



*Proposed*  
**RULES OF THE  
BRUSH COUNTRY  
GROUNDWATER CONSERVATION  
DISTRICT**

Amended:

Effective Date:

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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 and 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~~ 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. “District Act” means the District’s enabling legislation now codified as Chapter 8852, Texas Special District and Local Laws Code.
2. “Federal conservation program” means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.
3. “Groundwater” means water percolating below the surface of the earth.
4. “Groundwater reservoir” means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

5. “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.
6. “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.
7. “Use for a beneficial purpose” means use for:
  - A. ~~agricultural~~Agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
  - B. ~~exploring~~Exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
  - C. ~~any~~Any other purpose that is useful and beneficial to the user.

8. “Subsidence” means the lowering in elevation of the land surface caused by withdrawal of groundwater.
9. “Board” means the board of directors of the district.
10. “Director” means a member of the board.
11. “Public water supply well” means a well that produces the majority of its water for use by a public water system.
12. “Agriculture” means any of the following activities:
  - A. ~~cultivating~~Cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
  - B. ~~the~~The practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
  - C. ~~raising~~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~~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~~Wildlife management; and
  - F. ~~raising~~Raising or keeping equine animals.
13. “Agricultural use” means any use or activity involving agriculture, including irrigation.
14. “Conjunctive use” means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.
15. “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.
16. “Total aquifer storage” means the total calculated volume of groundwater that an aquifer is capable of producing.

17. “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.
18. “Recharge” means the amount of water that infiltrates to the water table of an aquifer.
19. “Inflows” means the amount of water that flows into an aquifer from another formation.
20. “Discharge” means the amount of water that leaves an aquifer by natural or artificial means.
21. “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.
22. “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.
23. “Domestic use” means:
  - A. ~~the~~The use of groundwater by an individual or a household to support domestic activities, including the use of groundwater for:
    1. ~~drinking~~Drinking, washing, or culinary purposes;
    2. ~~irrigating~~Irrigating a lawn or a family garden or orchard;
    3. ~~watering~~Watering domestic animals; or
    4. ~~water~~Water recreation, including aquatic and wildlife enjoyment.
  - B. ~~does~~Does not include the use of water:
    1. ~~to~~To support an activity for which consideration is given or received or for which the product of the activity is sold; or
    2. ~~by~~By or for a public water system.
24. “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.

25. “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.
26. “Small commercial well” means a well equipped with a pump rated at 1.5 horsepower or less used for commercial purposes.
27. “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.
28. “Acre-foot” means the amount of water necessary to cover one acre of land one foot deep, or about 326,000 gallons of water.
29. “Commission” means the Texas Commission on Environmental Quality or TCEQ.
30. “District” means the Brush Country Groundwater Conservation District created under Section 59, Article XVI, Texas Constitution.
31. “Executive director” means the executive director of the Commission.
32. “Executive administrator” means the executive administrator of the Texas Water Development Board.
33. “Exempt well” means a water well that is not required to obtain an operating permit.
34. “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.
35. “Non-Exempt Well” means a water well that is required to obtain an operating permit.
36. “Production Permit” means a permit issued by the District authorizing the ~~drilling, installation, and~~ production off from a non-exempt well.
37. “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.
38. “Person” means any individual, partnership, firm, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, association, or any

- other legal entity.
39. “Production Limit” means a numerical limitation on the annual amount of Groundwater authorized to be produced under a Production Permit. The Production Limit is generally expressed in acre-feet per year or gallons per year.
40. “Variance” means an authorized exception to requirements or provisions of the Rules that is approved by the District in accordance with Rule 1.2.
41. “Water” means groundwater.
42. “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.
43. “Drilling Permit” means a permit issued by the District authorizing the drilling, and installation of a non-exempt well.

## **RULE ~~1.2~~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 ~~13.1.1(6)~~.

### **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 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~~Consider all groundwater uses and needs;
  - 2. ~~develop~~Develop rules that are fair and impartial;
  - 3. ~~consider~~Consider the groundwater ownership and rights;
  - 4. ~~consider~~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~~Consider the goals developed as part of the district's management plan; and
  - 6. ~~not~~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~~Post notice in a place readily accessible to the public at the district office;
  2. ~~provide~~Provide notice to the county clerk of each county in the district;
  3. ~~publish~~Publish notice in one or more newspapers of general circulation in the counties in which the district is located;
  4. ~~provide~~Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (~~h~~H); and
  5. ~~make~~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 (~~e~~C) must include:
1. ~~the~~The time, date, and location of the rulemaking hearing;
  2. ~~a~~A brief explanation of the subject of the rulemaking hearing; and
  3. ~~a~~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. 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~~The person's name;
  2. ~~the~~The person's address; and

3. ~~whom~~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 (~~e~~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~~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~~Prepares a written statement of the reasons for its finding under Subsection A. 1.
- B. Except as provided by Subsection (~~e~~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. The amount of the attorney's fees shall be fixed by the court.
- E. In an enforcement action by a 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 Section 36.122, 36.205, or this section, or under a special law governing a district operating under this chapter, 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 a production permit, except as provided under Rule 9.
- B. 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 annually groundwater withdrawals ~~on a monthly basis as measured by a meter~~annually.
- 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 a [production](#) 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, re-drilling or re-equipping an existing well, or plugging a well;
  2. Production, which allows water to be withdrawn from a non-exempt well;  
~~and~~
  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.

F. A change in the withdrawal or purpose of use of groundwater during the term of a permit issued by the district may not be made unless the District has first approved a permit amendment authorizing the change.

FG. 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.

GH. An application for a permit or a permit amendment must be in writing in a form provided by the District and sworn to.

HI. The following shall be included in the permit or permit amendment application:

1. ~~the~~The name and mailing address of the applicant and the owner of the land on which the well will be located;
2. ~~if~~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~~A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
4. ~~a~~A water conservation plan or a declaration that the applicant will comply with the District's management plan;
5. ~~the~~The location of each well and the estimated rate at which water will be withdrawn;
6. ~~a~~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~~A drought contingency plan, if required by the Board; and
8. ~~a~~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~~ 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~~ if a hydrological report is required, the following calculations will be included:
    - i. ~~time~~ Time drawdown at the property boundary at five year intervals for a 30 year period;
    - ii. ~~distance~~ Distance drawdown. The distance from the pumped well to the outer edges of the cone of depression; and
    - iii. ~~well~~ Well interference.
9. Name and addresses of well owners within ½ mile radius of the location of the proposed well.

I. Notice of application is governed as provided ~~herein~~ within these Rules. Applicants must publish notice ~~of intent to transport any groundwater out of the District. Notice is also required for any application to permit new non-exempt wells or modify existing non-exempt wells to increase production capacity when the well will be completed with an inside casing diameter greater than six (6) inches or a pump size equal to or greater than five horse power and will be used for public water supply, municipal, commercial, industrial, or injection purposes~~ 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 water utility is not required of any applicant if notice is provided to the retail 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~~The application conforms to the requirements prescribed by these rules and is accompanied by the prescribed fees;
  2. ~~the~~The proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
  3. ~~the~~The proposed use of water is dedicated to any beneficial use;
  4. ~~the~~The proposed use of water is consistent with the District's approved management plan;
  5. ~~the~~The maximum allowable production, if any;
  6. ~~the~~The applicant has agreed to avoid waste and achieve water conservation; and
  7. ~~the~~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~~The name and address of the person to whom the permit is issued;
  2. ~~the~~The location of the well;
  3. ~~the~~The date the permit is to expire if no well is drilled;
  4. ~~a~~A statement of the purpose for which the well is to be used;
  5. ~~a~~A requirement that the water withdrawn under the permit be put to beneficial use at all times;
  6. ~~the~~The location of the use of the water from the well;

7. ~~a~~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~~The conditions and restrictions, if any, placed on the rate and amount of withdrawal;
9. ~~any~~Any conservation-oriented methods of drilling and operating prescribed by the district;
10. ~~any~~Any maximum allowable production;
11. ~~a~~A drought contingency plan prescribed by the district; and
12. ~~other~~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 (INSERT DATE), which has not been permitted 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 the ~~December 6, 2012~~ \_\_\_\_\_ until the application was made, in addition to the normal requirements, past ~~water-use~~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 ~~water use~~production fee, and any required past ~~water-use~~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 \_\_\_\_\_, based on information submitted with the application.

#### **RULE 10. MAXIMUM ALLOWABLE PRODUCTION**

- A. The amount of annual maximum production specified in the production permit for a non-exempt ~~well shall~~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 water utility, the District will consider the service needs and service area of the retail water utility in addition to or in lieu of surface area owned or operated by the retail 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~~The modeled available groundwater determined by the executive administrator of the Texas Water Development Board;
  2. ~~the~~The executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules;
  3. ~~the~~The amount of groundwater authorized under permits previously issued by the District;
  4. ~~a~~A reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and
  5. ~~yearly~~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~~ 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, a production 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 ~~one year~~ 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 if:
- ~~(1) the~~1. The terms and conditions of the permit (including maximum authorized withdrawal) are not changed;
  - ~~(2) the~~2. The permittee is in compliance or has a compliance agreement with all terms of the permit; and
  - ~~(3) the~~3. The permittee has resolved all enforcement actions, if any, for the permit.

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

- 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.

## **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. Initial permit 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; and
10. Change the well pump.

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

1. Initial applications requesting a withdrawal rate of more than 25 gpm;
2. Transport of water outside of the District;
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; and
5. Any other application the Board determines should have an opportunity for a hearing.

~~B~~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 ~~setting of the date, and~~ the ~~District~~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.

~~C. The application will expire if the information requested in the application is not provided to the District within 60 days of written request.~~

~~D. 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.~~

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 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), ~~spacing of~~ nonexempt wells capable of producing over 10,000,000 gallons annually 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 submitted with the application for the well, unless waived by the General Manager. The Board may, among other things, require wells to be spaced a certain distance from property lines or adjoining wells.

### **RULE 14. EXEMPT WELLS**

- A. The District provides an exemption from the District requirement to obtain a permit for:
1. ~~drilling~~Drilling or operating a well used solely for domestic use or for providing water for livestock or poultry;
  2. ~~drilling~~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~~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~~Drilling or operating a well used for agricultural purposes, if the well is drilled, completed, or equipped so that it is incapable of annual production that does not exceed one acre-foot per contiguous surface acre owned or operated per aquifer level;
  5. ~~drilling~~Drilling or operating a small commercial well;
  6. ~~drilling~~Drilling or operating a well used for a privately-owned small water system;
  7. ~~drilling~~Drilling a hole or operating a water well authorized under a permit issued by the Railroad Commission of Texas Under Chapter 131, Natural Resources Code, associated with uranium exploration activities;
  8. ~~drilling~~Drilling a hole or operating a water well authorized under a permit issued by the Texas Commission of Texas Commission on Environmental Quality regulation 30 TAC, Underground Injection Control; or,
  9. ~~a~~A water ~~well~~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~~A)(1).
- C. The District may cancel a previously granted exemption, and may require a production permit for or restrict production from a well, if:

1. ~~the~~The groundwater withdrawals that were exempted under Subsection (~~a~~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~~The groundwater withdrawals that were exempted under Subsection (~~a~~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.
- 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~~The total amount of water withdrawn during the month;
  2. ~~the~~The quantity of water necessary for mining activities; and
  3. ~~the~~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~~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~~Register the well in accordance with rules promulgated by the District; ~~and~~
  2. ~~equip~~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~~ 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~~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~~The existence of the well;
  - 2. ~~the~~The legal description of the property on which the well is located;

3. ~~the~~The approximate location of the well on the property;
  4. ~~the~~The failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;
  5. ~~the~~The closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
  6. ~~the~~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~~The availability of water in the District;
  2. ~~the~~The conditions of any aquifer that overlies the District;
  3. ~~subsidence~~Subsidence in the District;
  4. ~~existing~~Existing permit holders or other groundwater users in the District; and
  5. ~~any~~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~~The amount of water that may be transferred out of the District; and
  - 2. ~~the~~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. 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.
- 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. ~~The general manager or board may schedule a hearing on~~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 ~~applications received by the District as necessary.~~
- 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. ~~C.~~—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. ~~D.~~—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~~The name of the applicant;
  2. ~~the~~The address or approximate location of the well or proposed well;
  3. ~~a~~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~~The time, date, and location of the hearing; and
  5. ~~any~~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~~Post notice in a place readily accessible to the public at the District office;
  2. ~~provide~~Provide notice to the county clerk of each county in the District; and
  3. ~~provide~~Provide notice by:
    - a. ~~regular~~Regular mail to the applicant;
    - b. ~~regular~~Regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (~~d~~D) below; and
    - c. ~~regular~~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 (~~eC~~)(3)(~~Bb~~) 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~~The person's name;
- B. ~~the~~The person's address; and
- C. ~~whom~~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~~A quorum of the board;
  - 2. ~~an~~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~~The State Office of Administrative Hearings under Rule 19.14.
- B. Except as provided by Subsection (~~eC~~) 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~~Convene the hearing at the time and place specified in the notice;
  - 2. ~~set~~Set any necessary additional hearing dates;

3. ~~designate~~Designate the parties regarding a contested application;
  4. ~~establish~~Establish the order for presentation of evidence;
  5. ~~administer~~Administer oaths to all persons presenting testimony;
  6. ~~examine~~Examine persons presenting testimony;
  7. ~~ensure~~Ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
  8. ~~prescribe~~Prescribe reasonable time limits for testimony and the presentation of evidence; and
  9. ~~exercise~~Exercise the procedural rules adopted by the District.
- 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~~Refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
  2. ~~determines~~Determines how the costs of the procedure shall be apportioned among the parties; and

3. ~~appoints~~Appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

#### **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~~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 required under Rule 19.8 for a method of recording the hearing provided by Subsection (~~a~~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**

- A. Except as provided by Subsection (~~e~~E), the presiding officer shall submit a report to the board not later than the 30th day after the date a hearing is concluded.
- B. The report must include:
  1. ~~a~~A summary of the subject matter of the hearing;

2. ~~a~~A summary of the evidence or public comments received; and
  3. ~~the~~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 report to:
1. ~~the~~The applicant; and
  2. ~~each~~Each person who provided comments or each designated party.
- D. A person who receives a copy of the report under Subsection (~~e~~C) may submit to the board written exceptions to the 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 report to the board under this rule.

### **RULE 19.9. BOARD ACTION**

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.

### **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 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 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~~ 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~~If a request for rehearing is filed on time, on the date:
  - a. ~~the~~The board denies the request for rehearing; or
  - b. ~~the~~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 (b), 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~~Drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump;
  2. ~~the~~The spacing of water wells or the production of groundwater; or
  3. ~~transferring~~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. HEARING REQUEST AND AFFECTED PERSON DETERMINATION**

- A. Hearing Requests. The following may request a contested hearing under these Rules:
  1. ~~the~~The Board;
  2. ~~the~~The General Manager;
  3. ~~the~~The applicant; and

4. ~~affected~~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 hearing request by an affected person (as determined in Subsection F. below) must substantially comply with the following:
1. ~~give~~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~~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~~Request a contested hearing;
  4. ~~if~~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."; and,
  5. ~~if~~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 ~~shall be granted~~:
1. May be granted by the ~~General Manager~~Board if the request is made by ~~the applicant, the Board, or~~ the General Manager; ~~or~~and
  2. ~~by~~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 ~~Board, or the General Manager and the~~ request must also satisfy the following:

- a. ~~is~~Is based solely on concerns within the jurisdiction and authority of the District;
- b. ~~is~~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~~Complies with all of the requirements of A through D above; and,
- d. ~~is~~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.

At a preliminary hearing conducted by the District before the commencement of an evidentiary hearing, the Presiding Officer shall determine 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. 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. 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~~Whether the interest claimed is one protected by the Act or Texas Water Code Chapter 36;
  - b. ~~distance~~Distance between the regulated activity and the affected interest;
  - c. ~~whether~~Whether a reasonable relationship exists between the interest claimed and the activity regulated;

- d. ~~likely~~Likely impact of the regulated activity on the use of groundwater interests of the person; and
  - e. ~~for~~For governmental entities, their statutory authority over or interest in the issues relevant to the application.
4. An applicant is an affected person.

**RULE 19.14. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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 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.

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, 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.

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.

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.

**RULE ~~19.16.~~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 ~~19.17.~~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 ~~19.18.~~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.

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Padding cell	

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