



RULES OF THE BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

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INTRODUCTION

The Brush Country Groundwater Conservation District (“District”) was created by the 81st Texas Legislature, Regular Session, in 2009 with the enactment of Senate Bill 2456 (now codified as Chapter 8852 Texas Special District Local Laws Code). The creation of the District was confirmed by the citizens located within the District’s boundaries in Jim Hogg, Jim Wells, Brooks, and Hidalgo Counties at an election held on November 3, 2009.

The District’s boundaries consist of the entire territory within Jim Hogg County, the area within Jim Wells County that is not within the Kenedy County Groundwater Conservation District and outside the corporate limits of the City of Alice existing as of January 1, 2009, the area of Brooks County not within the Kenedy County Groundwater Conservation District, and a portion of northern Hidalgo County.

The District strives to preserve and protect the groundwater resources within its boundaries. The District recognizes that groundwater conservation districts are the state’s preferred method of groundwater management [in order to protect private 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.](#) ~~and~~ The District will work with local stakeholders towards achieving its objectives. The District will accomplish its objectives by working to lessen interference between water wells, minimize drawdown of groundwater levels, prevent the waste of groundwater, and reduce the degradation of groundwater quality within the District while helping the local economies maintain and improve their current condition. The District will also use the authority granted in its Enabling Act and applicable state laws to protect and maintain the groundwater resources of the District.

RULE 1. DEFINITIONS AND GENERAL PROVISIONS

RULE 1.1. DEFINITIONS

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

1. “Acre-foot” means the amount of water necessary to cover one acre of land one foot deep, or about 326,000 gallons of water.
2. “Agricultural use” means any use or activity involving agriculture, including irrigation.
3. “Agriculture” means any of the following activities:
 - A. Cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

- B. The practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
- C. 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;
- D. 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;
- E. Wildlife management; and
- F. Raising or keeping equine animals.

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

45. “Board” means the board of directors of the district.

56. “Commission” means the Texas Commission on Environmental Quality or TCEQ.

67. “Conjunctive use” means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

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

89. “Director” means a member of the board.

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

1011. “District” means the Brush Country Groundwater Conservation District created under Section 59, Article XVI, Texas Constitution.

1112. “District Act” means the District’s enabling legislation now codified as Chapter 8852, Texas Special District and Local Laws Code.

1213. “Domestic use” means:

- A. The use of groundwater by an individual or a household to support domestic activities, including the use of groundwater for:
 - 1. Drinking, washing, or culinary purposes;

2. Irrigating a lawn or a family garden or orchard;
 3. Watering domestic animals; or
 4. Water recreation, including aquatic and wildlife enjoyment.
- B. Does not include the use of water:
1. To support an activity for which consideration is given or received or for which the product of the activity is sold; or
 2. By or for a public water system.

| [1314](#). “Drilling Permit” means a permit issued by the District authorizing the drilling, and installation of a non-exempt well.

| [1415](#). “Evidence of historic or existing use” means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by district rule that regulates groundwater based on historic use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

| [1516](#). “Executive administrator” means the executive administrator of the Texas Water Development Board.

| [1617](#). “Executive director” means the executive director of the Commission.

| [1718](#). “Exempt well” means a water well that is not required to obtain an operating permit.

| [1819](#). “Existing Well” means any well in the District that was drilled or properly completed on or before the adoption of the Brush Country Groundwater Conservation District Rules.

| [1920](#). “Federal conservation program” means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

| [2021](#). “Groundwater” means water percolating below the surface of the earth.

| [2122](#). “Groundwater reservoir” means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

| [2223](#). “Inflows” means the amount of water that flows into an aquifer from another formation.

| [2324](#). “Livestock use” means the use of groundwater for the open-range watering of livestock,

exotic livestock, game animals, or fur-bearing animals. For purposes of this subdivision, “livestock” and “exotic livestock” have the meanings assigned by Sections 1.003 and 142.001, Agriculture Code, respectively, and “game animal” and “fur-bearing animal” have the meanings assigned by Sections 63.001 and 71.001, Parks and Wildlife Code, respectively. Livestock use does not include use by or for a public water system.

| [2425](#). “Modeled available groundwater” means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.

| [2526](#). “Non-Exempt Well” means a water well that is required to obtain an operating permit.

| [2627](#). “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.

| [2728](#). “Owner” means any person, firm partnership or corporation that has the right to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.

| [2829](#). “Person” means any individual, partnership, firm, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, association, or any other legal entity.

| [2930](#). “Production Limit” means a numerical limitation on the annual amount of Groundwater authorized to be produced under an [Production-Operating](#) Permit. The Production Limit is generally expressed in acre-feet per year or gallons per year.

| [3031](#). “[Production-Operating](#) Permit” means a permit issued by the District authorizing the [operation of and](#) production from a non-exempt well.

| [3132](#). “Public water supply well” means a well that produces the majority of its water for use by a public water system.

| [3233](#). “Recharge” means the amount of water that infiltrates to the water table of an aquifer.

| [3334](#). “Small commercial well” means a well equipped with a pump rated at 1.5 horsepower or less used for commercial purposes.

| [3435](#). “Small privately-owned water system” means a system that is privately-owned, located on private property that has not been subdivided, and that is used to supply water service to the landowner, the landowner’s family, employees, or invitees solely for domestic and livestock purposes.

- | [3536](#). “Subdivision of a groundwater reservoir” means a definable part of a groundwater reservoir 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 foreseeable economic development at the time the subdivision is designated or altered.
- | [3637](#). “Subsidence” means the lowering in elevation of the land surface caused by withdrawal of groundwater.
- | [3738](#). “Total aquifer storage” means the total calculated volume of groundwater that an aquifer is capable of producing.
- | [3839](#). “Transport” means transferring or exporting out of the District Groundwater that is authorized by a District Permit. The Terms “transfer” or “export” of groundwater are used interchangeably within Chapter 36 and these Rules.
- | [3940](#). “Use for a beneficial purpose” means use for:
- A. Agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
 - B. Exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals;
or
 - C. Any other purpose that is useful and beneficial to the user.
- | [4041](#). “Variance” means an authorized exception to requirements or provisions of the Rules that is approved by the District in accordance with Rule 1.2.
- | [4142](#). “Waste” means any one or more of the following:
- A. withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
 - B. the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
 - C. escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
 - D. pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

- E. willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;
- F. groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or
- G. for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205.

| [4243](#). “Water” means groundwater.

| [4344](#). “Water Well” or “Well” means an artificial excavation constructed to explore for or produce groundwater. It also includes an abandoned oil or gas well that can be conditioned for usable quality groundwater production. The term does not include a test or blast hole in a quarry or mine or a well or excavation constructed to explore for or produce oil, gas, or other minerals or an injection water source well associated with permitted oil and gas or other mineral extraction activities that penetrates the base of usable quality water.

RULE 1.2. VARIANCE

Any exceptions or variances to the requirements imposed by District Rules shall be considered on a case-by-case basis. A request for variance shall be submitted in writing and include reasons for the request. A variance from any requirements contained in a permit requires a permit amendment. A variance will not be granted unless approved by a two-thirds vote of the full membership of the Board.

RULE 2. WASTE AND BENEFICIAL USE

RULE 2.1. WASTE PREVENTION

- A. Groundwater shall not be produced within, or used within or outside of the District, in such a manner as to constitute waste as defined in these Rules.
- B. No person shall pollute or harmfully alter the character of the underground water reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata from the surface of the ground.
- | C. No person shall commit waste as that term is defined in Section 1.1([642](#)).

RULE 2.2. USE FOR A BENEFICIAL PURPOSE

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

RULE 2.3. ORDERS TO PREVENT WASTE/POLLUTION

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

RULE 3. RULEMAKING

- A. The district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. In adopting a rule, the district shall:
 - 1. Consider all groundwater uses and needs;
 - 2. Develop rules that are fair and impartial;
 - 3. Consider the groundwater ownership and rights;
 - 4. Consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution;
 - 5. Consider the goals developed as part of the district's management plan; and
 - 6. Not discriminate between land that is irrigated for production and land that

was irrigated for production and enrolled or participating in a federal conservation program.

- B. Any rule of the district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.
- C. Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:
 - 1. Post notice in a place readily accessible to the public at the district office;
 - 2. Provide notice to the county clerk of each county in the district;
 - 3. Publish notice in one or more newspapers of general circulation in the counties in which the district is located;
 - 4. Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (H); and
 - 5. Make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the district has a website, post an electronic copy on a generally accessible Internet site.
- D. The notice provided under Subsection (C) must include:
 - 1. The time, date, and location of the rulemaking hearing;
 - 2. A brief explanation of the subject of the rulemaking hearing; and
 - 3. A location or Internet site at which a copy of the proposed rules may be reviewed or copied.
- E. The Board President, or in his absence, a person appointed by the Board shall serve as the presiding officer who shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing [within any deadline established by the District](#). The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.
- F. Each person who participates in a rulemaking hearing to submit a hearing registration form stating:
 - 1. The person's name;

2. The person's address; and
 3. Whom the person represents, if the person is not at the hearing in the person's individual capacity.
- G. The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
- H. 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.
- I. 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.
- J. Failure to provide notice under Subsection (C)(4) does not invalidate an action taken by the District at a rulemaking hearing.
- K. The presiding officer shall close the hearing record at the conclusion of the hearing.

RULE 4. EMERGENCY RULES

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

RULE 5. ENFORCEMENT OF RULES, ORDERS, PERMITS

- A. The district may enforce its rules, orders and permits against any person by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- B. Any person who breaches any rule, order or permit of the District is subject to civil penalties not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation.
- C. A penalty under this rule is in addition to any other penalty provided by the law of this state and may be enforced against any person by complaints filed in the appropriate court of jurisdiction in Brooks County.
- D. If the district prevails in any suit to enforce its rules, orders, and permits, the District may seek and the court shall grant against any person, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court [in accordance with Section 36.066 Texas Water Code](#). The amount of the attorney's fees shall be fixed by the court.
- E. In an enforcement action by ~~a—the~~ district against any person that is a governmental entity for a violation of district rules, the limits on the amount of fees, costs, and penalties that a district may impose under Sections [36.102](#), [36.122](#), [or 36.205](#), [Texas Water Code](#) ~~or this section~~, or under ~~a special law governing a district operating under this chapter~~ [the District Act](#), constitute a limit of liability of the governmental entity for the violation. This subsection shall not be construed to prohibit the recovery by a district of fees and costs ~~under Subsection (d)~~ in an action against any person that is a governmental entity.

RULE 6. REGISTRATION, RECORDS, AND REPORTS

- A. All water wells within the District must be registered. There is no fee for registering existing wells. Upon receipt of a completed application, the District will determine if the well is exempt or non-exempt. A non-exempt well shall not be drilled or operated prior to District approval of an [production operating](#) permit, except as provided under Rule 9.
- B. [Except as provided in subsections below](#), ~~All~~ non-exempt wells are required to be equipped with a meter. An owner or operator of a water well that is required to be registered with or permitted by the district, except for the owner or operator of a well that is exempt from permit requirements, must record meter readings monthly and report groundwater withdrawals annually. The monthly water production records shall be submitted to the District on an annual basis on

January 31st of each year for the previous 12 months, unless the District imposes alternate recordkeeping and reporting requirements in the Production-Operating Permit for the Well.

1. The following wells may be excepted from the water meter requirements at the Board's discretion:

a. Agriculture wells with pumps having discharge pipes of 3" diameter or less with estimated pumpage of six million gallons per year or less and that are not connected with any other well; and

b. Agriculture wells with pumps having discharge pipes of 3" diameter or less in aggregate systems where the aggregate system has an estimated pumpage of six million gallons per year or less.

2. If evidence is presented to the Board indicates that the well or wells do not meet the discharge pipe diameter or pumpage requirements of these exceptions, or where there is no reasonable basis for determining the pumpage, the Board may require that water meters be installed within a specified time period.

- C. Accurate drillers' logs must be kept of water wells and copies of drillers' logs and electric logs must be filed with the District.
- D. Registration shall include the following information, submitted on forms provided by the District, and any other information the General Manager may determine to be needed.
 - 1. Name, address, phone number, email, and fax number of the well owner. If the applicant is not the landowner, include the name, address, phone number, email and fax number of the landowner and documentation establishing the authority of the applicant to drill and operate the well;
 - 2. If known, the latitude and longitude of the well;
 - 3. Casing size, well depth, depth to screen bottom, pump size, and production capability; and
 - 4. Proposed use of well.

RULE 7. PERMIT REQUIRED , PERMIT AMENDMENTS, APPLICATION

- A. No person, firm, or corporation may drill a non-exempt well without first obtaining a drilling permit from the District.
- B. No person, firm, or corporation may alter the size of a non-exempt well or well pump such that it would bring that well under the jurisdiction of the district without first obtaining a permit from the District.

- C. No person, firm, or corporation may operate a non-exempt well without first obtaining an production-operating permit from the District.
- D. A violation occurs on the first day the drilling, alteration, or operation begins and continues each day thereafter until the appropriate permits are approved.
- E. Except as exempted under the rules, the District requires a permit for:
 1. Drilling, which allows drilling a new well, expanding an existing well, redrilling or re-equipping an existing well, or plugging a well;
 2. ProductionOperating, which allows water to be withdrawn from a non-exempt well;
 3. Multiple wells that are part of an aggregate system that are owned and operated by the same permittee and serve the same subdivision, facility, or area served by a TCEQ issued Certificate of Convenience and Necessity may be authorized under a single permit. Separate drilling authorization applications shall be submitted for each well and the District will require separate records of each well's location and characteristics. Geographic location of wells and integrated distribution systems will be considered in determining whether or not to allow aggregation. For the purpose of categorizing wells by the amount of groundwater production, when wells are permitted with an aggregate withdrawal, the aggregate value shall be assigned to the group, rather than allocating to each well its prorated share or estimated production; ~~and~~,
 4. Transport, which allows groundwater to be transported outside the boundaries of the District; and,
 5. ASR recovery wells that are associated with an aquifer storage and recovery project if the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project.
- F. Permit Amendments are classified as minor amendments or major amendments. Minor amendments include the type of permit amendment applications listed in Rule 12.C. A minor amendment may be processed in accordance with Rule 12.C without notice and hearing. All other amendments are major amendments and may be processed in accordance with Rule 12.D with notice and opportunity for hearing.
- G. The District does not require a permit or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.

- H. An application for a permit or a permit amendment must be in writing in a form provided by the District and sworn to.
- I. The following shall be included in the permit or permit amendment application:
 - 1. The name and mailing address of the applicant and the owner of the land on which the well will be located;
 - 2. If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
 - 3. A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
 - 4. A water conservation plan or a declaration that the applicant will comply with the District's management plan;
 - 5. The location of each well and the estimated rate at which water will be withdrawn;
 - 6. A water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District and all other appropriate agencies;
 - 7. A drought contingency plan, if required by the Board; and
 - 8. A statement of the projected effect of the proposed withdrawal on the aquifer or aquifer conditions, depletions, subsidence, or effects on existing permit holders or other groundwater users in the District:
 - a. If the Board or the General Manager, subject to the review and direction of the Board, deems it necessary based upon the location of and the number of wells and the volume of requested pumpage, the applicant must submit a hydrogeological report prepared by a licensed geoscientist or engineer that evaluates the following parameters: rate of yield and drawdown, specific capacity, well efficiency, transmissivity, hydraulic conductivity, recharge or barrier boundaries, aquifer thickness, and any other information required by the District;
 - b. If a hydrological report is required, the following calculations will be included:
 - i. Time drawdown at the property boundary at five year

intervals for a 30 year period;

ii. Distance drawdown. The distance from the pumped well to the outer edges of the cone of depression; and

iii. Well interference.

9. Name and addresses of well owners within ½ mile radius of the location of the proposed well.

J. Notice of application is governed as provided within these Rules. Applicants must publish notice for any application described under Rule 12.D for which the District provides an opportunity for a hearing. Such notices shall be published by the Applicant, when directed by the District, in a newspaper designated by the District for the publication of legal notices in the county where the permit is issued in a form and content approved by the District. All permit applications described above must provide notice by certified mail, return receipt requested, to all property owners within a half (1/2) mile radius of the well that is the subject of the application. Notification of any property owner served by a retail [public](#) water utility is not required of any applicant if notice is provided to the retail [public](#) water utility. Applicants may not publish notice until the Board or the General Manager, subject to the review and direction of the Board, determines the application is administratively complete.

RULE 8. CRITERIA FOR ISSUANCE AND ELEMENTS OF PERMIT

A. Before granting or denying a permit or permit amendment, the District shall consider whether:

1. The application conforms to the requirements prescribed by these rules and is accompanied by the prescribed fees;

2. The proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

3. The proposed use of water is dedicated to any beneficial use;

4. The proposed use of water is consistent with the District's approved management plan;

5. The maximum allowable production, if any;

6. The applicant has agreed to avoid waste and achieve water conservation; and

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.
- B. A permit issued by the District to the applicant under these rules shall state the terms and provisions prescribed by the District.
- C. The permit will include:
1. The name and address of the person to whom the permit is issued;
 2. The location of the well;
 3. The date the permit is to expire if no well is drilled;
 4. A statement of the purpose for which the well is to be used;
 5. A requirement that the water withdrawn under the permit be put to beneficial use at all times;
 6. The location of the use of the water from the well;
 7. A water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District and other appropriate agencies;
 8. The conditions and restrictions, if any, placed on the rate and amount of withdrawal;
 9. Any conservation-oriented methods of drilling and operating prescribed by the district;
 10. Any maximum allowable production;
 11. A drought contingency plan prescribed by the district; and
 12. Other terms and conditions as provided by the District rules.

RULE 9. PERMITS FOR EXISTING WELLS.

- A. Any well existing on or before the effective date of these rules August 26, 2013, which has not been permitted, is not used for the transport of water outside the District, and which is not exempted from permitting under Rule 14, is entitled to obtain a permit from the District in the manner provided by this Rule.

- B. Applications for permits for existing nonexempt wells must be filed with the District. Any owner of an existing nonexempt well who failed to apply within 90 days of the effective date of the Rules may make application for a permit pursuant to this Rule; provided, however, if the well was in operation during the period from August 26, 2103 until the application was made, in addition to the normal requirements, past production fees, if any, shall be paid for each year of operation. Upon written request of the well owner or permittee, the Board may waive any or all past due fees.

Upon completion of a sworn application providing the completion date, capacity, location, water use, and such other information as may be required by the District, and upon payment of any application processing fee, any current annual production fee, and any required past production fees, the District will issue a permit to the applicant. The annual production limit will be the highest amount produced from the well without waste during the five years prior to August 26, 2013, based on information submitted with the application.

RULE 10. MAXIMUM ALLOWABLE PRODUCTION

- A. The amount of annual maximum production specified in the production-operating permit for a non-exempt may be up to 2.5 acre feet per contiguous surface acres owned or operated by the applicant, unless a smaller amount is requested. Applicants may request that greater amounts of production per surface acre per acre be authorized provided the applicant can demonstrate to the District's satisfaction that local hydrogeological conditions will allow the withdrawal of a greater amount of groundwater per annum without negatively affecting water levels of adjoining properties or otherwise interfering with an adjacent landowner's ability to withdraw and use groundwater. If necessary, the Board may adjust downward the maximum allowable production upon permit renewal to achieve the desired future conditions under Section 10 (B) below. In establishing the maximum allowable production for a retail public water utility, the District will consider the service needs and service area of the retail public water utility in addition to or in lieu of surface area owned or operated by the retail public water utility.
- B. In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve the desired future condition and the District will also consider:
1. The modeled available groundwater determined by the executive administrator of the Texas Water Development Board;
 2. The executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district 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.
- C. In order to protect the public health and welfare and to conserve and manage the groundwater resources in the District during times of drought, the District may pro-rate groundwater use, place special requirements on, modify, delay, or deny a permit for a new well during a District-declared drought.
- D. The District may impose more restrictive permit conditions on new permit applications and increased use by historic users if the limitations:
1. Apply to all subsequent new permit applications and increased use by historic users, regardless of type or location of use;
 2. Bear a reasonable relationship to the existing District Management Plan; and
 3. Are reasonably necessary to protect existing use.

RULE 11. PERMIT TERM

- A. A drilling permit for a well will automatically expire with one year from its issuance if the well is not significantly under development.
- B. Unless otherwise specified by the Board of Directors or these rules, an [production operating](#) permit is effective for a period of five years from the issue date. If renewed, such permits shall thereafter be effective for five year terms from the initial expiration date unless otherwise specified by the Board. The permit terms will be shown in the permit. A permit applicant requesting a permit term longer than five years must substantiate its reason for the longer term and its need to put groundwater to beneficial use throughout the proposed permit term.
- C. The Board or General Manager, subject to the review and direction of the Board, [without hearing](#) will normally renew a permit for wells [without an application for renewal or a hearing](#) if:
1. The terms and conditions of the permit (including maximum authorized withdrawal) are not changed [in a manner that requires a permit amendment under these rules](#);

2. The permittee is in compliance or has a compliance agreement with all terms of the permit and paid any required civil penalties; and
3. The permittee has resolved all enforcement actions, if any, for the permit and the permit is not subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; and
4. the permittee is not delinquent in paying any required fees in accordance with District rules.

Notwithstanding the above, all renewals remain subject to any new criteria or pumping limitations established by the Board of Directors.

If the District is not required to renew a permit because of a substantive violation under Subsection C.3. above, the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

D. ~~D.~~—After notice and an opportunity for a hearing, the Board may renew the permit with a reduced amount of the authorized production if the authorized withdrawal volume is no longer commensurate with reasonable non-speculative demand or actual production from a well is substantially less than the authorized permit amount for multiple years without any rationale that reasonably relates to efforts to utilize alternative water supplies, conserve, or improve water use efficiency.

E. Changes in Operating Permits.

(1) If the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District rules, the permit as it existed before the permit amendment process remains in effect until the later of:

(a) the conclusion of the permit amendment or renewal process, as applicable; or

(b) final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.

(~~1~~)2) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Subsection C above without penalty, unless Subsection C(3) above applies to the applicant.

(3) A district may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the District

rules. If the District initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

RULE 12. TIMING OF ACTION ON APPLICATION

- A. An administratively complete application requires information set forth in accordance with these rules. The General Manager or Board will determine administrative completeness and an applicant will be notified when a well is administratively complete. The application will expire if the information requested in the application is not provided to the District within 60 days of written request.
- B. The District shall promptly consider and act on each administratively complete application for a permit or permit amendment or, if within 60 days after the date an administratively complete application is submitted, the application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as appropriate.
- C. The following permit or permit amendment applications shall be approved by the Board without notice and hearing under Rule 19 or further action by the Board:
 - 1. Non-substantive corrections or administrative amendments to any permit;
 - 2. Applications requesting maximum production rate for a well of 25 gallons per minute or less;
 - 3. Change in the name or address of the well owner or well operator;
 - 4. Decrease the maximum authorized withdrawal;
 - 5. Increase the maximum authorized withdrawal by ten percent or less of the total permitted production for users permitted for more than 25 gallons per minute so long as there have not been similar amendments in the past two years;
 - 6. Increase the maximum authorized withdrawal by up to 5 gallons per minute for users permitted for 25 gallons per minute or less;
 - 7. Convert two or more wells individually permitted by the same permittee into an aggregate system under one permit so long as production amounts

are not increased above the total volumes authorized under the individual permits;

8. Change the depth of a water well;
9. Change the depth of the bottom of the screen of a water well;
10. Change the well pump if the change results in an increase in the production rate less than or equal to amounts described in Rule 12.C.5 and 6 above;
11. Change in purpose of use and no change in withdrawal amount or in connection with a change in withdrawal within the amounts described under Rule 12C.5 and 6 above; and,
12. Permit an existing well under Rule 9.

D. The following permit or permit amendment applications require an opportunity for a hearing:

1. Applications requesting a withdrawal rate of more than 25 gpm, except for applications to permit existing wells under Rule 9;
2. Transport of water outside of the District in connection with an existing or new well;
3. Increase the maximum authorized withdrawal by ten percent or more of the total permitted production for users permitted for more than 25 gallons per minute;
4. Applications requesting a variance from these Rules;
5. Change in purpose of use in connection with a change in withdrawal within the amounts described under Rule 12D.1 and 3 above; ~~and,~~
6. ASR recovery wells that are associated with an aquifer storage and recovery project if the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project; and,
~~Any other application the Board determines should have an opportunity for a hearing.~~
7. Any other application the Board determines should have an opportunity for a hearing.

E. For permit and permit amendment applications requiring an opportunity for a

hearing and the Board grants a hearing, the initial hearing shall be held within 35 days after the date the hearing is granted.

- F. The Board shall act on the application within 60 days after the date the final hearing on the application is concluded.
- G. The hearing shall be conducted in accordance with Rule 19.

RULE 13. REGULATION OF SPACING AND PRODUCTION

- A. In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, the District regulates well spacing.
- B. All wells drilled prior to the effective date of these Rules, shall be drilled in accordance with state law in effect, if any, on the date such drilling commenced.
- C. All new wells drilled after the effective date of these rules must comply with the construction, spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administration Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant.
- D. After authorization to drill a well has been granted under a registration or a permit, the well, if drilled, must be drilled within ten (10) yards (30 feet) of the location specified in the permit, and not elsewhere. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code, and these Rules.
- E. In addition to the requirements of subsection (c), nonexempt wells ~~capable of producing over 10,000,000 gallons annually with an inside casing diameter of eight (8) inches or greater~~ may be required to satisfy greater spacing distances and requirements to prevent interference between wells and impacts to neighboring wells and such requirements shall be determined based on a hydrogeological report prepared by a licensed geoscientist or engineer submitted with the application for the well, unless waived by the ~~General Manager~~Board. The Board may, among other things, require wells to be spaced a certain distance from property lines or adjoining wells. Replacement wells drilled within 200 feet of existing well, which is to be replaced, are not required to conduct a hydrogeological test.

RULE 14. EXEMPT WELLS

- A. The District provides an exemption from the District requirement to obtain a permit for:
1. Drilling or operating a well used solely for domestic use or for providing water for livestock or poultry;
 2. Drilling or operating 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 water well is located on the same lease or field associated with the drilling rig;
 3. Drilling or operating a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water;
 4. Drilling or operating a well used for agricultural purposes, if the well ~~is drilled, completed, or equipped so that it is incapable of~~ does not exceed annual production ~~that does not exceed~~ of one acre-foot per contiguous surface acre owned or operated by the well owner;
 5. Drilling or operating a small commercial well;
 6. Drilling or operating a well used for a privately-owned small water system;
 7. Drilling a hole or operating a water well authorized under a permit issued by the Railroad Commission of Texas ~~Under~~ under Chapter 131, Natural Resources Code, associated with uranium exploration activities;

- 8 Drilling a hole or operating a water well authorized under a permit issued by the Texas Commission on Environmental Quality regulation 30 TAC, Underground Injection Control; or,
 9. A water well drilled and completed solely for the purposes of aquifer testing or for monitoring water levels or water quality.
- B. The District may not restrict the production of water from any well described by Subsection (A)(1).
- C. The District may cancel a previously granted exemption, and may require an production operating permit for or restrict production from a well, if:
1. The groundwater withdrawals that were exempted under Subsection (A)(2) are no longer 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; ~~or~~
 2. The groundwater withdrawals that were exempted under Subsection (A)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code; or.
 3. The groundwater withdrawals that were exempted under Subsection (A)(1) are no longer used solely for domestic use or to provide water for livestock or poultry.
- D. An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of water well shall report monthly to the District:
1. The total amount of water withdrawn during the month;
 2. The quantity of water necessary for mining activities; and
 3. The quantity of water withdrawn for other purposes.
- E. The District requires compliance with the District's well spacing rules for the drilling of any well except a well exempted under Subsection (A)(3), (7), (8) and (9).
- F. The District may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the District.

- G. The district shall require the owner of a water well to:
1. Register the well in accordance with rules promulgated by the District;
 2. Equip and maintain the well to conform to the District's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir; and
 3. This Subsection G(3) does not apply to a well exempted under Subsection A(7), (8) and (9).
- H. The driller of a well shall file with the District the well log required by Section 1901.251, Occupations Code, and, if available, the geophysical log. This Subsection H does not apply to a well exempted under Subsection A(7), (8) and (9).
- I. An exemption provided under Subsection (A) does not apply to a well 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.
- J. Groundwater withdrawn under an exemption provided in accordance with this rule and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees provided under these rules and established by Board resolution. This provision does not apply to a well used for exempt agricultural purpose where water is transported outside the District for use on land owned by the same landowner who owns and operates the well located within the District.
- K. This rule applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This rule does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

RULE 15. OPEN OR UNCOVERED WELLS

- A. The owner or lessee of land on which an open or uncovered well is located is required to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.
- B. As used in this rule, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required by this rule.

- C. If the owner or lessee fails or refuses to close or cap the well in with District rules, any person, firm, or corporation employed by the District may go on the land and close or cap the well safely and securely.
- D. Reasonable expenses incurred by the District in closing or capping a well constitute a lien on the land on which the well is located.
- E. The lien arises and attaches upon recordation in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:
 - 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, after notification, to close the well within 10 days after the notification;
 - 5. The closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
 - 6. The expense incurred by the district in closing the well.
- F. Nothing in this rule affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

RULE 16. TRANSFER OF GROUNDWATER OUT OF DISTRICT

- A. If an application for a permit or an amendment to a permit under Rule 7 proposes the transfer of groundwater outside of the district's boundaries, the District may also consider the provisions of this rule in determining whether to grant or deny the permit or permit amendment.
- B. The District may impose a reasonable fee, set by resolution, for processing an application under this rule. The fee may not exceed fees that the District imposes for processing other applications for a permit. An application filed to comply with this rule shall be considered and processed under the same procedures as other applications for permits and shall be combined with applications filed to obtain a permit for in-district water use from the same applicant.
- C. The District may impose a fee or surcharge for an export fee, as set by resolution.

- D. In reviewing a proposed transfer of groundwater out of the District, the District shall determine whether the proposed transfer would have a negative effect on:
 - 1. The availability of water in the District;
 - 2. The conditions of any aquifer that overlies the District;
 - 3. Subsidence in the District;
 - 4. Existing permit holders or other groundwater users in the District; and
 - 5. Any applicable approved regional water plan or approved District management plan.
- E. If the District determines under Subsection (d) that the transfer would have a negative effect, the District may impose other requirements or limitations on the permit, in addition to the conditions authorized by Section 36.122, Water Code, that are designed to minimize the effect.
- F. In addition to conditions provided by Rule 8, the permit shall specify:
 - 1. The amount of water that may be transferred out of the District; and
 - 2. The period for which the water may be transferred.
- G. The District may periodically review the amount of water that may be transferred under the permit and may limit the amount if additional factors considered in Subsection (d) warrant the limitation. The review described by this subsection may take place not more frequently than the period provided for the review or renewal of regular permits issued by the District. In its determination of whether to renew a permit issued under this rule, the District shall consider relevant and current data for the conservation of groundwater resources and shall consider the permit in the same manner it would consider any other permit in the District.
- H. The District is prohibited from using revenues obtained under Subsection (c) to prohibit the transfer of groundwater outside of a District. The District is not prohibited from using revenues obtained under Subsection (c) for paying expenses related to enforcement of Water Code Chapter 36 or District rules.
- I. In applying this rule, a district must be fair, impartial, and nondiscriminatory.

RULE 17. RIGHT TO ENTER LAND

- A. The directors, engineers, attorneys, agents, operators, and employees of the District may go on any land to inspect, make surveys, or perform tests to

determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the District.

- B. District employees and agents are entitled to enter any public or private property within the boundaries of the District or adjacent to any reservoir or other property owned by the District at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the District. The District shall notify, coordinate, and schedule property access in advance with the consent of the property owner, his Agent, tenant, or other local contact. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

RULE 18. DISTRICT FEES

- A. The district may set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged. Administrative fees will be set by resolution.
- B. The District shall set and collect fees for all services provided outside the boundaries of the district. The fees may not unreasonably exceed the cost to the District of providing the services outside the district. Fees for services provided outside the District will be set by resolution. [Limitations established under this provision do not apply to fees set by the District under Section 16.C. above.](#)
- C. The District may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. The District may assess the fees in conjunction with taxes otherwise levied by the District. The District may use revenues generated by the fees for any lawful purpose. Production fees, if any, will be set by resolution and shall not exceed:
 - 1. \$1 per acre-foot payable annually for water used for agricultural use; or
 - 2. \$10 per acre-foot payable annually for water used for any other purpose.

RULE 19. NOTICE AND HEARING PROCESS

RULE 19.1. SCHEDULE OF HEARING

- A. If after consideration of a request for hearing using the factors under Rule 19.13,

the Board denies a hearing requested on an application noticed under Rule 7.J., the Board or the General Manager, subject to the review and direction of the Board, will grant the application and issue the permit or permit amendment.

B. If the Board grants a hearing requested under an application noticed under Rule 7.J., the Board will notice the hearing in accordance with Rule 19.2.

C. The general manager or board may schedule more than one permit or permit amendment application for consideration at a hearing.

~~D.F.~~ A hearing must be held at the District office or regular meeting location of the board unless the board provides for hearings to be held at a different location. For a hearing conducted by SOAH, the District may hold the hearing in Travis County.

~~E.G.~~ A hearing may be held in conjunction with a regularly scheduled board meeting.

RULE 19.2. NOTICE FOR HEARINGS SCHEDULED BY THE BOARD

A. If the general manager or board schedules a hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this rule.

B. The notice must include:

1. The name of the applicant;
2. The address or approximate location of the well or proposed well;
3. A brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
4. The time, date, and location of the hearing; and
5. Any other information the general manager or board considers relevant and appropriate.

C. Not later than the 10th day before the date of a hearing, the general manager or board shall:

1. Post notice in a place readily accessible to the public at the District office;
2. Provide notice to the county clerk of each county in the District; and
3. Provide notice by:
 - a. Regular mail to the applicant;

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

RULE 19.3. HEARING REGISTRATION

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

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

RULE 19.4. HEARING PROCEDURES

- A. A hearing must be conducted by:
 - 1. A quorum of the board;
 - 2. An individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
 - 3. The State Office of Administrative Hearings under Rule 19.14.
- B. Except as provided by Subsection (C) or Rule 19.14, the board president or the hearings examiner shall serve as the presiding officer at the hearing.

- C. If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.
- D. The presiding officer may:
1. Convene the hearing at the time and place specified in the notice;
 2. Set any necessary additional hearing dates;
 3. Designate the parties regarding a contested application;
 4. Establish the order for presentation of evidence;
 5. Administer oaths to all persons presenting testimony;
 6. Examine persons presenting testimony;
 7. Ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
 8. Prescribe reasonable time limits for testimony and the presentation of evidence; and
 9. Exercise the procedural rules adopted by the District;
 10. determine how to apportion among the parties the costs related to:
 - (A) a contract for the services of a presiding officer; and
 - (B) the preparation of the official hearing record.
- E. Except as otherwise provided, the District may allow any person, including the general manager or a district employee, to provide comments at a hearing on an uncontested application.
- F. The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
- G. If the board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later

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

- H. The presiding officer, at the presiding officer's discretion, may, but is not required to, issue an order at any time before board action on a permit application that:
1. Refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
 2. Determines how the costs of the procedure shall be apportioned among the parties; and
 3. Appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

I. In general, the burden of proof is on the moving party by a preponderance of the evidence, except in an enforcement proceeding, the General Manager has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions. The respondent in an enforcement proceeding has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. The permit applicant bears the burden of proof by a preponderance of the evidence in an application proceeding.

RULE 19.5. EVIDENCE

- A. The presiding officer shall admit evidence that is relevant to an issue at the hearing.
- B. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

RULE 19.6. RECORDING

- A. Except as provided by Subsection (B), the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from

further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

- B. If a hearing is uncontested, the presiding officer may substitute minutes or the report-proposal for decision required under Rule 19.8 for a method of recording the hearing provided by Subsection (A).

RULE 19.7. CONTINUANCE

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

RULE 19.8. ~~REPORT~~PROPOSAL FOR DECISION

- A. Except as provided by Subsection (E), the presiding officer shall submit a report proposal for decision to the board not later than the 30th day after the date ~~a the~~ evidentiary hearing is concluded.
- B. The proposal for decision~~report~~ must include:
 - 1. A summary of the subject matter of the hearing;
 - 2. A summary of the evidence or public comments received; and
 - 3. The presiding officer's recommendations for board action on the subject matter of the hearing.
- C. The presiding officer or general manager shall provide a copy of the proposal for decision~~report~~ to:
 - 1. The applicant; and
 - 2. Each ~~person who provided comments or each~~ designated party.
- D. A ~~person-party who receives a copy of the report under Subsection (C)~~ may submit to the board written exceptions to the proposal for decision~~report~~.
- E. If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing, the presiding officer shall determine whether to prepare and submit a proposal for decision~~report~~ to the board under this rule.

F. The board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final decision. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Rule 19.7.

RULE 19.9. BOARD ACTION

A. The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded. For a hearing conducted by the State Office of Administrative Hearings, the final hearing on the application concludes on the date the SOAH proposal for decision, exceptions and replies to exceptions to the proposal for decision are presented the Board of Directors. In a proceeding for a permit application or amendment in which a district has contracted with the State Office of Administrative Hearings for a contested case hearing, the board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge consistent with Section 2001.058, Government Code.

B. The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, district rules, written policies provided under District Bylaw 4-9.16F, 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.

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

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

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

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

RULE 19.10. REQUEST FOR REHEARING OR FINDINGS AND CONCLUSIONS

A. An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions ~~or a rehearing before the board~~ not later than the 20th day after the date of the board's decision.

B. On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each ~~person who provided comments or each~~ designated party, not later than the 35th day after the date the board receives the request. A ~~person who receives a certified copy of the findings and conclusions from the board~~ party to a contested hearing may request a rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.

C. A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the ~~person-party~~ requesting a rehearing must provide copies of the request to all parties to the hearing.

D. If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

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

RULE 19.11. DECISION; WHEN FINAL

A. A decision by the board on a permit or permit amendment application is final:

1. If a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

2. If a request for rehearing is filed on time, on the date:
 - a. The board denies the request for rehearing; or
 - b. The board renders a written decision after rehearing.
- B. Except as provided by Subsection (c), an applicant or a party to a contested hearing may file a suit against the District to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.
- C. An applicant or a party to a contested hearing may not file suit against the District under if a request for rehearing was not filed on time.

RULE 19.12. CONSOLIDATED HEARING ON APPLICATIONS

- A. Except as provided by Subsection (**bB**), the District shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the district requires a separate permit or permit amendment application for:
 - 1. Drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump;
 - 2. The spacing of water wells or the production of groundwater; or
 - 3. Transferring groundwater out of a district.
- B. The District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.

RULE 19.13. CONTESTED CASE HEARING REQUEST AND AFFECTED PERSON DETERMINATION

- A. Hearing Requests. The following may request a contested case hearing under these Rules:
 - 1. The Board;
 - 2. The General Manager;
 - 3. The applicant; and
 - 4. Affected persons (as determined in F. below).
- B. Form of Request. A request for a contested hearing by an affected person (as determined in Subsection F. below) must be in writing and be filed by United States mail, facsimile, e-mail, or hand delivery with the District within the time provided by subsection D. of this section.
- C. Requirements for Request. A contested case hearing request by an affected person (as determined in Subsection F. below) must substantially comply with the following:
 - 1. Give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for

receiving all official communications and documents for the group;

2. Identify the person's personal justiciable interest affected by the application, or District action including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application or District action and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
 3. Request a contested hearing;
 4. If the party requesting a hearing desires for the hearing to be referred to and conducted by the State Office of Administrative Hearings, then the hearing request must include a statement "I/we request that the State Office of Administrative Hearings conduct the hearing." A party requesting a contested case hearing before SOAH shall pay all costs associated with the contract for a SOAH hearing in accordance with Rule 19.14; and,
 5. If applicable, provide any other information specified in the public notice of application.
- D. Deadline for hearing requests. A hearing request by an affected person (as determined in F. below) must be filed with the District within 20 days after the last publication of the notice of application.
- E. A request for a contested hearing:
1. May be granted by the Board if the request is made by the General Manager; and
 2. Shall be granted by the General Manager, if the request is made by the Board, and shall be granted by the Board, the Presiding Officer or hearings examiner, if the request is made by an affected person (as determined in Subsection F. below). For a request by an affected person other than the applicant, the request must also satisfy the following:
 - a. Is based solely on concerns within the authority of the District;
 - b. Is supported by competent showing that the person requesting a hearing is likely to be impacted by the proposed regulated activity in a manner described under Subsection F. below;
 - c. Complies with all of the requirements of A through D above; and,

d. Is timely filed with the District.

F. Determination of Affected Person and a Party's Right to participate in a Hearing to be made by the Presiding Officer in a preliminary hearing.

At a preliminary hearing conducted ~~by the District~~ before the commencement of an evidentiary hearing, the Presiding Officer shall determine whether any person requesting a contested case hearing has standing to make the request, whether a personal justiciable issue related to an application has been raised, and a party's right to participate in a hearing. ~~The Presiding Officer may refer to SOAH the determination of a party's right to participate in a hearing. The preliminary hearing may be conducted as specified in accordance with Rule 19.4.A.~~ Any "affected person," as determined under this section, may participate in a hearing.

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

G. If it is determined at the preliminary hearing that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the board may treat the matter as uncontested as described by Rule Bylaw 19.9.

RULE 19.14. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS

- A. If requested by an applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct a hearing. A person opposing an application who requests a contested hearing under Rule 19.13C must include in a timely hearing request the statement “I/we request that the State Office of Administrative Hearings conduct the hearing” in order for the hearing to be referred to and conducted by SOAH.
- B. An applicant desiring that the District refer a contested case to SOAH must make a written request for the SOAH referral at the same time that applicant requests a hearing or, when a hearing has been requested by a person other than the applicant, and the applicant desires for the District to contract with SOAH to conduct the contested case, the applicant must request a SOAH hearing in writing within no later than 5 business days after the determination that the District will grant a hearing under rule 19.13E.
- C. A party requesting a hearing before SOAH shall pay all costs associated with the contract for a SOAH hearing and shall deposit with the District an amount determined by the District to pay the contract amount before the hearing begins. A party’s SOAH hearing request will be deemed withdrawn if the party fails to provide the required deposit within 5 days of the District’s request for the deposit. At the conclusion of the hearing, the District shall refund any excess money to the paying party.
- D. If the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.
- E. An administrative law judge who conducts a contest case hearing shall consider applicable district rules or policies in conducting the hearing, but the district deciding the case may not supervise the administrative law judge. The District shall provide the SOAH administrative law judge with a written statement of applicable rules and policies. The district may not attempt to influence the findings of fact or the administrative law judge’s application of the law in a contested case except by proper evidence and legal argument.

RULE 19.15. DISCOVERY

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

2001, Texas Government Code.

RULE 19.16. RULES; ALTERNATIVE DISPUTE RESOLUTION

A district by rule may develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

RULE 19.17. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

Except as provided by these rules and Water Code Sections 36.416 and 36.4165, Chapter 2001, Government Code, does not apply to a hearing under these Rules.

RULE 19.13. NOTICE AND HEARING IN AN APPEAL OF DESIRED FUTURE CONDITIONS; JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS.

A. An affected person may file a petition with the District requiring that the District contract with the SOAH to conduct a hearing appealing the reasonableness of the desired future condition. The petition must be filed not later than the 120th day after the date on which the District adopts a desired future condition under Water Code Section 36.108(d-4). The petition must provide evidence that the District did not establish a reasonable desired future condition of the groundwater resources in the management area.

B. In this Rule, “affected person” means:

(1) an owner of land in Ground Water Management Area 16;

(2) a groundwater conservation district or subsidence district in or adjacent to Ground Water Management Area 16;

(3) a regional water planning group with a water management strategy in Ground Water Management Area 16;

(4) a person who holds or is applying for a permit from a district in Ground Water Management Area 16;

(5) a person with a legally defined interest in groundwater in Ground Water Management Area 16; or

(6) any other person defined as affected by Texas Commission on Environmental Quality rule.

C. Not later than the 10th day after receiving a petition, the District shall submit a copy of the petition to the Texas Water Development Board. The Texas Water Development Board shall conduct an administrative review and study required by

Water Code section 36.1083(e), which must be completed and delivered to SOAH not later than 120 days after the date the Texas Water Development Board receives the petition. SOAH shall consider the study described and the desired future conditions explanatory report submitted to the development board under Water Code section 36.108(dd)(3) to be part of the administrative record in the SOAH hearing; and the Texas Water Development Board shall make available relevant staff as expert witnesses if requested by SOAH or a party to the hearing.

D. Not later than 60 days after receiving a petition appealing the reasonableness of the desired future conditions filed under Water Code section 36.1083(b), the District will submit to SOAH a copy of the petition and contract with SOAH to conduct a contested case hearing.

E. The petitioner shall pay the costs associated with the contract with SOAH and shall deposit with the District an amount determined by the District, after consultation with SOAH, that is sufficient to pay the contract amount. The deposit must be received within 15 days of written notification by the District to the petitioner specifying the amount of the deposit. Failure to timely pay the deposit may result in dismissal of the petition. After the hearing is completed and all costs paid to SOAH, the district shall refund any excess money to the petitioner.

F. Unless provided by SOAH, the District shall provide notice of a hearing appealing the reasonableness of the desired future conditions. Not later than the 10th day before the date of a hearing the general manager or board shall provide notice as follows (unless notice provide by SOAH):

1. General Notice:

a. Post notice in a place readily accessible to the public at the District office;

b. Provide notice to the county clerk of each county in the District; and

3. Individual notice by regular mail, facsimile, or electronic mail to:

a. the petitioner;

- b. any person who has requested notice;
- c. each nonparty district and regional water planning group located in Groundwater Management Area 16;
- d. the Texas Water Development Board; and
- f. the Texas Commission on Environmental Quality.

G. After the hearing and within 60 days of receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter and the District's findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.

H. If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.

I. If the District in its final order finds that a desired future condition is unreasonable, not later than the 60th day after the date of the final order, the District shall reconvene in a joint planning meeting with the other districts in Groundwater Management Area 16 for the purpose of revising the desired future condition. The District and other districts in Groundwater Management Area 16 shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the District.

J. A final order by the District finding that desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this Rule.

L. A final District order issues under this Rule may be appealed to a district court with jurisdiction over any part of the territory of the District. An appeal under this subsection must be filed with the district court not later than the 45th day after the date the District issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the Groundwater Management Area 16 to reconvene not later than the 60th day after the date of the court order in a joint planning meeting for the purpose of revising the desired future condition. The District and other districts in

the management area shall follow the procedures in Water Code Section 36.108 to adopt new desired future conditions applicable to the District. A court's finding under this Rule does not apply to a desired future condition that is not a matter before the court.

RULE 20. AQUIFER STORAGE AND RECOVERY PROJECTS

20.1. DEFINITIONS

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

20.2. REGISTRATION AND REPORTING OF WELLS

A. A project operator shall:

1. register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with the District;
2. each calendar month by the deadline established by the Texas Commission on Environmental Quality (TCEQ) for reporting to the TCEQ, provide the District with a copy of the written or electronic report required to be provided to the TCEQ under Water Code Section 27.155; and
3. annually by the deadline established by the TCEQ for reporting to the TCEQ, provide the District with a copy of the written or electronic report required to be provided to the TCEQ under Section 27.156.

B. If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by the TCEQ to be recovered under the project, the project operator shall report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection A.2.

20.3. PERMITTING, SPACING, AND PRODUCTION REQUIREMENTS

A. Except as provided by Subsection B, the District may not require a permit for the drilling, equipping, operation, or completion of an ASR injection well or an ASR recovery well that is authorized by the TCEQ.

B. The ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells exceeds the volume authorized by the

TCEQ to be recovered under the project. A project operator must submit an operating permit application with the District in accordance with Rule 7 within 60 days of the time that the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by the TCEQ to be recovered.

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

20.4. FEES AND SURCHARGES

A. The District may not assess a production fee or a transportation or export fee or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by the commission to be recovered.

B. The District may assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that the District assesses such a fee for other wells registered with the District.

20.5. CONSIDERATION OF DESIRED FUTURE CONDITIONS

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

BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT

BY-LAWS

SECTION 1. DEFINITIONS AND GENERAL PROVISIONS

1.01. Definition of Terms. Unless the context indicates a contrary meaning, the words defined below shall have the following meaning in these By-Laws:

- a. “Act” means the Brush Country Groundwater Conservation District’s enabling legislation, codified as Chapter 8852, Texas Special District Law Code. The District is governed further by Chapter 36 of the Texas Water Code.

- b. “District” means the Brush Country Groundwater Conservation District, whose jurisdiction and boundaries are set forth in the Act.

- c. “District Office” means the offices of the Brush Country Groundwater Conservation District at Brooks County Courthouse Annex, 408 West Travis, Suite 112 and 114, Falfurrias, Texas or at such other location as may be established by the Board.

- d. “Board” means the Board of Directors of the District.

- e. “By-Laws” means the rules and regulations compiled in this document and as may be supplemented or amended from time to time.

- f. “Director” means a member of the Board.

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

1.02. Purpose of By-Laws. These By-Laws are adopted for the purpose of facilitating the accomplishment of the purposes of the Act, and to address, among other things, policies regarding ethics, travel expenditures, investments, professional services, and fiscal management.

1.03. Use and Effect of By-Laws. These By-Laws are used by the District as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the Act and Chapter 36 of the Texas Water Code. They shall not be construed as a limitation or restriction on the exercise of any discretion, where it exists; nor shall they be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law; nor shall they be construed to limit or restrict the amount and character of data or information which may be required to be collected for the proper administration of the Act.

1.04. Rules, By-Laws and Policies. The Board may adopt rules, by-laws and policies as provided under Texas Water Code §§ 36.057(f), 36.061, and 36.101 to regulate the use of District property and for conduct on District property. Copies of such rules, by-laws and policies as they are amended from time to time shall be made available to the public.

1.05. Amending of By-Laws. The Board may, following proper notice, amend these By-Laws or adopt new By-Laws from time to time.

1.06. Headings and Captions. The section and other headings and captions contained in these By-Laws are for reference purposes only and shall not affect in any way the meaning or interpretation of these By-Laws.

1.07. Gender. Use of masculine pronouns for convenience purposes in these By-Laws shall include references to persons of feminine gender where applicable. Words of any gender used in these By-Laws shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise.

1.08. Severability. In case any one or more of the provisions contained in these By-Laws shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other By-Laws or provisions hereof and these By-Laws shall be construed as if such invalid, illegal, or unenforceable rule or provision had never been contained herein.

1.09. Computing Time. In computing any period of time prescribed or allowed by these By-Laws, by order of the Board, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday.

1.10. Effective Date. These Bylaws shall become effective immediately upon adoption by the Board.

SECTION 2. BOARD

2.01. Compensation and Appointment. The Board is composed of nine (9) directors, who are appointed pursuant to the terms of the Act.

2.02. Terms. The members of the Board of Directors shall serve staggered, four-year terms, as provided in the Act.

2.03. Oath, Bond and Training. Each Director shall make the sworn statement and take the constitutional oath of office prescribed by the constitution for public office before beginning to perform the duties of office. In addition, each Director shall execute a bond in the amount of \$10,000, payable to the District and conditioned on the faithful performance of the duties as a Director. Each Director shall undertake Open Government Training required under Chapters 551 and 552 of the Texas Gov't Code.

2.04. Officers. The Officers of the Board are the President, Vice President, and Secretary/Treasurer. Officers shall be elected annually for terms of one year at the Board's first meeting in June or at such time as necessary to fill a vacancy. The President is the chief executive officer of the District, presides at all meetings of the board, and shall execute all documents on behalf of the District unless the board by resolution authorizes the general manager or other employee of the District to execute a document or documents on behalf of the District. The Vice-President shall act as president in case of the absence or disability of the president. The Secretary/Treasurer is responsible for seeing that all records and books of the District are properly kept and may attest the president's signature on documents. The Board may

establish and elect additional officers to assist in the effective and expeditious operation of Board duties.

2.05. Quorum. Five (5) directors shall constitute a quorum and a concurrence of a majority of the entire membership of the Board is sufficient for transacting any business of the District.

2.06. Meetings.

a. **Regular and Special Meetings.** The Board shall establish by Board action, order or resolution a specified time for its regular meetings. The Board may meet in a special meeting if called by the President, Vice President or a majority of the Directors in a meeting held in compliance with the Texas Open Meetings Act. Once the Board establishes an office, the Board shall meet at its office unless the Board directs otherwise for a specific occasion. All such meetings shall be open and accessible to the public in accordance with the Texas Open Meetings Act. To the extent necessary for orderly conduct of proceedings, and in the absence of guidance provided by these By-Laws, the guidelines of the most recent edition of Roberts Rules of Order will be followed. The President shall preside at all meetings of the Board.

b. **Work Sessions.** From time to time as may be necessary, the Board may hold work sessions to discuss and evaluate issues in such detail as to require open and free discussion not normally possible in regular Board meetings. During work sessions of the Board, no public comment will be heard, unless specifically requested by a Director and recognized by the Board chair. Public comment may be made at the time the item(s) is up for discussion at a regular Board meeting.

2.07. Committees. The President may establish and designate Board members for advisory committees and appoint their chairmen for formulation of policy recommendations to the Board or for such other purposes as the President may designate. An Executive Committee comprised of the President, Vice President, and Secretary/Treasurer is hereby established and the Board shall establish the scope and function of the Committee by resolution or order.

2.08. Compensation and Reimbursement of Directors. Each director is entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the District. In order to receive reimbursement for expenses, each director shall file

with the District a verified statement showing the actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the District.

2.09. Indemnification of Board Members. Each Board member is indemnified by the District against any liability imposed upon him and for any expense reasonably incurred by him in connection with any claim made against him, or any action, suit or proceeding to which he may be a party by reason of his being, or having been, a Board member, and against such sums as counsel selected by the Board shall deem reasonable payment made in settlement of any such claim, action, suit, or proceeding; provided, however, that no Board member shall be indemnified with respect to actual damages arising out of a cause of action for a willful act or omission, an act or omission constituting gross negligence or official misconduct, or with respect to matters for which such indemnification would be unlawful or against public policy. Any right of indemnification granted by this Section is in addition to and not in lieu of any other such right of which any Board member of the District may at any time be entitled under the laws of the State of Texas; and if any indemnification which would otherwise be granted by this Section is disallowed by any competent court or administrative body as illegal or against public policy, then any Board member with respect to whom such adjudication was made, and any other Board member, shall be indemnified to the fullest extent permitted by law and public policy, it being the express intent of the District to indemnify its Board members to the fullest extent possible in conformity with these By-Laws, all applicable laws and public policy. District may purchase and maintain insurance on behalf of any person who is a Board member of the District against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such. The indemnification provided herein shall inure to the benefit of the heirs, executors, and administrators of the Board members of the District.

2.10. Addressing the Board. It will be the policy of the Board to permit any person to address the Board at any public meeting, other than a work session, concerning only specific issues relating directly to the District. The visitor should make every effort to inform the General Manager, as far in advance as possible, of the purpose of the visit so relevant background information may be obtained. Properly accredited speakers will be allotted a time space during the meeting as determined by the presiding officer. The presiding officer may impose a time limit on speakers.

SECTION 3. ADMINISTRATION

Section 3.01. General Manager. The person employed by the Board as General Manager shall be the chief operating officer of the District and shall have full authority to manage and operate the affairs of the District, subject only to Board Orders. The General Manager is responsible for employing all persons necessary for the proper handling of the business and operation of the District and for determining their

compensation. The General Manager is empowered to obtain official or legal status in matters of concern or interest to the District in public hearing processes, or other proceedings, when the opportunity to obtain such status presents itself and Board action to establish an official Board or District position cannot be obtained in a timely manner. Such matters will be brought to the Board for action at the earliest possible convenience.

Section 3.02. Delegation of Authority. The General Manager may delegate his/her administrative duties as may be necessary to effectively and expeditiously his/her duties, provided, however, that no such delegation shall ever relieve him/her of responsibilities which are ultimately his/hers under the Act, Rules and By-Laws, or Board Orders.

SECTION 4. AUTHORITY

Section 4.01. District Address. The District's mailing address is:

Brush Country Groundwater Conservation District
PO Box 136
Falfurrias, TX 78355

Such address may be changed by the Board.

Section 4.02. Minutes and Records of the District. All documents, reports, including audits, records, and minutes of the District shall be available for public inspection in accordance with the Texas Public Information Act. Upon application of any person, the District, when appropriate, will furnish copies, certified or otherwise, of any of its proceedings or other official acts of record of any paper, map, or document files in the District Office. Certified copies shall be made under the hand of the General Manager, Secretary/Treasurer or President and affixed with the seal of the District. Persons who are furnished any such copies may be assessed a charge therefor, pursuant to policies established by the Board based on the reasonable costs of furnishing such copies.

Section 4.03. Office Hours. The regular office hours of the District shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, except for holidays, or as may be set from time to time by the General Manager.

Section 4.04. Seal. The Board may design a seal for the District to be used on permits and other official documents of the District.

SECTION 5. FINANCIAL

Section 5.01. Contracts, Instruments, and Documents. The Board may authorize the President or, if authorized by resolution, the General Manager, to enter into any contract or to execute and deliver any instrument or document in the name of and on behalf of the District. Such authority may be general or confined to specific instances. All contracts shall be executed by either the President or the General Manager, and attested by the Board Secretary. In the absence of the President and the General Manager, the Vice President of the Board is authorized to execute the documents; in the absence of the Board Secretary, the Assistant Secretary to the Board, as designated by Board resolution, is authorized to attest the signature of execution.

Section 5.02. Loans. No loans shall be contracted on behalf of the District, and no evidence of indebtedness shall be issued in its name, unless authorized by resolution of the board executed by the President and attested by the Secretary/Treasurer.

Section 5.03. Audit. The Board shall provide and periodically revise written policies that ensure a better use of management information including:

- a. Unless otherwise exempted by Water Code § 36.153 as described in 5.03(C), the District's fiscal accounts and records shall be audited annually according to state law governing the audits of districts, at the expense of the District, by a certified public accountant familiar with the Texas Commission on Environmental Quality's rules, regulations, standards, and guidelines applicable to district audits.

- b. The audit shall be completed and filed within the time limits established by the Texas Water Code. A courtesy copy of the audit shall be filed with the Texas Commission on Environmental Quality, together with an annual filing affidavit in the form prescribed by Texas Water Code.

- c. If the District does not have sufficient revenues so that it meets the requirements of the Texas Water Code for a financially dormant or an inactive district, it may prepare and submit the financial dormancy affidavit or financial report described in the Texas Water Code instead of filing an audit report.

Section 5.04. Audit Committee. The President shall establish an audit committee comprised of one or two directors and such persons as the Board may deem appropriate. The persons selected should not be directly responsible for work subject to the audit. The audit committee shall conduct, at a minimum, an annual review of the District's financial status. The committee shall monitor variances from the District's budget and shall review the District's audit report and shall make recommendations to the Board.

Section 5.05. Budget. The District shall annually adopt a budget as provided under Water Code § 36.154. The adopted budget and any subsequent amendments shall be passed and approved by the governing board and shall be made a part of the governing board minutes. Budget amendments may be made from time to time in the discretion of the governing board. Such amendment shall be approved in advance by the Board. The District may not make expenditures in excess of the total budgeted expenditures for a fiscal year unless the Board amends the budget, and the budget may be amended contemporaneously with approval of an expenditure. Such budget shall take into consideration all District revenues, including, but not limited to, taxes and fees, if any, and all projected District obligations and expenditures.

Section 5.06. Records. The District shall ensure that the minutes of Board meetings and the District's accounting records are prepared on a timely basis and maintained in an orderly manner throughout the District's fiscal year in accordance with the guidelines set forth in the publication Water District Accounting Manual. The District shall preserve its minutes, contracts, notices, accounts, and all other records or certified copies thereof in a safe place, suitable for public inspection. All records, including the fiscal records, shall be available for public inspection during regular business hours. The District shall maintain all District fiscal records in a District office located in the District.

Section 5.07. Fiscal Year. The District's fiscal year shall begin October 1.

Section 5.08. Purchasing.

a. Expenditures to acquire goods or services valued at greater than \$5,000 or any professional fee expenses require approval by the Board in advance, unless an emergency or urgency exists, in which case the General Manager may make or approve the acquisition, with the verbal concurrence of the Executive Committee of the Board. Acquisitions valued at less than \$5,000 may be made by the General Manager without prior Board approval, provided that it is a Board approved budgeted item; emergency acquisitions requiring an expenditure greater than \$5,000 shall be presented to the Board for approval and validation at its next following meeting.

b. The General Manager may expend and transfer funds within the Board approved budget categories. Only in emergency or urgency may the General Manager exceed a category total, with the verbal concurrence of the Executive Committee of the Board, provided this amendment be presented to the Board for validation at its next following meeting. The Board may at any time, amend the budget to allow for unforeseen expenditures provided that funds are available in other budget categories or that reserve funds are available.

5.09. Credit Card. The General Manager is authorized to use a credit card issued in the name of the District. The credit card may be used solely for District business and personal use is prohibited. All purchases made must be within budget categories authorized by the Board. Supporting documentation, including receipts, documentation detailing goods or services purchased, date of purchase, cost, and explanation of purchase, must accompany all credit card purchases. The total amount of charges that can be made on a credit card cannot exceed \$2,500 per month without Board approval. The credit card may not be used for cash advances or any purchase not authorized under District By-Laws.

Section 5.10. Assets. Fixed assets shall include such items as land, land improvements, buildings, fixtures, equipment, vehicles, and items under construction. These items shall be recorded at cost including related professional costs, and any direct charges.

Any item meeting these criteria with a useful life of greater than one year and a cost greater than \$1,000 shall be capitalized, except for software, computers and other computer related items. These assets shall be included in the fixed assets ledger. This ledger shall be reconciled to the general ledger and a

complete inventory of fixed assets will be taken at least one time per year. An inventory of software, computers and other computer related items will be maintained.

The fixed asset ledger shall include the date of purchase, the total cost, the identifying number, the estimated useful life, and the type of asset. The asset ledger shall be grouped by asset type.

When an asset is traded in for a new asset, the net book value of the old asset should be included with the cash difference paid or given to determine the value of the new asset. The value of the traded asset shall be removed from the ledger. For disposed, irreparable, or misplaced assets, the assets shall be removed from the ledger after Board approval and treated in accordance with Generally Accepted Accounting Principles (GAAP). Assets purchased shall follow the Board's policy on purchasing.

SECTION 6. CODE OF ETHICS

6.01. Purpose. This code of ethics has been adopted by the Brush Country Groundwater Conservation District to: (a) comply with Texas Water Code Section 36.061(a)(1), as amended; (b) encourage high ethical standards in official conduct by District officials; and (c) establish guidelines for such ethical standards of conduct.

6.02. Policy. It is the District's policy that the District officials shall conduct themselves in a manner consistent with sound business and ethical practices; that the public interest shall always be considered in conducting District business; that the appearance of impropriety shall be avoided to ensure and maintain public confidence in the District; and that the Board shall control and manage the District's affairs fairly, impartially, and without discrimination, and according to the District's purpose.

6.03. Conflicts of Interest.

- a. Directors: In accordance with Chapter 171 of the Local Government Code, before any vote or decision on a business entity or real property in which a director has a "substantial interest," a director will publicly disclose the interest during a meeting of the Board,

file a completed affidavit (form of affidavit in Exhibit A) with the Secretary of the Board, and abstain from further participation in the matter if:

1. The action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
2. It is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property that is distinguishable from its effect on the public.

b. For purposes of this policy, a Board member has a “substantial interest” in a business entity if the member or a relative within the first degree of consanguinity or affinity owns 10% or more of the voting stock or shares of the business entity, owns either 10% or more or \$15,000 or more of the fair market value of the business entity, or received over 10% of his or her gross income for the previous year from the business entity. For purposes of this policy, a Board member has a “substantial interest” in real property if his or her interest or that of a relative within the first degree of consanguinity or affinity is an equitable or legal ownership with a fair market value of \$2,500 or more in real property.

c. Directors and General Manager must also file a conflicts disclosure statement in accordance with Local Government Code Chapter 176, whenever a director or general manager becomes aware that a vendor or contractor of the District, or a potential vendor or contractor, has an employment or business relationship with a director, general manager, or a family member of the director or general manager (the spouse, parent, child, father-in-law, mother-in-law, sons-in-law, and daughters-in-law). The disclosure statement must also be filed in the following circumstances:

1. When a director, general manager, or a family member of a director or general manager receives taxable income from a vendor or contractor or a potential vendor or contractor, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date a contract is signed or first considered by the District, or
2. When a vendor has given to a director, general manager, or a family member of a director or general manager one or more gifts that have an aggregate value of

more than \$100 in the 12-month period preceding the date a contract is signed or first considered.

A director and general manager must sign the disclosure statement (on a form prescribed by the Texas Ethics Commission) before a notary, under oath, acknowledging that it applies to the director's family members, then file it with the District's records custodian by the seventh business day after the director becomes aware of facts requiring the form to be filed.

A conflicts of interests disclosure statement is not required to be filed in relation to a gift accepted by the director, general manager or family of the director or general manager if the gift is food accepted as a gift.

- d. For contracts entered into on or after January 1, 2016 between the District and a business entity that require an action or vote by the Board, the District may not enter into such contracts unless the business entity submits a disclosure of interested parties to the District at the time the business entity submits the signed contract to the District. The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission. Within thirty days after the date of receiving the disclosure form from the interested parties, the District shall submit a copy to the Texas Ethics Commission.
 - 1. For purposes of this subsection 6.03d. "business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.
 - 2. For purposes of this subsection 6.03d., "interested party" means a person who has a controlling interest in a business entity with whom the District contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.

6.04. Nepotism. All Board members shall comply with the standards enunciated in Chapter 573, Tex. Gov't Code relating to nepotism.

An individual is not eligible for employment by the District if such individual is related to a Board member within the third degree by consanguinity or within the second degree by affinity.

This prohibition does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if the individual is employed in the position immediately before the appointment of the Board member to whom the individual is related in a prohibited degree and that prior employment is continuous for at least thirty (30) days. If an individual continues in employment under this exception, the Board member to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

6.05. Acceptance of Gifts.

- a. A District official shall not solicit, accept, or agree to accept any benefit of value from a person or business entity the District official knows is interested in or likely to become interested in any contract, purchase, payment, claim, or other transaction involving the exercise of their discretion as a public servant, or any matter before the Board, or likely to come before the Board for any decision, opinion, recommendation, or vote.
- b. The prohibition against gifts or favors in section 6.05(a) shall not apply to:
 1. an occasional non-monetary gift, valued at less than \$50.00 if it was not given in exchange for any exercise of official discretion,
 2. a gift from a family member or close personal friend if there is an independent relationship that is not related to the statutes or work of the official; or,
 3. a benefit to which the director is legally entitled or for which the director gives legitimate consideration in a capacity other than a public official.

6.06. Use of District Property. The funds, facilities, personnel, equipment, and supplies of the District shall be used in a manner consistent with Article III, § 52 of the Texas Constitution, which prohibits grants of public funds or things of value to individuals, associates, or corporations.

SECTION 7. TRAVEL EXPENDITURES POLICY

7.01. Purpose. According to the limitations in Texas Water Code Section 36.061(a)(2), the Board hereby establishes policies for reimbursing District directors and employees for actual travel expenses incurred while performing their official duties.

- a. Authorized expenses include cost of meals; lodging; commercial travel; in some cases, personal automobile mileage; and other necessary and reasonable costs incurred while on official business away from designated headquarters.
- b. Reimbursement for all travel expenses shall be subject to approval by the Board. The reimbursement request shall include a statement of the business purpose of the travel, date, time, and place, and shall be accompanied by supporting receipts and invoices.

7.02. Meals and Lodging. Reimbursement to directors and employees for actual expenses for meals and lodging shall not exceed the maximum amount allowed for state employees as posted by the Texas Comptroller.

7.03. Transportation. Directors or employees who use personal vehicles while on District business travel may be reimbursed for actual miles driven at the current rate allowed by the Internal Revenue Service. Mileage will be computed by the most direct route, and the use of personal vehicles for District travel *must* be approved by Board action **in advance of the travel event**. Subject to the Board's direction and discretion, directors or employees traveling by commercial transportation may receive reimbursement of the actual transportation cost when performing official business, with due consideration of serving the public's best interest.

SECTION 8. INVESTMENTS

8.01. Purpose. This policy has been adopted to establish the principles and criteria by which the District's funds should be invested and secured to:

- a. preserve the principal;
- b. earn interest; and
- c. comply with various legal provisions on the investment and security of the District's funds, including the Public Fund Investment Act.

8.02. Policy of Investment.

- a. The preservation of the District's principal shall be the primary concern of the District officials who are responsible for the investment of District funds. To the extent that the principal is protected, District funds shall be invested to yield the highest possible rate of return, taking into consideration the strength of the financial institution, and complying with any laws or regulations (including arbitrage provisions) and procedures set forth in any bond resolutions or orders, adopted from time to time by the Board, requiring yield restrictions. The District also will maintain sufficient liquidity to provide adequate and timely availability of funds necessary to pay obligations as they become due. Funds of the District shall be invested by the District's officials according to this policy. Any resolution or order adopted by the Board on investment policies or procedures shall be in writing and shall be made available to the public.
- b. District funds shall be invested and reinvested by the Board's investment officer, which the Board must designate as required under Section 2256.005(f) and Section 36.1561 of the Texas Water Code. The General Manager is the designated investment officer of the District, of the Texas Government Code, only in the investment instruments authorized under the Texas Public Funds Investment Act, Chapter 2256, Government Code. The District will use as depositories for its funds and investments only federal or state chartered banks or trust companies with their main office or branch located in the State of Texas in which deposits up to the maximum allowable limits are insured by federal agencies. Such depositories will be approved by the Board of Directors. The principal, *plus accrued interest*, invested in financial institutions according to this policy shall not exceed the FDIC insurance limits or exceed the collateral pledged as security for the District's investments.
- c. It shall be the responsibility of the District's investment officer to invest and reinvest the District funds according to this policy to meet the District's needs and requirements. It shall be the policy of the District that funds shall not remain in any given investment for longer than five years. The Board, by separate resolution, may provide that the investment officer may withdraw or transfer funds from and to the District's accounts on such terms as the Board considers advisable. Providing however, that nothing herein above provided shall authorize any transfer, expenditure, or appropriation of District funds, other than for the District's own account, unless by check or draft signed by two directors

or as authorized by separate Board order or resolution which allows an employee of the District to sign disbursements.

- d. Funds in the District accounts shall be invested by the District's investment officer as follows:
 - 1. *Tax Account:* To receive ad valorem tax collections, penalties, and interest. Disbursements are made for all tax collection costs. When appropriate, and after all collections costs, the funds can be transferred to the General Operating Account, as appropriate.
 - 2. *Operating or General Account:* Funds in this account shall be invested to meet the operating requirements of the District as determined by the annual operating budget of the District, or by Board resolution.

- e. Should total District funds exceed \$250,000, the Board hereby establishes an investment committee, composed of the District's investment officer and at least one director to be selected by the President. The investment committee shall meet quarterly to monitor and review the investments and collateral of the District. The investment officer shall be the chairman of the committee. Monitoring shall be done by using appropriate reports, indices or benchmarks for the type of investment. Information sources may include financial/investment publications, electronic media, software for tracking investments, depository banks, financial advisors, and representatives of investment pools or money market funds. The committee shall report concerning the District's investments transaction for the preceding year describing the investment position of the District at the end of each fiscal year. The report shall be signed by the members of the committee. The committee also shall report to the Board on its review the month following each quarterly meeting.

8.03. Security of District Funds.

- a. It shall be the policy of the district that all funds shall be insured by the FDIC or by collateral pledged to the extent of the fair market value of the amount not insured. The district officials recognize that FDIC insurance is only available *up to a maximum of \$100,000 (including accrued interest) per account* and that the amount of funds at any one financial institution (including branch banks located within the same county) will be totaled to determine the maximum amount of insurance coverage needed.

- b. To the extent district funds are not insured by the FDIC, they shall be secured as provided by Texas Water Code § 36.155(c).
- c. The investment committee shall review the fair market value of the collateral pledged to secure the district's funds on a quarterly basis to ensure that the district's funds are fully secured. The investment committee shall report to the Board on its review the month following each quarterly meeting.
- d. There shall be no sharing or splitting of collateral with other parties or entities. The investment officer shall ensure that the custodian of the collateral shall be an independent third party financial institution and that the collateral shall be pledged only to the district. The investment officer shall obtain safe-keeping receipts from the financial institution.

SECTION 9. PROFESSIONAL SERVICES POLICY

9.01. Purpose. This policy has been adopted to provide for the selection, monitoring, review, and evaluation of the district's professional services contracts. Consultants retained by the district to provide professional services include, but are not limited to, legal, engineering, financial advisor, management, bookkeeping, auditing, and tax collecting. Selection of such consultants shall be based upon their qualifications and experience following the procedures provided in the Professional Services Procurement Act (Texas Government Code, Chapter 2254, Subchapter A).

9.02. Periodic Review. The performance of the consultants providing professional services to the district shall be regularly monitored and reviewed by the Board, and the Board may appoint a professional services committee to provide such monitoring and review to the Board.

SECTION 10. MANAGEMENT POLICY

10.01. Purpose. The Board desires to adopt a policy to ensure better use of management information, including the use of budgets in planning and controlling costs, the establishment of a functioning audit committee, and the use of uniform reporting requirements.

10.02. Accounting Records. District accounting records shall be prepared on a timely basis and maintained in an orderly manner, to comply with generally accepted accounting principles and the requirements of the Texas Commission on Environmental Quality. Such records shall be available for public inspection during regular business hours (8 am - 5pm) at the district's office, located at:

SECTION 11. MISCELLANEOUS

11.01. Open Meeting. The Board officially finds, determines, and declares that these By-Laws, including a Code of Ethics and Policies, were reviewed, carefully considered, and adopted during a regular board meeting on September 22--, 2015 , and that a sufficient written notice of the date, hour, place, and subject of this meeting was posted for the time required by law preceding this meeting, as required by the Open Meetings Act (Government Code Section 551.054), and that this meeting had been open to the public as required by law at all times during which these By-Laws were discussed, considered, and acted upon. The Board further ratifies, approves and confirms such written notice and the contents and posting thereof.

Adopted the 22nd day of September, 2015.

President
Board of Directors

Vice-President
Board of Directors

Secretary
Board of Directors

(Seal)

