thereafter, the District shall use the best available scientific information, including but not limited to the Texas Water Development Board's Groundwater Availability Model for the area and information regarding the saturation rate of aquifers within the District, to determine the annual amount of recharge available for withdrawal in each management zone, based upon the District Management Plan, and the amount of actual annual production from permittees, registrants, and exempt users in each management zone.
- (b) As determined by the District, if the total amount of production within a management zone is less than or equal to the amount of recharge available for withdrawal within the management zone under Subsection (a), production amounts authorized under historic use and Operating Permits may remain the same or be increased in the management zone, as specifically set forth under Rule 5.4.
- (c) As determined by the District, if the total amount of production within a management zone is greater than the amount of recharge available for withdrawal within the management zone under Subsection (a), production amounts may be decreased proportionally among all permittees in the management zone, with any necessary reductions being applied first to Operating Permits and, subsequently, if production is still greater than availability, to historic use permits, as specifically set forth under Rule 5.4.

#### **Rule 5.3      When New Operating Permits May Be Issued**

In a management zone where the Board has already established proportional adjustment regulations under Rule 5.4, new Operating Permits may be issued by the District for production in the management zone only if the management zone contains water available for permitting after the District has made any and all proportional adjustments to existing permits, as specifically set forth under Rule 5.4.

#### **Rule 5.4      Proportional Adjustment**

- (a) The Board, by resolution or inclusion in the District's Regulatory Plan, may establish proportional adjustment regulations to alter the amount of production allowed in a

management zone, as set forth under these Rules or the District's Regulatory Plan. Notwithstanding anything to the contrary in these Rules, the Board may by resolution, Rule, or in the District's Regulatory Plan establish regulations regarding the reduction of groundwater production in the District that differ from the regulations set forth under Section 5, and nothing set forth in Section 4 or other Rules creates a vested right in any permit holder or permit applicant.

- (b) When establishing proportional adjustment regulations for a management zone, the Board may first set aside an amount of water equal to an estimate of total exempt use within the management zone.
- (c) After setting aside an amount of water for exempt use, to the extent of remaining water availability, the Board may allocate water to historic use permits or most recent amendments thereto according to the permitted or claimed Maximum Historic Use in each, depending upon whether the historic use permit application or amendment thereto has yet been issued. If there is insufficient water availability to satisfy all historic use permits, the Board may allocate the water availability among the historic use permits by reducing the amount authorized under each on an equal percentage basis until total authorized production equals water availability within the management zone. The Board may prohibit water from being authorized for production under Operating Permits if there is insufficient water availability to satisfy all historic use permits and exempt use, subject to Subsection (f) of this Rule.
- (d) If there is sufficient water to satisfy all historic use permits and exempt use within a management zone, the Board may then allocate remaining water availability among existing Operating Permits based on their previously permitted amounts. If there is insufficient water availability to satisfy all existing Operating Permits, the Board may allocate the remaining water availability among the Operating Permits by reducing the amount previously authorized under each on an equal percentage basis until total authorized production equals water availability within the management zone. The Board may prohibit water from being authorized for production under new Operating Permits if there is insufficient water availability to satisfy all existing Operating Permits, subject to Subsection (f) of this Rule.
- (e) If there is sufficient water to satisfy all historic use permits, exempt use, and existing Operating Permits within a management zone, the Board may then allocate remaining water availability to applications for new Operating Permits, or amendments to historic use permits or Operating Permits that contemplate increased use without the transfer of another permitted right, subject to Subsection (f) of this Rule.
- (f) When establishing proportional adjustment regulations for a management zone that contemplate the reduction of authorized production or a prohibition on authorization for new or increased production, the Board may consider the time reasonably necessary for water users to secure alternate sources of water, including surface water, by economically feasible means and may incorporate those time considerations in the adoption and implementation of the proportional adjustment regulations. The Board may also include provisions in the proportional adjustment regulations that engender or facilitate

cooperative arrangements between permittees within a management zone to diminish the impacts to the permittees in complying with the regulations. Notwithstanding anything to the contrary in these Rules, the Board may grant a permit to an applicant whenever it is found upon presentation of adequate proof that there is no other adequate and available substitute or supplemental source of water, including surface water, at prices competitive with those charged by suppliers of surface water within the District, and that compliance with any provision of any rule of the District will result in an arbitrary taking of property or in the closing and elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the people. Water is available if it can be utilized within the exercise of reasonable diligence within a reasonable time.

## **SECTION 6**

### **SPACING AND LOCATION OF WELLS; WELL COMPLETION**

#### **Rule 6.1 Spacing and Location of Existing Wells**

Wells drilled prior to ~~August 26, 2002~~ November XX, 2014, shall be drilled in accordance with these rules, Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and State law in effect, if any, on the date such drilling commenced. If a person wishes to substantially alter the size or capacity of the existing well, the well shall become subject to the spacing, location, and completion requirements of this section.

#### **Rule 6.2 Spacing and Location of ~~New~~ Wells**

- (a) All new wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant.
- (b) To prevent interference between wells and impacts to neighboring wells within the same aquifer, wells must be drilled and completed in compliance with the District Rules, including the applicable requirements for minimum tract sizes, the minimum well completion and screening depths, and the minimum distances from the nearest registered or permitted well or authorized well site that does or will produce from the same aquifer or aquifer subdivision as provided in Rules 6.3 and 6.4 for each aquifer, unless a variance is granted by the District in accordance with Rule 6.6.

- (c) As used in these rules, “tract” shall mean a surface estate plat, surface estate deed, or other legally recognized surface estate property configuration recorded in the deed records of Montgomery County.
- (db) As used in these rules, “vertical offset” shall mean the difference in elevation from mean sea level, measured in feet, between the bottom of the lowest screen of the proposed well or the existing well, whichever well is shallower, and the top of the upper most screen of the proposed well or the existing well, whichever well is deeper.
- (e) After authorization to drill a well has been granted under the District’s registration rRules or a permit, the well, if drilled, must be drilled within thirty feet of the location specified in the well registration or permit, and not elsewhere. If the drilling of the well is commenced at any other location than what is provided for in this Rrule, the Board may take action to enjoin the drilling activity or operation of the well pursuant to Chapter 36, Texas Water Code, and these rRules, and the Board may, pursuant to Rule 7.3, order that the well be plugged.

**Rule 6.3 Gulf Coast Aquifer-Specific Well Spacing, Location, and Tract Size Requirements**

- (a) Applicability: The well spacing and completion requirements provided by this rule shall apply to all wells drilled or completed on or after November XX, 2014, in any subdivision or layer of the Gulf Coast Aquifer, defined in the District Regulatory Plan Phase II(B) and incorporated by reference, as the major aquifer in Texas that parallels the Gulf of Mexico and includes the Chicot, Evangeline, and Jasper Aquifers and any perched aquifers that may serve as sources of recharge to the Chicot, Evangeline, or Jasper Aquifers, unless a variance is granted by the District in accordance with Rule 6.6.
- (b) Minimum Tract Size: The minimum tract size for existing and future plats that may be considered an appropriate site for a well completed in any subdivision or layer of the Gulf Coast Aquifer is 1.5 acres.
- (c) Minimum Screening Depth: In addition to the applicable standards of completion provided in Rule 6.5, a well completed in the Gulf Coast Aquifer shall be screened at a depth no less than 150 feet, measured from the land surface of the well, regardless of the capacity of the well.
- (d) Replacement Wells: Regardless of the minimum tract size requirements under Subsection (b) of this rule, a replacement well may be drilled to replace an existing permitted or registered well, currently authorized to produce groundwater from the Gulf Coast Aquifer, under the following conditions:
- (1) the replacement well or pump shall not be larger in size or capacity than the well or pump being replaced so as to substantially later the size or capacity of the well; and
  - (2) the replacement well must be drilled within 100 feet of the well to be replaced.



- (e) Multiple Wells Completed on a Tract: To complete more than one well on a tract of land equal to or greater than 1.5 acres, each well must be completed into a different subdivision of the Gulf Coast Aquifer, those subdivisions being the Chicot, Evangeline, or Jasper Aquifers, or a minimum horizontal distance of 255 feet shall exist between each well completed in the same subdivision, unless a variance is granted by the District as set forth under Rule 6.6. To complete more than one well on a tract of land less than 1.5 acres requires a variance by the District as set forth under Rule 6.6.
- (f) Subsections (b) and (e) of this rule shall not apply to a well drilled or completed on a tract of land that has been designated as a restricted reserve for the purpose of water production or public water supply in a subdivision platted prior to November XX, 2014. This subsection shall not apply if the subdivision platted prior to November XX, 2014 is re-platted or newly platted after November XX, 2014, regardless of whether such re-platting or new platting alters the tract of land designated as a restricted reserve for the purpose of water production or public water supply.

#### **Rule 6.4 Catahoula Aquifer-Specific Well Spacing Requirements**

- (a) Applicability: The well spacing requirements provided by this rule shall apply to wells drilled or completed on or after November XX, 2014, in the Catahoula Restricted Aquifer. For purposes of this rule, the Catahoula Restricted Aquifer or the Catahoula Aquifer means the aquifer in Texas that that lies beneath the Jasper Aquifer, Burkeville Confining Unit, Evangeline Aquifer, and Chicot Aquifer in southwest Texas and slopes in depth approximately 2,500 feet to 4,000 feet within Montgomery County.
- (b) To limit well interference and protect the investment backed expectations of existing well owners, a well drilled or completed in the Catahoula Aquifer shall be located a minimum distance from an existing permitted or registered well or authorized well site that does or will produce water from Catahoula Aquifer. The minimum spacing between the proposed well and any existing well in the Catahoula Aquifer will vary depending on the vertical offset, as defined in Rule 6.2, of the proposed well from the existing well and the production capacity of the proposed well in accordance with Subsections (c) and (d).
- (c) Minimum Spacing Distance For Wells Vertically Offset By Less Than 100 Feet From Existing Wells: The minimum distance a proposed well shall be located from an existing well pumping from the Catahoula is 400 feet when the proposed well is vertically offset by less than 100 feet from the existing well, and the proposed well has a maximum design capacity of 1,500 gpm or less. A proposed well that is vertically offset less than 100 feet from an existing well pumping from the Catahoula Aquifer, with a maximum design capacity greater than 1,500 gpm shall be located at a minimum distance as determined by using the following formula:

$$D = 0.000888Q^2 - 1.4Q + 487$$

Where D is the minimum spacing distance in feet, and Q is the maximum design capacity of the proposed well in gpm.

- (d) Minimum Spacing Distance For Wells Vertically Offset By 100 Feet Or More From Existing Wells: The minimum distance a proposed well shall be located from an existing well pumping from the Catahoula is 400 feet when the proposed well is vertically offset by 100 feet or more from the existing well, and the proposed well has a maximum design capacity of 2,000 gpm or less. A proposed well that is vertically offset 100 feet or more from an existing well pumping from the Catahoula Aquifer, with a maximum design capacity greater than 2,000 gpm shall be located at a minimum distance as determined by using the following formula:

$$D = 0.00031Q^2 - 1.07Q + 3060$$

Where D is the minimum spacing distance in feet, and Q is the maximum design capacity of the proposed well in gpm.

The following chart provides the calculations for wells with a vertical offset of less than 100 feet and wells with a vertical offset of 100 feet or more based on the maximum design capacity of the proposed well using the applicable formulas set forth in Subsections (c) and (d) of this rule.

<u>Maximum Designed Capacity (gpm)</u>	<u>Spacing Distance (Vertical Offset Less Than 100 ft)</u>	<u>Spacing Distance (Vertical Offset 100 ft or More)</u>
<u>The maximum amount of water the well can actually produce as equipped in gallons per minute (gpm).</u>	<u>The minimum distance, in feet, that a proposed well or proposed well site may be located from an existing registered or permitted well or approved well site.</u>	<u>The minimum distance, in feet, that a proposed well or proposed well site may be located from an existing registered or permitted well or approved well site.</u>
<u>1,500 gpm or less</u>	<u>400 feet</u>	<u>400 feet</u>
<u>1,600 gpm</u>	<u>520 feet</u>	<u>400 feet</u>
<u>1,700 gpm</u>	<u>673 feet</u>	<u>400 feet</u>
<u>1,800 gpm</u>	<u>844 feet</u>	<u>400 feet</u>
<u>1,900 gpm</u>	<u>1,033 feet</u>	<u>400 feet</u>
<u>2,000 gpm</u>	<u>1,239 feet</u>	<u>400 feet</u>
<u>2,100 gpm</u>	<u>1,463 feet</u>	<u>554 feet</u>
<u>2,200 gpm</u>	<u>1,705 feet</u>	<u>794 feet</u>
<u>2,300 gpm</u>	<u>1,965 feet</u>	<u>1,041 feet</u>

<u>2,400 gpm</u>	<u>2,242 feet</u>	<u>1,294 feet</u>
<u>2,500 gpm</u>	<u>2,537 feet</u>	<u>1,553 feet</u>
<u>2,600 gpm</u>	<u>2,850 feet</u>	<u>1,818 feet</u>
<u>2,700 gpm</u>	<u>3,181 feet</u>	<u>2,089 feet</u>
<u>2,800 gpm</u>	<u>3,529 feet</u>	<u>2,366 feet</u>
<u>2,900 gpm</u>	<u>3,895 feet</u>	<u>2,650 feet</u>
<u>3,000 gpm</u>	<u>4,279 feet</u>	<u>2,940 feet</u>

**Rule 6.53 Standards of Completion for All Wells**

- (a) Except as may be otherwise required ~~in by~~ Subsection (c) in this rule and by Subsection (c) in Rule 6.4, all wells must be completed in accordance with the well completion standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code.
- (b) Water well drillers shall indicate the method of completion in the well report as required by Rule 4.2.
- (c) In addition to any applicable standards provided for in Subsection (a), wells used to produce alternative water source groundwater must be completed using steel or other appropriately robust casing approved by the Texas Commission on Environmental Quality from the surface to the producing interval, and using cement to fill the annulus between the casing and the bore hole walls from the producing interval to the surface.

**Rule 6.6 Variances to Spacing, Location, and Tract Size Requirements.**

- (a) The Board may grant a variance to the spacing, location, and tract size requirements of the District only after consideration of an application filed pursuant to this rule.
- (b) An application for a variance to the spacing, location, or tract size requirements of the District must include:
  - (1) a description of the circumstance that the applicant believes justifies the requested variance to the spacing, location, or tract size requirements of the District;
  - (2) a plat or sketch of the tract upon which the applicant proposes to locate the well that is the subject of the application for a variance to the spacing, location, or tract size requirements of the District that:
    - (A) is drawn to scale;
    - (B) accurately provides the size of the tract that the well is proposed to be located on; and

- (C) accurately identifies and depicts the location of each well registered with the District that is located within the minimum spacing distances from the proposed well location under Rule 6.4, if applicable; and
  - (3) a list of the names and physical addresses of the owner of each property adjacent to the tract identified in Paragraph (2) of this subsection, only if the applicant is seeking a variance to the spacing, location, and tract size requirements under Rule 6.3, and the owner of each well described under Paragraph (2)(C) of this subsection, only if the applicant is seeking a variance to the spacing requirements under Rule 6.4; and
  - (4) a completed application for well registration; and
  - (5) a filing fee in an amount to be set by resolution of the Board, which shall cover all expenses involved in recording the variance in the property deed records of the county in which the well is located. This filing fee shall be refunded to the applicant in the event the variance is denied.
- (c) An application for a variance filed pursuant to this rule must be sworn to or affirmed by a person with personal knowledge of relevant facts who shall swear or affirm that the facts contained in the application are true and correct to the best of the person's knowledge. A plat filed pursuant to this rule must be certified by the county clerk's office where the land is located or sworn to or affirmed by a person with personal knowledge of relevant facts set forth in the plat, unless the District already has a certified plat by the appropriate county clerk's office on file at the District office that covers the property in question.
- (d) The Board may not approve an application filed pursuant to this rule unless:
  - (1) the General Manager has declared the application to be administratively complete;
  - (2) following the General Manager's written declaration of administrative completeness to the applicant, the applicant has, using a form provided by the District, provided written notice to each person described in Subsection (b)(3) in accordance with Subsection (e); and
  - (3) following the applicant's satisfaction of the notice requirements of Subsection (d)(2), the Board holds a public hearing on the application at the next available Board meeting or hearing called for that purpose, as determined by the General Manager in his discretion, where the applicant may be required to appear and show cause why the application should be granted, and at which all interested persons shall be given an opportunity to appear and be heard on the application.
- (e) The notice required by Subsection (d)(2) shall:
  - (1) include each of the following:

- (A) the name and address of the applicant;
  - (B) a description of the location of the property upon which the applicant proposes to locate the well that is the subject of the application for variance to the spacing requirements of the District;
  - (C) a general description of the applicant's request; and
  - (D) the date, time, and location of the public hearing on the application; and
- (2) be delivered to each person described in Subsection (b)(3), using a method of service that complies with Rule 1.8, no less than ten calendar days before the date of the public hearing on the application.
- (f) The Board may grant or deny an application filed pursuant to this rule on any reasonable grounds based on information contained in the application or evidence properly and timely presented to the Board for its consideration at the public hearing. Grounds for granting a variance may include evidence that the well proposed in the application will produce groundwater from an aquifer or subdivision of an aquifer other than the aquifer or subdivision of an aquifer from which the wells that are closer than the minimum distances are producing, evidence that the applicant will suffer an undue hardship as a result of the minimum tract size requirements or minimum well spacing requirements provided herein, and site specific evidence demonstrating that the impacts of the well proposed in the application to existing wells and adjacent landowners are substantially less than those impacts sought to be avoided through the implementation and enforcement of the District's well spacing, location, and tract size rules.
- (g) Notwithstanding any subsection of this rule to the contrary, the Board may grant an administratively complete application filed pursuant to this rule without the requirement of the notice described in Subsection (d)(2) and without the requirement of a public hearing described in Subsection (d)(3) if:
- (1) the applicant seeks a variance to the spacing requirements of the District under Rule 6.4 for a well that is proposed to be drilled or completed in the Catahoula Aquifer, and the applicant obtains, on a form provided by the District, a signed, voluntary waiver indicating the consent to the applicant's requested variance to the spacing requirements of the District by the owner of each well permitted or registered with the District that is located within the applicable minimum spacing distance, as established under these rules, from the proposed well location; or
  - (2) the applicant seeks a variance to the spacing requirements of the District under Rule 6.3 for a well that is proposed to be drilled or completed in the Gulf Coast Aquifer, and the well is proposed to be located on a tract of land that was platted, meets a variance to platting, or was otherwise lawfully configured, prior to November XX,

2014, as a tract that is too small to comply with the minimum tract size and spacing requirements set forth under Rule 6.3, but only if:

(A) the well is to be used solely for domestic, livestock, or poultry watering use;

(B) the well as equipped is incapable of producing more than 17.36 gallons of water per minute;

(C) such tract is not further subdivided into smaller tracts of land after November XX, 2014, and prior to the drilling, completion, or equipping of the well; and

(D) the applicant provides evidence of the date the tract of land was platted or was otherwise lawfully configured.

(h) Any person interested in supporting or challenging the application may;

(1) submit comments or other information in writing to the District, if received by the District prior to the date of the public hearing on the application; or

(2) appear before the Board in person at the public hearing.

(i) Applications for a variance under Subsections (g)(1) or (g)(2) of this rule may be approved or denied by the General Manager. The applicant or any person entitled to receive notice of the application for a variance pursuant to Subsections (d)(2) and (b)(3) of this rule may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board shall hear the appeal at the next regular Board meeting, unless the General Manager sets the application for consideration by the Board at an earlier Board meeting or hearing called for that purpose, as determined by the General Manager in his discretion, in lieu of approving or denying an application. Upon approval or denial of an application, the General Manager shall inform the applicant in writing by utilizing a method described in Rule 1.8.

(j) If the Board or General Manager grants a variance to the spacing requirements, the Board or General Manager may require such variance to be recorded in the property deed records of the county in which the well is located.

(k) The burden of proof in any proceeding related to an application for a variance to a spacing requirement shall be on the applicant. The Board may impose additional restrictions on the exact location or the production of a well to be drilled pursuant to a variance that it grants.

(l) The Board or General Manager may grant an application for a variance under this rule to a person who owns multiple tracts of land or lots in a platted subdivision for each tract or lot that meets the requirements of Subsection (g)(2) of this rule without the need to include a well registration or permit application with the application for a variance. However, no

well shall be drilled on any such tract until a well registration or permit application, as applicable under these rules, or for such well has been approved by the District.

**Rule 6.7 Variance Requests Involving Certain Public Water Systems.**

- (a) When considering a request for a variance to spacing requirements under Rule 6.6 by an applicant that is a retail public utility and proposes to drill a well to supply water exclusively for a public water system, the Board may consider evidence of whether the proposed well will be drilled at a location within the boundaries of a retail public utility that has prohibited the drilling of wells by other persons through a lawful ordinance, rule, resolution, or order of the retail public utility or whether the drilling of wells on other land in the area of the proposed well is prohibited through deed restrictions or other lawful means. The Board may consider whether and to what extent the well drilling prohibitions may reasonably be expected to limit the impact of the proposed well on surrounding landowners and well owners.
- (b) Notice of an application submitted under this rule shall be provided in the manner set forth under Rule 6.6.

**SECTION 7**

**REGULATION OF WELL OPERATION, PRODUCTION, AND MAINTENANCE**

**Rule 7.1 Initial Production Limitations**

- (a) The maximum annual quantity of water that may be withdrawn after August 26, 2002, ~~under,~~ under an Operating Permit shall be the amount authorized in the permit. Such amount shall be subject to the proportionate adjustment regulations of the District under Section 5 of these Rules and the District's Regulatory Plan.
- (b) The maximum annual quantity of groundwater that may be withdrawn by an applicant for a historic use permit during the time between August 26, 2002, and the issuance or denial of the permit shall be the amount specified in the applicant's historic use permit application or most recent amendment thereto as the Maximum Historic Use, subject to Rule 3.1 2(f). Such amount shall be subject to the proportionate adjustment regulations of the District under Section 5 of these Rules and the District's Regulatory Plan.

**Rule 7.2 Regular Production Limitations**

- (a) In order to accomplish the purposes of Chapter 36, Texas Water Code, and achieve the goals of the District's Groundwater Management Plan, including managing the sustainability of the aquifer, the District shall establish production limitations for all permits at some time after the

Verification Period based upon the District's determination of claims of historic use and water availability under Section 5 of these Rules and the District's Regulatory Plan.

- (b) The maximum annual quantity of groundwater that may be withdrawn under a historic use permit issued by the District shall be no greater than the amount specified in the permit or the amended permit, subject to Section 5 of these Rules and the District's Regulatory Plan.
- (c) The maximum annual quantity of groundwater that may be withdrawn under an Operating Permit shall be no greater than the amount specified in the permit, subject to Section 5 of these Rules and the District's Regulatory Plan.

### **Rule 7.3      Open or Uncovered Wells**

- (a) The District may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least four hundred pounds except when the well is in actual use.
- (b) The owner or lessee of land on which an open or uncovered well is located must close or cap the well within 10 days of receiving notice from the District that the well must be closed or capped.
- (c) As used in this section, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the aquifer that is not capped or covered as required by this Rule.
- (d) If an owner or a lessee fails or refuses to close or cap the well in compliance with this Rule, any person, firm, or corporation employed by the District may go on the land and close or cap the well safely and securely.
- (e) Reasonable expenses incurred by the District in closing or capping a well under this Rule constitutes a lien on the land on which the well is located.
- (f) The lien arises and attaches upon recordation of an affidavit in the deed records of the county where the well is located. The affidavit may be executed by any person conversant with the facts and must state:
  - (1) the existence of the well;
  - (2) the legal description of the property on which the well is located;
  - (3) the approximate location of the well on the property;
  - (4) the failure or refusal of the owner or lessee to close or cap the well within 10 days after receiving notification from the District to do so;



- (5) the well was closed or capped by the District, or by an authorized agent, representative, or employee of the District; and
- (6) the expense incurred by the District in closing or capping the well.
- (g) Nothing in this Rule affects the enforcement of Subchapter A, Chapter 756, Texas Health and Safety Code.

#### **Rule 7.4 Plugging Water Wells**

- (a) In this Rule, “abandoned well” means a well that is not in use. A well is considered to be in use if:
  - (1) the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;
  - (2) the well is not a deteriorated well and has been capped;
  - (3) the water from the well has been put to an authorized beneficial use, as defined by the Water Code;
  - (4) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or
  - (5) the owner is participating in the Conservation Reserve Program authorized by Sections 1231-1236, Food Security Act of 1985 (16 U.S.C. Sections 3831-3836), or a similar governmental program.
- (b) A driller who knows of an abandoned or deteriorated well shall notify the landowner or well owner that the well must be plugged or capped to avoid injury or pollution.
- (c) Not later than the 180th day after the date a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person shall have the well plugged or capped under standards and procedures adopted by the Texas Commission of Licensing and Regulation.
- (d) Not later than the 30th day after the date the well is plugged, a driller, licensed pump installer, or well owner who plugs an abandoned or deteriorated well shall submit a plugging report to the District.
- (e) District staff shall furnish plugging report forms on request.

## SECTION 8

### TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT

#### **Rule 8.1      General Provisions**

- (a) A person who produces or wishes to produce water from a registered or permitted well located or to be located within the District and transport such water for use outside of the District must obtain an Operating Permit, historic use permit, or amendment to such a permit from the District in the manner provided under these Rules for production and use of water within the District before transporting the water out of the District.
  
- (b) The District may not impose more restrictive permit conditions on a permit applicant who seeks to transport water for use outside of the District than the District imposes on other permittees of the District, but the District shall impose a groundwater transport fee on such a permittee as set forth under Rule 9.3 for any water transported out of the District and shall require the permittee to install any meters necessary to report the total amount of groundwater transported outside of the District for reporting purposes and for purposes of calculating the groundwater transport fee. A groundwater transport fee shall not be assessed against production in an area of a municipal utility district that is located inside the District that is transported for use to an area of the same municipal utility district that is located outside of the District.

#### **Rule 8.2      Transport Fee for Exempt Wells; Discharge Under Other Permit**

- (a) The owner of an exempt well is not excused from paying a groundwater transport fee if the groundwater produced from the exempt well is transported for use outside of the District.
  
- (b) A groundwater transport fee will not be assessed on groundwater that is transported by natural means outside of the boundaries of the District if:
  - (1) the groundwater is discharged pursuant to authorization by the Texas Commission on Environmental Quality; and
  
  - (2) the discharged groundwater is not the subject or part of an overall water transfer or sale.

## SECTION 9

## FEES AND PAYMENT OF FEES

### Rule 9.1 Water Use Fees

- (a) Each person producing, or causing to be produced, water from a non-exempt well within the District shall pay to the District a water use fee. A water use fee rate schedule shall be established by Board resolution annually at least 45 days before the end of the calendar year. The rate shall be applied to the total authorized annual pumpage for each permit, including amendments. The water use fee rate schedule established by the Board may include an inclining block rate structure designed to encourage conservation of groundwater. The District will review the account of any permittee changing the use of a well from non-exempt to exempt or vice versa to determine if additional water use fees are due or if a refund of water use fees is warranted under Subsection (e) of this Rule.
- (b) Wells exempt from permitting under Rule 3.8 shall be exempt from payment of water use fees. However, if exempt well status is withdrawn under Rule 3.8(d), the District may assess fees and penalties in accordance with District Rules.
- (c) In addition to the water use fee assessed under Subsection (a) of this Rule, each person producing, or causing to be produced, water from a non-exempt well in excess of the amount authorized in the applicable permit issued by the District shall pay to the District an overproduction penalty of \$43.00 per each 1,000 gallons of water overproduced, not to exceed \$10,000 per day for each day that overproduction occurs.
- (d) The permit holder may receive a refund of water use fees paid on water authorized to be produced under the terms of the applicable Operating Permit but not actually produced. Application for a refund under this Rule must be filed with the District no later than 180 days from the end of the permit term and must be for an amount equal to or greater than \$100.00. Any application filed for a refund of less than \$100.00 will not be considered or granted. The District upon request will provide refund application forms.
  - (1) An applicant for a water use fee refund under this Rule must present sufficient evidence that:
    - (A) a water meter was installed and operating during the entirety of the permit term;
    - (B) the amount of actual groundwater withdrawal during the permit term was less than the amount authorized to be withdrawn under the terms of the applicable Operating Permit; and
    - (C) the amount of fees eligible for refund under this Rule equal or exceed \$100.00.
  - (2) For purposes of a refund sought under this Rule only, in instances where an Operating Permit is issued for a well or well system currently permitted by a valid

historic use permit, water produced under such authorizations will be counted first toward the historic use permit until all production authorized under the terms of the historic use permit is accounted for, with any remaining production counted toward the initial term of the Operating Permit that serves as the basis for the refund.

- (3) The General Manager may rule on applications for water use fee refund applications made pursuant to this Rule without notice, hearing, or further action by the Board. Once a ruling is made by the General Manager, notice of the ruling shall be provided to the applicant. An applicant may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next regular Board meeting.
  - (4) Refunds made under this Subsection (d) are authorized for the period of production between issuance of a new Operating Permit and the end of the initial permit term only.
- (e) Any well that is subject to fee payment under this Rule and that provides water for both agricultural and non-agricultural purposes shall pay the water use fee rate applicable to non-agricultural purposes for all water authorized to be produced under the permit, unless the applicant can demonstrate through convincing evidence to the satisfaction of the District that a system is or will be in place so as to assure an accurate accounting of water for each purpose of use and the District authorizes separate amounts for each purpose in the permit.

## **Rule 9.2 Application and Other Fees**

The Board, by resolution, shall establish a schedule of fees for administrative acts of the District, including the cost of reviewing and processing permits and the cost of hearings for permits, and such administrative fees shall not unreasonably exceed the cost to the District for performing such administrative acts. In addition to such fees, the District shall assess a fee against permit applicants in the amount of \$35.00 or in an amount otherwise set by Board resolution to help reimburse the District for the costs of publishing notice of a hearing related to a permit matter for each notice published for a particular application.

## **Rule 9.3 Groundwater Transport Fee**

The District shall impose a reasonable fee or surcharge, established by Board resolution, for transportation of groundwater out of the District using one of the following methods:

- (a) a fee negotiated between the District and the transporter; or
- (b) a fifty percent (50%) export surcharge in addition to the District's water use fee for in-District use.

#### **Rule 9.4 Returned Check Fee**

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

#### **Rule 9.5 Well Report Deposit**

The Board, by resolution, may establish a well report deposit to be held by the District. The District shall return the deposit to the depositor if all relevant well reports are timely submitted to the District in accordance with these Rules. In the event the District does not timely receive all relevant well reports, or if rights granted within the registration or permit are not timely used, the deposit shall become the property of the District.

#### **Rule 9.6 Payment of Fees**

- (a) All fees are due at the time of application or permitting as set forth under these Rules. At the election of the permittee, the annual water use fee for a permit shall be paid annually or in quarterly installments. Permittees whose annual water use fee is \$500.00 or less are required to pay annually. Upon the Board's grant of a permit application and prior to issuance of the permit, the General Manager shall promptly provide an invoice to the new permittee for water use fees and any applicable administrative fees required by the District for permit applicants and permittees. A permit shall not be issued by the District until the District has received from the new permittee the annual water use fee or the first quarterly payment, as applicable, of the invoiced water use fee, along with full payment of any applicable administrative fees invoiced by the District for permit applicants. New permittees electing to pay by quarterly installments shall make the first installment at the time of permit issuance with subsequent payments due as described in this Rule. For historic use permit applicants, the initial water use fee for calendar year 2002 shall be submitted with the application. Notwithstanding any Rule to the contrary, failure of a historic use permit applicant to submit the initial water use fee so that it is received by the District on or before December 1, 2002, shall constitute grounds for denial of the historic use permit.
- (b) Annual water use fees other than the initial water use fee are due and shall be paid on or before the first day of January of each year, depending upon the nature of the permit, or in quarterly installments in accordance with Subsection (c) of this Rule. The initial water use fee is due and shall be paid on or before the 30<sup>th</sup> calendar date after the date the invoice is mailed by the General Manager.
- (c) Quarterly water use fee payments of four equal installments shall be due on or before the first day of the months of January, April, July, and October.

- (d) All fees other than water use fees are due at the time of assessment and are late after 30 days beyond the date of assessment.

**Rule 9.7 Failure of New Permittees to Make Initial Water Use Fee Payment**

Failure of a permittee to make the initial annual water use fee payment or the initial installment payment will result in the District’s withholding issuance of the permit until receipt of the outstanding fees plus late payment fees due and constitutes grounds for the District to declare the permit void after 45 days.

**Rule 9.8 Failure to Make Fee Payments**

- (a) Payments not received within 30 days following the date that water use fees are due and owing to the District pursuant to Rule 9.6(b) or (c) will be subject to a late payment penalty of the greater of the following:
  - (1) \$25.00; or
  - (2) ten percent (10%) of the total amount of annual water use fees due and owing to the District.
- (b) Persons failing to remit all water use fees due and owing to the District within 60 days of the date such fees are due pursuant to Rule 9.6(b) or 9.6(c) shall be subject to a non-compliance penalty for a major violation, in addition to the late fee penalty prescribed in Subsection (a) of this Rule, and may be subject to additional enforcement measures provided for by these Rules or by order of the Board.

**SECTION 10**

**WATER USE FEE REBATE PROGRAM**

**Rule 10.1 General Provisions**

- (a) At the discretion of the Board, subject to annual appropriation of the District's operating budget, beginning January 1, 2010 rebates may be offered to permit holders who have paid water use fees to the District for all water authorized to be produced under the applicable permit, but have produced a total amount of groundwater over the course of the permit term that is less than the total amount of groundwater authorized by the permit to be produced.
- (b) If eligible under Rule 10.2, permittees may receive reimbursement of paid water use fees based on the difference between the amount of groundwater authorized to be produced annually through a historic use permit or through an Operating Permit issued by the District

and the amount of groundwater actually withdrawn by the permittee and demonstrated to the District, up to an amount not to exceed ten percent (10%) of the total paid water use fees. Any applicable reimbursement may, at the discretion of the Board, be made in the form of a direct rebate or as a credit toward water use fees accrued for the permit term following the term for which the rebate is sought.

## **Rule 10.2 Eligibility**

- (a) To qualify for participation in the rebate program described in District Rule 10.1, a person must:
  - (1) seek a refund for water use fees paid in association with a historic use permit or an Operating Permit issued by the District;
  - (2) have submitted all water use fees due and owing to the District no later than the date such fees are due pursuant to District Rule 9.6(b);
  - (3) have, on or before February 15 of the applicable year, submitted all reports required under District Rule 4.3 that evidence the water use that serves as the basis for the rebate request; and
  - (4) have no outstanding, unresolved enforcement matters pending before the District, not including matters awaiting a final dispensation by the Board following the initiation of a formal protest.
- (b) Applications for water use fee rebates under Rule 10.1 must be filed with the District no later than 90 days from the date that annual water use fees are due.
- (c) Each applicant seeking a water use fee rebate under this Section must provide sufficient evidence in the application to demonstrate, to the satisfaction of the General Manager or Board, as applicable, that:
  - (1) the water production that serves as the basis for the rebate request was measured and recorded by a properly installed water meter that was calibrated in accordance with District Rules, and that was competently operating at all times during the applicable production year; and
  - (2) the total amount of actual groundwater withdrawn during the applicable production year was less than the total amount of groundwater authorized to be withdrawn under the terms of the applicable permit.
- (d) Applications for water use fee rebates must be for amounts that equal or exceed \$10.00. Any applications filed under this Section 10 seeking a refund of less than \$10.00 will not be considered.

- (e) The District will make applications for water use fee rebates available in electronic or other forms. Such applications may, in addition to any other information required under this Section, require the submission of water use information deemed necessary by the General Manager or by the Board, including without limitation and where applicable:
  - (1) information describing the number of connections served by each applicable well;
  - (2) total water use history for the previous two years;
  - (3) system loss information; and
  - (4) production authorization amounts requested for the previous two permit terms.
- (f) The General Manager may rule on applications for water use fee rebates without notice, hearing, or further action by the Board. Once a ruling is made by the General Manager, notice of the ruling shall be provided to the applicant. An applicant may appeal the decision of the General Manager under Section 12 in the same manner as appeals are made of decisions on applications for Operating Permits or amendments thereto.
- (g) Rebates authorized under this Rule may not be combined with any refund of fees provided for under District Rule 9.1 for the same permit.

## **SECTION 11**

### **METERING**

#### **Rule 11.1 Water Meter Required**

- (a) Except as provided in Rule 11.2, the owner of a registered or permitted well located in the District shall equip the well with a flow measurement device meeting the specifications of these Rules and shall operate the meter on the well to measure the flow rate and cumulative amount of groundwater withdrawn from the well. Except as provided in Rule 11.2, the owner of an existing well that is located in the District shall install a meter on the well prior to producing groundwater from the well after December 31, 2002.
- (b) A mechanically driven, totalizing water meter is the only type of meter that may be installed on a well permitted by or registered with the District. The totalizer must not be resettable by the permittee and must be capable of a maximum reading greater than the maximum expected pumpage during the permit term. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works



Association standards for cold-water meters as those standards existed on the date of adoption of these Rules.

- (c) The water meter must be installed according to the manufacturer's published specifications in effect at the time of the meter installation, or the meter's accuracy must be verified by the permittee in accordance with Rule 11.4. If no specifications are published, there must be a minimum length of five pipe diameters of straight pipe upstream of the water meter and one pipe diameter of straight pipe downstream of the water meter. These lengths of straight pipe must contain no check valves, tees, gate valves, back flow preventers, blow-off valves, or any other fixture other than those flanges or welds necessary to connect the straight pipe to the meter. In addition, the pipe must be completely full of water throughout the region. All installed meters must measure only groundwater.
- (d) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's standards, instructions, or recommendations, and shall be calibrated to ensure an accuracy reading range of ninety-five percent (95%) to one hundred-five percent (105%) of actual flow.
- (e) The owner of a well is responsible for the installation, operation, maintenance, and repair of the meter associated with the well.
- (f) Bypasses, which include any device or feature located between the wellhead and the meter that would allow water to be diverted for use before it passes through the meter, are prohibited unless they are also metered.

## **Rule 11.2 Water Meter Exceptions**

- (a) Wells exempt under Rule 3.8 shall be exempt from the requirement of metering groundwater withdrawals under Rule 11.1.
- (b) Following notice and hearing, the Board may grant an exception from the water meter requirements of these Rules for a non-exempt well with a column pipe inside diameter of one inch or less.
- (c) If evidence is presented at a hearing which indicates that the well does not meet the casing diameter, pumpage, or purpose requirements of this exception, or where there is not reasonable basis for determining the pumpage (such as wells serving ponds, irrigation, landscaping, or car washes) the Board may require that water meters be installed within a specified time period. In addition, verification of well size may be required in accordance with Rule 11.3.
- (d) Water Use Fee: The water use fee to be assessed permittees granted a water meter exemption shall be the fee rate multiplied by one million gallons per year.

### **Rule 11.3 Metering Aggregate Withdrawal**

Where wells are permitted in the aggregate, one or more water meters may be used for the aggregate well system if the water meter or meters are installed so as to measure the groundwater production from all wells covered by the aggregate permits. The provisions of Rule 11.1 apply to meters measuring aggregate pumpage.

### **Rule 11.4 Meter Accuracy Verification**

- (a) The General Manager may require the permittee, at the permittee's expense, to test the accuracy of a water meter and submit a certificate of the test results. The certificate shall be on a form provided by the District. The General Manager may further require that such test be performed by a third party qualified to perform such tests. The third party must be approved by the General Manager prior to the test. Except as otherwise provided herein, certification tests will be required no more than once every three years for the same meter. If the test results indicate that the water meter is registering an accuracy reading outside the range of ninety-five percent (95%) to one hundred-five percent (105%) of the actual flow, then appropriate steps shall be taken by the permittee to repair or replace the water meter within 90 calendar days from the date of the test. The District, at its own expense, may undertake random tests and other investigations at any time for the purpose of verifying water meter readings. If the District's tests or investigations reveal that a water meter is not registering within the accuracy range of ninety-five percent (95%) to one hundred-five percent (105%) of the actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or wells, the permittee shall reimburse the District for the cost of those tests and investigations, and the permittee shall take appropriate steps to bring the meter or meters into compliance with these Rules within 90 calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement of accuracy is impaired, the District may require the permittee, at the permittee's expense, to take appropriate steps to remedy the problem and to retest the water meter within 90 calendar days from the date the problem is discovered and reported to the permittee.
- (b) Meter Testing and Calibration Equipment: Only equipment capable of accuracy results of plus or minus two percent (+/- 2%) of actual flow may be used to calibrate or test meters.
- (c) Calibration of Testing Equipment: All approved testing equipment must be calibrated every two years by an independent testing laboratory or company capable of accuracy verification. A copy of the accuracy verification must be presented to the District before any further tests may be performed using that equipment.

### **Rule 11.5 Removal of Meter for Repairs**

A water meter may be removed for repairs and the well remain operational provided that the District is notified prior to removal and the repairs are completed in a timely manner. The readings on the meter must be recorded immediately prior to removal and at the time of

reinstallation. The record of pumpage must include an estimate of the amount of groundwater withdrawn during the period the meter was not installed and operating.

#### **Rule 11.6 Water Meter Readings**

The permittee of a well must read each water meter associated with the well and record the meter readings and the actual amount of pumpage in a log at least monthly. The logs containing the recordings shall be available for inspection by the District at reasonable business hours. Copies of the logs must be included with the water production report as required by District Rule 4.3. The permittee of a well shall read each water meter associated with the well within 15 days before or after the date the permit expires and within 30 days after the date of expiration of the permit report the readings to the District on a form provided by the District.

#### **Rule 11.7 Installation of Meters**

Except as otherwise provided by these Rules, a meter required to be installed under these Rules shall be installed before producing water from the well under a permit issued by the District.

#### **Rule 11.8 Tampering Prohibited**

No person may tamper with any meter installed, or that is required to be installed, on any well within the District's boundaries.

### **SECTION 11A**

#### **PROCEDURES FOR THE PROCESSING AND DETERMINATION OF HISTORIC USE PERMIT APPLICATIONS**

##### **Rule 11A.1 Implementation of Historic Use Permit Program**

This section has been adopted to implement the District's historic use permit program in furtherance of the requirements set forth in Rule 3.12(h), and shall apply solely to historic use permit applications.

##### **Rule 11A.2 Determination of Administrative Completeness**

Upon conclusion of the Verification Period and receipt of the well production reports due on February 15, 2005, the General Manager shall conduct an initial review of historic use permit applications for administrative completeness. During this initial review, or upon determination that an application is or is not administratively complete, the General Manager shall mail written

notification to the applicant of any deficiencies in the application or of the General Manager's determination that the application is administratively complete. Any additional information received from the applicant will become part of the application. An application shall not be considered administratively complete until all requested information has been submitted and all applicable fees have been paid. The application may be deemed to have expired, at the discretion of the Board, if the applicant does not complete the application within 90 days of the date of the District's initial request for additional information.

### **Rule 11A.3 Technical Review and Issuance of Notice of Proposed Permit**

(a) **Technical Review:** Upon determination that an application is administratively complete, the General Manager shall conduct a technical review of the application and prepare a recommendation for Board action on the application based upon the information contained in the application and after consideration of the applicable criteria set forth in Chapter 36 of the Texas Water Code, the District Act, and the District Rules. The General Manager may request additional information from the applicant to support the General Manager's technical review and development of a recommendation. If the General Manager's recommendation is to grant a permit in whole or in part, the recommendation shall include an amount that the General Manager believes the weight of the evidence will support as the applicant's Maximum Historic Use, and the General Manager shall not be constrained by the amount designated as Maximum Historic Use by the applicant in the application or most recent amendment thereto in developing the recommendation.

(b) **Issuance of Notice of Proposed Permit**

After completing the technical review and developing a recommendation on an application and no less than 30 days prior to the preliminary hearing, the General Manager shall issue notice of the recommendation and setting of the preliminary hearing in the following manner:

- (1) The General Manager's recommendation shall be incorporated into a proposed permit and provided to the applicant by regular mail, along with an advisory on how to protest the recommendation, and notice of the date, time, and place of the preliminary hearing.
- (2) The General Manager's recommendation shall be posted at a place convenient to the public in the District office, published in a newspaper of general circulation in the District, provided to the County Clerk for posting on a bulletin board at a place convenient to the public at the County Courthouse, and provided by mail, facsimile, or email to any person who has requested notice under Paragraph (3) of this subsection. This notice may include recommendations on one or more applications and shall include the following information:

- (A) name and address of the applicant;

- (B) the approximate location or address of the well or wells that are the subject of the application;
  - (C) the Maximum Historic Use claimed by the applicant;
  - (D) a brief explanation of the proposed permit and the General Manager's recommended action, including the proposed Maximum Historic Use recommendation, if applicable;
  - (E) notice of the date, time, and place of the preliminary hearing;
  - (F) an advisory how to protest the recommendation; and
  - (G) any other information the General Manager deems appropriate to include in the notice.
- (3) A person having an interest in the subject matter of a hearing on a historic use permit application may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. 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 by the District to provide written notice to a person under this paragraph does not invalidate any action taken by the Board.

#### **Rule 11A.4 Contesting a Historic Use Permit Application**

The requirements set forth in Rule 12.5 relating to requests for contested case hearings shall apply to historic use permit applications.

#### **Rule 11A.5 Hearing Before the Board**

- (a) A historic use permit application designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner or may be heard by the Board along with an appointed Hearing Examiner who officiates during the hearing. Upon issuance of the notice of proposed permit under this section, the Board shall proceed with setting and conducting the following hearings on an application:
  - (1) preliminary hearing: A preliminary hearing shall be held after issuance of the notice of a proposed permit;

- (2) pre-evidentiary hearing: If determined by the Board or Hearing Examiner to be necessary;
  - (3) evidentiary hearing: An evidentiary hearing shall be conducted no later than 75 days from the date the preliminary hearing is held;
  - (4) hearing for Board's consideration of hearing report and final decision;
  - (5) hearing on any filed motions for rehearing; and
  - (6) rehearing, if a motion for rehearing is granted.
- (b) The parties shall bear their own costs and the District shall not assess costs associated with the hearing beyond any application fee to the applicant or other parties, except as provided by these Rules.

#### **Rule 11A.6 Preliminary Hearing**

- (a) Uncontested applications: For any application determined to be uncontested, as set forth in Rule 12.6, the Hearing Body may proceed at the preliminary hearing to review the evidence on file with the District and upon consideration of the relevant factors make a decision on the application if the Hearing Body is the Board of Directors. If the Hearing Examiner or two or more members of the Hearing Body disagree with the General Manager's proposed permit, the applicant and General Manager shall be given an opportunity to present additional argument and evidence to address the Hearing Examiner's or Hearing Body's concerns. The Hearing Body or Hearing Examiner may continue the hearing to grant additional time to the applicant to file supplemental evidence with the District. For any application determined to be uncontested, the uncontested hearing procedures of Section 12 of these Rules, as set forth in Rules 12.4 and 12.6 shall apply. At the discretion of the Hearing Body, the procedures of Rule 12.7 may also be applicable.
- (b) Contested applications: For any application determined to be contested, the contested hearings procedures of Section 12 of these Rules, as set forth at Rule 12.4 and 12.7 shall apply to historic use permit applications.

### **SECTION 12**

#### **HEARINGS ON RULEMAKING AND PERMIT MATTERS**

#### **Rule 12.1 Types of Hearings**

- (a) The District conducts three general types of hearings under this section:

- (1) hearings involving the issuance of permits or permit amendments, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing;
- (2) 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; and
- (3) Rules enforcement hearings, in which the obligation and authority of the District to impose civil penalties are considered under specific relevant circumstances, after an opportunity for an adjudicative hearing.

Any matter designated for hearing before the Board may be heard by a quorum of the Board, referred by the Board for hearing before a Hearing Examiner, or heard by a quorum of the Board along with an appointed Hearing Examiner who officiates during the hearing.

(b) Permit Hearings:

- (1) Permit Applications and Amendments: The District shall hold a hearing for each activity for which a permit or permit amendment is required pursuant to Section 3, subject to the exception in Rule 12.1(b)(2). A hearing involving permit matters may be scheduled before a Hearing Examiner.
- (2) The District shall hold a hearing for minor amendments only if the General Manager determines that a hearing is required.
- (3) The District may hold hearings on permit renewals.
- (4) Hearings on Motions for Rehearing: Motions for rehearing will be heard by the Board pursuant to Rule 12.11(c).

(c) Rulemaking Hearings:

- (1) District Management Plan: The Board shall hold a hearing to consider adoption of a new District Management Plan.
- (2) Other Matters: A public hearing may be held on any matter within the jurisdiction of the Board if the Board determines that a hearing is in the public interest or necessary to effectively carry out the duties and responsibilities of the District.

- (d) Enforcement Hearings: Following the issuance of any notice of violation issued by the District pursuant to Rule 2.4, a compliance order under Rule 2.6, or upon the proposal to institute or the institution of any other enforcement action by the District other than an action filed by the District in a court of appropriate jurisdiction pursuant to Section 36.102, Texas Water Code, the Respondent may contest an enforcement action or a proposed

enforcement action by requesting, pursuant to Rule 12.5.1, a contested case hearing on the matter.

## **Rule 12.2 Notice and Scheduling of Rulemaking Hearings**

- (a) Not later than the 20th day before the date of a rulemaking hearing, the General Manager, as instructed by the Board, is responsible for giving notice in the following manner:
  - (1) notice of the hearing will be published at least once in a newspaper of general circulation in the District;
  - (2) a copy of the notice will be posted in a place readily accessible to the public at the District's office;
  - (3) notice of the hearing will be provided to the County Clerk; and
  - (4) notice will be provided by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (b).
- (b) A person having an interest in the subject matter of a hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. 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 by the District to provide written notice to a person under this subsection does not invalidate any action taken by the Board.
- (c) The notice provided under Subsection (a) must include:
  - (1) the time, date, and location of the rulemaking hearing;
  - (2) a brief explanation of the subject of the rulemaking hearing; and
  - (3) a location or internet site at which at which a copy of the proposed Rules may be reviewed or copied.
- (d) A hearing may be scheduled during the District's regular business hours, excluding District holidays. All rulemaking hearings will be held at the District office or regular meeting location of the Board. The Board, however, may change or schedule additional dates, times, and places for hearings.
- (e) The District shall make available a copy of all proposed Rules at a place accessible to the public during normal business hours, and post an electronic copy of the Rules on the District's internet site.



### **Rule 12.3 Notice and Scheduling of Permit Hearings**

- (a) This Rule applies to all permit matters for which a hearing is required, except as provided under Rule 11A for historic use permit applications.
- (b) Notice may be provided under this Rule for permit renewals if the General Manager determines that a hearing is required.
- (c) Not later than the 10th day before the date of a hearing, the General Manager, as instructed by the Board, is responsible for giving notice in the following manner:
  - (1) notice of hearing will be published at least once in a newspaper of general circulation in the District;
  - (2) a copy of the notice shall be posted in a place readily accessible to the public at the District's office;
  - (3) notice of the hearing shall be provided to the County Clerk;
  - (4) notice of the hearing shall be provided by regular mail to the applicant; and
  - (5) notice of the hearing shall be provided by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d).
- (d) A person having an interest in the subject matter of a hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. 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 by the District to provide written notice to a person under this subsection does not invalidate any action taken by the Board.
- (e) The notice provided under Subsections (a) and (b) must include:
  - (1) the name of the applicant;
  - (2) the address or approximate location of the well or proposed well;
  - (3) if the notice is for a permit, permit amendment or permit renewal, provide a brief explanation, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
  - (4) a general explanation of the manner by which a person may contest the permit, permit amendment, or permit renewal, including information regarding the need

to appear at the hearing or submit a motion for continuance on good cause under Rule 12.7(e)(5).

- (5) the time, date, and location of the hearing; and
  - (6) any other information the Board or General Manager deems relevant and appropriate to include in the notice.
- (f) An administratively complete application shall be set for a hearing on a specific date within 60 days after the date it is submitted. A hearing shall be held within 35 days after the setting of the date, and the District shall act on the application within 60 days after the date the final hearing on the application is concluded.
- (g) A hearing may be scheduled during the District's regular business hours, excluding District holidays. All permit hearings will be held at the District office or regular meeting location of the Board. The Board, however, may change or schedule additional dates, times, and places for hearings.

#### **Rule 12.3.1 Notice and Scheduling of Contested Case Hearings on Enforcement Matters**

- (a) This Rule applies to all enforcement matters for which a contested hearing has been requested in accordance with Rule 12.5.1.
- (b) Not later than the 20th day before the date of a hearing, the General Manager, as instructed by the Board, shall notify the Respondent of the hearing by providing notice of the same:
  - (1) in a place readily accessible to the public at the District's office; and
  - (2) by first class regular mail to the Respondent or the Respondent's designated representative.
- (c) The notice provided under Subsection (b) must include:
  - (1) the name of the Respondent;
  - (2) the mailing address of the Respondent;
  - (3) the date or dates of all notices of violation or Board orders that will be the subject of the hearing, along with a description of the violations noticed in each pertinent notice of violation or Board order;
  - (4) the date that the request for a contested case hearing on the proposed enforcement action was received by the District;
  - (5) a statement informing the Respondent of the need to appear at the hearing and the need to comply with Rule 12.4(g) if a continuance of the hearing date is sought;

- (6) the time, date, and location of the hearing; and
  - (7) any other information the Board or General Manager deems relevant and appropriate to include in the notice.
- (d) A hearing on the merits of the enforcement matters noticed under this Rule shall begin within 60 days after the date that the request under Rule 12.5.1 is received by the District.
- (e) Requisites for notice of show cause hearings ordered by the Board shall be governed by Rule 2.5(b).

**Rule 12.4 General Procedures**

- (a) Authority of Presiding Officer: The Presiding Officer may conduct a hearing or other proceeding in the manner the Presiding Officer determines most appropriate for the particular proceeding. The authority of a Hearing Examiner appointed by the Board to serve as Presiding Officer may be limited at the discretion of the Board. The Presiding Officer may:
- (1) set hearing dates other than the initial hearing date for permit matters which is 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, the admissibility of evidence, and amendments to pleadings;
  - (5) designate parties and establish the order for presentation of evidence;
  - (6) administer oaths to all persons presenting testimony;
  - (7) examine witnesses;
  - (8) prescribe reasonable time limits for the presentation of evidence and oral argument;
  - (9) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party to the proceeding;
  - (10) conduct public hearings in an orderly manner in accordance with these Rules;
  - (11) recess a hearing from time to time and place to place;

- (12) reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
  - (13) exercise any other lawful power necessary or convenient to effectively carry out the responsibilities of the Presiding Officer.
- (b) Registration form: Each individual attending a hearing or other proceeding of the District who wishes to testify or otherwise provide information to the District must submit a form to the Presiding Officer providing the following information:
- (1) the individual's name;
  - (2) the individual's address;
  - (3) whether the individual plans to testify;
  - (4) whom the person represents, if the person is not there in the person's individual capacity; and
  - (5) any other information relevant to the hearing or other proceeding.
- (c) Appearance; representative capacity: An interested person may appear in person or may be represented by counsel, an engineer, or other representative, provided the representative is authorized to speak and act for the principal. The person or the person's representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. A partner may appear on behalf of a 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 on behalf of 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 to so appear.
- (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 members of an aligned class to select one or more persons to represent the class 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 from each aligned class to be heard in the proceeding or on any particular matter or ruling.
- (e) Appearance by applicant, movant, or Respondent: The applicant, movant, party, or Respondent, or their authorized representative, should be present at the hearing or other proceeding. Failure to 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 determines that action is necessary to fully develop the record. For Respondents who have requested a contested case hearing on an enforcement matter under Rule 12.5.1, the failure to appear at the hearing on the

merits will be grounds for the issuance of a default order in favor of the enforcement actions at issue.

- (f) Recording:
- (1) Contested hearings: A record of the hearing in the form of an audio or video recording or a court reporter transcription shall be prepared and kept by the Presiding Officer in a contested hearing. The Presiding Officer shall have the hearing transcribed by a court reporter upon a request by a party to a contested hearing. The Presiding Officer may assess court reporter transcription costs against the party requesting the transcription or among the parties to the hearing. The Presiding Officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this Rule, unless the parties have agreed that the costs assessed against such party will be paid by another party.
  - (2) Uncontested hearings: In an uncontested hearing the Presiding Officer may use the means available in Subsection (f)(1) of this Rule to record a proceeding or substitute meeting minutes or the report set forth under Rule 10.9 for a method of recording the hearing.
  - (3) Rulemaking hearings: The Presiding Officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
- (g) Continuance: Except as required by the Open Meetings Act, the Presiding Officer may continue a hearing or other proceeding without the necessity of publishing, serving, mailing, or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District office) 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 mailed at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Rule 12.2(b) and 12.3(c), and any other person the Presiding Officer deems appropriate, but it is not necessary to provide other notice under Rules 12.2 and 12.3.
- (h) Filing of documents; time limit: Applications, petitions, motions, exceptions, communications, requests, briefs, or other papers and documents required to be filed under these Rules or by law must be received at the District office within the time limit, if any, set by these Rules 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: If a party to a hearing or other proceeding is required to make an affidavit, the affidavit may be made by the party or the party's representative. 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 a 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 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 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 determines necessary.
- (l) Public comment on applications: Documents that are filed with the Board that comment on an application but do not request a hearing will be treated as public comment. The Presiding Officer may allow any person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application.

**Rule 12.5      Contesting a Permit Application; Uncontested and Contested Cases**

- (a) Contested case hearing requests: The following may request a contested case hearing on an application for a permit or permit amendment:
  - (1) the General Manager;
  - (2) the applicant; or
  - (3) an affected person.
- (b) Requirement for contested case hearing requests on applications: A request for a contested case hearing must substantially comply with the following:
  - (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
  - (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
  - (3) set forth the grounds on which the person is protesting the application;

- (4) request a contested case hearing;
  - (5) be timely under Rule 12.5(d); and
  - (6) provide any other information required by the public notice of application.
- (c) Contested case hearing request on more than one application: If a person or entity is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.
- (d) Deadline for contested case hearing requests on applications: A hearing request is considered timely if it complies with Rule 12.5(b) and:
- (1) it is submitted in writing to and received by the District prior to the date of the hearing and action by the Board on the application; or
  - (2) the person appears before the Board at the hearing and opposes the application.

For a hearing request on a historic use permit application, the date of the preliminary hearing set forth in accordance with Rule 11A.3 shall be used for purposes of determining timeliness under this subsection.

- (e) Contested case: A matter regarding an application is considered to be contested if a hearing request is made pursuant to Rule 12.5(b) and 12.5(c), made in a timely manner pursuant to Rule 12.5(d), and declared as such by the Presiding Officer. Any case not declared a contested case under this Rule is an uncontested case.

### **Rule 12.5.1 Contesting an Enforcement Action**

- (a) A person in receipt of a written notice of violation from the District, or an order of the Board involving a matter for which an opportunity for a contested enforcement action has not previously been provided, may formally contest the enforcement action or actions at issue by submitting to the District a written petition contesting the actions or proposed actions and seeking a hearing on the merits of the same.
- (b) A petition filed pursuant to Subsection (a) of this Rule must be filed within 45 days following the date the notice of violation or order is delivered. For purposes of this Rule only, the date a notice of violation or order will be considered delivered is the date of delivery as evidenced by a return receipt or written delivery confirmation generated by the United States Postal Service. In the absence of either a return receipt, a delivery confirmation, or other convincing evidence indicating otherwise, a notice of violation or order is considered delivered on the third business day following the date such notice or order was deposited by the District for delivery with the United States Postal Service.

- (c) Petitions filed under Subsection (a) shall be addressed directly to the Board of Directors of the Lone Star Groundwater Conservation District, and shall contain the following:
  - (1) the name, physical address, daytime telephone number and, if available, the facsimile number of the Respondent;
  - (2) the name and contact information of all other known parties;
  - (3) a concise statement of the facts relied upon in defense of each violation asserted by the District to which a contest is being filed;
  - (4) a concise statement of any law relied upon in defense of each violation asserted by the District to which a contest is being filed;
  - (5) a statement regarding the type of relief requested; and
  - (6) the signature of the Respondent or the Respondent's authorized representative.
- (d) A petition may adopt and incorporate by reference any part of any document or entry in the official files and records of the District. Copies of the relevant portions of such documents must be attached to the petition.
- (e) Parties to an enforcement action formally contested under this Rule may file supplemental or amended pleadings no later than 7 days before a hearing on the merits of the matter.

**Rule 12.6 Decision to Proceed as Uncontested or Contested Case on Applications**

- (a) Action on contested case hearing requests: the written or oral submittal of a hearing request is not, in itself, a determination of a contested case. The Presiding Officer will evaluate the contested case hearing request at the hearing and may:
  - (1) determine that a hearing request does not meet the requirements of Rule 12.5(b) and deny the request;
  - (2) determine that the person requesting the hearing is not an affected person related to the application and deny the hearing request;
  - (3) determine that a hearing request meets the requirements of Rule 12.5(b), and designate the matter as a contested hearing upon determining that the person is an affected person; or
  - (4) refer the case to a procedural hearing.
- (b) The Presiding Officer may hold a hearing on any issue related to the determination of whether to declare a matter as a contested case.



- (c) The Presiding Officer may recommend issuance of a temporary permit for a period not to exceed four months, with any special provisions the Presiding Officer deems necessary, for the purpose of completing the contested case process.
- (d) Any case not declared a contested case under this section is an uncontested case, and the Presiding Officer will summarize the evidence and issue a report to the Board within 30 days after the date a hearing is concluded. Such report must include a summary of the subject matter of the hearing; a summary of the evidence or public comments received; and the Presiding Officer's recommendations to the Board. A copy of the report must be provided to the applicant; and each person who provided comment. A report is not required if the hearing was conducted by a quorum of the Board and the hearing was recorded pursuant to Rule 12.4(f).

### **Rule 12.7 Contested Permit and Enforcement Hearings Procedures**

- (a) Procedural hearing: A procedural hearing may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process in contested matters.
- (b) Matters considered: Matters that may be considered at a procedural hearing include:
  - (1) the designation of parties;
  - (2) the formulation and simplification of issues;
  - (3) the necessity or desirability of amending applications or other pleadings;
  - (4) the possibility of making admissions or stipulations;
  - (5) the scheduling of depositions, if authorized by the Presiding Officer;
  - (6) the identification of and specification of the number of witnesses;
  - (7) the filing and exchange of prepared testimony and exhibits; and
  - (8) the procedure at the evidentiary hearing.
- (c) Notice: A procedural hearing or evidentiary hearing may be held at a date, time, and place stated in a notice, given in accordance with Rule 12.3, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued at the discretion of the Presiding Officer.
- (d) Procedural hearing action: Action taken at a procedural hearing may be reduced to writing and made a part of the record or may be stated on the record at the close of the hearing.
- (e) Designation of parties:

- (1) Parties to a contested permit hearing will be designated as determined by the Presiding Officer.
  - (2) The General Manager and the applicant are automatically designated as parties in matters involving permit or permit amendment applications.
  - (3) The General Manager and the Respondent are automatically designated as parties in contested cases involving enforcement actions.
  - (4) In order to be admitted as a party, persons other than the automatic parties must appear at the hearing in person or by representation and seek to be designated as a party.
  - (5) A person requesting a contested case hearing that is unable to attend the first day of the proceeding must submit a continuance request to the Presiding Officer, in writing, stating good cause for his inability to appear at the proceeding. The Presiding Officer may grant or deny the request, at his discretion.
  - (6) After parties are designated, no other person may be admitted as a party unless, in the judgment of the Presiding Officer, there exists good cause and the hearing will not be unreasonably delayed.
- (f) **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 party or party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies to a party or a party's representative may be grounds for withholding consideration of the pleading or the matters set forth therein.
- (g) **Disabled parties and witnesses:** Persons who have special requests concerning their need for reasonable accommodation, as defined by the Americans With Disabilities Act, 42 U.S.C.12111(9), during a Board meeting or a hearing shall make advance arrangements with the General Manager of the District. Reasonable accommodation shall be made unless undue hardship, as defined in 42 U.S.C. 12111(10), would befall the District.
- (h) **Interpreters for deaf parties and witnesses:** If a party or subpoenaed witness in a contested case is deaf, the District must 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 Presiding Officer unless it is in

writing, signed by all parties, and filed as part of the record, or unless it is announced at the hearing and entered on the record.

- (j) Ex Parte communications: Neither the Presiding Officer nor a Board member may communicate, directly or indirectly, in connection with any issue of fact or law in a contested case with any agency, person, party, or representative, except with notice and an opportunity for all parties to participate. This provision does not prevent such communications between Board members and District staff, attorneys, or other professional consultants retained by the District.
- (k) Written testimony: The Presiding Officer may allow testimony to be submitted in writing, either in narrative or question and answer form, and may require the written testimony be sworn to. On the motion of a party to a hearing, the Presiding Officer may exclude written testimony if the person who submits the testimony is not available for cross-examination in person or by phone at the hearing, by deposition before the hearing, or other reasonable means.
- (l) Cross-examination: The opportunity for cross-examination shall be provided for all testimony offered in a contested case hearing.
- (m) Evidence:
  - (1) The Presiding Officer shall admit evidence if it is relevant to an issue at the hearing. The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
  - (2) Notwithstanding Paragraph (1), the Texas Rules of Evidence govern the admissibility and introduction of evidence of historic use or existing use in a historic use permit application, 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.
- (n) Burden of Proof:
  - (1) The General Manager has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed remedial provisions and penalties. The Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted.
  - (2) Except as provided by Paragraph (1) of this subsection, the burden of proof is on the moving party by a preponderance of the evidence.

## **Rule 12.8 Consolidated Hearing on Applications**

- (a) Except as provided by Subsection (b), the Board shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant.
- (b) The Board is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.

### **Rule 12.9 Conclusion of the Hearing; Report**

- (a) Closing the record; final report: At the conclusion of the presentation of evidence and any oral argument in a contested case, the Presiding Officer may either close the record or keep it open for an additional 10 days to allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials. After the record is closed, the Presiding Officer will prepare a report to the Board. The report must include a summary of the subject matter of the hearing, a summary of the evidence, and the Presiding Officer's recommendations for action. Upon completion of the Presiding Officer's report, the Presiding Officer must submit a copy to the Board and deliver a copy to each party to the proceeding and to each person who provided comments on the application. If the hearing was conducted by a quorum of the Board and if the Presiding Officer prepared a record of the hearing as provided by Rule 12.4(f), the Presiding Officer shall determine whether to prepare and submit a report to the Board.
- (b) Exceptions to the Presiding Officer's report; reopening the record: Prior to Board action, any party in a contested case may file with the Presiding Officer written exceptions to the Presiding Officer's report. Upon review of the report and exceptions, the Presiding Officer may reopen the record for the purpose of developing additional evidence or may deny the exceptions and submit the report and exceptions to the Board. Any party in an uncontested case may request of the Board an opportunity to make an oral presentation of exceptions to the Board. The Board, at any time and in any case, may remand the matter to the Presiding Officer for further proceedings.
- (c) Time for Board action on certain permit matters: In a hearing involving an application for an Operating Permit or an application for a permit renewal or amendment, the Presiding Officer's report should be submitted and delivered within 30 calendar days after the date of the closing of the hearing record, and the Board should act within 60 calendar days after the date of the closing of the hearing record.

### **Rule 12.10 Rulemaking Hearings Procedures**

- (a) General procedures: The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer determines most appropriate to obtain all relevant information pertaining to the subject matter of the hearing as conveniently, inexpensively, and expeditiously as possible. The Presiding Officer may follow the guidelines of

Parliamentary Procedure at a Glance, New Edition, O. Garfield Jones, 1971 revised edition, or as amended.

- (b) Submission of documents: Any interested person may submit to the Presiding Officer written statements, protests, comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject matter of the hearing. Such documents must be submitted no later than the time of the hearing as stated in the notice of hearing given in accordance with Rule 12.2. The Presiding Officer may grant additional time for the submission of documents.
- (c) Oral presentations: Any person desiring to testify on the subject matter of the 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, the time period for oral presentations, and the time period for raising questions. The Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- (d) Conclusion of the hearing; closing the record; Hearing Examiner's report: At the conclusion of testimony and after the receipt of all documents, the Presiding Officer may close the record or keep it open to allow the submission of additional information. If the Presiding Officer is a Hearing Examiner, the Hearing Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject matter of the hearing and the public comments received, together with the Hearing Examiner's recommendations for action. Upon completion of the Hearing Examiner's report, the Hearing Examiner must submit a copy to the Board. Any interested person who so requests in writing will be notified when the report is complete and furnished a copy of the report.
- (e) Exceptions to the Hearing Examiner's report; reopening the record: Any interested person may make exceptions to the Hearing Examiner's report, and the Board may reopen the record in the manner prescribed in Rule 12.9(b).

#### **Rule 12.11 Final Decision; Appeal**

- (a) Board Action on permit or rulemaking hearings: After the record is closed on a permit or rulemaking hearing and the matter is submitted to the Board, the Board may take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought, grant the action sought in whole or part, or take any other appropriate action. Board action on a rulemaking hearing takes effect at the conclusion of the meeting in which the Board took the action and is not affected by a request for rehearing.
- (b) Determination of merit in enforcement hearings:
  - (1) Following the closing of a hearing presided over by the Board pursuant to this section, or following receipt of a hearings report from the Presiding Officer

pursuant to Rule 12.9, the Board shall consider the evidence admitted on each issue in contest and shall, based upon the preponderance of the credible evidence admitted, render a decision on the matter that shall include provisions requiring remedial relief, where appropriate, and one of the following findings:

- (A) that a violation has occurred and that a specific amount of penalties should be assessed;
  - (B) that a violation has occurred but that no penalty should be assessed; or
  - (C) that no violation has occurred.
- (2) When assessing a penalty, the Board shall analyze each factor prescribed by the applicable statute or Rule to be considered by the Board in determining the amount of the penalty.
  - (3) The Board shall act on contested enforcement matters no later than the 60<sup>th</sup> day following the date of submission of closing arguments, or within 30 days following receipt of the hearings report submitted by the Presiding Officer pursuant to Rule 12.9, whichever is later.
- (c) Requests for Rehearing or Findings and Conclusions
- (1) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application, or on an enforcement matter, by requesting written findings and conclusions or a rehearing before the Board not later than the 20th day after the date of the Board's decision.
  - (2) 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 or on an enforcement matter. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions from the Board may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.
  - (3) A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.
  - (4) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.

- (5) A timely filed motion for rehearing shall be denied under operation of law should the Board fail to grant or deny the request before the 91st day after the date the request is submitted.
- (d) Decision; when final: A decision by the Board on a permit or permit amendment application or on an enforcement matter is final:
  - (1) if a request for rehearing is not timely filed, on the expiration of the period for filing a request for rehearing; or
  - (2) if a request for rehearing is timely filed, on the date:
    - (A) the Board denies the request for rehearing, either expressly or by operation of law; or
    - (B) the Board renders a written decision after rehearing.

**Rule 12.12 Minutes and Records of the District**

All documents, reports, records, and minutes of the District are available for public inspection and copying under the Texas Public Information Act. Upon written application of any person, the District will furnish copies of its public records. The Board will set a reasonable charge for such copies and will publicly post a list of copying charges.

**SECTION 13**

**WASTE PROHIBITED; CONSERVATION STANDARDS FOR CERTAIN IMPOUNDMENTS**

**Rule 13.1 Waste Prohibited**

No person shall engage in any conduct subject to the District's regulatory jurisdiction that constitutes waste, as that term is defined herein.

**Rule 13.2 Discharge of Groundwater Into Surface Impoundments**

- (a) No groundwater produced from a well may be discharged into or otherwise held in any surface impoundment and subsequently used for irrigation or any other purpose, except as specifically authorized by this section.
- (b) Surface impoundments used or designed to hold groundwater produced within the District shall be constructed, and at all times maintained, such that the miscellaneous impoundment losses do not exceed 10 percent of the total volume of groundwater discharged annually into the surface impoundment.
- (c) For applications received by the District on or after August 11, 2009 for a groundwater production permit for a new well or a permit to substantially alter an existing well, the District may issue a production permit authorizing the discharge of groundwater into a surface impoundment for purposes other than irrigation only if:
  - (1) no more than 1.5 acre-feet of groundwater per year for each surface acre of the designed capacity of the impoundment may be discharged into any given surface impoundment for maintaining the level of the impoundment under the terms of any permit issued by the District pursuant to this rule; and
  - (2) the applicant has otherwise satisfied all other applicable requirements of the District Rules.

### **Rule 13.3 Conservation Standards for Certain Irrigation Practices**

- (a) Groundwater produced from a non-exempt well may be held as impounded irrigation water only if, in addition to other applicable requirements imposed by this section, beginning not later than January 1, 2010, all volumes of water impounded and actually withdrawn from the surface impoundment for subsequent use are separately measured and recorded at all times using a properly installed, functioning and calibrated flow measurement device as otherwise prescribed by this rule.
- (b) Meters used to satisfy the flow measurement requirements of Subsection (a):
  - (1) shall conform to the American Water Works Association (AWWA) Standard M6, “Water Meters-Selection Installation, Testing, and Maintenance”, as that standard may be revised by the AWWA from time to time;
  - (2) must be capable of being calibrated and maintaining calibration for no fewer than 90 contiguous days; and
  - (3) must be capable of reliable measurement within a margin of error not to exceed the standards specified in AWWA Standard M6.



- (c) Each permit holder authorized to produce groundwater that will be impounded and subsequently withdrawn for use shall, no less frequently than once each month or such other interval required in the terms of the applicable permit, inspect the meter required by this rule and record in a log the total volume registered on the meter at the time of the inspection.
- (d) Each meter required by Subsection (b) must be calibrated upon installation. The person who installs any meter required by this Rule shall submit to the District a certificate of calibration for each installed meter. Any meter that is not calibrated to achieve the accuracy standards specified in AWWA M6 cannot be used and must be replaced.
- (e) The calibration of each meter required under Subsection (b) shall be tested no less than once every three years. Before any such calibration testing, the permit holder shall notify the District verbally or in writing no fewer than 48 hours before the scheduled testing shall take place. District staff or any authorized representative of the District may be present to observe the calibration testing. If the calibration testing shows a variance greater than the variation allowed in AWWA M6, the District may require the permit holder to correct all monthly readings conducted since the most recent previous calibration to account for any inaccuracies in the readings.
- (f) A true and correct copy of the log required under Subsection (c) shall be submitted to the District with the water production report required by Rule 4.3 by the deadline set forth under Rule 4.3, along with a copy of the production log required under Rule 11.6.
- (g) The failure to submit to the District, in whole or in part, the information required to be maintained in Subsection (e) shall be considered by the District during any pertinent permit renewal or amendment process as evidence indicating the absence of the claimed subsequent use activity, and the permit amount requested may be reduced as a result.
- (h) Applicant must provide a map of any and all areas to be irrigated, with the acreage of each parcel to be irrigated plainly shown on the map.

## **SECTION 14**

### **OTHER DISTRICT MANAGEMENT ACTIONS AND DUTIES**

#### **Rule 14.1 District Management Plan**

Following notice and hearing, the District shall adopt a comprehensive Management Plan. The District Management Plan shall specify the acts and procedures and performance and avoidance measures necessary to prevent waste, the reduction of artesian pressure, or the draw-down of the water table. The District shall use the Rules to implement the Management Plan. The Board will review the Management Plan at least every five years. If the Board considers a new Management Plan necessary or desirable based on evidence presented at a hearing, a new

Management Plan will be developed and adopted. A Management Plan, once adopted, remains in effect until the subsequent adoption of another Management Plan.

## SECTION 15

### APPOINTMENT OF DIRECTORS

#### **Rule 15.1 Director Appointments**

- (a) Permanent Directors shall serve staggered four-year terms on the Board. The nine Directors comprising the Board are appointed by the following appointing bodies:
- (1) the Commissioners Court of Montgomery County shall appoint two Directors, one Director every two years as a result of the staggered terms;
  - (2) the Board of Directors of the Montgomery County Soil and Water Conservation District shall appoint one Director;
  - (3) the Board of Directors of the San Jacinto River Authority shall appoint one Director;
  - (4) the Mayor of the City of Conroe shall appoint one Director;
  - (5) the mayors of all of the incorporated municipalities, other than the City of Conroe, located in whole or in part in Montgomery County shall jointly appoint one Director;
  - (6) the Board of Trustees of the Woodlands Joint Powers Agency shall appoint one Director;
  - (7) the boards of directors of all the municipal utility districts located in whole or in part in Montgomery County that are not members of the Woodlands Joint Powers Agency and the District boundaries of which are located primarily to the east of Interstate Highway 45 jointly shall appoint one Director; and
  - (8) the boards of directors of all the municipal utility districts located in whole or in part in Montgomery County that are not members of the Woodlands Joint Powers Agency and the District boundaries of which are located primarily to the west of Interstate Highway 45 jointly shall appoint one Director.

#### **Rule 15.2 Procedure Overview: Appointment by Form and by Ballot**

**Lone Star Groundwater Conservation District**

**District Regulatory Plan Phase II(B)**

**November XX, 2014~~April 22, 2010~~**

**Page 93**  
**Amended**

- (a) The General Manager shall create official appointment forms that shall be provided to each of the appointing bodies designated in Subsections (a)(1) through (4) and (6) of Section 15.1. By convention, these appointing bodies shall make their appointments “by form.”
- (b) The General Manager shall create official appointment ballots that will be provided to mayors or boards of directors responsible for jointly appointing a Director as an appointing body designated in Subsections (a)(5), (7), and (8) of Section 15.1. By convention, these appointing bodies make their appointments “by ballot.” The official ballot created by the General Manager shall be in the form of a write-in ballot, which shall not identify individual candidates or otherwise constrain the ability of a mayor or board of directors to freely designate any person as their choice for appointed Director.

**Rule 15.3 Appointment by Form**

- (a) Not later than 60 days before appointments are due, the General Manager shall by mail deliver an official appointment form to each appointing body, as designated in Subsection (a) of Section 15.2, that is entitled to make an appointment by form in that particular year. Each appointing body shall make its choice for its appointed Director according to its own procedures, and shall submit the name of its chosen appointment by completing the official form provided by the General Manager and returning the official appointment form to the General Manager by the established due date.
- (b) As soon as practicable after appointment forms are due, the General Manager shall certify in writing to the Board that the appointments by form were submitted in accordance with Subsection (a) of this Section, and shall make a reasonable effort to verify that the appointed Directors are qualified to serve on the Board. Following certification and verification, the General Manager shall present the names of the newly appointed Directors to the Board for installation. The General Manager is responsible for insuring that the newly appointed Directors follow the requirements for the installation of new Directors.
- (c) As soon as practicable after the appointment of the newly appointed Directors, the General Manager shall submit in writing the names of the appointments designated in Subsection (a)(1) through (4), and (6) of Section 15.1 to the Commissioners Court of Montgomery County.

**Rule 15.4 Appointment by Ballot**

- (a) Not later than 60 days before appointments are due, the General Manager shall by mail deliver official appointment ballots to the following mayor or boards of directors entitled to jointly appoint a Director in that particular year, as designated in Subsection (b) of Section 15.2:
  - (1) Each mayor of an incorporated municipality located in whole or in part in Montgomery County, except for the Mayor of the City of Conroe. Each mayor

shall complete the official appointment ballot with the name of their desired appointment for Director and return the completed ballot to the General Manager on or before the established due date for appointments.

- (2) Each board of directors for every municipal utility district located in whole or in part in Montgomery County that are not members of the Woodlands Joint Powers Agency and whose District boundaries are determined by the General Manager to be primarily located east of Interstate Highway 45. In accordance with its own procedures, each board of directors shall complete the official appointment ballot with the name of their desired appointment for Director and return the completed ballot to the General Manager on or before the established due date for appointments.
  - (3) Each board of directors for every municipal utility district located in whole or in part in Montgomery County that are not members of the Woodlands Joint Powers Agency and whose District boundaries are determined by the General Manager to be primarily located west of Interstate Highway 45. In accordance with its own procedures, each board of directors shall complete the official appointment ballot with the name of their desired appointment for Director and return the completed ballot to the General Manager on or before the established due date for appointments.
- (b) As soon as practicable after appointment ballots are due, the General Manager shall:
- (1) Determine the individual with the greatest number of ballots in his or her favor submitted according to Subsection (a)(1) of this section. This individual is the appointed Director selected by the appointing body designated in Subsection (a)(5) of Section 15.1.
  - (2) Determine the individual with the greatest number of ballots in his or her favor submitted according to Subsection (a)(2) of this section. This individual is the appointed Director selected by the appointing body designated in Subsection (a)(7) of Section 15.1.
  - (3) Determine the individual with the greatest number of ballots in his or her favor submitted according to Subsection (a)(8) of this section. This individual is the appointed Director selected by the appointing body designated in Subsection (a)(8) of Section 15.1.
- (c) The General Manager shall certify his or her identification of the Directors appointed according to Subsection (b) of Section 15.4 of these Rules, and that the appointed Directors are qualified to serve on the Board. Following certification and verification, the General Manager shall present the names of these newly appointed Directors to the Board for installation. The General Manager is responsible for insuring that the newly appointed Directors follow the requirements for the installation of new Directors.

- (d) In the event that the ballots for an appointment produce a tie, the General Manager shall resubmit appointment ballots to the appropriate appointing body within 10 days of the determination by the General Manager that a tie has occurred. In order to break a tie, however, these appointment ballots shall set forth the candidates tied for the appointment and direct the mayors or boards of directors comprising the appointing body to select only from the listed candidates. The tie-breaking appointment ballots must be received by the General Manager by 5 p.m. on the 45<sup>th</sup> day after the date such ballots were mailed to the appointing bodies by the General Manager.
- (e) As soon as practicable after the appointment of the newly appointed Directors, the General Manager shall submit in writing the names of the appointments designated in Subsection (a)(5), (7), and (8) of Section 15.1 to the Commissioners Court of Montgomery County.

### **Rule 15.5      Miscellaneous Provisions**

- (a) All appointment forms or ballots due to the General Manager must be received by 5 p.m. on the date those appointment forms or ballots are due; appointment forms or ballots received after this time are invalid. All appointment forms or ballots timely received by the General Manager in accordance with the procedures set forth in this section cannot be retracted, altered, or otherwise amended after 5 p.m. of the date those appointment forms or ballots are due.
- (b) A Director appointed in accordance with the procedures set forth in this section may only be removed in accordance with the laws of the State. The body responsible for a Director's appointment has no power to remove that Director during his or her term, except as provided under the laws of this State related to the removal of public officers generally. This does not affect the power of the appointing body to fill a vacancy in accordance with the District's By-Laws.
- (c) If any appointee does not fulfill the qualifications for a Director, then the vacancy procedures set forth in the District's By-Laws shall be followed to select another appointee. The vacancy procedures set forth in the District's By-Laws shall likewise be followed in the event that an appointing body fails or refuses to follow the procedures set forth in this section. Vacancy procedures will not be followed and the General Manager shall not refuse to certify an appointment by ballot, however, simply because any mayor or board of directors entitled to jointly appoint a Director under Subsection (a) of Section 13.4 of these Rules fails or refuses to follow the procedures set forth herein; the appointment ballot of such a mayor or boards of directors is invalid.
- (d) Only appointments designated on completed, official forms or ballots provided by the General Manager will be honored.

**SECTION 16**

**EFFECTIVE DATE**

**Rule 16.1. Effective Date**

These Rules take effect on the date of their original adoption and an amendment to these Rules takes effect on the date of its original adoption. It is the District's intention that the Rules and amendments thereto be applied retroactively to activities involving the production and use of groundwater resources located in the District.