RESOLUTION NO. #20-007

RESOLUTION OF THE BOARD OF DIRECTORS OF THE LONE STAR GROUNDWATER CONSERVATION DISTRICT AMENDING AND ADOPTING DISTRICT RULES

THE STATE OF TEXAS §
§
LONE STAR GROUNDWATER CONSERVATION DISTRICT §

WHEREAS, the Lone Star Groundwater Conservation District ("District") was created by the Texas Legislature through the enactment of House Bill 2362, Chapter 1321, Acts of the 77th Legislature, Regular Session, 2001 (the "Act"), pursuant to the authority of Article XVI, Section 59 of the Texas Constitution, as a groundwater conservation district operating under Chapter 36 of the Texas Water Code, Section 59, Article XVI of the Texas Constitution, and the Act;

WHEREAS, the Act and Chapter 36 of the Texas Water Code assign certain duties, rights, powers, privileges, authorities, and functions to the District;

WHEREAS, Section 36.101 of the Texas Water Code authorizes the District, after notice and hearing, to adopt and enforce rules to carry out the powers and duties provided by Chapter 36 of the Texas Water Code;

WHEREAS, following publication of notice and public hearing, the District's Board of Directors ("Board") originally adopted District Rules on August 26, 2002, which have subsequently been amended by the Board from time to time as necessary after proper notice and public hearing, including the development and adoption of the District Regulatory Plan ("DRP");

WHEREAS, The DRP was designed to require a comprehensive conversion effort to reduce total annual groundwater production within Montgomery County to a level not to exceed 64,000 acre-feet of groundwater per year for the Gulf Coast Aquifer. Under Phase IIA and IIB of the DRP, certain specified large volume groundwater users ("LVGUs") were required to reduce groundwater production by thirty percent (30%) of their Total Qualifying Demand and submit a Groundwater Reduction Plan ("GRP") to meet the conversion obligations.

WHEREAS, in August 2015, the District, the General Manager and then directors were sued by the City of Conroe, Quadvest, LP, and other investor-owned utilities over the validity of the regulations requiring LVGUs to reduce production by thirty-percent;

WHEREAS, in September 2018, Senior District Judge Lamar McCorkle of the 284th District Court in Montgomery County granted a partial summary judgment holding that the District's rule requiring a reduction in pumping by LVGUs effective in 2016 is invalid and outside the District's authority granted by the Legislature.

WHEREAS, on May 17, 2019, the Honorable Judge McCorkle signed a Final Judgment declaring that certain LVGU rules under the DRP were adopted "without legal authority and consequently are, and have been, unlawful, void and unenforceable."

WHEREAS, effective from the date of the Final Judgment, the LVGU reduction rules were struck from the District's Rules, Regulatory Plan, LVGU Permits, and the District has not been managing the resources in accordance with those regulations.

WHEREAS, in anticipation of work on amended rules, in April-May 2019, the District held a Board workshop on Chapter 36 for the new board members and held five town hall sessions where it obtained valuable public input;

WHEREAS, in May 2019, the District formed two study groups, which met regularly and worked on the proposed amended rules for over a year;

WHEREAS, at the direction of the District's Board, the two study groups and District staff, consultants and legal counsel reviewed, analyzed, and proposed for the Board's consideration amendments to the rules in accordance with the District's statutory powers and duties;

WHEREAS, the proposed amendments to the District Rules included a repeal of all phases of the DRP and the inclusion of well spacing rules for new, non-exempt wells;

WHEREAS, in July 2020, the Board held a public workshop where the proposed amendments to the District Rules were discussed and later approved for public comment and review;

WHEREAS, in August 2020, the District held several stakeholder meetings and a public workshop where valuable public input was obtained on the proposed amendments to the District Rules;

WHEREAS, the District issued notice in the manner required by state law and held a public hearing on August 11, 2020 to receive public and written comments on the proposed amendments to the District Rules and in response to public comment, the Board approved additional revisions to the proposed amendments to the District Rules;

WHEREAS, the District published the revised proposed amendments to the District Rules for public review and comment following the August 11, 2020 hearing;

WHEREAS, the District issued notice in the manner required by state law and held a public hearing on September 8, 2020 to receive public and written comments on the revised proposed amendments to the District Rules; and

WHEREAS, the District received written and oral public comments on the revised proposed amendments to the District Rules, and no additional substantive changes were made to the revised proposed amendments to District Rules at the public hearing.

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE LONE STAR GROUNDWATER CONSERVATION DISTRICT THAT:

1. The above recitals are true and correct;

2. The Board of Directors hereby approves and adopts with amendments the District Rules, which are included as "Attachment A" to this Resolution;

3. The attached Rules are authorized to be made available for use and inspection at the District's office, and are provided on the District's website;

4. The attached Rules shall take effect September 8, 2020;

5. The District shall handle the Q4 2020 invoicing and payments for GRP participants in the same manner it has handled the invoicing and payments for GRP participants in Q1-Q3 2020. Beginning with invoicing and payments due for 2021, all GRP participants shall remit payment directly to the District; and

6. The District's Board, its officers, District staff, and legal counsel are further authorized to take any and all actions necessary to implement this Resolution.

AND IT IS SO ORDERED.

PASSED AND ADOPTED on this 8th day of September 2020.

LONE STAR GROUNDWATER CONSERVATION DISTRICT

By: _____
Board President

ATTEST:

_____
Board Secretary

Attachment "A"

RULES OF THE LONE STAR GROUNDWATER CONSERVATION DISTRICT

As amended, effective September 8, 2020

TABLE OF CONTENTS

PREAMBLE 5

SECTION 1 DEFINITIONS, CONCEPTS, & GENERAL PROVISIONS 6

Rule 1.1 Definitions 6
Rule 1.2 Authority of District 17
Rule 1.3 Purpose of District and Rules 17
Rule 1.4 Use and Effect of Rules 17
Rule 1.5 Ownership of Groundwater 18
Rule 1.6 Construction 18
Rule 1.7 Methods of Service Under the Rules 18
Rule 1.8 Severability 18
Rule 1.9 Regulatory Compliance with Other Governmental Entities 18
Rule 1.10 Computing Time 19
Rule 1.11 Time Limits 19
Rule 1.12 Request for Reconsideration and Appeal 19
Rule 1.13 Amending of Rules 19
Rule 1.14 Falsification or Records or Documents 19
Rule 1.15 Board of Directors and General Manager 20
Rule 1.16 Minutes and Records of the District 20
Rule 1.17 District Management Plan 20
Rule 1.18 Procedure, Conduct and Decorum at Board Meetings 21

SECTION 2 WELL REGISTRATIONS AND PERMITTING 21

Rule 2.1 General Provisions Applicable to Registrations and Permits 22
Rule 2.2 Wells Exempt from Obtaining Permits 24
Rule 2.3 Exempt Well Registration Required 25
Rule 2.4 Historic Use Permits; Terms and Renewals 28
Rule 2.5 Operating Permits 28
Rule 2.6 Application Requirements for Operating Permits 29
Rule 2.7 Administrative Completeness of Applications for Operating Permits 31
Rule 2.8 Considerations for Granting or Denying an Operating Permit 31
Rule 2.9 New or Amended Operating Permits Issued by District 32
Rule 2.10 Aggregation of Withdrawal Among Multiple Wells 34
Rule 2.11 Historic Use and Operating Permit Terms; Administrative Review 34
Rule 2.12 Operating Permit Amendments and Limited Authorized Amendments to Historic Use Permits 35
Rule 2.13 Replacement Wells and Substantial Alteration of Existing Wells 36
Rule 2.14 Test Hole Permit 38
Rule 2.15 Emergency Permits 39
Rule 2.16 Temporary Permit for Construction Projects and Drilling Supply 40
Rule 2.17 Transfer of Well Ownership 41

SECTION 3 SPACING AND LOCATION OF WELLS 42

Rule 3.1 Spacing and Location of Existing Wells 42
Rule 3.2 Spacing Requirement for All New Wells 43
Rule 3.3 Spacing Requirements for All New Non-Exempt Wells 43
Rule 3.4 Exceptions to Spacing Requirements 44

SECTION 4 ANNUAL PRODUCTION LIMITATIONS 45
Rule 4.1 Annual Production Limits for Permits 45
Rule 4.2 Temporary Drought Buffer 46
SECTION 5 WELL COMPLETION AND OPERATION 46
Rule 5.1 Responsibility to Protect Groundwater Quality 47
Rule 5.2 Responsibility for Well Construction and Management 47
Rule 5.3 Standards of Completion for All New Wells 47
Rule 5.4 Open, Uncovered, Abandoned or Deteriorated Wells Prohibited 48
Rule 5.5 Sealing or Plugging of Wells 49
SECTION 6 MANAGEMENT ZONES; PROPORTIONAL ADJUSTMENTS 50
Rule 6.1 Purpose and General 50
Rule 6.2 Authority to Establish Management Zones 51
Rule 6.3 Proportional Adjustment 51
SECTION 7 TRANSPORTING GROUNDWATER OUT OF DISTRICT 52
Rule 7.1 General Provisions 52
Rule 7.2 Transport Fee for Exempt Wells for Discharge Under Other Permit 53
SECTION 8 FEES AND PAYMENT OF FEES 53
Rule 8.1 Water Use Fees 53
Rule 8.2 Application and Other Fees 55
Rule 8.3 Groundwater Transport Fee 55
Rule 8.4 Returned Check Fee 55
Rule 8.5 Well Report Deposit 56
Rule 8.6 Payment of Fees 56
Rule 8.7 Failure of New Permittees to Make Initial Water Use Fee Payment 56
Rule 8.8 Failure to Make Fee Payments 56
Rule 8.9 Well Registration and Permit Fees 57
Rule 8.10 Meter Sealing Fee 57
SECTION 9 WATER USE FEE REBATE PROGRAM 57
Rule 9.1 General Provisions 57
Rule 9.2 Eligibility 58
SECTION 10 METERING 59
Rule 10.1 Water Meter Required 59
Rule 10.2 Water Meter Exceptions 60
Rule 10.3 Metering Aggregate Withdrawal 60
Rule 10.4 Meter Accuracy Verification 61
Rule 10.5 Removal of Meter for Repairs 61
Rule 10.6 Water Meter Readings 61
Rule 10.7 Installation of Meters 62
Rule 10.8 Tampering Prohibited 62
Rule 10.9 Conservation Requirements for Impoundments 62
SECTION 11 REPORTING REQUIREMENTS 63
Rule 11.1 Purpose and Policy 63
Rule 11.2 Records of Drilling and Pump Installation and Alteration Activity, Plugging and Capping 63
Rule 11.3 Permit Production Report 66

Rule 11.4 Groundwater Transport Report 66

SECTION 12 INSPECTIONS AND ENFORCEMENT 67
Rule 12.1 Purpose and Policy 67
Rule 12.2 Inspection, Information Gathering, and Compliance Monitoring 67
Rule 12.3 Rules Violations 69
Rule 12.4 Notices of Violation 71
Rule 12.5 Show Cause Hearing 72
Rule 12.6 Enforcement Orders 73
Rule 12.7 Demonstrated Repeat Non-Compliance of District Rules 74
Rule 12.8 Non-Compliance Penalties 75
Rule 12.9 Sealing of Wells 77
Rule 12.10 Judicial Relief 77
SECTION 13 HEARINGS OF THE DISTRICT 77
Rule 13.1 Hearings Generally 77
Rule 13.2 Rulemaking Hearings 78
Rule 13.2.1 Hearings on Rules Other Than Emergency Rules 79
Rule 13.2.2 Hearing Procedures on Emergency Rules 80
Rule 13.3 Permit Applications Requiring Public Hearings 81
Rule 13.3.1 Request for a Contested Case Hearing on an Application 83
Rule 13.3.2 Preliminary Hearing for Contested Application 84
Rule 13.3.3 Action on Uncontested Applications 85
Rule 13.3.4 Contested Case Permit Hearings 86
Rule 13.3.5 Request for Rehearing or Findings and Conclusions 89
Rule 13.4 Show Cause and Enforcement Hearings 90
Rule 13.4.1 Contesting an Enforcement Action 90
Rule 13.4.2 Notice and Scheduling of Contested Enforcement Matters 91
Rule 13.4.3 Contested Enforcement Hearings Procedures 92
Rule 13.5 Desired Future Conditions Hearings 94

SECTION 14 AQUIFER STORAGE AND RECOVERY WELLS 95
Rule 14.1 Registration Required 95
Rule 14.2 No Permit Required; No Water Use Fee on Authorized Recovery 95
Rule 14.3 Exceeding Authorized Recovery Volume 95
Rule 14.4 Desired Future Conditions Planning 96

SECTION 15 BRACKISH GROUNDWATER PRODUCTION ZONES 96
Rule 15.1 Rules for Permits for Brackish Groundwater Production Zones 96

PREAMBLE

The Lone Star Groundwater Conservation District ("District") was created in 2001 by the 77th Legislature with a directive to conserve, protect and enhance the groundwater resources of Montgomery County, which comprise the boundaries of the District. A confirmation election was held on November 6, 2001, with 73.85% approval.

The original rules of the District were first adopted on August 26, 2002, at a duly posted public meeting in compliance with the Open Meetings Act and following notice and hearing in accordance with Chapter 36 of the Texas Water Code ("Chapter 36"). The original rules were subsequently amended, in accordance with all legal requirements, in 2002, 2004, 2005, 2006, 2008, 2009, 2010, 2013, and 2015. Beginning in 2006, the District adopted a multi-phased District Regulatory Plan.

The new rules and regulatory plan below (hereinafter referred to individually as a "Rule" and collectively as "Rules") specifically repeal, supersede, and replace all previously adopted rules and regulatory plans including the last adopted District Regulatory Plan Phase II(B), and are adopted to comply with the final judgment in *City of Conroe, et. al. v. Tramm,* No. 15-08-08942, in the 284th District Court of Montgomery County, Texas. These Rules were adopted on September 8, 2020, at a duly posted public meeting in compliance with the Open Meetings Act and following notice and hearing in accordance with Chapter 36.

The District is committed to providing a regulatory program that encourages the best practicable conservation and development practices for the groundwater resources of Montgomery County by developing, promoting, and implementing water conservation, augmentation, and management strategies to both conserve and utilize groundwater resources for the benefit of the citizens, economy, and environment. The District's mission includes honoring and protecting private property rights by affording an opportunity for a fair share to every owner of each common, subsurface reservoir underlying, in whole or in part, in Montgomery County as authorized under state law. The District will protect both public and private interests through programs designed for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and by adopting and enforcing these Rules as authorized by Chapter 36 and consistent with state law.

SECTION 1 DEFINITIONS, CONCEPTS, & GENERAL PROVISIONS

Rule 1.1 Definitions

In the administration of its duties, the District strictly follows the definitions of terms set forth in Chapter 35 and Chapter 36 of the Texas Water Code, 31 Texas Administrative Code, Chapter 356, Chapter 357 and Chapter 358, and other definitions as set forth below. To the extent any definitions below conflict with the statutes, the statutes prevail.

"**Abandoned well**" (or "abandoned well") means a well 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 not 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.

"**Acre-feet**" (or "acre-feet") means the standard measurement of groundwater necessary to cover one acre of land to the depth of one foot, or 325,851 U.S. gallons of water.

"**Administratively Complete**" means (1) that all information requested by the District has been fully and accurately provided; and (2) that all applicable fees have been paid.

"**Affected Person**" means, for any contested application for which a hearing is required under these Rules, a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and is affected by Board's action on the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

"**Aggregate withdrawal**" (or "aggregate withdrawal") means the total pumpage measurement of the amount of water withdrawn from two or more wells in a well system from the same Aquifer of the District.

"**Agriculture**" (or "agriculture") means any of the following activities:

(1) cultivating the soil to produce crops for human food, animal feed, or

planting seed or for the production of fibers;

(2) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(3) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(4) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(5) wildlife management; and

(6) raising or keeping equine animals.

"**Agricultural use**" or ("agricultural use") means any use or activity involving Agriculture, including irrigation.

"**Animal Feeding Operation**" (AFO) means: (1) a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and where the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season over any portion of the lot or facility; or (2) any other facility regulated as an AFO or as a Concentrated Animal Feeding Operation by the TCEQ.

"**Annual Production Limitations**" means the maximize quantity of groundwater authorized to be produced on an annual basis under a permit subject to proportional adjustments or other alterations as authorized under these Rules.

"**Aquifer**" (or "aquifer") means a groundwater reservoir or a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

"**Aquifer of the District**" means one of the strata of the District by which groundwater production is regulated. The three regulatory strata include: (i) the Chicot-Evangeline aquifers (considered one aquifer for regulatory purposes); (ii) the Jasper aquifer; and (iii) the Catahoula aquifer.

"**Aquifer Storage and Recovery**" means the injection of water into a geologic formation and the subsequent recovery and beneficial use by the project operator, as defined by TCEQ rules.

"**Aquifer subdivision** (or "aquifer subdivision") means a definable part of a groundwater reservoir or aquifer in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological

and hydrological conditions and relationships and on forseeable economic development at the time the subdivision is designated or altered.

"**Beneficial Use**" (or "beneficial use") or means use of groundwater for:

(1) agricultural, gardening, domestic (including lawn-watering), stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes, or pleasure purposes;

(2) exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals; or

(3) any other purpose that is useful and beneficial to the user.

"**Best Available Data and Science**" (or "best available data and science") means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are available for peer review by scientists in the field and can be employed to address a specific scientific issue.

"**Board**" means the Board of Directors of the District.

"**Brackish Groundwater**" (or "brackish groundwater") means groundwater containing between 1,000 and 10,000 milligrams per liter (mg/L) total dissolved solids (DS) and is used to describe either slightly or moderately saline groundwater.

"**Brackish Groundwater Production Zone**" (or "brackish groundwater production zone") means an aquifer, subdivision of an aquifer, or geologic stratum designated by the TWDB under Chapter 16 of the Texas Water Code.

"**Cap**" (or "capped well") means covering a well with a securely fixed, removable device that will prevent the entrance of surface pollutants into the well. A well that is closed or capped must have a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds. The cap must be constructed in such a way that the covering cannot be easily removed by hand.

"**Casing**" (or "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.

"**Chapter 36**" refers to Chapter 36 of the Texas Water Code.

"**Closed loop geothermal well**" (or "closed loop geothermal well") means a well used for domestic use purposes that recirculates water or other fluids inside a sealed system for heating and/or cooling purposes, and where no water is produced from the well or used for any other purpose of use.

"**Completed well,"** (or "completed well" or 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.

"**Contested Case**" (or "contested case") shall mean an application or other matter for which the Board has granted a request for a contested case hearing.

"**Desired Future Condition(s)**" or "DFC(s)" is the desired, quantitative condition of groundwater resources within a Management Area at one or more specified future times as defined the participating groundwater districts within a groundwater management as part of the joint planning process and adopted in accordance with Section 36.108 of Chapter 36.

"**Deteriorated well**" (or "deteriorating well" or "deteriorating well") means a well that, in the discretion of the District, because of its condition will cause or is likely to cause property damage, personal injury, or risk to health, safety, or life and/or the contamination of groundwater.

"**Dewatering well**" (or "dewatering well") means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.

"**Director**" means a person elected to serve on the Board of Directors of the District per amendment to the District Act, Acts of the 85th Leg., R.S., H.B. No. 1982.

"**District**" means the Lone Star Groundwater Conservation District created in accordance with Section 59, Article XVI, Texas Constitution, Chapter 36, and the District Act.

"**District Act**" means Act of June 16, 2001, 77th Leg., R.S., ch. 1321, 2001 Tex. Gen. Laws 3246, as may be amended from time to time.

"**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.

"**Domestic use**" means the use of groundwater by an individual or a household to support essential domestic activity. Such use includes water for: drinking, washing, or culinary purposes; residential landscape watering of no more than one (1) acre contiguous to one (1) residence; irrigation of a family garden and/or orchard; for watering of domestic animals; recreation limited to the filling of residential swimming pools and hot tubs. Domestic use does not include the following type of use: water used to support activities for which consideration is given or received or for which the product of the activity is sold; irrigation of crops in fields or pastures; use by or for a public water system; or water used for open-loop residential geothermal heating and cooling systems, but does include water used for closed-loop residential geothermal systems.

"**Early conversion credit"** (or "early conversion credit") means the credit issued by the District under the repealed regulatory plan for meeting the conversion requirement before

it took effect. The District no longer issues early conversion credits but will honor those unused credits as set forth in these Rules.

"**Effective Date**" means September 8, 2020, which is the most recent date of adoption of these Rules or amendments thereto.

"**Emergency Permit**" means a permit issued by the District for emergency purposes, as set forth under Rule 2.15.

"**Exempt Well**" (or "exempt well") means a new or an existing well that is exempt from permitting, metering and fee requirements under Chapter 36 or these Rules and is not required to have a permit to withdraw water from an Aquifer of the District.

"**Existing Well**" (or "existing well") is a groundwater well within the District's boundaries that was in existence, or for which drilling commenced, or for which drilling was approved, or for which the Administratively Complete well registration or permit or permit amendment application was filed, before the Effective Date.

"**Gallons per minute**" or "gpm" means the maximum production capacity or flow rate of a well as equipped, which can be measured by the District in accordance with these Rules.

"**General Manager**" is the chief administrative officer of the District, as set forth in the District's bylaws.

"**Groundwater**" (or "groundwater") means water percolating below the surface of the earth.

"**Groundwater Transport Fee**" means the fees referred to in Rule 8.3.

"**Hearing Examiner**" means a person appointed in writing by the Board to conduct a hearing or other proceeding including but not limited to an administrative law judge employed by SOAH, and who has the authority granted to a Party under these Rules, except as that authority may be limited by the Board or pursuant to the appointment.

"**Historic Use**" means the amount of production and type of beneficial use of groundwater from an Aquifer of the District during the Historic Use Period.

"**Historic Use Period**" (or "Existing and Historic Use Period") means the time period of January 1, 1992, through August 26, 2002.

"**Historic Use Permit**" means a permit issued by the District under the then applicable rules for the operation of any non-exempt, existing water well or well system that produced groundwater during the Historic Use Period and has not been abandoned and not had its type of use changed or authorized production increased.

"**Hydrogeological Report"** means the report described in Rule 2.6(b)(15).

"**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 beneficial use.

"**Leachate well**" (or "leachate well") means a well used to remove contamination from soil or groundwater.

"**Livestock or Poultry**" (or "livestock or poultry") means the use of groundwater associated with watering, raising, feeding, or keeping non-commercial livestock and/or poultry, of any variety, for subsistence or labor. The term also includes domesticated horses, cattle, goats, sheep, swine, poultry, and other similar animals involved in farming or ranching operations, on land recorded and taxed in the county as an agricultural land use. The term does not include any animal that is stabled, confined, or fed at a facility that is defined herein as an Animal Feeding Operation. The term does not include 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.

"**Livestock Use**" (or "livestock use") means the use of groundwater for the open-range watering of livestock.

"**Management Area**" means an area designated and delineated by the TWDB as an area suitable for management of groundwater.

"**Management Plan**" means the District's Management Plan required under Section 36.1071 of Chapter 36, and as further described in these Rules.

"**Management Zone**" means one or more of the management zones into which the Board may or has divided the District, as set forth in Rule 6.2.

"**Maximum Allowable Pumping Rate**" means the maximum, instantaneous pumping rate in gallons per minute for a well.

"**Maximum Historic Use**" (MHU) means the amount of groundwater from an Aquifer of the District 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:

(1) 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 an Aquifer of the District excluding waste during any one full calendar year of the Historic Use Period; or

(2) 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.

"**Meter**" (or "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, as specifically set forth in Section 10.

"**Miscellaneous Impoundment Losses**" means the exfiltration losses or percolation losses of water through the bottom and sides of a Surface Impoundment, excluding evaporative losses.

"**Modeled Available Groundwater**" means the amount of water that the Executive Administrator of the TWDB determines, based on a model, that may be produced on an average annual basis to achieve a Desired Future Condition established for the groundwater resources in the District.

"**Modify**" (or "modify" or "modified") means performing work on the physical or mechanical components of the wellhead assembly or downhole portion of a well.

"**Monitoring well**" ("or monitoring well") means a well used solely for the purpose of measuring some property of the groundwater or the aquifer that it penetrates, and is not equipped with a pump. Wells with other uses can still be used to collect aquifer data in the District's monitoring program but are not considered a monitoring well for purposes of these Rules.

"**New well**" (or "new well") means a water well for which an Administratively Complete registration or application is filed with the District on or after the Effective Date, substantial alteration of an existing well, or conversion of another type of well or artificial excavation of a water well on or after the Effective Date, including but not limited to a well originally drilled for hydrocarbon production activities that is to be converted to a water well.

"**New non-exempt well**" (or "new non-exempt well") means a new well that does not qualify for exempt well status under Chapter 36 or these Rules.

"**Non-compliance penalty"** means a penalty imposed for major and minor violations of the Rules as set forth in Rules 2.1(n) and 12.8. The non-compliance penalty is in addition to Water Use Fees and any applicable overproduction disincentive penalty per Rule 8.1(c).

"**Non-exempt well**" means an Existing or New Well that does not qualify for exempt well

status under Chapter 36 or these Rules.

"**Notice to Proceed**" means the official registration approval, written authorization form issued by the District for new exempt wells.

"**Nursery grower**" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

"**Open Meetings Act**" means Chapter 551, Texas Government Code, as it may be amended from time to time.

"**Operating Permit**" means a permit issued by the District to produce groundwater from an Aquifer of the District from any non-exempt water well for which a Historic Use Permit has not be issued by the District.

"**Overproduction disincentive penalty**" (or "overproduction disincentive penalty") is a penalty imposed per Rule 8.1(c) for withdrawing or causing to be withdrawn groundwater from a non-exempt well in excess of the amount authorized in the applicable permit calculated at $6.00 per each 1,000 gallons of water overproduced, not to exceed $10,000 per day for each day that overproduction occurs. The disincentive penalty is in addition to Water Use Fees and any applicable non-compliance penalty provided for in Rule 12.8.

"**Owner**" (or "owner") means the owner or holder of the right to produce groundwater from a tract of land.

"**Party**" means a person who is an automatic participant in a proceeding as set forth under Rule 13.3.2 or a person who has been designated as an Affected Person and admitted to participate in a contested case, except where the usage of the term clearly suggests otherwise.

"**Performance bond**" (or "performance bond") means a bond issued to the District by a bank or insurance company as a guarantee against the failure of an applicant to meet obligations specified in these Rules.

"**Production**" (or "production" or "producing") means the act of extracting groundwater from an aquifer by pumping or other method.

"**Property Line"** (or "property line") means a line at which the ownership of the right to produce groundwater changes.

"**Proportional Adjustment Order**" an order the Board adopts by resolution under Section 6 to proportionally adjust the Annual Production Limitations applicable to permits.

"**Public Information Act**" means Chapter 552, Texas Government Code, as it may be amended from time to time.

"**Person**" (or "person") means an individual, corporation, limited liability company, organization, government, governmental subdivision, agency, business trust, estate, trust, partnership, association, or other legal entity.

"**Pollution**" (or "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.

"**Poultry Use**" means the use of groundwater to provide water for poultry.

"**Pre-existing well**" (or "pre-existing well") means a well drilled before August 26, 2002.

"**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.

"**Public water system**" (or "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.

"**Pump**" (or "pump") means any facility, device, equipment, material, or method used to obtain water from a well.

"**Purpose of use**" (or "purpose of use") means the type of beneficial use of the groundwater produced from a well.

"**Qualifying Major Violation**" means a violation listed in Rule 12.3(a) that has been made the subject of a written notice of violation issued under Rule 12.4(b) and has not been dismissed by the Board following a formal protest.

"**Qualifying Minor Violation**" means a violation listed in Rule 12.3(b) that has been made the subject of a written notice of violation issued under Rule 12.4(b) and has not been dismissed by the Board following a formal protest.

"**Registrant**" (or "registrant") means a person required to submit a registration.

"**Registration**" (or "registration") means an Owner or Well Owner providing certain information about a well to the District for the District's records, as more particularly described under Rule 2.3.

"**Replacement well**" (or "replacement well") means a new well drilled to replace an

existing registered well that meets the requirements set forth in Rule 2.13.

"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 13.4.1.

"**Rule" or "Rules"** refers to, a specific Rule herein, or collectively, to all these Rules, as finally adopted by the Board.

"**SOAH**" shall mean the State Office of Administrative Hearings.

"**Subsidence**" (or "subsidence") means the lowering in elevation of the surface of the land caused by the withdrawal of groundwater.

"**Substantially alter**" (or "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.

"**Surface Impoundment**" means an artificially dug or natural occurring hole or other land surface depression used for holding groundwater produced from a non-exempt well.

"**Swimming pool**" (or "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.

"Tamper" (or "tamper") means to interfere with, alter, or manipulate in a manner that undermines the accuracy, integrity, functionality, or intended purpose of the thing described.

"**TCEQ**" refers to the Texas Commission on Environmental Quality.

"**TDLR"** refers to the Texas Department of Licensing and Regulation.

"**Temporary Permit**" means any permit issued under Rule 2.16.

"**Transfer of Well Ownership**" (or "transfer") means a change to a registration or permit as follows, except that the term "transfer" shall have its ordinary meaning as read in context when used in other contexts: (a) ownership; or (b) the person authorized to exercise the right to make withdrawals and place the groundwater to beneficial use.

"**TWDB**" refers to the Texas Water Development Board.

"**Waste**" (or "waste") means one or more of the following:

(1) withdrawal of groundwater from an aquifer at a rate and in an amount that

causes or threatens to cause an intrusion into the aquifer unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(2) the flowing or producing of water from an aquifer if the water produced is not used for a beneficial use;

(3) the escape of groundwater from an aquifer to any other reservoir or geologic stratum that does not contain groundwater;

(4) pollution or harmful alteration of groundwater in an aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(5) 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 TCEQ under Chapter 26 of the Texas Water Code;

(6) 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; or

(7) for water produced from an artesian well, "waste" also has the meaning assigned by Section 11.205, Texas Water Code.

"**Water Use Fee**" refers to the fee described in Rule 8.1.

"**Well**" (or "well") means any artificial excavation located within the boundaries of the District that causes groundwater to be withdrawn or removed from an aquifer or Aquifer of the District within the District.

"**Well Completion Report"** is the form provided by the District or created by the well owner that includes all the information in Rule 11.2(c).

"**Well Owner**" (or "well owner" or "owner of well") means the owner of the right to produce groundwater from a Well, or an owner of the well if that person is not the owner of the right to produce groundwater from a well.

"**Well Report**" is a form provided by TDLR or the District that includes all the information in Rule 11.2(a)-(b).

"**Well spacing"** (or "well spacing") means the lateral, straight-line distance between two wells completed and producing from the same Aquifer of the District.

"**Well system**" (or "well system") means two or more non-exempt wells that are owned by the same Well Owner in the same Aquifer of the District and are connected by piping,

storage, or that share or are tied to the same water collection or distribution system. Examples of a well system include, but are not limited to, a well or group of wells connected to the same ground storage tank, distribution system piping, or swimming pool.

"**Withdraw**" (or "withdraw") means the act of extracting or producing groundwater by pumping or any other method.

"**Year**" (or "year") means a calendar year (January 1 through December 31) except where the usage suggests otherwise.

Rule 1.2 Authority of District

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

Rule 1.3 Purpose of District and Rules

The District was created to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of aquifers or their subdivisions, and to control subsidence caused by the withdrawal of water from those aquifers or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, Chapter 36, and the District Act. Per Chapter 36, the District is the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater. These Rules are adopted under the authority in Chapter 36, the District Act and Texas law to carry out all of the District's purposes.

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. These Rules create no rights or privileges in any person or water well, and shall not be construed to bind the Board in any manner in its promulgation of the District Management Plan or amendments to the Rules.

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 these Rules is to require the submission, by the appropriate person or persons, of complete, accurate, and timely registrations, permit applications, records, reports, and logs as required throughout these 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 the District, the failure to comply with these Rules may

result in the assessment of additional fees, civil penalties, or any combination of the same, as specifically set forth in these Rules.

Rule 1.5 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, shall be construed as depriving or divesting those owners or their lessees and assigns of that ownership or those rights.

Rule 1.6 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 1.7 Methods of Service Under the Rules

Except as provided in these Rules, 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, by fax to the recipient's current fax number or by e-mail 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 fax or e-mail 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 1.8 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 provision 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 1.9 Regulatory Compliance with Other Governmental Entities

All permittees and registrants of the District shall comply with all applicable Rules and

regulations of all governmental entities referenced herein. If the District's Rules are more stringent than those of the other referenced herein governmental entities, these Rules control.

Rule 1.10 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 1.11 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 1.12 Request for Reconsideration and Appeal

To appeal a determination made by the General Manager where an appeal is provided for in these Rules, a request for an appeal may be filed with the District within twenty (20) calendar days of the date a person is provided notice of the decision. This appeal is a pre-requisite to filing suit against the District to overturn the General Manager's decision. Such appeal must be in writing and must state clear and concise grounds for the request. The Board will hear the applicant's appeal at the next available regular 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.

To appeal a decision of the Board concerning any matter not specifically covered under any other section of these Rules, a request for reconsideration may be filed with the District within twenty (20) calendar days of the date of the Board's decision. Such request for reconsideration must be in writing and must state clear and concise grounds for the request. The Board will make a decision on the request for reconsideration within sixty (60) calendar days thereafter. The failure of the Board to grant or deny the request for reconsideration within sixty (60) calendar days of the date of filing of the request for reconsideration shall constitute a denial of the request.

Rule 1.13 Amending of Rules

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

Rule 1.14 Falsification or Records or Documents

Falsification of any document or record submitted to the District pursuant to a requirement under the Rules is hereby prohibited and shall be subject to enforcement under Section 12 as a major violation of these Rules.

Rule 1.15 Board of Directors and General Manager

(a) The Board was created to determine policy and regulate the withdrawal of groundwater, protect and recharge groundwater, prevent pollution or waste, control subsidence caused by groundwater withdrawal within the boundaries of the District, and to regulate the transport of groundwater outside of the District, as well as exercise the rights, powers, and duties of the District in a way that will effectively and expeditiously accomplish the purpose of the District has defined in Chapter 36, the District Act and these Rules. The Board's responsibilities include, but are not limited to, the adoption and enforcement of fair and impartial rules, among other responsibilities.

(b) The Board may employ or contract with a person to serve as General Manager of the District and to perform such services as the Board may from time to time specify.

(c) The District Act and District's bylaws direct the Board's governance, structure, management and operations.

Rule 1.16 Minutes and Records of the District

All documents, reports, records, and minutes of the District are available for public inspection and copying under the Public Information Act. Upon written request of any person, the District will furnish copies of its public records subject to any exceptions to disclosure under the Public Information Act. The Board will set a reasonable charge for such copies and will provide a list of copying charges.

Rule 1.17 District Management Plan

Following notice and hearing in accordance with Rule 13.2(b), the District shall adopt a Management Plan. The Management Plan shall specify the acts and procedures and performance and avoidance measures necessary to prevent waste, the reduction of artesian pressure, or the drawdown of the water table using the best available data and science. The District shall use the Rules to implement the Management Plan. The Board will review the Management Plan annually to determine whether the plan and Rules are working effectively and whether amendments are necessary. Upon adoption of Desired Future Conditions under Section 36.108 of Chapter 36, the District shall update its Management Plan within two years of the date of the adoption of the Desired Future Conditions by the Management Area. The District shall thereafter update its rules as needed to implement the Desired Future Conditions within one year of the date the Management Plan is updated to include the adopted Desired Future Conditions. 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.

Rule 1.18 Procedure, Conduct and Decorum at Board Meetings

(a) Public participation at Board meetings is limited to that of observers unless the Board requests a member of the public to address the Board or unless the person who wishes to address the Board submits a completed Speaker Request Form prior to the beginning of the meeting. The Speaker Request Form must list each agenda item the person wishes to address or any item the person would like the Board to consider adding to a future agenda.

(b) The Presiding Officer of the meeting may limit the total amount of time each member of the public has to address the Board. The time limit, if any, will be listed on the agenda or Speaker Request Form or will be announced at the beginning of the meeting. The time limit per speaker may not be pooled or given to other speakers. The Board will not typically limit the number of speakers on any given topic, but reserves the right to do so if necessary to ensure an efficient and orderly meeting.

(c) Members of the public in attendance at any meeting or hearing shall conduct themselves with the proper respect and decorum. Disruptive conduct, and profane, insulting or threatening language directed toward any person or racial, ethnic, or gender slurs or epithets will not be tolerated during public comments. Disruptive conduct includes without limitation physical violence, throwing objects, yelling, talking out of turn, using and/or making obscene gestures, ignoring time limits, refusing to leave the microphone, and/or any other obstructive physical action or verbal utterance.

(d) These Rules do not prohibit public criticism of the District, including criticism of any act, omission, policy, procedure, program, or service.

(e) Violation of these rules may result in the following sanctions:

(1) cancellation of a speaker's remaining time;

(2) removal from the Board meeting; and/or

(3) such other civil or criminal sanctions as may be authorized under the Constitution, Statutes and Codes of the State of Texas.

(f) From time to time, the Board may conduct public workshops and hearings. These rules of procedure, conduct and decorum shall also apply to public workshops and hearings.

SECTION 2 WELL REGISTRATIONS AND PERMITTING

Rule 2.1 General Provisions Applicable to Registrations and Permits

(a) No person may:

(1) drill a well without first obtaining from the District either a permit, which serves as the Notice to Proceed, or a separate Notice to Proceed for registrations;

(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) drill or operate a non-exempt well without first obtaining a permit from the District;

(4) substantially alter the size of a well or pump or increase the maximum instantaneous pumping rate of a well or pump without first obtaining a permit or 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 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. Drilling or operating a well or wells without a required permit in violation of these Rules is illegal, wasteful per se, and a nuisance.

(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. The Board may revoke or amend a permit at any time in accordance with these Rules when reasonably necessary to accomplish the purposes of the District, the Rules, Management Plan, or Chapter 36.

(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) All permits are granted in accordance with the Rules, and acceptance of a permit constitutes an acknowledgment of receipt of the Rules and agreement that the permit holder will comply with all of the Rules.

(f) A registrant, permit holder or new well owner shall provide written notice to the District of any change of ownership, name of any authorized representative, well operator, mailing address or telephone number in accordance with these Rules.

(g) The well site shall be accessible to District representatives and/or agents for inspection during business hours and during emergencies. The well owner and/or permit holder agrees to cooperate fully in any reasonable monitoring or sampling of the wells.

(h) Produced groundwater shall be put to a beneficial use at all times. Operation of the well(s) shall be conducted in a manner so as to avoid waste, pollution or harm to groundwater resources.

(i) Violation of a permit's terms, conditions, requirements, or special provisions is a violation of these Rules and shall be grounds for enforcement.

(j) 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.

(k) All permits are subject to these Rules, including without limitation the Management Zone and proportional adjustment authority in Section 6, and the Management Plan. All exempt wells and/or registrations are subject to these Rules except for the permitting, metering and fee requirements as set forth in these Rules.

(l) 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.

(m) The District may amend any permit, in accordance with these Rules, to accomplish the purposes of the Rules, Management Plan, the District Act, or Chapter 36.

(n) 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, 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 under these Rules or 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 under these Rules or 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.

(o) A violation of Subsection (n) of this Rule occurs on the day that the 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, until such time that additional production authorization is granted by the Board. The non-compliance penalties provided for in Subsection (n) of this Rule and Rule 12.8 will be assessed in addition to the overproduction disincentive penalty provided for in Rule 8.1(c).

(p) After authorization to drill a well has been granted under the District's registration Rules or a permit, the well, if drilled, must be drilled within thirty (30) feet of the location specified in the permit, and not elsewhere. If the drilling of the well is commenced at any other location than what is provided for in this Rule, the Board may take action to enjoin the drilling activity or operation of the well pursuant to Chapter 36, and these Rules, and the Board may, pursuant to Rules 12.6 and 12.9, order that the well be plugged.

(q) 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 12.6(c), will be considered to be withdrawals made from an unpermitted, non-exempt well for purposes of Rules enforcement.

Rule 2.2 Wells Exempt from Obtaining Permits

(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, 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, including replacement wells, 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, livestock 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 for 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/forfeit its exempt status and/or does not qualify as exempt if:

(1) the well is subsequently used for a purpose or in a manner that is not exempt under Subsection (a);

(2) while the well was classified as an exempt well, the District determines that the groundwater withdrawals are no longer used solely for domestic use or to provide water for livestock or poultry, no longer used solely to supply water for a rig that is actively engaged in drilling or exploration operation, or are no longer necessary for mining activities;

(3) the capacity of the replacement well is increased from that being replaced; or

(4) if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.

(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 2.3.

(d) If exempt well status is lost under Subsection (b), the District may initiate an enforcement action against the owner of the well for violating these Rules.

Rule 2.3 Exempt Well Registration Required

(a) Registration applications may be submitted to the District in person, by mail, by fax, or by internet submission, using the registration form provided by the District. Well owners of the following wells shall file an application for well registration with the

District and the District shall register:

(1) all new, exempt wells, except those wells exempt under Subsections (a)(5) or (7) of Rule 2.2;

(2) all existing exempt wells, except those wells exempt under Subsections (a)(5) or (7) of Rule 2.2; and

(3) all pre-existing exempt wells with an inside casing diameter measuring larger than 4 inches in diameter except those wells exempt under Subsections (a)(5) or (7) of Rule 2.2.

(b) Exempt wells that are required to be registered under these Rules but have not yet been registered are not subject to enforcement under these Rules so long as the well is registered within 60 days of the Effective Date. Any subsequent failure to register or amend the registration is subject to enforcement under these Rules.

(c) Exempt wells that are not required to be registered are exempt wells under Subsections (a)(5) or (7) of Rule 2.2 regardless of when they are/were drilled and pre-existing exempt wells with an inside casing diameter measuring 4 inches or less in diameter. Exempt wells that are not required to be registered by the District are encouraged to register to receive the benefits of being classified as an existing well under these Rules, including but not limited to a consideration of the registered well in a review of a proposed new well's spacing requirements and during the permitting process for proposed new non-exempt wells. Wells not registered with the District are not considered in review of a proposed new well's impacts on existing wells.

(d) Except for subsection (b), failure of a well owner to timely register or amend the registration of a well under this Rule shall be subject the well owner to enforcement under these Rules. A violation of this rule occurs on the first day that the drilling, alteration, modification, or operation occurs, and continues each day thereafter as a separate violation until cessation of the prohibited conduct, or until the well is registered or the registration is amended, as applicable.

(e) 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 property, if different from the registrant, on which the well is or will be located and the legal description of the property 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) the location or proposed location of the use of the water from the well, if used or proposed to be used at a location other than the location of the well;

(6) the production capacity or proposed production capacity of the well, as equipped in gallons per minute, and the horsepower rating of the pump, as assigned by the pump manufacturer;

(7) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;

(8) a statement that the water withdrawn from the well will be put to beneficial use at all times; and

(9) a statement that the applicant agrees to comply with the Administrative Rules of the TDLR and will contact the Montgomery County Health Department if the well is to be drilled on less than 1 ½ acres.

(f) The General Manager shall review a registration application and issue a Notice to Proceed if the registration is Administratively Complete and the new exempt well will comply with the applicable spacing requirements in Rule 3.2. If the registration is for an exempt pre-existing well that was drilled before August 26, 2002 or an exempt well that was not otherwise required to be registered, the General Manager shall approve the registration if the information provided is Administratively Complete. A new exempt well must be drilled and completed within 120 days following issuance of the Notice to Proceed.

(g) The person who drills or completes an exempt well shall file the well report with the District within 60 days after the date the well is completed as required by Rule 11.2. Upon receipt of the well report required by Rule 11.2, the registration of the well shall be perpetual in nature, subject to being amended or transferred and subject to enforcement and/or cancellation for violation of these Rules.

(h) Notwithstanding any other rule to the contrary, the owner, driller, pump installer, or well service company that is authorized by the owner to complete or operate a new well, substantially alter an existing well, or modify or operate an existing well are jointly responsible for ensuring that a well registration required by this section, or well registration amendment required by subsection (i), is timely filed with the District and contains only information that is true and accurate. Each will be subject to enforcement action if a registration or registration amendment required by this

section is not timely filed by either, or by any other person legally authorized to act on his or her behalf.

(i) Amendment of Registration: A registrant of an exempt well shall file an application to amend an existing registration and obtain approval by the District of the application prior to engaging in any activity that would constitute a substantial change from the information in the existing registration. For purposes of this rule, a substantial change includes a change that would substantially alter the pump or well, a change in the type of use of the water produced, a change in location of a well or proposed well, a change of the location of use of the groundwater, or a change in ownership of a well. Failure of a well owner or transferee per Rule 2.17 to timely register or amend the registration of a well under this Rule shall subject the well owner or transferee per Rule 2.17 to enforcement under these Rules. Substantial changes may require a well owner to file an application for an operating permit.

Rule 2.4 Historic Use Permits; Terms and Renewals

The District previously issued Historic Use Permits during the Historic Use Period. In connection with each Historic Use Permit, the District determined the Maximum Historic Use, which effectively served as the Annual Production Limitations for each Historic Use Permit subject to any proportional adjustments. Any changes to a Historic Use Permit as set forth in Rule 2.5 will require the permit holder to file an application for an Operating Permit. If no changes are made to a Historic Use Permit, the Historic Use Permit shall be reissued and reviewed in accordance with Rule 2.11 and include all the conditions in Rule 2.9(c). Any changes to Historic Use Permits are subject to Rule 2.12 and the considerations for Operating Permits in Rule 2.6 including a Hydrogeological Report Requirement for certain wells or well systems in Rule 2.6(b)(15).

Rule 2.5 Operating Permits

(a) The owner of a new, non-exempt well must obtain an Operating Permit from the District prior to the drilling, construction, or operation of the well or well system. The owner of a new or existing well that is exempt from the District's permitting requirements, but is subsequently substantially altered in a manner that causes the well to lose its exempt status, must obtain an Operating Permit. In addition, the owner of an existing well or well system that has obtained a Historic Use Permit for the well must obtain an Operating Permit if any of the following apply:

(1) The permit holder intends to produce or has produced groundwater in excess of the amount authorized in a Historic Use Permit;

(2) The well or well system has been substantially altered in a manner that causes the well or well system to be capable of producing more groundwater than authorized; or

(3) The purpose of use of the groundwater produced changes to another type of

use other than that authorized in the Historic Use Permit.

(b) An Operating Permit is required for all new non-exempt production from the District and is applicable to only one Aquifer of the District. A separate Operating Permit must be obtained to produce from a different Aquifer of the District.

(c) New or existing wells for which an Administratively Complete permit or permit amendment application has not been filed with the District prior to the Effective Date will be presumed to be wells not in existence prior to the Effective Day. Those wells that are not deemed existing wells under these Rules are considered to be new wells that are required to comply with the spacing requirements under Rules 3.2 and 3.3.

Rule 2.6 Application Requirements for Operating Permits

(a) Each application for an Operating Permit or an Amended Operating Permit must contain all of the information as set forth below. Application forms will be provided on the District's website and can be furnished to the applicant upon request. Applications may be submitted to the District in person, by mail, by fax, or by internet submission. For well systems, the applicant shall provide the information required in this subsection for each well that is part of the well system.

(b) The application shall be in writing and sworn to and shall include the following:

(1) the name, telephone number, fax number, and mailing address of the applicant and the owner of the land on which the well is or will be located and a legal description of the property on which the well is or will be located;

(2) if the applicant is other than the owner, a map of the service area of a retail water public utility, and/or documentation establishing the applicable authority to construct and operate a well on such property for the proposed use;

(3) a statement of the nature and purpose of the proposed use, the amount of water to be used for each purpose, and how the amount of water requested addresses an existing or projected water supply need or demand;

(4) a declaration that the applicant will comply with the District's Management Plan and Rules and all groundwater permits promulgated pursuant to the Rules;

(5) the location or proposed location of each well, including a location map showing the proposed well location detailed by latitude and longitude or by GPS coordinates, and a description of the Aquifer of the District, depth and diameter;

(6) the location or proposed location of the use of the water from the well, if used or proposed to be used at a location other than the location of the well;

(7) the maximum instantaneous pumping rate requested in gallons per minute for each well and the production capacity of the well as equipped if different from the maximum instantaneous pumping rate requested, and the horsepower rating of the pump, as assigned by the pump manufacturer;

(8) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District and the appropriate state agencies;

(9) a drought contingency plan, if the applicant is required by other law to have a drought contingency plan;

(10) a water conservation plan, if the applicant is required by law to have a water conservation plan;

(11) a statement by the applicant that the water withdrawn under the permit will be put to beneficial use at all times;

(12) if the groundwater is to be resold, leased, or otherwise transferred to others, whether inside or outside of the District, provide the location to which the groundwater will be delivered, the purpose for which the groundwater will be used, and a copy of the legal documents establishing the right for the groundwater to be sold, leased, or otherwise transferred, including but not limited to any contract for the sale, lease, or transfer of groundwater;

(13) a statement that the applicant will equip the permitted well(s) with a flow measurement device under Section 10.

(14) if groundwater is proposed to be transported out of the District, the applicant shall describe the following issues and provide documents relevant to these issues:

(A) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;

(B) the projected effect of the proposed transport on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and

(C) how the proposed transport is consistent with the approved regional water plan and District Management Plan; and

(15) a Hydrogeological Report that is completed in accordance with the District's Hydrogeological Report Guidelines for:

(A) a request to modify or increase an existing well or well system that

would result in the existing well(s) being equipped to produce 700 gallons per minute or greater;

(B) a request to drill and operate a proposed new well or well system with a proposed aggregate production capacity of 700 gallons per minute or greater; and/or

(C) a request for an exception to the spacing requirements in Rule 3.2 or Rule 3.3.

Hydrogeological Reports required under this subsection, Rule 2.12, and Rule 3.4 shall be sealed by a licensed professional engineer or geoscientist in Texas and submitted simultaneously with an application and shall include all of the required elements of the District's Hydrogeological Report Guidelines in order for the permit or permit amendment application to be deemed Administratively Complete.

Rule 2.7 Administrative Completeness of Applications for Operating Permits

(a) An application shall be accompanied by payment by the applicant of any administrative fees required by the District for permit application.

(b) 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.

(c) An application will be considered Administratively Complete if it complies with all requirements set forth under the Rules, including all information required to be included in the application.

(d) The General Manager shall determine whether an application is Administratively Complete.

(e) The District shall promptly consider and act on each Administratively Complete application for an Operating Permit that meets the requirements of Rule 2.6, includes the application fee established by the District, and for which the applicant is in compliance with District Rules. If an application is not Administratively Complete, the District may request the applicant to complete the application as required by these Rules. The application will expire if the applicant does not complete the application within 60 (sixty) days of the date of the District's request or upon conclusion of an extension granted by the General Manager.

Rule 2.8 Considerations for Granting or Denying an Operating Permit

(a) Before granting or denying an Operating Permit or an application to amend a permit, the District shall consider whether:

(1) the application contains accurate information, all the information requested, and is accompanied by the subscribed administrative fees;

(2) the water well(s) complies with Chapter 36 and these Rules, including but not limited to the spacing and production limitations identified in these Rules;

(3) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(4) the proposed use of water is dedicated to any beneficial use;

(5) the proposed use of water is consistent with the District's Management Plan;

(6) the applicant agrees to avoid waste and achieve water conservation;

(7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure; and

(8) for those hearings conducted by SOAH, the Board shall consider the proposal for decision issued by the State Office of Administrative Hearings.

(b) The District, to the extent possible, shall issue permits up to the point the total volume of exempt and permitted groundwater production will achieve the applicable Desired Future Conditions established for the aquifer or Aquifers in the District. In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve the applicable Desired Future Conditions and shall consider:

(1) the Modeled Available Groundwater determined by the Executive Administrator of the TWDB;

(2) the Executive Administrator of the TWDB's estimate, as may be provided by the District, of the current and projected amount of groundwater produced under the exemptions in the Rules;

(3) the amount of groundwater authorized under permits previously issued by the District;

(4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and

(5) yearly precipitation and production patterns.

Rule 2.9 New or Amended Operating Permits Issued by District

(a) Upon the Board's grant of an Operating 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) An Operating 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 and address of the person to whom the permit is issued;

(2) the location of the well, the Aquifer of the District, depth and diameter

(3) the Maximum Allowable Pumping Rate for each well;

(4) the Annual Production Limitations for each permit;

(5) the date the permit is issued;

(6) the date the permit is to expire if no well is drilled;

(7) a statement of the purpose for which the well is to be used;

(8) a requirement that the water withdrawn under the permit be put to beneficial use at all times;

(9) a declaration that the applicant will comply with well plugging guidelines and report closure to the commission;

(10) a requirement that the permit holder shall reduce water production as required by the Rules and orders of the Board, including without limitation Proportional Adjustment Orders issued based on achievement of the District's Desired Future Conditions, other adjustments or a Management Zone;

(11) The permit contains all matters approved by the District related to the permittee's authority to use groundwater, and all other matters requested by the permit holder not included in the permit are denied;

(12) If groundwater is to be transported outside the District, the amount of water that may be transferred and the period for which the water may be transferred;

(13) In the event of a conflict between the terms of the permit and the application and information pursuant to which the permit was granted, the terms of the permit shall prevail.

(14) any other conditions or restrictions the District prescribes; and

(15) any other information the District determines necessary.

Rule 2.10 Aggregation of Withdrawal Among Multiple Wells

Multiple wells that are part of a well system that are owned and operated by the same person and serve the same subdivision, facility, or a certified service area may be requested to be aggregated under a single permit by either the owner or the General Manager. 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 owner may be requested to be aggregated under a single permit by either the owner or the General Manager. The determination of aggregation shall be made at the sole discretion of the District. Wells owned by the same person that produce from different Aquifers of the District shall not be aggregated under a single permit.

All aggregated wells under a single permit shall be subject to the Maximum Allowable Production Rate for each well, Annual Production Limitations for the permit in accordance with Rule 4.1, and Management Zones and Proportional Adjustment Orders in accordance with Section 6, from which the well system produces. When wells are aggregated under a single permit, each well shall have a Maximum Allowable Production Rate; however, the Annual Production Limitations shall apply to the aggregated system of wells under the single permit and a prorated share of the Annual Production Limitations shall not be allocated on a pro rata basis to each well.

Rule 2.11 Historic Use and Operating Permit Terms; Administrative Review

(a) **Term:** Historic Use Permits and Operating Permits are perpetual in nature unless revoked or amended, and shall be subject to a formal administrative review at least once every five years and an informal review from time-to-time as set forth below in Subsection (d).

(b) **Reissuance of Existing Permits**: The District shall reissue existing Historic Use Permits and Operating Permits as soon as practicable after the Effective Date using a process similar to what the District has used for annual renewals. All reissued permits shall state that the permit is perpetual; contain the information in Rule 2.9(c) including without limitation a Maximum Allowable Pumping Rate for each well and Annual Production Limitations for each permit; and subject the permit to proportional adjustments in accordance with Rule 6.3 and Management Zones in accordance with Rule 6.2. For all permits issued before the Effective Date, the District shall designate the approved maximum instantaneous pumping rate in effect on the Effective Date as the Maximum Allowable Pumping Rate based on the District's records and/or information provided by the permit holder. For all permits issued before the Effective Date, the District shall identify which Aquifer(s) of the District the production is occurring and associate the permit(s) with those particular Aquifer(s) of the District. For Historic Use Permits, the District shall designate the Maximum Historic Use as the Annual Production Limitations for each Historic Use

Permit subject to any proportional adjustments. For Operating Permits issued before the Effective Date, the District shall designate the authorized annual allocation in effect on the Effective Date as the Annual Production Limitations subject to proportional adjustments.

(c) Issuance of New Permits: All permits issued after the Effective Date shall state that the permit is perpetual and contain the information in Rule 2.9(c) including without limitation a Maximum Allowable Pumping Rate for each well and Annual Production Limitations for each permit, and are subject to proportional adjustments in accordance with Rule 6.3 and Management Zones in accordance with Rule 6.2.

(d) **Formal and Informal Administrative Review**: The formal and informal review processes may entail inspections and requests for information from a permit holder as required to ensure the accuracy and integrity of the District's information, and to enforce compliance with these Rules, the District Act, and Chapter 36. The District shall conduct a formal administrative review at least one every five years. The formal review shall include without limitation a review of all terms and conditions of the permit, a certification from the permit holder that there are no changes to the information currently on file with the District or in the permit, a field inspection of all wells associated with the permit, and a review of the permit holder's compliance with all Rules. Upon receipt of information that necessitates a permit amendment under Rule 2.12, the District shall notify the well owner in writing that a permit amendment is required prior to initiation of the permit amendment process. The General Manager shall inform the Board of any reviews conducted and any permit amendments initiated at the next scheduled Board meeting.

(e) If the holder of a permit requests a change that requires an amendment to the permit under these Rules, the permit as it existed before the permit amendment remains in effect until the later of the conclusion of the permit amendment or review process, as applicable or final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment. If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed as provided for under this Rule.

(f) The General Manager may initiate an amendment to a permit, in connection with the review of a permit or otherwise, in accordance with these Rules. If the General Manager initiates an amendment to a permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment process, as applicable.

(g) An applicant may appeal the General Manager's ruling in the manner provided for in Rule 1.12.

Rule 2.12 Operating Permit Amendments and Limited Authorized Amendments to Historic Use Permits

(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. All applications for permit amendments shall be reviewed under the Rules in effect at the time the application is filed. All applications for amendments to any permit issued by the District are subject to the considerations for Operating Permits in Rule 2.6 including a Hydrogeological Report Requirement for certain wells or well systems in Rule 2.6(b)(15) and are subject to the notice and hearing procedures set forth in Rule 13.3. An approved amendment to a permit applies prospectively and cannot be applied retroactively on a one-time basis. Changes requested to the purpose of use or to increase the amount of annual production under a Historic Use Permit require the issuance of an Operating Permit prior to the changes being made.

(b) A major amendment to a permit includes, but is not limited to, a change that would increase the maximum instantaneous pumping rate or Maximum Allowable Pumping Rate of a well, an increase in the annual quantity of groundwater authorized or Annual Production Limitations to be withdrawn under a permit, a change in the type of use or location of use of the water produced, the addition of a new well to be included in the permit, or a change of location of groundwater withdrawal, except for a replacement well authorized under Rule 2.13(b).

(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 an amendment sought by the permittee for a decrease in the quantity of groundwater authorized for withdrawal and beneficial use, or a change in ownership of a well, are minor amendments and may be made by the General Manager or referred to the Board at the General Manager's discretion.

(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 as provided by Rule 1.12. 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 Open Meetings Act.

Rule 2.13 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 and shall be drilled in the same Aquifer of the District as the well being replaced;

(2) The application for registration of a replacement well shall include a diagram of the property that depicts both the proposed replacement well and the well being replaced, and any other structures on the property.

(3) the replacement well will not be located any closer to any other registered or 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;

(4) the replacement well and pump will not be larger in size or designed capacity than the well and pump being replaced; and

(5) 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 within ninety (90) days from the date that the replacement well is completed.

(c) For substantial alteration of existing wells and for those applications submitted to replace a well that also include a request to increase the capacity of the replacement well beyond that of the well being replaced, 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 submitted under Subsection (c) to determine whether the proposed substantial alteration or increased capacity would constitute a major or minor permit amendment under Rule 2.12, or would disqualify an exempt well from the applicable permitting exemption under Rule 2.2 and would require an application for an Operating Permit. Increasing the capacity of the replacement well from that being replaced will result in the forfeiture of any applicable exemptions under Rule 2.2(b). The spacing requirements of Rule 3.3 shall apply to a well whose alteration would result in an increase in the Maximum Allowable Pumping Rate. An Operating Permit or permit amendment shall also be required for the alteration or increase in capacity over that of the well replaced if

required by Rule 2.5 or Rule 2.12.

(f) An applicant may appeal the General Manager's ruling in the manner provided for in Rule 1.12.

Rule 2.14 Test Hole Permit

(a) A person may apply for a permit to drill exploratory boreholes for the purposes of obtaining necessary and reliable information regarding aquifer characteristics and other relevant subsurface conditions for use in evaluating groundwater resources and potentially subsequently applying to the District for an Operating Permit. To the extent practicable, all test bores shall be drilled in accordance with the spacing requirements set forth in Section 3. Any test bore hole later drilled to serve as a well will require an Operating Permit and compliance with spacing requirements in Section 3.

(b) An application for a Test Hole Permit shall be submitted using a form approved by the District and shall include information listed in Rule 2.6, as applicable.

(c) Within 60 days of the date that an application for a Test Hole Permit is determined to be Administratively Complete, the General Manager may either approve the application or refer it to the Board for its consideration.

(d) A Test Hole permit is valid for one year from date of issuance. The 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 an extension that includes a basis for the requested extension and a reasonably detailed explanation of why the test hole drilling could not be completed within the one-year permit term. The General Manager may approve the extension or refer it to the Board for consideration.

(e) Except as provided in subsection (g), once testing of water source has been completed or upon expiration of the permit term, whichever occurs first, all test holes shall be permanently 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 co-mingling between aquifers or Aquifers of the District or other deleterious matter admitted from another stratum or from the surface.

(f) Within 60 days of completion of the Test Hole drilling, the applicant shall report all required information as described in Rule 11.2.

(g) The permit holder is not required to install a permanent seal on the test hole if it has been selected for completion as a producing groundwater well and if:

(1) the test hole 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 hole, 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 Test Hole 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.

(h) If the Board denied an application for an Operating Permit for the well, the Test Hole permit holder shall seal the test hole in accordance with subsection (e) within 30 days of the date the decision on the denial becomes effective.

Rule 2.15 Emergency Permits

(a) Upon receiving an Administratively Complete 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 2.6 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, 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. An applicant may appeal the General Manager's ruling as provided by Rule 1.12.

(d) The permit fee to be assessed for an Emergency Permit under this Rule shall be the same as an Operating Permit.

(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.

Rule 2.16 Temporary Permit for Construction Projects and Drilling Supply

(a) The District may grant a Temporary Permit to drill and operate a water well for the purpose of either supplying water to a construction project or supplying water for the drilling process of a permanent well.

(b) The General Manager may rule on any Administratively Complete application for a Temporary 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 a Temporary Permit upon a determination that the applicant is currently in violation of these Rules or Chapter 36, 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. An applicant may appeal the General Manager's ruling as provided for in Rule 1.12.

(c) Temporary Permits may be issued for the term requested in the application; provided however that no term for a Temporary Permit shall exceed one year from the date of approval by the General Manager. Upon expiration of the term, the Temporary Permit automatically expires and is canceled. Temporary Permits shall not be subject to renewal.

(d) An applicant for a Temporary Permit is limited to a maximum production authorization of 5 million gallons.

(e) A well(s) for which a Temporary Permit is issued must be plugged no later than one year from the date of issuance of the Temporary Permit for the term of the permit. Wells shall be plugged in accordance with the rules and procedures established by the TDLR. Not later than the 30th day after the date the well is plugged, the permit holder shall submit a plugging report to the District. The District shall furnish plugging forms on request.

(f) The Temporary Permit holder shall equip the well with a meter prior to producing from the well and shall submit a Permit Production Report in accordance with Rule 11.3 to the District no later than one year from the date of permit issuance.

(g) Notwithstanding anything to the contrary in these Rules, an applicant for a Temporary Permit must provide to the District:

(1) a completed Temporary Permit application form, which shall be provided by the District;

(2) an application fee in the amount of $250 and any necessary administrative fees pursuant the fee schedule of the District and these Rules;

(3) a flat rate Water Use Fee of $500; and

(4) evidence of a lawful performance bond paid by the applicant and issued in the name of the District in an amount of $50,000 to cover all costs associated with plugging the well as required by this rule; the permit holder's failure to properly plug the well in accordance with this rule shall result in the District's utilization of the performance bond to cover all costs of the District related to plugging the well.

(h) The District shall name the licensed water well driller as the Temporary Permit holder, who shall be responsible for compliance with all rules applicable to the permit.

(i) Ownership of a well drilled pursuant to a Temporary Permit granted under this rule may be transferred to the owner where the permitted well is located if:

(1) the owner obtains the proper registration or Operating Permits, whichever is applicable, for the well, as established in these Rules, prior to the expiration of the Temporary Permit; and

(2) the transfer is completed and approved by the District prior to expiration of the Temporary Permit.

(j) If ownership of a well is transferred in accordance with Subsection (i) and an Operating Permit or registration for the well is approved by the District, as applicable, the holder of the Temporary Permit shall be released from the obligation to plug the well and the performance bond shall be released by the District.

Rule 2.17 Transfer of Well Ownership

(a) Within sixty (60) days after the date of a change in ownership of a well that is required to be registered or permitted under these Rules, the new owner or well owner (transferee) shall file with the District a Transfer of Well Ownership form that provides the name, daytime telephone number, mailing address of the new owner or well owner, documents evidencing and supporting change along with any other contact or well-related information reasonably requested by the General Manager. The requirement under this rule to transfer well ownership shall also apply to capped or inactive wells.

(b) If a registrant or 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 registration or permit so that the transferring party (the transferor) is no longer the owner or well owner, as defined herein, and if the form for Transfer of Well 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 owner or owner of the well, subject to the conditions and limitations of these Rules.

(c) Upon approval of the Transfer of Ownership Form, the new owner or transferee shall amend the well registration in accordance with Rule 2.3 or file an application to amend a permit in accordance with Rule 2.12, which shall be treated as a minor amendment.

(d) The burden of proof in any proceeding related to a question of well ownership or status as the legal holder of a registration or 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 wells included in the application or existing registration, and each well and registration or permit made the subject of the application is otherwise in good standing with the District.

(f) The new owner or new owner of a well that is the subject of a transfer described in this rule (transferee) may not operate or otherwise produce groundwater from the well after ninety (90) days from the date of the change in ownership until the new owner has submitted a Transfer of Well Ownership if required under this rule.

(g) Transfer of well ownership of wells associated with a Historic Use Permit are subject to Rules 2.4 and 2.5 requiring the permit holder to file an application for an Operating Permit if any changes are made to a Historic Use Permit other than a decrease in the amount authorized or a transfer of well ownership under this Rule.

(h) Transfers of well ownership of wells associated with an Operating Permit are subject to Rule 2.12 regarding amendments to Operating Permits.

SECTION 3 SPACING AND LOCATION OF WELLS

Rule 3.1 Spacing and Location of Existing Wells

Existing Wells shall be drilled in accordance with state law and the District rules in effect on the date such drilling commenced or the Administratively Complete registration or permit application was filed, and are exempt from the spacing, location and completion requirements of these Rules to the extent they were drilled lawfully. The owner of a well or well system for which significant plans or funding related to the drilling thereof have been developed prior to the Effective Date may submit evidence to the District in order for the

District to consider whether the well or well system qualifies under Rule 3.1 for spacing purposes only.

Rule 3.2 Spacing Requirement for All New Wells

(a) All New Wells for which a registration or permit application is filed after the Effective Date may not be drilled within 50 feet of the nearest adjacent property line.

(b) After authorization to drill a well has been granted under the District's registration rules or a permit, the well, if drilled, must be drilled within thirty feet of the location specified in the permit, and not elsewhere. If the drilling of the well is commenced at any other location than what is provided for in this Rule, the Board may take action to enjoin the drilling activity or operation of the well pursuant to Chapter 36, and these Rules, and the Board may, pursuant to Rules 12.6(c) and 12.9, order that the well be plugged.

(c) A person who drills a well in violation of the applicable spacing requirements of this Rule may be required to recomplete or reconstruct the well in accordance with the Rules, and may be ordered to plug the well deemed to be in violation.

Rule 3.3 Spacing Requirements for All New Non-Exempt Wells

(a) New, non-exempt wells shall be spaced from all registered and permitted wells completed in the same Aquifer of the District based upon the capacity of the proposed new, non-exempt well. New, non-exempt wells will be spaced from registered and permitted wells completed in the same Aquifer of the District as follows:

(1) For the Chicot/Evangeline aquifer – new, non-exempt wells shall be spaced from all registered and permitted wells a distance not less than 2.0 feet multiplied by the Maximum Allowable Pumping Rate;

(2) For the Jasper aquifer – new, non-exempt wells shall be spaced from all registered and permitted wells a distance not less than 1.5 feet multiplied by the Maximum Allowable Pumping Rate;

(3) For the Catahoula aquifer – new, non-exempt wells shall be spaced from all registered and permitted wells a distance not less than 1.0 foot multiplied by the Maximum Allowable Pumping Rate;

(b) After authorization to drill a well has been granted under the District's registration rules or a permit, the well, if drilled, must be drilled within thirty (30) feet of the location specified in the permit, and not elsewhere. If the drilling of the well is commenced at any other location than what is provided for in this Rule, the Board may take action to enjoin the drilling activity or operation of the well pursuant to Chapter 36, and these Rules, and the Board may, pursuant to Rules 12.6 and 12.9, order that the well be plugged.

(c) A person who drills a well in violation of the applicable spacing requirements of this Rule may be required to recomplete or reconstruct the well in accordance with the Rules, and may be ordered to plug the well deemed to be in violation.

(d) Existing Wells that may or may not comply with the spacing requirements set forth in Rule 3.3, and for which a request to replace the well per Rule 2.13 and/or for which a permit amendment is requested that would result in an increase in the Maximum Allowable Pumping Rate, the well spacing regulation in Rule 3.3(a) will be applied. If a requested increase in Maximum Allowable Pumping Rate cannot be granted without violating the applicable well spacing rule, then exceptions per Rule 3.4 may be requested and considered.

Rule 3.4 Exceptions to Spacing Requirements

(a) If an exception to the spacing requirements of the District is desired, a person shall submit an application on a form provided by the District. In the application, the applicant must explain the circumstances justifying an exception to the spacing requirements of the District, and include a Hydrogeological Report and boundary survey or sketch, drawn to scale, one inch equaling two-hundred (200) feet. The boundary survey or sketch must show the property lines in the immediate area and show accurately, to scale, all the registered and permitted wells within the applicable spacing distance under Rule 3.2 or 3.3 of the proposed well site. The application and boundary survey or sketch must be certified by a person acquainted with the facts who shall state that the facts contained in the application are true and correct. The Hydrogeological Report must meet the requirements of Rule 2.6(b)(15) and the District's Hydrogeological Report Guidelines.

(b) An exception to the property line and existing well spacing requirements shall be automatically granted upon receipt of an application under Subsection (a) that includes evidence and a sworn statement by the owner or well owner, as applicable, that the abutting land or registered and permitted well(s) to which a spacing exception is requested is owned or controlled by the same person as the proposed well.

(c) If all registered and permitted well owners and/or property owners within the applicable spacing distance for which an exception is sought execute a certified waiver in writing, stating that they do not object to the granting of the exception, the District may proceed, upon notice to the applicant only and without hearing, and take action to grant or deny the exception in full or in part.

(d) If an applicant cannot provide signed and notarized waivers from all registered and permitted well owners or all adjacent property owners, as applicable, within the applicable spacing distance, then the applicant must notify all registered and permitted well owners and adjacent property owners, as applicable, within the applicable spacing distance and the District will hold a public hearing for each request of an exception to the spacing requirements. An exception may be granted

by the Board after written notice has been given by the applicant by mailing notice by certified mail, return receipt requested, to all registered and permitted wells and/or all adjacent property owners, as applicable, located within the minimum required distance from the proposed well site, after a public hearing at which all interested parties may appear and be heard, except as provided in Subsections (b) and (c). Proof of the mailed notice shall be given to the General Manager by the applicant no less than twenty (20) days prior to the date of the public hearing on the spacing exception request. If, at any time prior to the public hearing, all registered and permitted well owners and/or adjacent property owners, as applicable, within the applicable spacing distance sign waivers, then the exception will be granted without a public hearing. The District may require any interested person that appears or submits information protesting the spacing exception request to provide additional information in order for the Board to further evaluate the interested person's protest including whether the interested person is within the applicable spacing distance.

(e) Grounds for granting a spacing exception from a registered or permitted well may include evidence that the well proposed in the application will produce groundwater from a different aquifer subdivision other than that from the registered and permitted well(s) within the minimum required distance from the proposed well. Grounds for granting a spacing exception may include evidence that the exception is necessary to provide the applicant an opportunity to produce groundwater.

(f) The Board may grant the variance, deny the variance or approve the variance with terms other than those requested at the noticed Board meeting or any subsequent and appropriately noticed Board meeting. If the Board approves a spacing exception for a non-exempt well, the Board may limit the production of the well under the permit to prevent or limit injury to existing well owners or the applicable aquifer or subdivision thereof. This right to limit production is in addition to the proportional adjustment authority in Rule 6.3.

SECTION 4 ANNUAL PRODUCTION LIMITATIONS

To accomplish the purposes of Chapter 36, and to achieve the stated purposes and goals of the District, including managing the aquifers to encourage the best practicable conservation and development practices while also honoring and protecting private property rights by affording an opportunity for every owner to produce groundwater, the District shall manage total groundwater production on a long-term basis to achieve the applicable Desired Future Conditions.

Rule 4.1 Annual Production Limits for Permits

The Annual Production Limitations shall be designated in each permit issued by the District pursuant to the conditions of the District Act, Chapter 36, and these Rules. Except as otherwise provided in these Rules, the quantity withdrawn under a permit shall not exceed the Annual Production Limitations designated in the permit issued by the District. For Historic Use Permits issued before the Effective Date, the District shall designate the

Maximum Historic Use as the initial Annual Production Limitations for each Historic Use Permit subject to any proportional adjustments. For Operating Permits issued before the Effective Date, the District shall designate the authorized annual allocation in effect on the Effective Date as the initial Annual Production Limitations. For a new or amended permit, the Board will determine the Annual Production Limitations at the permit hearing and will do so by considering the information provided and requested in the application, the General Manger's permit recommendation, and the considerations in Rule 2.8.

All permits are subject to Management Zones in Rule 6.2 and any future proportional adjustments in accordance with Rule 6.3 and any other adjustments or reductions authorized under these Rules. The District may reissue any applicable permits after a proportional adjustment in accordance with Section 6. Producing groundwater in violation of the Annual Production Limitations is illegal, wasteful per se, and a nuisance.

If the Board issues a Proportional Adjustment Order, the General Manager shall apply the proportional adjustment factor to each permit affected by the Proportional Adjustment Order reducing the Annual Production Limitations in each affected permit on a pro rata basis. The General Manager shall administratively reissue the affected permits containing the adjusted Annual Production Limitations to all affected permit holders. Each affected permit holder will have five years from the date the permit is reissued to comply with the Proportional Adjustment Order and the adjusted Annual Production Limitations.

Rule 4.2 Temporary Drought Buffer

(a) The Board may by resolution adopt a temporary drought buffer temporarily increasing the Annual Production Limitations in all permits for a given period if the TWDB reports certain drought stages in all or part of the District's boundaries for a prolonged period of time in its Water Weekly reports found at https://waterdatafortexas.org/drought/twdb-reports as follows:

(1) DO abnormally dry conditions: an upward adjustment up to 5%;

(2) D1 drought-moderate or D2 drought-severe: an upward adjustment up to 10%; and

(3) D3 drought-extreme or D4 drought-exception: an upward adjustment up to 15%.

(b) Any resolution shall state how long the temporary drought buffer shall remain in place and can be based on improvement of the drought status according to TWDB report.

(c) All persons with permits where the Annual Production Limitations have been temporarily increased shall pay the Water Use Fees for all amounts produced over the Annual Production Limitations.

SECTION 5 WELL COMPLETION AND OPERATION

Rule 5.1 Responsibility to Protect Groundwater Quality

All owners or operators shall use reasonable diligence and conform to these Rules in order to prevent the pollution or harmful alteration of groundwater in the Aquifer(s) of the District. In addition to the well completion and operation rules, all well owners shall comply with the District's metering and reporting requirements in Sections 10-11.

Rule 5.2 Responsibility for Well Construction and Management

(a) Owners shall be responsible for the installation, equipping, operation, maintenance, and closure of their wells, and all costs associated therein.

(b) All wells shall be installed, equipped, operated, maintained, and closed consistent with Chapters 1901 and 1902, of the Texas Occupations Code, and Chapter 16 of the Texas Administrative Code, as may be amended, relating to the TDLR's rules on well drillers and well pump installers, regardless of whether the well is required to obtain a permit from the District.

(c) Any existing well or pump that is altered, re-worked, re-drilled, re-equipped or replaced must be done in compliance with the standards in this rule, regardless of whether the owner is required to obtain a permit from the District.

(d) Well construction and maintenance issues may be investigated by the District.

Rule 5.3 Standards of Completion for All New Wells

(a) All new 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, and under these Rules. New wells completed for a public water system (PWS) use must comply with the standards of 30 Texas Administrative Code Chapter 290 Subchapter D entitled *Rules and Regulations for Public Water System*. All new wells must comply with the location standards of TDLR rules at 16 Texas Administrative Code Section 76.1000, as amended, and with the minimum required separation distance for on-site sewage facilities under Texas Commission on Environmental Quality rules at 30 Texas Administrative Code Section 285.91(10), as amended.

(b) In addition to the requirements under Subsection (a), all new wells, re-completed wells, and wells that are re-worked in a manner that involves removal of the pump from the well for any reason shall be equipped in such a manner as to allow the measurement of the water level in the aquifer supplying water to the well. The driller or well owner is responsible for ensuring that the completed well complies with this subsection.

(c) After the Notice to Proceed or permit has been issued by the District, the well may only be drilled at a location that is within 30 feet of the location specified in the

registration and must be drilled within 120 days following issuance of the Notice to Proceed or permit. Extension of the time period to drill a well may be granted at the sole discretion of the General Manager.

(d) Water well drillers shall indicate the method of completion in the well report and shall indicate the water level upon completion of the well as required by Rule 11.2.

(e) Any well must be constructed with proper selection of screen zones applicable to only the Aquifer of the District that is specified in the application. In the event a test hole was first drilled to a depth that penetrates a deeper Aquifer of the District, the borehole shall be first plugged back, in accordance with State plugging standards, to within 20 feet of the total depth of the well.

(f) To prevent the commingling of water between the Aquifer(s) of the District which can result in a loss of artesian (or static) head pressure or the degradation of water quality, each well penetrating more than one Aquifer of the District must be completed in a manner so as to prevent the commingling of groundwater between aquifers or between subdivisions of an aquifer if required by the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. The driller shall indicate the method of completion used to prevent the commingling of water on the well report. The well driller may use any lawful method of completion calculated to prevent the commingling of groundwater.

(g) In order to protect water quality, the integrity of the well, or loss of groundwater from the well, the District may impose additional well completion requirements on any well as determined necessary or appropriate by the Board.

Rule 5.4 Open, Uncovered, Abandoned or Deteriorated Wells Prohibited

(a) The District may require the owner or well owner 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 well owner 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) Deteriorated or abandoned wells are prohibited. The District shall require the owner or operator to plug, repair or destroy said well according to District policy and procedures.

(1) A driller who knows of an abandoned or deteriorated well shall notify the owner or well owner that the well must be plugged or capped to avoid injury or pollution. Not later than the 180th day after the date an owner or other person who possesses an abandoned or deteriorated well learns of its condition, the owner or other person shall have the well plugged or capped

under standards and procedures adopted by the Texas Commission of Licensing and Regulation.

(2) 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. District staff shall furnish plugging report forms on request.

(d) 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.

(e) If an owner or well owner 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.

(f) 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.

(g) 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.

(h) Nothing in this Rule affects the enforcement of Subchapter A, Chapter 756, Texas Health and Safety Code.

(i) The driller, licensed pump installer, or well owner who plugs, seals, or caps a well must provide the report required in Rule 11.2(d).

Rule 5.5 Sealing or Plugging of Wells

(a) The District may seal wells that are prohibited from withdrawing groundwater by District rules or Board order when the District determines that such action is: (1)

reasonably necessary to assure that a well is not operated in violation of District rules or Board orders, and (2) the owner has failed to take corrective action following notice from the district. A well may be sealed when (1) no application has been made for a permit to drill a new well; (2) misrepresentations have been made by the owner, orally or in writing, regarding the well; (3) the owner has violated any provision of the state law or these Rules; (4) it is operated at a higher rate of production than the maximum allowable production granted for the well; (5) the well was not drilled within thirty feet of the proposed well site specified in the permit; or (6) the Board has denied, cancelled, or revoked a permit.

(b) The well may be sealed by physical means, including plugging or rendering inoperable, and tagged to indicate that the well has been sealed by order of the District. The District may recover costs incurred for sealing a well under this Rule from the owner. Other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

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

(d) The owner may appeal the decision of the District to seal the well by filing a written request for a hearing before the Board, in which case the Board will hear the owner's appeal at the next regular Board meeting for which notice has not already been published. The owner may also take corrective action to address the cause for which the District sealed the well and thereafter request the District to remove the seal.

(e) Nothing in this Rule affects the enforcement of Subchapter A, Chapter 756, Texas Health and Safety Code.

SECTION 6 MANAGEMENT ZONES; PROPORTIONAL ADJUSTMENTS

Rule 6.1 Purpose and General

(a) All permits issued by the District are subject to the terms, conditions and provisions of this Section 6.

(b) At least once every two years, the District will examine the collected monitoring well data for the Aquifers of the District from all available sources and analyze the historical data. Based on collected monitoring and reported pumping data demonstrating trends in reservoir conditions, the District will review annually whether the Management Plan and rules are working effectively and whether amendments are needed. The District will share the collected data with the GMA 14 districts and use it to inform possible amendments to the desired future conditions.

(c) At least once every five years, the District will evaluate whether it is on track to achieve the Desired Future Conditions by ascertaining water levels from the collected monitoring well data and comparing those water levels to the water levels of the desired future conditions and take into consideration the reported pumping data and trends in reservoir conditions. Before designating a Management Zone, the District shall hold a hearing in accordance with Rule 13.2 on the proposed Management Zone. Before instituting a proportional adjustment, the District may designate an Aquifer of the District or another hydrogeologically defined area, geological strata, aquifer, or aquifer subdivisions as a Management Zone and shall hold a hearing in accordance with Rule 13.2 on the proposed proportional adjustment.

Rule 6.2 Authority to Establish Management Zones

(a) Using the best available data and science, including without limitation, information received in Hydrogeological Reports and other hydrogeologic and scientific studies, the Board, by resolution, may create specific Management Zones within the District based on hydrogeologically defined areas, geological strata, aquifers, or aquifer subdivisions, in whole or in part, within which the District may:

(1) assess water availability;

(2) assess water quality;

(3) establish more restrictive spacing requirements;

(4) authorize total production and make proportional adjustments to Annual Production Limitations; and

(5) otherwise undertake efforts to manage the groundwater resources in a manner that is consistent with the District Act, Chapter 36, and that aids in the attainment of all applicable Desired Future Conditions established for the aquifers or Aquifers of the District.

(b) In creating Management Zones, the Board shall attempt to consider hydrogeologically defined areas, geological strata, Aquifers of the District, and/or aquifer subdivisions to help promote fairness and efficiency by the District in its management of groundwater, while considering hydrogeologic conditions and the Desired Future Conditions established for any Aquifer of the District.

Rule 6.3 Proportional Adjustment

(a) Using the best available data and science, including without limitation, information received in Hydrogeological Reports and other hydrogeologic and scientific studies, the Board, by resolution, may establish proportional adjustment reductions to alter the Annual Production Limitations for all permits producing from a particular Aquifer

of the District or Management Zone if reductions are necessary to avoid impairment of and to achieve the applicable Desired Future Conditions established for a particular Aquifer of the District or Management Zone or to achieve to the purposes of these Rules, Chapter 36 or the District Act.

(b) When establishing proportional adjustment restrictions, the Board shall first set aside an amount of groundwater equal to an estimate of actual exempt use for the particular Aquifer of the District or Management Zone.

(c) After first setting aside an amount of groundwater for exempt use for the particular Aquifer of the District or Management Zone, the Board shall determine how much water remains to be allocated to permits for the particular Aquifer of the District or Management Zone without impairing achievement of the applicable Desired Future Condition(s) established for a particular Aquifer of the District or Management Zone.

(d) When establishing proportional adjustment restrictions that contemplate the reduction of authorized production, the Board may choose to proportionately reduce permits for the particular Aquifer of the District or Management Zone on a pro rata basis.

(e) A Proportional Adjustment Order shall identify the Aquifer of the District or Management Zone and a proportional adjustment factor to be applied to the applicable Annual Production Limitations under Rule 4.

(f) In the event the Board elects to issue a Proportional Adjustment Order, then the procedures in Rule 4.1 shall apply to set new Annual Production Limitations under each permit issued for that particular Aquifer of the District or Management Zone.

(g) All affected permits shall comply with any adjusted maximum allocation limits within 5 years of the date of the Proportional Adjustment Order.

(h) In order to provide an opportunity for every owner to produce groundwater, new Operating Permits may be issued by the District for production in an Aquifer of the District or Management Zone subject to a Proportional Adjustment Order. Any new Operating Permits issued for production in an Aquifer of the District or Management Zone subject to a Proportional Adjustment Order shall be proportionally adjusted consistent with the Proportional Adjustment Order.

(i) Any unused early conversion credits issued before the Effective Date can be applied to offset the proportional adjustment in a given year; however, the Water Use Fees for the amount produced in excess of the adjusted Annual Production Limitations shall be paid.

SECTION 7 TRANSPORTING GROUNDWATER OUT OF DISTRICT

Rule 7.1 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, or amendment to an Operating Permit or Historic Use Permit.

(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 8.3 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.

Rule 7.2 Transport Fee for Exempt Wells for 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 the District except as provided under Subsection (b).

(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 the groundwater is discharged pursuant to authorization by the TCEQ and the discharged groundwater is not subject or part of an overall water transfer or sale.

SECTION 8 FEES AND PAYMENT OF FEES

Rule 8.1 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 60 days before the end of the calendar year. The rate shall be applied to the Annual Production Limitations in a Historic Use Permit and Operating Permit. Water Use Fees for agricultural use in a Historic Use Permit or Operating Permit shall not exceed $1.00 per acre-feet per year. 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 2.2 shall be exempt from payment of Water Use Fees. However, if exempt well status is withdrawn or lost under Rule 2.2(b), the District may assess fees and penalties in accordance with these Rules.

(c) In addition to the Water Use Fees assessed under Subsection (a) of this Rule, each person withdrawing, or causing to be withdrawn, groundwater 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 disincentive penalty of $6.00 per each 1,000 gallons of water overproduced, not to exceed $10,000 per day for each day that overproduction occurs, and any applicable non-compliance penalty provided for in Rule 12.8. Adjustment Order. Any unused early conversion credits issued before the Effective Date can be applied to offset an overproduction disincentive penalty in a given year; however, the Water Use Fees for the amount produced over the Annual Production Limitations shall be paid.

(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 Historic Use Permit or Operating Permit but not actually produced for the period of production between issuance of a new Operating Permit and the end of the first year of the initial permit term only.

(e) 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 in the manner provided for in Rule 1.12.

(b) 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 8.2 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 8.3 Groundwater Transport Fee

(a) The District may impose a reasonable fee or surcharge in accordance with the authority set forth in Section 36.122(e) of Chapter 36 for transportation of groundwater out of the District using one of the following methods:

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

(2) a fifty percent (50%) export surcharge in addition to the District's Water Use Fee for in- District use.

(b) The procedures, requirements, and penalties related to payment of the Water Use Fee shall also apply to payment of the Groundwater Transport Fee. A Groundwater Transport Fee shall not be assessed against production in a service area of a retail public utility, as that term is defined under Section 13.002 of the Water Code, located inside the District that is transported for use to the service area of the same retail public utility that is located outside the District. Groundwater Transport Fees shall also not be imposed on a person that produces groundwater from a well located in the District, but who uses the water outside the boundaries of the District, only if the property where the well is located and the water is used is on property that is contiguous and owned by the same person.

Rule 8.4 Returned Check Fee

The 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, is $50.

Rule 8.5 Well Report Deposit

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

Rule 8.6 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.

(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 30th 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 8.7 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 8.8 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 8.6(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 8.6(b) or 8.6(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.

Rule 8.9 Well Registration and Permit Fees

The Board, by resolution, shall establish a non-refundable well registration fee and permit application fee. The owner of any new well shall submit the non-refundable well registration fee payment to the District per well, which is due by the same deadline established under these rules for registration of the well. The owner of a non-exempt well that requires a permit shall also be required to pay the permit application fee established by the Board. A fee required under this rule and established by the Board must be received by the District in order for the District to find the application Administratively Complete. The purpose of such fees is to cover the administrative costs to the District associated with registering and permitting the well, where applicable, and administering the rules of the District related to the well.

Rule 8.10 Meter Sealing Fee

The Board, by resolution, may establish a fee to recover all or part of its costs for removing and reapplying a District seal and verifying relevant well and meter information in situations where a well owner or operator submits a request to move a meter from one well to another.

SECTION 9 WATER USE FEE REBATE PROGRAM

Rule 9.1 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 annually that is less than the total amount of groundwater authorized annually by the permit to be produced.

(b) If eligible under Rule 9.2, 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 next year following the year for which the rebate is sought.

Rule 9.2 Eligibility

(a) To qualify for participation in the rebate program described in Rule 9.1, 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 Rule 8.6(b);

(3) have, on or before February 15 of the applicable year, submitted all reports required under Rule 11.3 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 Section 9 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 these 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 9 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 this section as provided in Rule 1.12.

(g) Rebates authorized under this Rule may not be combined with any refund of fees provided for under Rule 8.1 for the same permit.

SECTION 10 METERING

Rule 10.1 Water Meter Required

(a) Except as provided in Rule 10.2, 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.

(b) A mechanically driven, totalizing water meter, an ultrasonic meter, and electromagnetic flow meters are the only types 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 10.4. 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) All water produced from a well must go through a single meter that must record all production from the well.

Rule 10.2 Water Meter Exceptions

(a) Wells exempt under Rule 2.2 shall be exempt from the requirement of metering groundwater withdrawals under Rule 10.1.

(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 indicating 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 10.4.

(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 10.3 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 10.1 apply to meters measuring aggregate withdrawal pumpage.

Rule 10.4 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 10.5 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 10.6 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 Permit Production Report as required by Rule 11.3. 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 10.7 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 10.8 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.

Rule 10.9 Conservation Requirements for Impoundments

(a) 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 in the surface impoundment.

(b) 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.

(c) Meters used to satisfy the flow measurement requirements of Subsection (b):

(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.

(d) 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.

(e) Each meter required by Subsection (c) 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.

(f) The calibration of each meter required under Subsection (c) 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.

(g) A true and correct copy of the log required under Subsection (d) shall be submitted to the District with the Permit Production Report required by Rule 11.3 by the deadline set forth under Rule 11.3, along with a copy of the meter readings production log required under Rule 10.6.

SECTION 11 REPORTING REQUIREMENTS

Rule 11.1 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 11 is to require the submission, by the appropriate person or persons, of complete, accurate, and timely records, reports, and logs as required throughout these 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 11.2 Records of Drilling and Pump Installation and Alteration Activity, Plugging and Capping

(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 TDLR. 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.

(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 water 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 in 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 production test conducted on the well, including the yield, in gallons per minute, of the pump operated under optimal

conditions during a pumping test of the well; and

(16) a description of the water quality encountered in the well.

(c) In addition to the Well Report required in Subsections (a)-(b) for all well owners, non-exempt well owners shall provide the District with a Well Completion Report that includes the following information, if available and applicable, within 60 days after well completion or drilling:

(1) Geophysical logs required to be submitted upon completion of the well.

(A) Geophysical logs to consist of a resistivity or induction curve and a spontaneous potential or gamma ray curve at a minimum.

(B) Geophysical logs performed in the initial open-borehole are required and will consist of resistivity (self potential and gamma ray at a minimum).

(C) Wells cased with PVC require induction and gamma ray logs.

(D) All digital log files to be submitted in LAS format as well as printed.

(2) Digital or tabulated data of water levels measured during drawdown, specific capacity, or pumping test;

(3) measurements of specific conductivity, temperature and pH made during the drawdown or pumping test, or well sampling; and/or

(4) Any laboratory analysis completed on samples collected from the well after construction and development.

(5) All public water supply sampling completed in accordance with TCEQ/EPA requirements must be submitted to the District.

(A) Geophysical logs;

(B) As-built well completion diagrams;

(C) Pumping test data;

(D) Pump and motor information including pump setting, column pump diameter, pump horsepower/number of stages, and head-capacity curve; and

(E) Water quality sampling.

(d) Not later than the 30th day after the date a well is plugged, a driller, licensed pump installer or well owner who plugs the well shall submit a plugging report to the District that meets TDLR reporting requirements.

Rule 11.3 Permit Production Report

(a) Not later than February 15th of each year the holder of a permit issued by the District must submit, on a form provided by the District, a permit production report containing the following:

(1) the name of the permittee;

(2) the well numbers of each well that produces under the 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 10.6.

(c) Persons failing to submit to the District a Permit 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.

(d) If a non-exempt well owner is not using an existing well and would like to be exempt from the Permit Production Report requirement, the well owner can enter the well into the District's monitoring program. The well owner must contact the District to see if the well is a candidate for the monitoring program. By entering the well into the program, the well owner agrees that District staff will visit the site at least annually to collect data and to confirm no usage on the meter during the visit(s).

Rule 11.4 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 number of each well and the Operating Permit(s) that are utilized for the transport permit;

(3) the total amount of groundwater transported outside of the district from each well, well system, or surface impoundment during each month of the immediately preceding calendar year;

(4) the purposes for which the water was transported; and

(5) 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 12 INSPECTIONS AND ENFORCEMENT

Rule 12.1 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. 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.

Rule 12.2 Inspection, Information Gathering, and 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 carry out technical and other routine investigations necessary for the implementation of these Rules, or for certain studies beneficial to the district’s purposes

(2) to conduct inspections or otherwise comply with the requirements, obligations and authority provided in section 36.123 of Chapter 36;

(3) to inspect or otherwise investigate conditions relating to the quality of water in the State; and

(4) to determine whether the purpose of these Rules, Chapter 36 and any well or 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 or otherwise comply with the requirements, obligations, and authority provided in Section 36.123 of the Texas Water Code.

(f) Inhibiting or prohibiting access to District personnel attempting to conduct an investigation under District rules constitutes a violation of these Rules and subjects the person inhibiting or prohibiting access, as well as any other person authorizing or allowing such action, to penalties allowed in Texas Water Code §36.102.

(g) An application for a permit may be suspended or cancelled by the Board if the applicant refuses to grant District personnel access to real property to gather information necessary to complete an application.

(h) The operation of any well may be enjoined by the Board immediately upon the refusal to allow the gathering of information as provided above from such well.

Rule 12.3 Rules Violations

(a) The following acts and omissions each separately constitute a major violation of these Rules:

(1) falsification of any documents or records submitted to the District in response to requirements of these Rules [Rule 1.14];

(2) drilling a non-exempt well without first obtaining a permit for such activity from the District [Rule 2.1(a)];

(3) drilling a new exempt well without first obtaining a well registration [Rule 2.1(a)];

(4) substantially altering a well without first receiving from the District the required express authorization for the alterations made [Rule 2.1(a), 2.13];

(5) for each well operating pursuant to these Rules or a valid permit issued by the District, in addition to the overproduction disincentive penalty provided for in Rule 8.1(c) for non-exempt wells, the withdrawal of groundwater from a well authorized under these Rules or a validly permitted, non-exempt well in an amount that exceeds the authorized permitted amount by ten percent (10%) or greater [Rule 2.1(n)];

(6) 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 [Rules 2.1(o), 3.2(c), 3.3(b)];

(7) engaging in conduct that causes an exempt well to lose its exempt status [Rule 2.2(b)];

(8) failure to timely register or permit a well as required by these Rules or amend the registration or permit of a well where mandated by rules, including drilling, equipping, completing or altering or operating a well without an approved registration, as evidenced by a Notice to Proceed, or permit issued by the District [Rules 2.3-2.5, 2.12-2.17];

(9) producing any amount of groundwater from a non-exempt well without first having obtained an approved Operating Permit or permit amendment issued by the District [Rules 2.5, 2.12];

(10) failure to close, plug or cap an open, uncovered, abandoned or deteriorated well in a manner and within the time limits prescribed by law [Rule 5.4];

(11) 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 [Rule 8.8(b)];

(12) failure to timely meter a well when required [Rules 10.1. 10.2];

(13) 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 [Rule 10.1];

(14) the failure to file the water meter readings log [Rule 10.6];

(15) tampering with any meter installed, or required to be installed, on any well in the District [Rule 10.8];

(16) failure to maintain any Surface Impoundment Losses to 10 percent or less of the total volume of groundwater discharged annually in the Surface Impoundment [Rule 10.9];

(17) 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 [Rule 10.9];

(18) the failure to file with the District a water or permit production report by March 1st of the calendar year in which it is due [Rule 11.3(c)];

(19) the failure to file with the District a Groundwater Transport Report by March 1st of the calendar year in which it is due [Rule 11.4(d)];

(20) failure to limit or suspend groundwater production in accordance with any applicable Rules or Orders of the District [Rules 3.4, 4.1, 6.3, 12.4, 12.6];

(21) tampering with, removing, or disabling a District seal [Rule 12.9(c)]

(22) withdrawing or attempting to withdraw water from a sealed well [Rule 12.9(d)];

(23) the occurrence 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 Rule 12.4; and

(24) 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) for each well authorized under these Rules or permit issued by the District, the withdrawal of groundwater over the authorized or permitted amount that exceeds the authorized or permitted amount by less than ten percent (10%) [Rule 2.1(n)];

(2) the failure to amend a well registration that does not involve a substantial change [Rule 2.2(b)];

(3) the failure to timely file a Transfer of Ownership under these Rules [Rule 2.17];

(4) the failure to timely file with the District each well report required to be completed [Rule 11.2];

(5) all other acts or omissions that both:

(A) constitute violations of these Rules; and

(B) do not qualify as major violations under Rule 12.3(a).

Rule 12.4 Notices of Violation

Whenever the General Manager determines that any person has violated or is violating any provision of these 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, 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 Rule 1.7. 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 12.5 Show Cause Hearing

(a) Upon recommendation of the General Manager to the Board or upon the Board's own motion, the Board may order any person that it believes has violated or is violating any provision of the Rules, or any term of a District permit or order, a District notice to appear before the Board 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 and place for the hearing;

(2) the basis of each asserted violation;

(3) the proposed enforcement action;

(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 as determined by the Board.

(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 12.6 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 Board.

(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 Operating 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 12.7 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 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 Rule 9.1;

(2) shall not be eligible for installment option payments under Rule 8.6(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 Major Violation 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 8.1 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 12.8.

(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 8.

(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 12.5, 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 12.8 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		
	Minor	Major
First Violation	$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 12.7(b) shall be as follows, unless otherwise specified in these Rules:

Penalty Schedule – Demonstrated Repeat Non-compliance		
	Minor	Major
Second or Repeated	$250 - $500	$1,000 -

(1) For purposes of the penalties for minor violations listed in this subsection, a person who commits a minor violation before the conclusion of the time period provided for in Rule 12.7(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 the conclusion of the time period provided for in Rule 12.7(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) compliance history;

(2) the severity or seriousness of the violation;

(3) efforts to correct the violation and whether the violator makes a good faith effort to cooperate with the District;

(4) the penalty amount necessary to ensure future compliance and deter future noncompliance;

(5) any enforcement costs related to the violation; and

(6) any other matters deemed necessary by the Board.

(d) A penalty under this section is in addition to any other penalty provided by law and may be enforced by filing a complaint in a court of competent jurisdiction in the county in which the District's principal office or meeting place is located.

(e) A violation of any of the prohibitions in these Rules occurs on the first day that the prohibited action begins and continues each day thereafter as a separate violation.

(f) Multiple violations by the same person or entity shall result in escalated fines assessed in order to deter such continued noncompliance.

(g) In addition to the applicable penalty, persons who drill a well in violation of applicable spacing requirements may be required to plug the well.

(h) In addition to the applicable penalty, persons who do not submit all Water Use Fees and Groundwater Transport Fees due and owing within 60 days of the date the fees are due pursuant to Section 8 will be assessed a civil penalty equal to three times the total amount of outstanding Water Use Fees, Groundwater Transport Fees, or both, that are due and owing.

(i) In addition to the Water Use Fee assessed under Rule 8.1, 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 $6.00 per each 1,000 gallons of water overproduced, not

to exceed $10,000 per day for each day that overproduction occurs.

Rule 12.9 Sealing of Wells

(a) The District may seal or plug wells that are prohibited from withdrawing groundwater within the District when the Board determines, pursuant to Rule 12.6(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 12.10 Judicial Relief

(a) Notwithstanding any 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, 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 13 HEARINGS OF THE DISTRICT

Rule 13.1 Hearings Generally

(a) A public hearing may be held on any matter within the jurisdiction of the Board, or if the Board deems a hearing to be in the public interest or necessary to effectively carry out the duties and responsibilities of the District. The District conducts four general types of hearings under this Section:

(1) rulemaking or Management Plan hearings;

(2) hearings involving the issuance of a permit for which a hearing is required or authorized under these Rules, in which the rights, duties, or privileges of a

Party a determined after an opportunity for an adjudicative hearing;

(3) show cause and enforcement hearings, in which the obligation and authority of the District to impose civil penalties is considered under specific relevant circumstances, as set forth in Rule 12.6; and

(4) hearings on the Desired Future Conditions proposed for the District.

(b) 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, or by SOAH if required under Rule 13.3.1.

(c) Any hearing may be scheduled during the District's regular business hours at regular or special meetings, Monday through Friday of each week, except District holidays. All hearings shall be held at the location set forth in the notice. Any hearing may be continued from time to time and date to date without notice after providing the initial notice.

(d) Every person, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants and comply with Rule 1.18. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer deems necessary.

(e) A person participating in a hearing shall complete a hearing registration form stating the person's name, address, and whom the person represents, if applicable.

(f) After the Presiding Officer calls a hearing to order, the Presiding Officer shall announce the subject matter of the hearing and the order and procedure for presentation.

Rule 13.2 Rulemaking Hearings

(a) Rulemaking hearing notice shall include a brief explanation of the subject matter of the hearing, the time, date, and place of the hearing, location or internet site at which a copy of the proposed rules may be reviewed or copied, if the District has a functioning internet site, and any other information deemed relevant by the General Manager or the Board.

(b) Not less than 20 calendar days prior to the date of the hearing, the General Manager shall:

(1) Post notice in a place readily accessible to the public at the District office;

(2) Provide notice to the county clerks within the District;

(3) Publish notice in one or more newspapers of general circulation in the District;

(4) Provide notice by mail, facsimile, or electronic mail to any person who has requested rulemaking hearing notice; and

(5) Make available a copy of all proposed rules at a place accessible to the public during normal business hours, and post an electronic copy on the District's internet site.

(c) A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(d) Failure to provide notice under Subsection (c) does not invalidate an action taken by the District at a rulemaking hearing.

(e) The District shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

(f) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the District about contemplated rules.

Rule 13.2.1 Hearings on Rules Other Than Emergency Rules

(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 period stated in the notice of hearing given pursuant to Rule 13.2. The Presiding Officer may grant additional

time for the submission of additional 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 13.2.1(b).

(f) If the Board decides to consider substantial changes to the proposed Rules, the Board will provide new notice of the proposed rules and hold an additional hearing on the proposed Rules in accordance with this Rule.

(g) The Board shall issue a written order or resolution reflecting its decision. The proposed Rules that the Board has approved shall be an attachment to that written order or resolution.

(h) The effective date of the written order or resolution shall be the date on which the President or his designee signs the order or resolution. The order or resolution shall include the date upon which the proposed Rules will become effective. Any appeal authorized by Chapter 36, subchapter H shall run from the effective date.

Rule 13.2.2 Hearing Procedures on Emergency Rules

(a) The Board may adopt an emergency rule without following the procedures in Rules 13.2 and 13.2.1 if the Board: (1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and (2) prepares a written statement of the reasons for its finding under this subsection.

(b) An emergency rule under this Rule 13.2.2 must be adopted at a meeting of the Board subject to the requirements of the Open Meetings Act. Notice required by the

Open Meetings Act shall be provided.

(c) Except as provided by Rule 13.2.2.(d), a rule adopted under this section may not be effective for longer than 90 days.

(d) If notice of a hearing under 13.2. is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

Rule 13.3 Permit Applications Requiring Public Hearings

(a) "Application" defined in Rules 13.3 (inclusive of Rules 13.3.1-13.3.5) refers to an application for a permit or permit amendment for which a hearing is required or authorized under Section 2.

(b) The District shall hold a permit hearing for each Application for an Operating Permit or Operating Permit amendment except that the District shall hold a hearing for minor amendments only if the General Manager determines that a hearing is required. The District may hold hearings on permit renewals and on any other Application for which a hearing is required or authorized under these Rules.

(c) If the General Manager or Board schedules a hearing on an Application, the General Manager shall give notice of the hearing as provided in this section. The General Manager or Board may schedule more than one permit Application for consideration at a hearing.

(d) Any person having an interest in the subject matter of a permit hearing on an 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. Failure by the District to provide written notice to a person under this Subsection does not invalidate any action taken by the Board.

(e) Not later than the 10th day before the date of a permit hearing, the General Manager shall:

(1) Post notice at a place readily accessible to the public in the District office;

(2) Provide notice to the county clerk of all counties within the District, whereby the county clerks must post the notice on a bulletin board at a place convenient to the public;

(3) Provide notice by regular mail to the applicant; and

(4) Provide notice by mail, fax, or email to any person who has specifically requested to receive notices of permit hearings.

(f) The notice provided under Subsection (e) must include:

(1) the name and address of the applicant;

(2) the address or approximate location of the well or proposed well;

(3) a brief explanation, including any requested amount of groundwater, the purpose of the proposed use, and any change in use, if applicable;

(4) a general explanation of the manner by which a person may contest the Application;

(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.

(g) **Technical review**: Upon receipt of an Application, the General Manager will conduct a technical review as follows:

(1) Within 60 days of the receipt of the Application, the General Manager will notify the applicant if the Application is incomplete or if any additional information or documentation is useful or necessary to address the factors that the Board will consider in making a decision on the Application under these Rules. If the applicant has not supplied the additional information or documentation within 60 (sixty) days following the date that the General Manager notified the applicant of the need for the additional information or documentation or upon conclusion of an extension granted by the General Manager, the Application shall expire. Any additional information or documentation timely submitted by an applicant will be considered a part of the Application.

(2) Within 60 days of the later of the date the District receives an Application or the date that the applicant supplies the additional information or documentation requested under Rule 13.3(f)(1), the General Manager will complete the technical review of the Application, and notify the applicant in writing that the Application has been declared Administratively Complete. The written notice will contain a summary of the General Manager's recommendation on the Application, and, if the General Manager recommends that a permit, an amendment, or a renewal be granted, may include a draft permit. The General Manager may extend the 60-day period for technical review for a reasonable period upon written notice to the applicant if the General Manager determines that some specific aspect of the application requires a technical review period of more than 60 days.

(h) An Administratively Complete Application requiring a hearing shall be set for a hearing within sixty (60) days after the date the Application is determined to be Administratively Complete. The initial hearing shall be held within thirty-five (35)

days after the setting of the date, and the District shall act on the Application within sixty (60) days after the date the final hearing on the Application is concluded.

(i) **Public Comment**: Documents that are filed with the Board that comment on an Application, but that 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 13.3.1 Request for a Contested Case Hearing on an Application

(a) **Filing of Request**: The General Manager, the applicant, or an Affected Person may request a contested hearing on an Application in writing no later than the 5th day before the date of the public hearing described in the notice in Rule 13.3. If the applicant requests a contested case hearing on its Application, then the Application shall be considered contested and a contested case hearing on the Application will be held in accordance with Rules 13.3.2 and 13.3.4. If the General Manager requests a contested case hearing, then the Board, in its discretion shall determine whether a contested case hearing on the Application shall be held in accordance with Rules 13.3.2 and 13.3.4. A request for a contested hearing is distinguished from public comment on an Application, and shall be filed not later than five (5) calendar days before the scheduled hearing date, and shall include the following information:

(1) The name, address, telephone number and email address of the person filing the request. If the request is made by a group or association, the request must identify the primary contact person responsible for receiving all official communications on behalf of the group or association;

(2) The person or entity's personal justiciable interest affected by the application and proposed withdrawal, including a statement demonstrating how that interest is not common to members of the general public; and

(3) Specifically request a contested hearing.

(b) **Hearing Conducted by SOAH**: A request for a contested hearing to be conducted by SOAH pursuant to Section 36.416 of Chapter 36 shall be made not later than five (5) calendar days before the scheduled hearing date. If timely requested by the applicant or other Party to a contested case, the District shall contract with SOAH to conduct a preliminary hearing or the hearing on merits of an Application.

(c) **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 13.3.1 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 13.3.1, and designate the matter as a contested hearing upon determining that the person is an Affected Person; and/or

(4) refer the case to a preliminary hearing.

(d) The Presiding Officer may hold a hearing on any issue related to the determination of whether to declare a matter as a contested case.

(e) Any case not declared a contested case under this section is an uncontested case.

Rule 13.3.2 Preliminary Hearing for Contested Application

(a) Upon the timely filing of a contested hearing request that meets the requirements of Rule 13.3.1, the District shall schedule a preliminary hearing to hear the request. The preliminary hearing may be conducted by a quorum of the Board, a Hearing Examiner, or SOAH (if the applicant, General Manager, or a person requesting a contested case hearing request it to be conducted by SOAH under Rule 13.3.1(b)).

(b) The District shall mail notice of the preliminary hearing to the applicant, any person who filed a request for a contested case hearing, and persons requesting notice under Rule 13.3(d) no later than the 10th day before the date of the preliminary hearing. Failure to provide notice to a person requesting notice under Rule 13.3(d) does not invalidate an action taken by the District at the preliminary hearing.

(c) The sole issues at the preliminary hearing shall be:

(1) whether the person requesting a contested case hearing is an Affected Person and has standing to make the request to protest the Application; and

(2) whether the person requesting a contested case hearing has raised a justiciable issue related to the Application.

(3) if the Presiding Officer referred the issue of whether a request for a contested case hearing was timely for the preliminary hearing, the Presiding Officer shall first determine whether the request for a contested case hearing was timely, and only decide issues (i) and (ii) of this subsection for requests for contested case hearings that were timely filed.

(d) A person other than the applicant or the General Manager has standing if that person is an Affected Person under these Rules who has a personal justiciable interest that is related to a legal right, duty, privilege, power, or economic interest

that is within the District's regulatory authority and that is affected by the Board's action on the Application, not including persons who have an interest common to members of the public. The General Manager and applicant have standing and are automatic participants and parties to a contested hearing.

(e) Parties to a contested hearing shall be designated at the preliminary hearing. Unless the District is required to contract with SOAH to conduct the contested hearing, the District may, but is not required, to conduct the preliminary hearing on the same day and immediately before the evidentiary hearing on an Application.

(f) **Decision on Request for Contested Case Hearing**. Following the preliminary hearing, the Board shall determine whether any person requesting a contested case hearing has standing to make that request and whether a justiciable issue relating to the Application has been raised. If the Board determines that a person requesting a contested case hearing has standing and has raised a justiciable issue related to the Application, the Board shall grant that person's request for a contested case hearing, and a contested case hearing on the Application will be held in accordance with Rule 13.3.4. If the District determines that no person requesting a contested hearing has standing or that no justiciable issues are presented, then the Application shall be considered uncontested, and the Board may take any action authorized under Rule 13.3.3.

Rule 13.3.3 Action on Uncontested Applications

(a) If the District does not receive a timely-filed request for a contested case hearing on the Application, or if the Board denies all requests for a contested case hearing, then the Application shall be considered uncontested. The Board may take action on any uncontested Application at a properly noticed public meeting held at any time after the public hearing at which the Application is scheduled to be heard. The Board may issue a written order to:

(1) grant the permit Application;

(2) grant the permit Application with special conditions; or

(3) deny the permit Application.

(b) An applicant may, not later than the 20th day after the date the Board issues an order granting the Application, request a contested case hearing if the order:

(1) includes special conditions that were not part of the Application as finally submitted; or

(2) grants a maximum amount of groundwater production that is less than the amount requested in the Application.

(c) The Presiding Officer shall prepare and keep a record and may substitute minutes

for an audio or video recording.

Rule 13.3.4 Contested Case Permit Hearings

(a) **Hearings Conducted by SOAH:** If timely requested by the applicant or other party to a contested case hearing, the District shall contract with SOAH to conduct a preliminary hearing or a hearing on the merits of the Application. The Board shall determine whether the hearing held by SOAH will be held in Travis County or at the District office or other regular meeting place of the Board.

(1) The General Manager, applicant or other Party requesting a contested case hearing must request that the preliminary hearing or hearing on the merits be conducted by SOAH in writing no later than the 5th day before the date of the public hearing described in notice required by Rule 13.3.

(2) The Party requesting that the hearing be conducted by SOAH shall pay all costs associated with the contract for the hearing and shall make a deposit with the District in an amount that is sufficient to pay the estimated contract amount no later than 20 days before the preliminary hearing. If the total cost for the contract exceeds the amount deposited by the paying Party at the conclusion of the hearing, the Party that requested the hearing shall pay the remaining amount due to pay the final price of the contract. If there are unused funds remaining from the deposit at the conclusion of the hearing, the unused funds shall be refunded to the paying Party. The District may assess other costs related to hearings conducted under this rule as authorized under Chapter 36, or the District Rules.

(3) A hearing before a SOAH Administrative Law Judge shall be conducted as provided by Texas Government Code chapter 2001, subchapters C, D and F, the procedural rules of SOAH, and this Rule to the extent this Rule is consistent with SOAH's procedural rules. The SOAH Administrative Law Judge will be the Presiding Officer for purposes of this Rule. The administrative law judge who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing. The District shall provide the administrative law judge with a written statement of applicable rules or policies.

(b) **Hearings Conducted by the Board or Hearing Examiner** Except as provided in Rule 13.3.4(a), a contested case hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a Hearings Examiner to preside at and conduct the hearing on the Application. The appointment of a Hearings Examiner shall be made in writing. If the contested case hearing is conducted by a quorum of the Board, the President shall preside. If the President is not present, the Board shall select one of the Directors who are present to preside. If the hearing is conducted by a Hearing Examiner, the Hearing Examiner shall be the Presiding Officer.

(c) **Powers of Presiding Officer**: The Presiding Officer may conduct the hearing or other proceeding in the manner the Presiding Officer deems most appropriate for the particular hearing. The Presiding Officer has the authority to:

(1) set additional hearing dates, other than the hearing date set by the General Manager or Board under Rule 13.3;

(2) convene the hearing at the time and place specified in the notice for public hearing;

(3) designate the parties to a hearing; align the parties and/or number of representatives to be heard;

(4) admit evidence that is relevant to an issue at the hearing, exclude evidence that is not relevant, immaterial, or unduly repetitious, and rule on motions and on the admissibility of evidence. The Texas Rules of Evidence shall apply in a contested case, except that evidence inadmissible under those rules may be admitted if the evidence is: (a) necessary to ascertain facts not reasonably susceptible of proof under those rules; (b) not precluded by statute; and (c) of a type on which a reasonably prudent person commonly relies in the conduct of the
person's affairs.

(5) Allow or require testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a Party to the hearing, the Party may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

(6) Allow any discovery that is authorized by the Texas Rules of Civil Procedure.

(7) Rule on motions, on discovery issues, on the admissibility of evidence, and on other interlocutory matters.

(8) Refer the parties to an alternative dispute resolution (ADR) procedure on any matter at issue in the hearing, apportion costs for ADR, and appoint an impartial third Party as provided by Section 2009.053 of the Government Code to facilitate that procedure.

(9) establish the order for presentation of evidence and prescribe reasonable time limits for the presentation of evidence and oral argument;

(10) administer oaths to all persons presenting testimony;

(11) examine witnesses;

(12) ensure that information and testimony are introduced as conveniently and

expeditiously as possible, without prejudicing the rights of any person participating in the proceeding;

(13) Conduct public hearings in an orderly manner in accordance with these Rules;

(14) continue any hearing from time to time and place to place without providing notice under Rule 13.3. If the continuance is not announced on the record at the hearing, the Party shall provide notice of the continued hearing by regular mail to the parties. If the hearing is being conducted by a quorum of the Board, Open Meetings notice also shall be provided;

(15) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Party;

(16) Apportion among the parties the costs related to: (a) a contract for the services of the Party; and (b) the preparation of the official hearing record; and

(17) If the Board has not acting on the Application, allow at witness at a hearing to supplement the testimony in accordance with section 36.406(a) of Chapter 36.

(d) **Ex parte communications**. A Board member, or a Hearings Examiner or Administrative Law Judge assigned to render a decision or to make findings of fact and conclusions of law in a contested case, may not directly or indirectly communicate in connection with an issue of fact or law in the contested case with a state agency, person, Party, or a representative of those entities, except on notice and opportunity for each Party to the contested case to participate. A Board member may communicate ex parte with another Board member in connection with an issue of fact or law in the contested case, if a quorum is not present. All ex parte communications that are not prohibited by Rule 13.3.4(d) are expressly permitted.

(e) **Official Hearing Record.** A record of a hearing in the form of an audio or video recording or a court reporter transcription shall be prepared and kept by the Party in a contested hearing. The Party shall have the hearing transcribed by a court reporter upon a request by a Party to a contested hearing. The Party may assess court reporter transcription costs against the Party requesting the transcription or among the parties to the hearing. The Party 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. The Party may substitute a proposal for decision for the method of recording.

(f) **Consideration of Proposal for Decision.** If a proposal for decision is submitted to the Board by the Party, the Board shall consider the proposal for decision at a final hearing. Additional evidence may not be submitted during the final hearing.

The parties may present oral argument at a final hearing to summarize evidence, present legal arguments, or argue an exception to the Proposal for Decision. The Party may continue the final hearing from time to time and from place to place without providing notice under Rule 13.3.1(b). If the continuance is not announced on the record at the hearing, the Party shall provide notice of the continued hearing by regular mail to the parties. If the hearing is being conducted by a quorum of the Board, Open Meeting Act notice also shall be provided.

(g) **Board Action on Permits.** The Board shall issue a written order or resolution reflecting its decision. The Board's decision on the contested Application shall be made within 60 days after the final hearing on the Application is concluded. For hearings conducted by SOAH, the Board shall make the final decision on the Application within 60 days after the issuance of the proposal for decision by SOAH. In a hearing in which the District has contracted with SOAH to conduct the contested case hearing, the Board has the authority to make a final decision on consideration of a proposal for decision issued by SOAH administrative law judge consistent with Section 36.4165 of Chapter 36, and Section 2001.058, Texas Government Code.

(h) The District Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, District rules, written policies provided under Section 36.416(e) of the Texas Water Code, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

Rule 13.3.5 Request for Rehearing or Findings and Conclusions

(a) **Request for Written Findings and Conclusions.** An applicant in a contested or uncontested hearing on an Application or a Party to a contested hearing may administratively appeal a decision of the Board on an Application by requesting written findings of fact and conclusions of law within twenty (20) calendar days of the date of the Board's decision. On receipt of a timely written request, the Board shall make written findings of fact and conclusions of law regarding a decision of the Board on a permit or permit amendment Application. The Board shall provide certified copies of the findings and conclusions to the Party who requested them, and to each designated Party, not later than the 35th day after the date the Board receives the request.

(b) **Request for Rehearing.** A Party 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. In a contested case, a Party must first make a request for written findings and conclusions under District Rule 13.3.5(a) before any Party to the contested case may submit a request for rehearing under this rule.

A request for rehearing must be filed with the District in writing and must state clear and concise grounds for the request. The person requesting a rehearing must provide copies of the request to all parties to the hearing. With respect to any decision or action of the Board in a contested case, such a request for rehearing is mandatory before any appeal to District Court may be brought. Any appeal to District Court shall be limited to the issues and grounds raised in the motion for rehearing.

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. Hearings on Motions for Rehearing will be heard by the Board pursuant to Rule 13.1 and 13.3.

The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

(c) **Final Decision on Permits and Finality of Board Decision.** A decision by the Board on an Application is final:

(1) If a request for rehearing is not timely filed, then 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.

An applicant or a Party to a contested hearing may file suit against the District under Section 36.251, Texas Water Code, to appeal a decision on an Application not later than the 60th day after the date on which the decision becomes final if a request for rehearing was filed on time. An applicant or a Party to a contested hearing may not file suit against the District under Section 36.251, Texas Water Code, if a request for rehearing was not filed on time.

Rule 13.4 Show Cause and Enforcement Hearings

Show cause hearings shall be conducted in accordance with Rules 12.5, 12.6, and 13.1.

Rule 13.4.1 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, 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;

Rule 13.4.2 Notice and Scheduling of Contested Enforcement Matters

(a) This Rule applies to all enforcement matters for which a contested hearing has been requested in accordance with Rule 13.4.1.

(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 if a continuance of the hearing date is sought, to submit a written request for a continuance to the General Manager within 7 days of receipt of the notice of hearing;

(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 13.4.1 is received by the District.

(e) Requisites for notice of show cause hearings ordered by the Board shall be governed by Rule 12.5(b).

Rule 13.4.3 Contested 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 Party;

(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 13.4.2, 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 Party.

(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) **Written testimony**: The Party 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 Party 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**.**

(f) **Cross-examination**: The opportunity for cross-examination shall be provided for all testimony offered in a contested case hearing.

(g) **Evidence**: The Party shall admit evidence if it is relevant to an issue at the hearing. The Party may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(h) **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.

(i) **Determination of merit in enforcement hearings**:

(1) Following the closing of a hearing, 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.

(1) 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.

(2) The Board shall act on contested enforcement matters no later than the 60th day following the date of submission of closing arguments, or within 30 days following receipt of any hearings report submitted by the Party, whichever is later.

Rule 13.5 Desired Future Conditions Hearings

(a) Hearings on Desired Future Conditions shall be held in accordance with Sections 13.1, Chapter 36, and this Rule.

(b) After Desired Future Conditions for the District are approved by a two-thirds vote of all the district representatives in the Management Area, the 90 day public comment period begins on the day the proposed Desired Future Conditions are mailed to the District. During the public comment period and after posting notice, the District shall hold a public hearing on any proposed Desired Future Conditions relevant to the District. During the public comment period, the District shall post on its website and make available in its office a copy of the proposed Desired Future Conditions and any supporting materials, such as the documentation of factors considered under section 36.108(d) of Chapter 36 and groundwater availability model run results. After the close of the public comment period, the District shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed Desired Future Conditions, and the basis for the revisions.

(c) At least 10 days before a hearing under section 36.108(d-2) of Chapter 36 or a meeting at which the District will adopt a Desired Future Condition under section 36.108(d-4) of Chapter 36, the Board shall post notice that includes:

(1) the proposed Desired Future Conditions and a list of any other agenda items;

(2) the date, time, and location of the meeting or hearing;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the names of the other districts in the District's Management Area; and

(5) information on how the public may submit comments.

(d) Not less than 10 calendar days prior to the date of the hearing, the General Manager shall:

(1) Post notice in a place readily accessible to the public at the District office;

(2) Provide notice to the county clerks within the District;

(3) Publish notice in one or more newspapers of general circulation in the District;

(4) Provide notice by mail, facsimile, or electronic mail to any person who has requested rulemaking hearing notice; and

(5) Make available a copy of all proposed rules at a place accessible to the public during normal business hours, and post an electronic copy on the District's internet site.

SECTION 14 AQUIFER STORAGE AND RECOVERY WELLS

Rule 14.1 Registration Required

A project operator of an Aquifer Storage and Recovery project shall register the injection and recovery wells associated with the project with the District, and shall provide the District with all reports required to be submitted to TCEQ under Sections 27.155-.156 of the Texas Water Code.

Rule 14.2 No Permit Required; No Water Use Fee on Authorized Recovery

Except as provided by Rule 14.3, no permit is required for the drilling, equipping, or operation of an Aquifer Storage and Recovery injection or recovery well authorized by TCEQ. Similarly, no Water Use Fee or Groundwater Transport Fee will be imposed on the volume of groundwater authorized by TCEQ to be recovered under an Aquifer Storage and Recovery project. The District may, however, assess a well registration fee or other similar administrative fee for an Aquifer Storage and Recovery well.

Rule 14.3 Exceeding Authorized Recovery Volume

(a) If an Aquifer Storage and Recovery project recovers an amount of groundwater that exceeds the volume authorized by the TCEQ to be recovered under the project, the project operator shall immediately report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the reports required by Rule 14.1.

(b) The recovery wells associated with an Aquifer Storage and Recovery project are

subject to the District's spacing, permitting, metering, production limitations, and fee payment requirements if the amount of groundwater recovered from the wells exceeds the authorized volume to be recovered under the project. The District's spacing, permitting, metering, production limitations, and fee payment requirements only apply to the volume of groundwater recovered that exceeds the recovery volume authorized by the TCEQ.

(c) A project operator may not recover groundwater by an Aquifer Storage and Recovery Project in an amount that exceeds the volume authorized by TCEQ to be recovered under the project unless the operator first obtains an Operating Permit in accordance with Section 2 and pays all fees in accordance with Section 8 for the amount that exceeds the volume authorized by TCEQ to be recovered under the project.

Rule 14.4 Desired Future Conditions Planning

The District may consider hydrogeologic conditions related to the injection and recovery of water as part of an Aquifer Storage and Recovery project in the planning related to, and monitoring of the achievement of, a Desired Future Condition for an Aquifer of the District in which the injection and recovery wells associated with the project are located.

SECTION 15 BRACKISH GROUNDWATER PRODUCTION ZONES

Rule 15.1 Rules for Permits for Brackish Groundwater Production Zones

If a brackish groundwater production zone is designated over any part of the District, the District may adopt rules to govern the issuance of permits. The District shall adopt rules within 180 days of the District receiving a petition from a person with a legally defined interest in groundwater.

A person may obtain a permit under rules adopted for a (1) municipal project designed to treat brackish groundwater to drinking water standards for the purpose of providing a public source of drinking water; and (2) an electric generation project to treat brackish groundwater to water quality standards sufficient for the project needs.

Any rules adopted shall be in accordance with section 36.1015 of Chapter 36.