

**RULES OF THE BRAZOS VALLEY
GROUNDWATER CONSERVATION DISTRICT**

Notice of the Rules of the Brazos Valley Groundwater Conservation District was published on

In accordance with Section 59 of Article XVI of the Texas Constitution and Act of May 26, 2001, 77th Leg., R.S., ch. 1307, 2001 Tex. Gen. Laws (HB 1784), and the non-conflicting provisions of Chapter 36, Texas Water Code the following Rules are hereby ratified and adopted as the Rules of this District by its Board. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended.

The Rules, regulations, and modes of procedure herein contained are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State and the Rules of this District. To the end that these objectives are attained, these Rules will be so construed.

These Rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case may these Rules be construed as a limitation or restriction upon the exercise of powers, duties, and jurisdiction conferred by law. These Rules will not limit or restrict the amount and accuracy of data or information that may be required for the proper administration of the law.

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT**

DISTRICT RULES

The District is authorized under § 36.101 of the Texas Water Code to make and enforce Rules, including Rules limiting groundwater production and 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 Chapter 36 of the Texas Water Code. The District incorporates by reference all authorities granted to the District by the District Act and Chapter 36 of the Texas Water Code into its District Rules. These Rules are effective as of September 8, 2005.

RULE 1.1. DEFINITIONS OF TERMS

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

- (1) "Acre-foot" means the amount of water necessary to cover one acre of land one foot deep, or about 325,000 gallons of water.
- (2) "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.
- (3) "Agricultural use" means any use or activity involving agriculture, including irrigation.
- (4) "Board" means the Board of Directors of the Brazos Valley Groundwater Conservation District.
- (5) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

- (6) "Contiguous acreage" means land with the same continuous boundary within the District that is owned or legally controlled for the purpose of groundwater withdrawal by the well owner or operator. A majority of the contiguous acreage assigned to the well shall bear a reasonable reflection of the cone of depression impact near the pumped well, as based on the best available science. Land that is owned or legally controlled by the well owner or operator that is separated only by a road, highway or river from other land owned or controlled by the well owner or operator is contiguous.
- (7) "De-watering Well" means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.
- (8) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.
- (9) "District" means the Brazos Valley Groundwater Conservation District.
- (10) "District Act" means the Act of May 26, 2001, 77th Leg., R.S., ch. 1307, 2001 Tex. Gen. Laws (HB 1784).
- (11) "District Office" means the office of the District as established by resolution of the Board.
- (12) "Drilling Permit" means a permit for a water well issued or to be issued by the District allowing a water well to be drilled.
- (13) "Existing Well" means a groundwater well within the District's boundaries, for which drilling or significant development of the well commenced before the effective date of these Rules.
- (14) "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.
- (15) "Groundwater" means water located beneath the earth's surface within the District but does not include water produced with oil in the production of oil and gas.
- (16) "Hearing Body" means the Board, any committee of the Board, or a Hearing Examiner at any hearing held under the authority of the District Act.
- (17) "Hearing Examiner" means a person appointed by the Board of Directors to conduct a hearing or other proceeding.
- (18) "Historic Use" means the highest annual amount of water withdrawn from an active groundwater well in the District for an actual beneficial use, prior to the adoption date of the District's first set of Rules.
- (19) "Inflows" means the amount of water that flows into an aquifer from another formation.

(20) "Injection well" includes:

- (a) an air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;
- (b) a cooling water return flow well used to inject water previously used for cooling;
- (c) a drainage well used to drain surface fluid into a subsurface formation;
- (d) a recharge well used to replenish the water in an aquifer;
- (e) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;
- (f) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
- (g) a subsidence control well used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; or
- (h) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

- (21) "Landowner" means the person who bears ownership of the land surface.
- (22) "Leachate Well" means a well used to remove contamination from soil or groundwater.
- (23) "Managed available groundwater" means the amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer as determined under Section 36.108.
- (24) "Management Area" means an area designated and delineated by the Texas Water Development Board under Chapter 35 as an area suitable for management of groundwater resources.
- (25) "Monitoring Well" means a well installed to measure some property of the groundwater or aquifer it penetrates, and does not produce more than 5,000 gallons of groundwater per year.
- (26) "New Well" means any Well other than an existing well.
- (27) "New Well Application" means an application for a permit to drill and operate a new well.
- (28) "Open Meeting Law" means Chapter 551, Texas Government Code.
- (29) "Operating Permit" means a permit issued by the District for a water well, allowing groundwater to be withdrawn from a water well for a designated period.
- (30) "Property legally assigned to a well" is property owned or legally controlled for purposes of groundwater withdrawal by a well owner or operator and assigned to a well by the owner or operator.

(31) "Public Information Act" means Chapter 552, Texas Government Code.

- (32) "Public water supply well" means a well that produces the majority of its water for use by a public water system.
- (33) "Person" includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- (34) "Presiding Officer" means the President, Vice-President, Secretary, or other Board member presiding at any hearing or other proceeding or a Hearing Examiner conducting any hearing or other proceeding.
- (35) "Produce or Production" means extracting groundwater by pumping or by another method.
- (36) "Rate of Production" means the amount of groundwater that is stated in the District's operating permits that limits the number of gallons of groundwater produced per minute ("gpm"), with a maximum annual cap of overall groundwater production specified in acre-feet. For example, a District operating permit could state that the authorized rate of production is 1000 gpm, not to exceed a total amount of 5000 acre-feet of groundwater production per year.
- (37) "Recharge" means the amount of water that infiltrates to the water table of an aquifer.
- (38) "Rules" means the Rules of the District compiled in this document and as may be supplemented or amended from time to time.
- (39) "Texas Rules of Civil Procedure" and "Texas Rules of Civil Evidence" mean the civil procedure and evidence Rules as amended and in effect at the time of the action or proceeding. Except as modified by the Rules of the District, the rights, duties, and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure or the Texas Rules of Evidence are the same as a court acting under those Rules.
- (40) "Transport" means transferring or moving groundwater outside the District.
- (41) "Transport Permit" means an authorization issued by the District allowing the transport of a specific quantity of groundwater outside the District's boundaries for a designated time period. All applicable permit Rules apply to transport permits.
- (42) "Use for a Beneficial Purpose or Beneficial Use" means:
 - (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 and that does not cause waste.
- (43) "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 Texas Commission on Environmental Quality under Chapter 26, Texas Water Code;
 - (f) groundwater pumped for irrigation that escapes as irrigation tail water 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, Texas Water Code.
- (44) "Water Meter" means a water flow measuring device that can accurately record the amount of water produced during a measured time.
- (45) "Well" means any facility, device, or method used to withdraw groundwater from within the District's boundaries.
- (46) "Well Owner" or "Well Operator" means the person who owns a possessory interest in: (1) the land upon which a well or well system is located or to be located; (2) the well or well system; or (3) the legal right to occupy the property and to capture groundwater withdrawn from a well or well system located on the property. The term "well owner" includes but is not limited to a person that holds a well permit for the well.
- (47) "Well System" means a well *or* group of wells tied to the same distribution or transportation system.
- (48) "Withdraw or Withdrawal " means extracting groundwater by pumping or by another method.
- (49) "Windmill" means a wind-driven or hand-driven device that uses a piston pump to remove groundwater.

RULE 1.2. PURPOSE OF RULES

These Rules are adopted to achieve the provisions of the District Act and accomplish its

purposes.

RULE 1.3. USE AND EFFECT OF RULES

The District uses these Rules in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They may not be construed as a limitation or restriction on the exercise of any discretion nor be construed to deprive the District or Board of the exercise of any powers, duties, or jurisdiction conferred by law, nor be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act.

RULE 1.4. HEADINGS AND CAPTIONS

The section and other headings and captions contained in these Rules are for reference purposes only. They do not affect the meaning or interpretation of these Rules in any way.

RULE 1.5. CONSTRUCTION

A reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the Water Code. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code.

RULE 1.6. METHODS OF SERVICE UNDER THE RULES

Except as otherwise expressly provided in these Rules, any notice or documents required by these Rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three (3) days will be added to the prescribed period. Where service by one or more methods has been attempted and failed, the service is complete upon notice publication in a general circulated newspaper in Brazos and Robertson Counties.

RULE 1.7. SEVERABILITY

If any one or more of the provisions contained in these Rules are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other Rules or provisions of these Rules, and these Rules must be construed as if such invalid, illegal, or unenforceable Rules or provision had never been contained in these Rules.

SECTION 2. BOARD

RULE 2.1. PURPOSE OF BOARD

The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District for managing, conserving, preserving, protecting, and recharging the groundwater within the District, and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable Rules and other orders.

RULE 2.2. BOARD STRUCTURE, OFFICERS

The Board consists of the members appointed and qualified as required by the District Act. The Board will elect one of its members to serve as President, to preside over Board meetings and proceedings; one to serve as Vice President to preside in the absence of the President; one to serve as Secretary and/or Secretary/Treasurer to keep a true and complete account of all meetings and proceedings of the Board, and any other officer or assistant officers as the Board may deem necessary. Members and officers serve until their successors are elected or appointed and sworn in, in accordance with the District Act and these Rules.

RULE 2.3. MEETINGS

The Board will hold a regular meeting at least once each quarter as the Board may establish from time to time by resolution. At the request of the President, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held according to the Texas Open Meetings Law.

RULE 2.4. COMMITTEES

The President may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees. Committee members serve at the pleasure of the President.

SECTION 3. DISTRICT STAFF

RULE 3.1. GENERAL MANAGER

The Board may employ or contract with a person to manage the District, and title this person General Manager. The Board may delegate to the General Manager full authority to manage and operate the offices of the District subject only to orders of the Board. The Board will determine the salary and review the position of General Manager each year at the beginning of the third quarter of every fiscal year. The General Manager, with approval of the Board, may employ or contract with all persons necessary for the proper handling of business and operation of the District.

If the Board has not appointed a General Manager, the Board shall act to manage the District and may perform any function of the General Manager identified by these Rules.

SECTION 4. DISTRICT

RULE 4.1. MINUTES AND RECORDS OF THE DISTRICT

All documents, reports, records, and minutes of the District are available for public inspection and copying following the Texas Open Records Act. Upon written application of any person, the District will furnish copies of its public records, and charge a copying fee pursuant to policies established by the District. A list of the charges for copies will be furnished by the District.

RULE 4.2. CERTIFIED COPIES

Requests for certified copies must be in writing. Certified copies will be made under the direction of the Board of Directors. A certification charge and copying charge may be assessed, pursuant to policies established by the Board of Directors.

SECTION 5. DISTRICT MANAGEMENT PLAN AND JOINT PLANNING

RULE 5.1. DISTRICT MANAGEMENT PLAN

The District Management Plan, and any amendments thereto, shall be developed using the District's best available data and forwarded to the Region G Regional Water Planning Group for consideration in their planning process. The District Management Plan must also use the groundwater availability modeling information provided by the Texas Water Development Board in conjunction with any available site-specific information provided by the District and acceptable to the Texas Water Development Board. The District shall use the Rules of the District to implement the Management Plan. The Board will review the plan at least every fifth year and shall adopt amendments as necessary, after notice and hearing.

RULE 5.2. JOINT PLANNING IN MANAGEMENT AREA

- (a) Upon completion and approval of the District's comprehensive Management Plan, as required by §§36.1071 and 36.1072, Texas Water Code, the District shall forward a copy of the new or revised Management Plan to the other groundwater districts in its Texas Commission on Environmental Quality designated Management Area. The Board shall consider the plans of the other districts individually and shall compare them to other management plans then in force in the Management Area.
- (b) The presiding officer, or the presiding officer's designee, of the District shall meet at least annually to conduct joint planning with the other districts in the Management Area and to review the management plans and accomplishments for the Management Area. In reviewing the management plans, the districts shall consider:
 - (1) the goals of each management plan and its impact on planning throughout the Management Area;
 - (2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the Management Area generally;

- (3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the Management Area; and
 - (4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.
- (c) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall establish desired future conditions for the relevant aquifers within the management area. In establishing the desired future conditions of the aquifers under this section, the districts shall consider uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another. The districts may establish different desired future conditions for:
- (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
 - (2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.
- (d) The desired future conditions established under Subsection (c) must be adopted by a two-thirds vote of the district representatives present at a meeting.
- (1) at which at least two-thirds of the districts located in whole or in part in the management area have a voting representative in attendance; and
 - (2) for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, Government Code.
- (e) Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.
- (f) A joint meeting of the districts in the Management Area, under this section, must be held in accordance with the Open Meetings Act, Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act.
- (g) A district or person with a legally defined interest in the groundwater within the management area may file a petition with the Texas Commission on Environmental Quality requesting an inquiry if a district refused to join in the planning process or the process failed to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that:
- (1) a district in the Groundwater Management Area has failed to adopt Rules;
 - (2) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the groundwater management area established during the joint planning process;
 - (3) the groundwater in the Management Area is not adequately protected by the Rules

- adopted by a district; or
 - (4) the groundwater in the Groundwater Management Area is not adequately protected due to the failure of a district to enforce substantial compliance with its Rules.
- (h) Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:
 - (1) dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or
 - (2) select a review panel as provided in Subsection (i).
- (i) If the petition is not dismissed under Subsection (h), the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the groundwater management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.
- (j) Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.
- (k) In its report, the review panel shall include:
 - (1) a summary of all evidence taken in any hearing on the petition;
 - (2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and
 - (3) any other information the panel considers appropriate.
- (l) The review panel shall submit its report to the commission. The commission may take action under Section 36.3011, Texas Water Code.
- (m) A person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area.
- (n) The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to

take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.

- (o) The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the groundwater management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.
- (p) The districts shall submit the conditions established under this section to the executive administrator. The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the managed available groundwater in the management area based upon the desired future condition of the groundwater resources established under this section.
- (q) Districts located within the same Management Areas or in adjacent Management Areas may contract to jointly conduct studies or research, or to construe projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities.

SECTION 6. SPACING REQUIREMENTS

RULE 6.1. REQUIRED SPACING

To minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, and to prevent waste, the District will enforce spacing requirements on all new wells in the District. Spacing requirements do not apply to wells drilled in the Brazos River Alluvium formation or wells that are exempt under Rule 8.1.

As stated below, there are two types of spacing requirements, both of which apply to all new non-exempt wells in the District, other than those in the Brazos River Alluvium. The first spacing rule is the distance that the well site must be from the perimeter of the real property that is assigned to that well under Rule 7.1(2). The second spacing rule is the distance that the well site must be from all permitted non-exempt wells and all registered exempt wells.

1. Spacing of new non-exempt wells completed in the Simsboro Formation shall be one-half foot per gallon per minute ($\frac{1}{2}$ ft / gpm) of production capacity from the perimeter of the property that is legally assigned to that well.

A new well may not be drilled within a minimum of 50 feet from the perimeter of the property that is legally assigned to that well.

2. Spacing of new non-exempt wells completed in the Simsboro Formation in the District shall be one foot per one gallon per minute (1 ft / gpm) of production capacity from a, permitted, or registered well in the Simsboro Formation that is in the District.
3. Spacing of all other new non-exempt wells completed in the District, other than the Brazos River Alluvium, shall be two foot per one gallon per minute (2 ft / gpm) of production capacity from a permitted, or registered well in the same aquifer formation that is in the District.

RULE 6.2. EXCEPTIONS TO SPACING REQUIREMENTS

1. If the applicant presents waivers signed by the landowners and/or registration/permit holders that are located within the spacing-requirement circumference of the applied-for well(s), stating that they have no objection to the proposed location of the well site, a waiver to the spacing requirements may be granted for the new proposed well location.

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A waiver may be submitted to the District by a single permit holder to waive the spacing requirements between the permit holder's own wells within in a single well field. The District may waive the spacing requirements on the well field if the applicant submits adequate evidence showing that the increased cone of depression caused by the well field will not increase the impact on nearby existing wells, or cause an overall reduction in the total amount of groundwater available within the District, any greater than the spacing requirements under rule 6.1(2)(3).

2. Providing an applicant can show, by clear and convincing evidence, good cause why a new well should be allowed to be drilled closer than the required spacing of Rule 6.1, the issue of spacing requirements will be considered during the permitting process. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board may limit the production of the well(s) to minimize injury to existing wells or the aquifer.
3. The Board or General Manager, if authorized by the Board, may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing spacing requirements.
4. Well spacing Rules do not apply to wells completed in the Brazos River Alluvium.
5. Well spacing Rules do not apply to wells that are exempt under Rule 8.1. However, non-exempt wells are required to observe spacing requirements from exempt wells that are registered with the District.

SECTION 7. PRODUCTION LIMITATIONS

RULE 7.1. MAXIMUM ALLOWABLE PRODUCTION

To minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, and to address the potential loss of opportunity to drill a new well because of spacing requirements, and to prevent waste, the District adopts the following Rules to regulate the production of groundwater:

(1) Availability Goal

The District has adopted initial Availability Goals that are listed in the District's Certified Management Plan, for the following aquifer formations: the Brazos River Alluvium; the Carrizo-Wilcox, including the Simsboro Formation; the Queen City; the Sparta; and the Yegua. The adopted Availability Goals are supported by the hydrogeological data of the Region G Water Planning Group, the Texas Water Development Board, and the District's hydrologist. The District's Certified Management Plan may be revised to amend the initial Availability Goals based on new and additional data received by the District.

The adopted Availability Goals will be applied in reviewing permit applications. Groundwater production on new permit applications and increased use by historic users may be limited in accordance with the availability goal, as supported by the best available science, in a fair and impartial manner, regardless of type or location of use.

(2) Production Based Acreage

A permit holder's groundwater production for a new non-exempt well drilled in the Simsboro Formation, is limited by the number of contiguous acres that are legally assigned to the well site. A majority of the contiguous acreage assigned to the well shall bear a reasonable reflection of the cone of depression impact near the pumped well, as based on the best available science. The amount of groundwater production based on the assigned contiguous acreage will be determined by the following formula:

$$\frac{\left(\begin{array}{c} \text{Well Production} \\ \text{Capacity in} \\ \text{Gallons/Minute} \end{array} \times \begin{array}{c} \text{District Spacing} \\ \text{Requirement} \\ \text{Between Wells} \end{array} \right)^2 \times \pi}{43,560} = \begin{array}{c} \text{Total number of} \\ \text{contiguous acres} \\ \text{required to be assigned} \\ \text{to the well site} \end{array}$$

Example: $\frac{(2500\text{gpm} \times 1 \text{ ft/gpm})^2 \times \pi}{43,560} = 451 \text{ acres}$

Therefore, under this example, to be permitted for a well with a maximum capacity of 2500 gpm, the land assigned to that well must encompass 451 contiguous acres.

More than one well may be assigned to the production acreage at the discretion of the Board as long as the spacing requirements are met.

The maximum well pumping capacity denoted in gallons per minute in an operating permit does not mean that the well is authorized by the District to pump that maximum

capacity. The authorized amount of water to be produced annually by a permittee is not tied to the pump size. The authorized withdrawal amount of groundwater is stated in each well permit as the rate of production, which authorizes a maximum gpm production, not to exceed a specified number of acre-feet of groundwater production each year.

The permitted groundwater production capacity is also subject to the spacing requirements in Section 6, as well as the availability, production, and beneficial use limits in Section 7.

(3) 3000 gpm Production Limit

All new wells within the District that are drilled in the Simsboro Formation, must be designed and equipped to not exceed a maximum production limit of 3000 gpm under normal operating conditions. The District will also adopt production limits for other aquifer formations within the District, as supported by the best available science.

(4) Beneficial Use

Production limits on wells will be based on evidence of beneficial use submitted in Operating Permit applications.

RULE 7.2. DEPLETION MANAGEMENT ZONES

- (a) Based on the best available science, the District may designate Depletion Management Zones in areas of the District that are experiencing significant drawdowns of the aquifer levels, which may be caused by concentrated groundwater pumping. Within designated Depletion Management Zones, the District may adopt different production limitations to alleviate the depletion stress on the aquifer(s). Management strategies within the designated Depletion Management Zones may include, but are not limited to, a reduction in groundwater production of existing and future permits and increased spacing requirements.

Deleted:

SECTION 8. REGISTRATION AND PERMITTING

RULE 8.1. EXCLUSIONS AND EXEMPTIONS

The permit requirements in Section 8 do not apply to:

- (a) all groundwater wells in Brazos and Robertson counties used solely for domestic use or for providing water for livestock or poultry that are either drilled, completed, or equipped so that they are incapable of producing more than 50,000 gallons of groundwater per day;
- (b) A groundwater well drilled or operated within the District under a permit issued by the Railroad Commission of Texas is under the exclusive jurisdiction of the Railroad Commission and is exempt from regulation by the District.
- (1) Groundwater produced in an amount authorized by a Railroad Commission permit may be used within or exported from the District without a permit from the District.
- (2) To the extent groundwater is produced in excess of Railroad Commission authorization,

the holder of the Railroad Commission permit must apply to the District for the appropriate permit for the excess production and is subject to the applicable regulatory fees.

- (3) Groundwater produced from a well under the jurisdiction of the Railroad Commission is generally exempt from District fees. However, the District may impose either a pumping fee or an export fee on groundwater produced from an otherwise exempt mine well that is used for municipal purposes or by a public utility. Any fee imposed by the District under this subsection may not exceed the fee imposed on other groundwater producers in the District.

RULE 8.2. REGISTRATION OF EXEMPT WELLS

- (a) All water wells exempt under Rule 8.1 from the requirement to obtain a permit must be registered with the District by the well owner or the well operator in order to be protected by the District, as authorized by Chapter 36 of the Texas Water Code. The District will request and encourage compliance. If the exempt well is in existence on the effective date of these Rules, the well owner or operator should file with the District on form(s) prescribed by the General Manager an application for Certificate of Registration. Existing exempt wells will be registered in accordance with the application schedule adopted by the District. After review and determination by the General Manager that the well is exempt, the owner or operator shall be issued a Certificate of Registration. No fee will be charged for the registration of exempt wells.
- (b) For a new well that is exempt under Rule 8.1, a well registration form must be submitted to the District prior to the well being drilled. The applicant and/or the well driller violate the District's Rules and Chapter 36, Texas Water Code, by drilling or causing to be drilled, a well(s) without prior authorization from the District;
- (c) New exempt water wells shall be equipped and maintained so as to conform to the District's Rule 12.3 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.

RULE 8.3. PERMITTING OF NON-EXEMPT WELLS

- (a) Drilling Permit. No person, including a well owner or well driller, shall construct or drill a new well without first obtaining a drilling permit. An application for a drilling permit shall accompany an operating permit application for the same well(s), and must be completed in accordance with Rule 8.4.

Permit applications for new wells will be processed according to the adopted permitting schedule. If a new well is drilled prior to the District's acceptance of permit applications for new wells, then the well owner may proceed at their own risk, but will be required to adhere to all of the Rules listed herein. The well owner will also be required to submit an application for the well in accordance with the adopted schedule. The District gives no assurances that a permit will be granted for the new well. The permit owner must give the District notice of the new well prior to the beginning of the construction.

(b) Operating Permit.

- (1) No person shall modify, alter or operate a new well without an operating permit, unless the well is exempt under Rule 8.1.
- (2) After the adoption of these Rules, the District will adopt a schedule by which all well operators must submit their applications for an operating permit. After the established deadline for filing applications for operating permits for an existing non-exempt well has passed, no person shall operate an existing well unless an application is pending with the District or has been granted.
- (3) Except as provided by Rule 11.1(a), no person shall modify or alter an existing well or alter the size of a pump without an operating permit, unless the well is exempt under Rule 8.1.

(c) Before granting or denying a drilling and/or operating permit for a well, the District shall consider whether:

- (1) the application conforms to the requirements prescribed by these Rules and Chapter 36, Texas Water Code, and is accompanied by the prescribed fees, and is therefore Administratively Complete;
- (2) the applicant violated the District's Rules and Chapter 36, Texas Water Code, prior to submitting its application to the District by either drilling or operating a well(s) without a permit;
- (3) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
- (4) the proposed use of water is dedicated to a beneficial use and whether sufficient evidence of an intended beneficial use is presented;
- (5) the proposed use of water is consistent with the District's Certified Water Management Plan, including the District's Availability Goals;
- (6) the applicant has agreed to avoid waste and achieve water conservation;
- (7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure; and
- (8) would not be otherwise contrary to the public welfare.

(d) The District may impose more restrictive permit conditions on new permit applications and applications for increased use by historic users, provided that:

- (1) such limitations apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;

- (2) such limitations bear a reasonable relationship to the existing District Management Plan; and
- (3) such limitations are reasonably necessary to protect existing use.
- (e) Permits and permit amendments may be issued subject to the Rules promulgated by the District and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.
- (f) Changes in the amount or rate of withdrawal or use of groundwater under a District permit may not be made without the prior approval of a permit amendment issued by the District.
- (g) Historic Use. The District shall preserve historic or existing groundwater use in the District before the effective date of the District's Rules, to the maximum extent practicable, consistent with the District's Management Plan. Historic use of groundwater may only be preserved for the actual use of the water from a particular aquifer, and cannot be transferred to a different use and may not be withdrawn from a different aquifer. Therefore, changes in withdrawal and use of groundwater under a historic use operating permit may not be made without prior approval of the District, and such changes will jeopardize the historic use preservation. Evidence of historic use must be presented to the District before such use may be preserved. For agricultural irrigation wells, the District shall not grant over 2 acre-feet per irrigated acre as historic use absent actual evidence of production, providing that the applicant's well is capable of producing the requested withdrawal amount. Examples of the required evidence may be well meters, fuel consumption records, and FSA records. For non-exempt wells in existence before the effective date of these Rules, an application for a historic use-operating permit must be submitted to the District by December 31, 2006.

Historic use operating permits may be amended by the District in the future with reference to the drilling, equipping, completion, or alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

- (h) All groundwater production from non-exempt wells in the District is required to be metered, except for groundwater produced from wells in the Brazos River Alluvium aquifer. The District maintains the discretion to require meters on wells in the Brazos River Alluvium aquifer.

RULE 8.4. APPLICATIONS

Each original application for a certificate of registration, water well drilling permit, operating permit, transport permit, and permit renewal or amendment requires an application by the applicant. Applications for multiple wells may be combined if submitted by the same applicant. Application forms will be provided by the District and furnished to the applicant by request. The District will hold

hearing(s) on a permit application(s) in accordance with Section 14 of the District's Rules.

An application shall be in writing and sworn and shall contain:

- (1) the name and mailing address of the applicant and the name and address of the owner of the land, if different from the applicant, on which the well is to be located;
- (2) if the applicant is not the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;
- (3) for exempt wells, a statement regarding the basis for asserting that the well will be exempt under Rule 8.1.
- (4) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose and any evidence supporting the authenticity of the intended beneficial use;
- (5) except for exempt wells and operating permits for Existing wells based on historic use, availability of feasible and practicable alternative supplies to the applicant;
- (6) except for exempt wells, wells in the Brazos River Alluvium, and wells not capable of producing more than 250 gallons per minute:
 - (A) in the case of wells capable of producing over 250 gallons per minute but less than 500 gallons per minute: an evaluation of the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the District;
 - (B) in the case of wells capable of producing over 500 gallons per minute: a study shall be conducted by a registered professional evaluating the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the District. Five copies of the report shall be submitted with the permit application.
 - (C) the District may adopt a guidance document to specify the required contents of the hydrogeological report.
 - (D) for a single well application, an applicant may request that the District engage its hydrologist to complete the required report specified in this subsection. The District has complete discretion to accept or deny the applicant's request. If the District does agree to have its hydrologist perform the report, then the applicant is required to pay for the District's actual costs of conducting the hydrogeological study. The District's hydrologist will not perform a report for a multiple well application or for multiple single-well applications that are submitted less than 24 months apart.
- (7) the applicant's water conservation plan and, if any subsequent user of the water is a municipality or entity providing retail water services, the water conservation plan of that municipality or entity shall also be provided along with a copy of the contract

between the applicant and any subsequent user of the water, indicating that the applicant and that municipality or entity will comply with the District's Management Plan.

- (8) the location of the well(s) and the estimated rate at which water will be withdrawn and where the water is proposed to be used;
- (9) a well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the District;
- (10) The identity of the well driller, including the well driller's license number; and,
- (11) Except for exempt wells and wells in the Brazos River Alluvium aquifer formation; proof of notification of the application to all landowners and/or registration/permit holders that are located within the spacing-requirement circumference of the applied-for well(s), along with the publisher's affidavit showing publication of the notice.

RULE 8.6. OPERATING PERMIT TERM

(a) An operating and drilling permit for a well or well site will automatically expire within three years from its issuance if the permitted well(s) has not been completed or is not significantly under development.

(b) Unless specified otherwise by the Board or these Rules, operating permits are effective for five-year terms. At the end of each five-year term, the permit shall be renewed by the Board for an additional five-year term, upon submittal of a permit renewal application by the permit holder that provides adequate evidence of continued beneficial use for the permitted amount of water withdrawal. The District shall send notices to permit holders that contain the permit renewal applications, prior to permit expirations.

(c) The District may amend or revoke an operating permit at anytime if there is evidence of:

- (1) the owner or operator of the well or well system has operated in violation of their permit, District Rules, or Chapter 36 of the Texas Water Code; or
- (2) a change in the permit is required to prevent waste and achieve water conservation, minimize as far as practicable the draw down of the water table or reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence; or
- (3) The permitted well(s) has not been completed, is not significantly under construction; or no significant progress is being made toward construction.

RULE 8.7. AGGREGATION OF WITHDRAWAL

In issuing an operating permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District, at the discretion of the District. Applicable spacing requirements and production allowances will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each

well it's pro rata share of production. This will allow a well owner, with a number of water wells that supply a single well system, to apply for an operating permit for the well system without being required to apply for a separate operating permit for each individual well.

RULE 8.8. OPERATING PERMIT PROVISIONS

All permits are granted subject to these Rules, orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit issued by the District, each permit issued shall contain the following standard permit provisions:

This permit is granted in accordance with the provisions of the Rules of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with the Rules of the District.

- (1) This permit is granted in accordance with provisions of the Rules of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with the Rules of the District.
- (2) This permit confers only the right to operate the permitted well under the provisions of the District Rules and its terms may be modified or amended pursuant to the provisions of those Rules. To protect the permit holder from the illegal use of a new landowner, within ten (10) days after the date of sale of property containing a well having been issued an operating permit, the operating permit holder must notify the District in writing of the name of the new owner. Any person who becomes the owner of a currently permitted well must, within forty-five (45) calendar days from the date of the change in ownership, file an application for a permit amendment to affect a transfer of the permit.
- (3) The operation of the well for the authorized purposes must be conducted in a non-wasteful manner.
- (4) Withdrawals from all non-exempt wells must be measured or estimated by the owner or operator using a device or method approved by the District that is within plus or minus 10% of accuracy. The operating permit holder shall maintain records of withdrawal on the property where the well is located or at its business office, and shall make those records available to the District for inspection. Whether measured or estimated by an approved method, water use shall be reported to the District annually, as requested by the District.
- (5) The well site must be accessible to District representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.
- (6) The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application. A finding that false information has been supplied is grounds for immediate revocation of the permit.
- (7) Violation of this permit's terms, conditions, requirements, or special provisions,

including pumping amounts in excess of authorized withdrawal, is punishable by civil penalties as provided by the District Rule 15.3, as well as revocation of the permit.

- (8) The permittee will use reasonable diligence to protect groundwater quality and will follow well-plugging guidelines at the time of well closure.

RULE 8.9. OPERATING PERMIT LIMITATIONS

- (a) Maximum Authorized Withdrawal. It is a violation of these Rules to withdraw any amount of water over the authorized permit limits.
- (b) Operating Permit Required. It is violation of these Rules to withdraw groundwater from a non-exempt well without an operating permit from the District, except as provided by Rule 8.3 (b)(2).

RULE 8.10. AMENDMENTS

- (a) Permit Amendment Increasing Authorized Withdrawal. A written, sworn application for a permit amendment to increase the authorized withdrawal must be filed and an amendment granted before any over pumpage occurs.
 - (1) Submission of application. An applicant for a permit amendment increasing the authorized withdrawal must demonstrate that the increased amount of withdrawal will be put to a beneficial use, and is consistent with the District's Rules and Certified Management Plan.
 - (2) Action on amendment. Applications shall be considered by the Board, provided that the General Manager may rule on the first application for an amendment to an operating permit for an increase in total groundwater production up to, but not exceeding, 20 percent of the initially authorized total production amount without notice, hearing, or further action of the Board. Thereafter, such applications shall be considered by the Board. Once a ruling is made by the General Manager, notice of the ruling shall be served upon the applicant. Any applicant may appeal the General Manager's ruling by filing a written request for hearing within ten (10) business days of the date of service of the General Manager's decision. If a written request for a hearing is filed, or if the applicant seeks an increase greater than 20 percent of the initially authorized total production amount, notice shall be issued and a hearing conducted in the manner prescribed for operating permit issuance.
- (b) Amendment to Decrease Authorized Withdrawal. The General Manager may rule on any application for a permit amendment to decrease the authorized withdrawal. The General Manager may grant such amendment without notice, hearing, or further action by the Board.
- (c) Amendment to Transfer Ownership of a Permit. The General Manager may rule on any application for a permit amendment to transfer the ownership of any permit. The written, sworn application shall include a request to make the ownership change and show the authority for requesting the change. The General Manager may grant such an amendment without notice,

hearing, or further action by the Board. While the application is pending, the new owner may continue to operate the well.

SECTION 9. FEES AND DEPOSITS

RULE 9.1. WATER USE FEES

Water use fees authorized under the District Act shall be paid to the District for water that may be withdrawn from non-exempt wells. The water use fee rate shall be established annually by Board resolution. The rate will be applied to prior years actual or estimated total volume pumped. Following issuance or amendment of an operating permit, the permit holder shall pay the District the assessed water use fee in accordance with Rule 9.3. For agricultural use, the Board may adopt by resolution a schedule setting a fee based upon irrigated acreage and crop grown. The District will review the account of any permittee changing the use of a well from non-exempt to exempt to determine if additional water use fees are due or if a reimbursement of water use fees is warranted. Reimbursements exceeding \$250 must receive Board approval.

- (a) Pursuant to the District Act, the water use fee may not exceed:
 - (1) \$0.25 per acre-foot for water used for irrigating agricultural crops or operating existing steam electric stations; and
 - (2) \$0.0425 per thousand gallons for water used for any other purpose.
- (b) The water use fees may be increased at a cumulative rate of up to three percent per year.
- (c) The District may impose a reasonable fee or surcharge for an export fee using one of the following methods:
 - (1) a fee negotiated between the District and the transporter; or
 - (2) a combined production and export fee not to exceed \$0.17 per thousand gallons of water used.
- (d) The fees listed in subsection (a)(1)(2), reflect the fees allowed by state law. Actual fees are reflected in the district schedule of fees.
- (e) The District is prohibited from using revenues obtained from export fees to prohibit the transfer of groundwater outside of the District, but may use export fees for paying expenses related to enforcement of Chapter 36 of the Texas Water Code or the District Rules.

RULE 9.2. APPLICATION, REGISTRATION, AND OTHER FEES

The Board, by Order, shall establish a schedule of fees. The Board will attempt to set fees that do not unreasonably exceed the costs incurred by the District for performing the administrative function for which the fee is charged. District Monitor Wells are exempt from application, registration, and well log deposits. The General Manager shall exempt District Monitor Wells from any other fee if he determines that the assessment of the fee would result in the District charging itself a fee.

RULE 9.3. PAYMENT OF FEES

All fees are due at the time of application, registration, or permitting. The annual water use fee for a permit shall be paid in annual, quarterly, or monthly installments at the election of the permittee. Permittees whose annual water use fee is \$200.00 or less are required to pay annually. New permittees electing to pay by installments shall make the first installment at the time of permit issuance with subsequent payments due as described below.

- (1) Annual water use fees shall be paid at the time of permit issuance and are subsequently due on the anniversary date each year following permit issuance.
- (2) Quarterly water use fee payments of four (4) equal installments shall be due on or before the fifth day of the month of September, December, March and June.
- (3) Monthly water use fee payments of twelve (12) equal installments shall be due on or before the fifth day of each month.
- (4) Payments received within the ten (10) days following the due date will not be subject to a late payment fee. Thereafter, the late payment fees set forth in Rule 15.7 shall be imposed.
- (5) All fees other than water use fees are due at the time of assessment and are late after ten (10) days.

RULE 9.4. TRANSPORT PERMIT PROCESSING

The Board, by Order, may adopt a processing fee for transport permits to cover all reasonable and necessary costs to the District for processing the application.

RULE 9.5. MINIMUM WATER USE FEES

The Board may, by Order, establish a minimum water use fee.

RULE 9.6. INSPECTION AND PLAN REVIEW FEES

The Board may, by Order, establish fees for: the inspection of wells, meters, or other inspection activities; plan reviews; special inspection services requested by other entities; or other similar services that require significant involvement of District personnel or its agents. Fees may be based on the amount of District time and involvement, number of wells, well production, well bore, casing size, size of transporting facilities, or amounts of water transported.

RULE 9.7. SPECIAL FEES

Wells drilled in aggregate, such as closed loop heat exchange wells, may qualify for reduced fees for review, registration, and inspection. The fee rate will be based on review and inspection time on a case-by-case basis.

RULE 9.8. EXCEPTIONS

If a regulated water utility is unable to pass through pumpage fees due to delay in obtaining regulatory approval, or in other unusual instances of hardship, the Board may grant exceptions and establish a payment schedule. Such exceptions shall be applied consistently.

RULE 9.9. EXCESS PUMPAGE FEES

The Board may, by Order, establish additional water use fees for any pumpage exceeding the permitted pumpage volume.

RULE 9.10. RETURNED CHECK FEE

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

RULE 9.11. ACCOUNTING FEE

The Board may, by Order, establish a fee for permittee-requested accounting of pumpage reports, water use fee payments, or other accounting matters pertaining to the permittee's account which the District does not routinely maintain in its accounting of a permittee's records. Should a District error be discovered, the accounting fee, if any, will be fully refunded. Permittee's may request one review of their account per fiscal year without charge.

RULE 9.12. WELL LOG DEPOSIT

The Board may, by Order, establish a Well Log Deposit to be held by the District for return to the depositor if well logs are submitted to the District within sixty (60) days following surface completion of the well. The depositor will receive one-half the Well Log Deposit for well logs received by the District after the sixty (60) day period.

SECTION 10. TRANSFER OF GROUNDWATER OUT OF THE DISTRICT

RULE 10.1. PERMIT REQUIRED

Groundwater produced from a well within the District may not be transported outside the District's boundaries unless the Board has issued the well owner or operator a transport permit, except as provided within these Rules.

RULE 10.2. APPLICABILITY

- (a) A person proposing to transport groundwater out of the District must obtain a transport permit, in addition to a drilling/operating permit for a new well, or an operating permit for an existing well, to:
 - (1) increase, on or after March 2, 1997, the amount of groundwater to be transferred under a continuing arrangement in effect before that date; or
 - (2) transfer groundwater out of the District on or after March 2, 1997, under a new arrangement.
- (b) The District may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.
- (c) A transport permit for the transportation of water outside the District is not required for the transportation of groundwater that is part of a manufactured product, or the groundwater is to be used on property that straddles the District boundary line, or the groundwater is used within the existing contiguous service area of an existing retail public utility that straddles the District boundary line. Transportation of groundwater, created by the expansion of an existing retail public utility into counties that are not contiguous to the District, will require a transport permit.

RULE 10.3. APPLICATION

An application for a transport permit must be filed in the District office and must include the information required under Rule 8.4 for a drilling and/or operating permit, plus the following information:

- (a) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested, including the:
 - (1) location of the proposed receiving area for the water to be transported;
 - (2) information describing alternate sources of supply that might be utilized by the applicant and the groundwater user, and the feasibility and practicability of utilizing such supplies; and
 - (3) description of the amount and purpose of use in the proposed receiving area for which water is needed.
- (b) the projected effect of the proposed groundwater transport on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District, including:
 - (1) a hydrogeological report by a registered professional in hydrogeology assessing the impact of the proposed well on existing wells and the aquifer from which withdrawals are proposed;

- (2) information describing the projected effect of the proposed transporting of water on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District;
 - (3) the names and addresses of the landowners and/or registration/permit holders and the location of their water wells, that are located within the spacing-requirement circumference of the applied-for well from which water to be transported to the proposed receiving area is to be produced; and
 - (4) any proposed plan of the applicant to mitigate adverse hydrogeologic impacts of the proposed transport of water from the District.
- (c) the approved Regional Water Plan and certified District Management Plan, including a description of how the proposed transport is addressed in any approved regional water plan(s) including the Region G Regional Water Plan and, the certified District Management Plan.
 - (d) a technical description of the facilities to be used for transportation of water and a time schedule for any construction thereof, that will be used to establish the term of the transport permit, under Section 36.122 (i) of the Texas Water Code.

RULE 10.4. HEARING AND PERMIT ISSUANCE

- (a) Applications for transport permits are subject to the hearing procedures provided by these Rules in Section 14.
- (b) In determining whether to issue a permit to transfer groundwater out of the District, the Board shall be fair, impartial, and nondiscriminatory and shall consider the following factors when deciding whether to issue or impose conditions on a drilling, operating, or transport:
 - (1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
 - (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
 - (3) the approved Region G Water Plan and certified District Management Plan.
- (c) The District may not deny a transport permit based on the fact that the applicant seeks to transport groundwater outside of the District and may not impose more restrictive permit conditions on transporters than the District imposes on existing in-District users, unless:
 - (1) such limitations apply to all subsequent new operating permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;
 - (2) such limitations bear a reasonable relationship to the existing District Management

Plan; and

- (3) such limitations are reasonably necessary to protect existing use.
- (d) In addition to conditions provided by Section 36.1131, Texas Water Code, the operating permit to transport water out of the District 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, which shall be:
 - (i) at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit, and shall be automatically extended to the terms 30 years if construction of a conveyance system is begun before the expiration of the initial term; or
 - (ii) at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.
- (e)
 - (1) The District may periodically review the amount of water that may be transferred under an operating permit to transport water out of the District and may limit the amount if additional factors considered, related to the factors in Subsection (b), above.
 - (2) After conducting its periodic review, more restrictive permit conditions may only be imposed if the factors in Subsection (c), above, are met.

RULE 10.5. FEES INCLUDED WITH APPLICATION

The transport permit application must be accompanied by the application processing fee, inspection fee, or other fees as appropriate. Such fees must be paid before notice is published and mailed. Payment of all fees including water use fees remain the responsibility of the permit holder.

SECTION 11. REWORKING AND REPLACING A WELL

RULE 11.1. PROCEDURES

- (a) An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well status without obtaining a permit amendment.
- (b) A permit must be applied for and the Board will consider approving the permit, if a person wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe or gpm. rate by reworking, re-equipping, or re-drilling such well as described in this section.
- (c) A permit must be applied for and granted by the Board if a person wishes to replace an existing well with a replacement well.
- (d) A replacement well must be completed in the same aquifer as the well it replaces, and shall not

be drilled, equipped, or completed so as to increase the rate of production of water from the well it replaces. A replacement well must not be located closer to any other well or authorized well site unless the new location complies with the minimum the spacing requirements of Rule 5.1; otherwise, the well shall be considered a new well for which an application must be made.

- (e) In the event the application meets spacing and production requirements, and satisfies all requirements of these Rules, the Board or General Manager may grant such application without further notice.

SECTION 12. WELL LOCATION AND COMPLETION

RULE 12.1. RESPONSIBILITY

After an application for a well permit has been granted, 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. As described in the Texas Water Well Drillers' Rules, all well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of this Rule and Rule 12.2 prescribing the location of wells and proper completion of the wells under Rule 12.3.

RULE 12.2. LOCATION OF DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS

With regard to potential sources of contamination, wells shall be located in conformity with the Rules and regulations promulgated by the Texas Commission on Environmental Quality and the Texas Department of Licensing and Regulation, as applicable.

RULE 12.3. STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS

Water well drillers must indicate the method of completion performed on the Well Report (TNRCC-0199) Section 10 Surface Completion form. Unless otherwise ordered by the Board, domestic, industrial, injection, and irrigation wells must be completed in accordance with all applicable State and local standards, including but not limited to 31 Texas Administrative Code Chapter 290 (TNRCC Water Hygiene Rules for Public Water Supply Systems) and 16 Texas Administrative Code Chapter 76 (Rules for Water Well Drillers and Water Well Pump Installers).

RULE 12.4. RE-COMPLETIONS

- (a) The permit holder shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the well bore to other porous strata.
- (b) If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable Rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be

cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

- (c) The Board may direct the permit holders to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

SECTION 13. WASTE AND POLLUTION

RULE 13.1 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 aquifers 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 these Rules and in Chapter 36, Texas Water Code.

RULE 13.2 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 Board 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, it 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.

SECTION 14. HEARINGS

RULE 14.1. TYPES OF HEARINGS

The District conducts two general types of hearings: (1) hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after notice and an opportunity for an adjudicative hearing, and (2) rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. The District, however, may use its discretion to conduct a hearing on other relevant subject matters. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner, at the Board's discretion.

(a) Permit Hearings:

- (1) Permit Applications, Amendments, and Revocations: The District will hold hearings on water well drilling permits, operating permits, transport permits, permit renewals or amendments, and permit revocations or suspensions. Hearings involving permit matters

may be scheduled before the Board or a Hearing Examiner, at the Board's discretion. If no person notifies the General Manager of their intent to contest the application, and if the General Manager does not contest the application, the application will be presented directly to the Board for a final decision under Rule 14.3. The Board may grant the application, in whole or in part, or refer the application to the Hearings Examiner for a hearing. If a Person requests a contested case hearing, the Board shall proceed under Rules 14.2, 14.4, and 14.5.

- (2) Hearings on Motions for Rehearing: Motions for Rehearing will be heard by the Board pursuant to Rule 14.4(k).

(b) Rulemaking Hearings:

District Management Plan: as required by Chapter 36 of the Texas Water Code, the Board will hold hearings to consider amendments to the District's Management Plan and District Rules pursuant to Rule 14.6.

(c) Other Matters:

A public hearing may be held on any matter within the jurisdiction of the Board if the Board determines a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District.

RULE 14.2. NOTICE AND SCHEDULING OF PERMIT-RELATED HEARINGS.

- (a) The District shall promptly consider and act on each administratively complete application for a permit. 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.

Applications that are not administratively complete will be sent back to the applicant with a list of needed information. If the District does not receive an administratively complete application within 60 days of the District sending the incomplete application notice, then the District may consider the application expired. If an incomplete application expires, the applicant will be required to submit a new application and the deadlines under this Rule will begin again.

For applications requiring a hearing, the initial hearing shall be held within 35 days after the setting of the date, and the District shall act on the application within 60 days after the date the final hearing on the application is concluded. An administratively complete application requires information set forth in accordance with Sections 36.113, 36.1131, and these Rules.

(b) Notice of permit hearing.

- (1) 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 section.

- (2) The notice must include:
- (a) the name of the applicant;
 - (b) the address or approximate location of the well or proposed well;
 - (c) 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;
 - (d) the time, date, and location of the hearing; and
 - (e) any other information the general manager or board considers relevant and appropriate.
- (3) Not later than the 10th day before the date of a hearing, the general manager or board shall:
- (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
 - (c) 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 (4); and
 - (C) regular mail to any other person entitled to receive notice under the rules of the district.
- (4) 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.
- (5) Failure to provide notice under Subsection (3)(c)(B) does not invalidate an action taken by the District at the hearing.
- (c) The General Manager may schedule as many applications at one hearing as the General Manager deems necessary. The District may require each person who participates in a 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 there in the person's individual capacity.
Hearings will be held in accordance with Section 14.
- (d) Hearings may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. All permit hearings will be held at the District Office. However, the Board may from time to time change or schedule additional dates, times, and places for permit hearings by resolution adopted at a regular Board meeting. The General Manager is instructed by the Board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings. Other hearings will be scheduled at the dates, times, and locations set at a regular Board meeting.
- (e) The District may assess fees to permit applicants for administrative acts of the District relating to a permit application. Fees set by the District may not unreasonably exceed the cost to the District of performing the administrative function for which the fee is charged.

RULE 14.3. DETERMINATION OF CONTESTED STATUS OF PERMIT HEARINGS

- (a) Written Notice of Intent to Contest. Any person who intends to contest a permit application must provide written notice of that intent to the District office at least five (5) calendar days prior to the date of the hearing. If the Board of Directors intends to contest a permit application, the Board of Directors must provide the applicant written notice of that intent at least five (5) calendar days prior to the date of the hearing. If no notice of intent to contest is received five (5) calendar days prior to the hearing, the General Manager as instructed by the Board of Directors, will cancel the hearing and the Board will consider the permit at the next regular Board meeting as an uncontested permit application.
- (b) Participation in a Contested Permit Hearing. The Board or Hearing Examiner may limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.
- (c) Informal Hearings. Permit hearings may be conducted informally when, in the judgment of the Board or Hearing Examiner, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- (d) Agreement of Parties. If, during an informal proceeding, all parties reach a negotiated or agreed settlement that, in the judgment of the Board or Hearing Examiner, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the Board or Hearing Examiner will summarize the evidence and make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.
- (e) Decision to Proceed as Uncontested or Contested Case. If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Board or Hearing Examiner determines these issues will require

extensive discovery proceedings, the Board or Hearing Examiner will declare the case to be contested and convene a pre-hearing conference as set forth in Rule 14.4 and 14.5. The Board or Hearing Examiner may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions the Board or Hearing Examiner deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the Board or Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.

RULE 14.4. GENERAL PERMIT-RELATED HEARING PROCEDURES

- (a) A hearing must be conducted by:
 - (1) a quorum of the board; or
 - (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.
- (b) Except as provided by Subsection (c), below, 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 herein.
- (e) The District may allow any person registered to speak, including the general manager or a District employee, to provide comments at a hearing on an uncontested application, consisted with these Rules.

- (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 District may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before the Board takes final actions 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) Hearing Registration. The District may require each person who participates in a 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 there in the person's individual capacity.
- (j) 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.
- (k) Recording.
 - (1) 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.

- (2) If a hearing is uncontested, the presiding officer may substitute minutes or its Report under subsection (m), below, for a method of recording the hearing.

(l) Continuance.

The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 14.2(b). 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.

(m) Report.

- (1) Except as provided by Subsection (m)(5), below, the presiding officer shall submit a report to the board not later than the 30th day after the date a hearing is concluded.
- (2) The report must include:
 - (a) a summary of the subject matter of the hearing;
 - (b) a summary of the evidence or public comments received; and
 - (c) the presiding officer's recommendations for board action on the subject matter of the hearing.
- (3) The presiding officer or general manager shall provide a copy of the report to:
 - (a) the applicant; and
 - (b) each person who provided comments or each designated party.
- (4) A person who receives a copy of the report under Subsection (3), above, may submit to the board written exceptions to the report.
- (5) If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Subsection (k)(1), herein, the presiding officer shall determine whether to prepare and submit a report to the board under this section.

(n) 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. In deciding whether or not to issue a drilling permit, operating permit, and/or transport permit, and in setting the terms of the permit, the Board will consider the Water Code Ch. 36, the District Act, the District's Rules Certified Management Plan, whether the application is accompanied by prescribed fees, and all other relevant factors.

(o) Requests for Rehearing and or Finding and Conclusions.

- (1) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the board not later than the 20th day after the date of the board's decision.
- (2) On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the board receives the request. A person who receives a certified copy of the findings and conclusions from the board may request a rehearing before the board not later than the 20th day after the date the board issues the findings and conclusions.
- (3) A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.
- (4) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- (5) 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.

(p) Decision; When Final.

- (1) A decision by the board on a permit or permit amendment application is final:
 - (a) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
 - (b) 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.
- (2) Except as provided by Subsection (3), below, an applicant or a party to a contested hearing may file a suit against the District under Section 36.251 of the Texas Water Code 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.
- (3) An applicant or a party to a contested hearing may not file suit against the District under Section 36.251 if a request for rehearing was not filed on time.

(q) Consolidated Hearing on Applications.

- (1) Except as provided by Subsection (2), below, 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:

- (a) drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113, Texas Water Code;
 - (b) the spacing of water wells or the production of groundwater under Section 36.116, Texas Water Code; or
 - (c) transferring groundwater out of the District under Section 36.122, Texas Water Code;.
- (2) 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.
- (r) Hearings Conducted by State Office of Administrative Hearings.
- 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.
- (s) Alternative Dispute Resolution.
- The District use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

RULE 14.5. ADDITIONAL CONTESTED PERMIT HEARINGS PROCEDURES

- (a) Pre-hearing Conference. A pre-hearing conference may be held to consider any matter that may expedite the contested case hearing or otherwise facilitate the hearing process.
- (1) Matters Considered. Matters that may be considered at a pre-hearing conference include, but are not limited to:
- (A) the designation of parties;
 - (B) the formulation and simplification of issues;
 - (C) the necessity or desirability of amending applications or other pleadings;
 - (D) the possibility of making admissions or stipulations;
 - (E) the scheduling of discovery;
 - (F) the identification of and specification of the number of witnesses;
 - (G) the filing and exchange of prepared testimony and exhibits; and
 - (H) the procedure at the hearing.
- (2) Notice. A pre-hearing conference may be held at a date, time, and place stated in a separate notice, and may be continued from time to time and place to place, at the discretion of the Board or Hearing Examiner.
- (b) Designation of Parties. Parties to a hearing will be designated on the first day of hearing or at such other time as the Board or Hearing Examiner determines. The Board of Directors and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. The Board or Hearing Examiner may limit participation in a hearing on a contested application to persons who have a personal

justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Board or Hearing Examiner, there exists good cause and the hearing will not be unreasonably delayed.

- (c) Rights of Designated Parties. Subject to the direction and orders of the Board or Hearing Examiner, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.
- (d) Persons Not Designated Parties. At the discretion of the Board or Hearing Examiner, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Board or Hearing Examiner as evidence.
- (e) Furnishing Copies of Pleadings. After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.
- (f) Interpreters for Deaf Parties and Witnesses. If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment that inhibits the person's comprehension of the proceedings or communication with others.
- (g) Agreements to be in Writing. No agreement between parties or their representatives affecting any pending matter will be considered by the Board or Hearing Examiner unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered as in the record.
- (h) Discovery. Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Board or Hearing Examiner. Unless specifically modified by these Rules or by order of the Board or Hearing Examiner, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Board or Hearing Examiner.
- (i) Discovery Sanctions. If the Board or Hearing Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Board or Hearing Examiner may:
 - (1) suspend processing of the application for a permit if the applicant is the offending party;

- (2) disallow any further discovery of any kind or a particular kind by the offending party;
 - (3) rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
 - (4) limit the offending party's participation in the proceeding;
 - (5) disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
 - (6) recommend to the Board that the hearing be dismissed with or without prejudice.
- (j) Ex Parte Communications. The Board and the Hearing Examiner, if appointed, may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or representative, except with notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence.
- (k) Compelling Testimony; Swearing Witnesses and Subpoena Power. The Board or Hearing Examiner may compel the testimony of any person that is necessary, helpful, or appropriate to the hearing. The Board or Hearing Examiner will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The Board or Hearing Examiner may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.
- (l) Evidence. Except as modified by these Rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
- (m) Written Testimony. When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- (n) Requirements for Exhibits. Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
- (o) Abstracts of Documents. When documents are numerous, the Board or Hearing Examiner may receive in evidence only those that are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

- (p) Introduction and Copies of Exhibits. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Board or Hearing Examiner and to each of the parties, unless the Board or Hearing Examiner Rules otherwise.
- (q) Excluding Exhibits. In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.
- (r) Official Notice. The Board or Hearing Examiner may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- (s) Documents in District Files. Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.
- (t) Oral Argument. At the discretion of the Board or Hearing Examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Board or Hearing Examiner may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, further oral arguments may be heard by the Board.

RULE 14.6. RULEMAKING HEARINGS PROCEDURES

- (a) General Procedures for amending District Rules. The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time. The presiding officer will conduct the rulemaking hearing in the manner the presiding officer determines most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The presiding officer may follow the guidelines of "Robert's Rules of Order," 10th Edition, General Henry M. Robert, 2000 Revised Edition, or as amended.
- (b) Notice of a Rulemaking Hearing.
 - (1) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:
 - (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;
 - (C) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located;
 - (D) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (6), below; and

- (E) 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.
 - (2) The notice provided under Subsection (1), above, must include:
 - (A) the time, date, and location of the rulemaking hearing;
 - (B) a brief explanation of the subject of the rulemaking hearing; and
 - (C) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.
 - (3) The presiding officer 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.
 - (4) The District may require each person who participates in a rulemaking 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 at the hearing in the person's individual capacity.
 - (5) 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.
 - (6) 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.
 - (7) 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.
 - (8) Failure to provide notice under Subsection (b)(1)(D), above, does not invalidate an action taken by the District at a rulemaking hearing.
- (c) Emergency Rules.
- (1) A board may adopt an emergency rule without prior notice or hearing, or with an

abbreviated notice and hearing, if the board:

- (a) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
 - (b) prepares a written statement of the reasons for its finding under Subdivision (a), above.
- (2) Except as provided by Subsection (3), herein, a rule adopted under this section may not be effective for longer than 90 days.
 - (3) 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.
 - (4) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.
- (d) Submission of Documents. Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 14.1(b)(3); provided, however, that the presiding officer may grant additional time for the submission of documents.
 - (e) Oral Presentations. Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
 - (f) Conclusion of the Hearing; Closing the Record; Hearing Examiner's Report. At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the presiding officer is a Hearing Examiner, the Hearing Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject of the hearing and the public comments received, together with the Hearing Examiner's recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy must be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.
 - (g) Exceptions to the Hearing Examiner's Report; Reopening the Record. Any interested person may make exceptions to the Hearing Examiner's report, and the Board may reopen the record, in the manner prescribed in Rule 14.6(b).
 - (h) Decision; Appeal regarding District Rules
 - (1) Board Action. After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take

any other appropriate action. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.

- (2) Requests for Rehearing. Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within twenty (20) calendar days of the Board's decision. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within forty-five (45) calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within ninety (90) calendar days of submission will be deemed to be a denial of the request.

SECTION 15. INVESTIGATIONS AND ENFORCEMENT

RULE 15.1. NOTICE AND ACCESS TO PROPERTY

Board Members and District agents, engineers, attorneys, operators, and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District agents, engineers, attorneys, operators, and employees who are attempting to conduct an investigation under the District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code Chapter 36.102.

RULE 15.2. CONDUCT OF INVESTIGATION

Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's Rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the well.

RULE 15.3. RULE ENFORCEMENT

If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Act, Water Code Chapter 36, District permit, District Rules, the Board of Directors may assess a civil penalty or file for an injunction or other appropriate remedy in a court of competent jurisdiction, as authorized by Chapter 36.102 of the Texas Water Code.

RULE 15.4. SEALING OF WELLS.

Following due-process, the District may, upon orders from the judge of the courts, seal wells that are prohibited from withdrawing groundwater within the District by the District Rules to ensure that a well is not operated in violation of the District Rules. A well may be sealed when:

- (1) no application has been granted for a permit to drill a new water well which is not excluded or exempted from obtaining a permit; or
- (2) no application has been granted for an operating permit to withdraw groundwater from an existing well that is not exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or
- (3) the Board has denied, canceled, or revoked a drilling permit or an operating permit.

The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District. Other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

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

RULE 15.5. CIVIL PENALTIES.

- (a) The District may enforce Chapter 36 of the Texas Water Code and its Rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- (b) **The Board by rule may set reasonable civil penalties for breach of any Rule of the District not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation.** All civil penalties recovered by the District shall be paid to the Brazos Valley Groundwater Conservation District.
- (c) A penalty under this section is in addition to any other penalty provided by the law of this State and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the District's principal office or meeting place is located.
- (d) If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, 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.

RULE 15.6. FAILURE TO REPORT PUMPAGE AND/OR TRANSPORTED VOLUMES

The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources. Failure of the permittee to submit complete, accurate, and timely pumpage, transport and water quality reports as required by District Rule may result in late payment fees, forfeiture of the permit, or payment of increased meter reading and inspection fees as a result of District inspections to obtain current and accurate pumpage and/or transported volumes and water quality reports.

RULE 15.7. EMERGENCY ORDERS

The District will develop Emergency Contingency Plans to deal with water quality or water quantity emergencies. Public hearings on Emergency Contingency Plans shall be conducted by the Board prior to adoption. To implement Emergency Contingency Plans, the Board, or the General Manager if specifically authorized by an Emergency Contingency Plan, may adopt emergency orders of either a mandatory or prohibitory nature, requiring remedial action by a permittee or other party responsible for the emergency condition.