

McMullen
Groundwater
Conservation District

APPROVED NOVEMBER 13, 2008

MCMULLEN GROUNDWATER CONSERVATION DISTRICT RULES OF THE DISTRICT

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McMullen GROUNDWATER CONSERVATION DISTRICT RULES OF THE DISTRICT

RULE 1 DEFINITIONS

Definitions of Terms: In the administration of its duties, the McMullen Groundwater Conservation District follows the definitions of terms set forth in Chapter 36, Water Code, and other definitions as follows:

"Agriculture" means any of the following activities:

- (1) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (2) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
- (3) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
- (4) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
- (5) wildlife management; and
- (6) raising or keeping equine animals.

"Agricultural use" means any use or activity involving agriculture, including irrigation.

"District" means the McMullen Groundwater Conservation District, maintaining its principal office in George West, Texas. Where applications, reports and other papers are required to be file with or sent to "the District", this means the District headquarters in Tilden, Texas.

"Board" means the Board of Directors of the McMullen Groundwater Conservation District.

"Groundwater" means water percolating below the surface.

"Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries and containing groundwater.

"Water" means groundwater.

"Well" or "Water Well" means any artificial excavation constructed, fitted or equipped to produce more than 25,000 gallons of water per day.

"Exempt Well" means any artificial excavation constructed, fitted or equipped to produce less than 25,000 gallons of water per day. Exempt Wells must be registered in accordance with these rules but are otherwise exempt from any other requirements for obtaining permits, installing meters, or reporting usage.

"Open or Uncovered Well" means any artificial excavation drilled or dug for the purpose of exploring for or producing water from an underground reservoir, if that well is not capped, covered or plugged as required by these rules.

"Owner" means any person, firm, partnership or corporation that has the right to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.

"Person" means any individual, partnership, firm, corporation, organization, government, agency, business trust, estate, trust, association or any other legal entity.

"Party" means any person, whether as an owner, lessor, lessee, tenant or operator, who operates a water well within the boundaries of the District, or who is or may be affected by either granting or denying an application. The following persons shall be automatically designated parties in any contested case:

- (1) the General Manager of the District;
- (2) the applicant;
- (3) any other person who timely files an objection to an application; and
- (4) any other person designated by the Board or Presiding Officer at a contested case hearing.

"Plugging" means sealing a well bore by any method that meets the requirements of these rules.

"Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or any water in the District that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful purpose.

"Undesirable Water" means water that is injurious to vegetation, to land, or to fresh water, or water that can cause pollution.

"Waste" means any one or more of the following:

- (1) 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;

(2) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose or in an amount in excess of the amount reasonably needed for that beneficial purpose;

(3) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(4) 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;

(5) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road or road ditch, or onto any land other than that of the owner unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality under Chapter 26, Water Code;

(6) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

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

"Authorized Well Site" means:

(8) The location of a proposed well on an application duly filed until such application is denied; or

(9) The location of a proposed well on a valid permit. An authorized well site does not act as a permit to drill.

"Exploratory Hole" means any hole drilled to a depth below the top of any stratum containing groundwater for the purpose of testing well capacity, water quantity and water quality. An excavation ceases to be an exploratory hole and becomes a well that may require a permit if any pumping occurs after the well is completed with casing and a pump, or if production occurs in excess of an amount to complete the tests listed above.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of water to a well or spring.

"Artesian Well" means a well completed in the confined portion of an aquifer such that water will rise in the well, by natural pressure, above an overlying impermeable stratum.

"Beneficial Use" or "Beneficial Purpose" means using groundwater for:

- (1) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational or pleasure purposes;
- (2) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
- (3) any other nonwasteful purpose that is economically necessary for a purpose authorized by law.

"Irrigation" means the artificial application of water to land to assist in the production of crops.

RULE 2 WASTE PROHIBITED

Wasting water is prohibited. Any person producing or using groundwater shall use every possible precaution, in accordance with the latest approved methods, to stop and prevent wasting water.

Polluting water or allowing water to be polluted is prohibited.

Transporting water for a distance greater than 1/4 mile in an open ditch, canal or other water course is per se wasteful and prohibited.

RULE 3 WELL REGISTRATION

Registration is required for all exploratory holes, exempt wells and wells in the District, and shall be filed with the District on a form and in a manner required by the District. Nonexempt wells meet the registration requirement by filing an application to either drill or operate the well.

RULE 4 DEPOSITS

Each application for a permit to drill a well must be accompanied by a **\$100.00 deposit**. Said deposit shall be returned to the applicant by the District if:

- (1) the application is denied;
- (2) the application is granted but only upon receipt of a correctly completed registration and log of the well; or
- (3) the permit location is abandoned without having been drilled, but only upon return and surrender of the Permit marked abandoned.

In event neither the registration and log of the well nor abandoned permit is returned to the District office within one hundred eighty (180) days after the date the permit was approved, or after any extension granted by the District, the deposit shall become the property of the District.

RULE 5 PERMIT REQUIRED

A permit is required prior to drilling or producing a well, or increasing the size or capacity of a well such that the well could reasonably be expected to produce in excess of 25,000 gallons of water per day. A permit is not required for drilling exempt wells.

Applications for permits to drill or operate a well must be filed at the office of the District in Tilden, Texas. The General Manager shall publish a Notice of Application in a paper of general circulation within the District stating the name of the applicant, the location of the well and the requested production amount.

If no protest is filed within ten (10) days of publication of the notice of application, the General Manager may issue the permit without action by the Board. The board of directors will approve or deny the application at a meeting of the Board of Directors following notice and hearing, if a hearing is required.

If a protest is filed the Board shall conduct a hearing. Notice shall be given to all interested parties. The Board may convene a preliminary hearing to establish parties, to narrow the issues, and to schedule a full contested case trial if necessary. The Board may vote to issue a permit or deny the application if it determines the application may be decided by summary disposition. If the matter is not settled by summary disposition the board shall schedule a contested case hearing to hear evidence and receive argument to determine the outcome of the contest. Following the contested case hearing the Board shall issue a final decision stating the findings of fact, conclusions of law, and the disposition of the application.

A protest shall be deemed filed when written notification is filed with the Board. The protest must include evidence as to why the particular application should be denied, including evidence as to the effect on the water reservoir, the conservation and preservation of water, the prevention of waste, the protection of property rights, and other pertinent matters, which evidence shall be taken into consideration by the Board. Where there are competing applications, the Board shall also take into consideration which of the applicants filed an application first.

If the Board determines the applicant has provided substantial evidence that the permit meets all the requirements of these rules, the Board shall issue the permit.

If the application is denied, the applicant may file a motion for rehearing before the Board. A motion for rehearing must be filed with the Manager of the District or written notice by registered mail given twenty (20) days, from the date the application is denied. If no such motion is filed, the application shall be deemed to have been abandoned by the applicant. If a motion for rehearing is filed, the Board shall set a time and place for a hearing and notify the necessary parties thereof in accordance with Rule 19. At least 72 hours notice shall be given by the Board to the necessary parties for said hearing. If the Board does not set a hearing on the motion within ninety (90) days of receipt, the motion shall be deemed denied.

On approval of an application, the District shall issue a permit to the applicant. The permittee's right to produce shall be limited to the extent and purposes stated in the permit. Operating permits shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed. A permit shall not be transferable except when an application has been made to amend the permit to change the name of the permittee. The General Manager may grant such an amendment without notice, hearing, or further action by the Board.

RULE 6 ISSUANCE OF PERMITS

The board may issue the following types of permits:

(1) Well Construction Permit, which allows drilling a new well, expanding an existing well, redrilling or re-equipping an existing well, or plugging a well;

(2) Well Production Permit, which allows water to be withdrawn from a nonexempt well;

(3) Transportation Permit, which allows groundwater to transported outside the boundaries of the District.

The Board shall issue or cause to be issued a drilling permit for a well upon proper application executed and filed by the owner if that application meets all the requirements of these rules. An application shall be considered filed if it is administratively complete and accompanied by the required deposit.

Applications must be on forms provided by the District, in writing and prepared in accordance with and contain the information called for on the form of application. The application will be considered administratively complete if it is

properly completed following all instructions issued by the Board with respect to the filing of an application. Administratively incomplete applications will not be considered.

Rules for the filing of applications:

(1) If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent. The agent must present Power of Attorney as authority to represent the applicant.

(2) If the application is by a partnership, the applicant must be designated by the firm name followed by the words "a Partnership" and the application must be signed by at least one of the general partners duly authorized to bind all of the partners.

(3) In the case of a corporation, government agency, county, municipality or any other body politic and corporate, the application shall be signed by a duly authorized official. A copy of the resolution or other authorization to make the application may be.

(4) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.

Applications must set forth the following:

(1) the name and address of the fee owner of the land upon which the well is to be drilled or the well is located;

(2) a map showing the proposed location of the well to be drilled as provided in the application including the County, the section, block, survey and township; labor and league; and exact number of yards to the nearest nonparallel property lines; or other adequate legal description;

(3) the proposed use of the well, whether municipal, industrial, irrigation, agricultural or other;

(4) the size of the pump;

(5) the approximate date drilling or operation is to begin;

(6) the location of all wells within a quarter mile on the proposed location, if any;

(7) an agreement by the applicant that a complete well registration and log will be furnished to the District (on forms furnished by the District) upon completion of this well and prior to producing any water (except for such production as may be necessary to the drilling and testing of the well);

(8) any additional data as may be required by the Board and included on the form; and

(9) a water conservation plan and a declaration that the applicant will comply with the district's management plan.

RULE 7 REQUIREMENTS OF DRILLER'S LOG, CASING AND PUMP DATA

Complete records shall be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled. Such records shall include an accurate driller's log, any electric log made and any additional data concerning the description of the well, its maximum rate of production. Drilling records must be filed with the District within 90 days after completion of the well.

A well log and well registration form must be provided to the District prior to any production from the well except for production necessary to drilling, completing and testing the well.

RULE 8 PERMIT TERMS AND RENEWAL

a. Drilling Permits.

A drilling permit shall be valid for 180 days.

b. Production Permits.

Production permits shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed. The General Manager may renew a production permit for the same amount of withdrawal, point of withdrawal, place of use, and purpose of use without hearing or notice except that upon renewal, production permits shall be subject to any new criteria or pumping limitations established by these rules.

c. Transportation Permits.

Transportation permits shall be valid for three (3) years from the date of issuance if construction of the conveyance system has not been initiated prior to the issuance of the permit. Transportation permits shall be valid for thirty (30) years if construction of the conveyance system has been initiated prior to issuance of the permit or if construction of the conveyance system begins during the term of the initial 3 year permit.

RULE 9 PERMIT AMENDMENTS

Permits may be amended by filing an amendment application with the board. Amendments shall be granted or denied following the same procedure and requirements of an original application.

RULE 10 WELL LOCATION AND COMPLETION

After an application for a well permit has been granted, the well, if drilled, must be drilled within **thirty (30) feet** of the location specified in the permit. 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.

All well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of this Rule prescribing the location of wells and proper completion.

Wells may not be drilled within one hundred (100) feet of any property line. In addition, well must be located so that the distance to any other existing well is at least one foot for each gallon-per-minute of production capacity of the new well. If the capacity of the well exceeds one-thousand (1000) gallons-per-minute then the minimum spacing distance must be an additional one-half (1/2) foot for each gallon-per-minute in excess of one-thousand.

EXAMPLES:

500 gallons per minute=500 feet
750 gallons per minute=750 feet
1000 gallons per minute=1000 feet
1250 gallons per minute=1375 feet
1500 gallons per minute=1750 feet
1750 gallons per minute=2125 feet

For the purpose of preventing waste, the Board reserves the right in particular subterranean water zones or reservoirs to enter special orders increasing or decreasing distances provided by this requirement.

RULE 11 PRODUCTION LIMITATIONS

a. A well or well system may only be permitted to be drilled and equipped for production of a cumulative total of ten (10) gallons per minute per contiguous acre owned or operated.

b. In no event may a well or well system be operated such that the total annual production exceeds one-half (1/2) acre foot of water per acre owned or operated.

c. All production permits are issued subject to future changes to these rules mandated by a determination by the Texas Water Development Board setting the managed available groundwater in the District. Under no circumstances may the aggregate total of all production permits exceed the managed available groundwater in the District.

RULE 12 EXCEPTIONS TO SPACING AND PRODUCTION RULES

In order to protect rights of owners of interests in groundwater or to prevent waste, the Board may grant exceptions to the above spacing and production limitation rules. This rule may not be construed to limit the power of the Board, and the powers stated are cumulative of all other powers possessed by the Board.

Application for an exception to the spacing or production limitation rule must be submitted in writing to the District office on forms furnished by the District. The application must be accompanied by a plat or sketch, drawn to scale of one (1) inch equaling two thousand (2000) feet. The plat or sketch must show thereon the property lines of the lot where the well is located the location of any wells within one-half (1/2) mile of the well location. The application must also contain the names and addresses of all property owners adjoining the tract on which the well is located, and the owners of the wells within one-half (1/2) mile of the well location. The application and plat must be attested to by some person actually acquainted with the facts who subscribe and swear or affirm under oath before any person entitled to administer oaths, who must also sign and apply the seal of office to the attestation, that all the facts set out in the application are true and correct.

The hearing notice shall state that the application does not meet spacing requirements of the District, and an exception is requested by the applicant.

RULE 13 REWORKING OR REPLACING OF WELL

A permit is not required to rework, redrill, or replace an existing well in a manner that will not change the existing well.

A permit is required to replace a well, or to rework, redrill, or reequip a well in a manner that would increase the rate of production of the well to a rate of production greater than 25,000 gallons per.

RULE 14 FINAL ORDERS OF THE BOARD

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

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing; or

(2) if a request for rehearing is filed on time, on the date:

(A) the board denies the motion for rehearing or the motion for rehearing is denied by operation of law; or

(B) the board renders a written decision after rehearing.

RULE 15 RIGHT TO INSPECT AND TEST WELLS

Upon approval by well owner, any authorized officer, employee, agent, or representative of the District shall have the right at all reasonable times to enter upon the lands where a well or wells may be located within the boundaries of the District. District staff may inspect any well or wells on the property, and may read any meter, weir box or other instrument for the purpose of measuring production of water from any well or wells on the property. District staff may take any necessary action to determine the pumping capacity of any well or wells on the property.

Any authorized officer, employee, agent, or representative of the District shall have the right at reasonable times to enter upon any land upon which a well or wells may be located within the boundaries of the District for the purposes of testing the pump and the power unit of the well or wells, or making any other reasonable and necessary inspections and tests that may be required or necessary for enforcement of these rules.

RULE 16 OPEN WELLS TO BE CAPPED

Abandoned wells must be permanently plugged. It shall be the responsibility of the land owner to ensure every abandoned well on that person's property is properly plugged. Officers, agents and employees of the District are authorized to serve or cause to be served written notice upon any owner or operator of a well in violation of this rule, thereby requesting such owner or operator to permanently plug the well. In the event any owner or operator fails to comply within ten (10) days, any officer, agent or employee of the District may any abandoned well in a manner complying with this rule, and all expenditures incurred shall constitute a lien upon the land where the well is located.

RULE 17 RULES GOVERNING CONTESTED CASE HEARINGS

a. Pre-hearing Conference.

A pre-hearing conference may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process.

b. Matters considered.

Matters that may be considered at a pre-hearing conference include, but are not limited to:

- (1) designation of parties;
 - (2) consolidation of other applications pertinent to this application or hearing;
 - (3) additional formulation and simplification of issues;
 - (4) referral of parties to an alternative dispute resolution procedure;
 - (5) the necessity or desirability of amending applications or other pleadings;
 - (6) possibility of making admissions or stipulations;
 - (7) establishing a Discovery Control Plan;
 - (8) identifying and specifying of the number of witnesses;
 - (9) filing and exchange of prepared testimony and exhibits;
- and
- (10) establishing procedure at the hearing.

c. Notice.

A pre-hearing conference may be held at a date, time, and place stated in the notice provided to those persons entitled to notice and may be continued from time to time and place to place, at the discretion of the presiding officer.

d. Conference Action.

Action taken at a pre-hearing conference may be reduced to writing and made a part of the record, or may be stated on the record at the close of the conference.

e. Assessing Reporting and Transcription Costs.

Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may assess reporting and transcription costs to one or more of the parties. The presiding officer will consider the following factors in assessing reporting and transcription costs:

- (1) the party who requested the transcript;
- (2) the financial ability of the party to pay the costs;
- (3) the extent to which the party participated in the hearing;
- (4) the relative benefits to the various parties of having a transcript;
- (5) the budgetary constraints of a governmental entity participating in the proceedings; and

(6) any other factor that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of reporting or transcription costs is an issue, the presiding officer will provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs will be included in the presiding officer's report to the Board.

f. Designation of Parties.

Parties to a hearing may be designated on the first day of hearing, or at such other time as the presiding officer determines. The General Manager and any person specifically named in a matter are automatically designated parties. Only 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 may be admitted as parties. Persons that only have an interest common to members of the public may not be admitted as parties.

g. Rights of Designated Parties.

Subject to the direction and orders of the presiding officer, 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.

h. Persons Not Designated Parties.

At the discretion of the presiding officer, 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 to inform the Board regarding various concerns or issues related to the application and may be considered as evidence if corroborated by sworn testimony or exhibits properly admitted into evidence by a party.

i. 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 the 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.

j. Interpreters for Deaf Parties and Witnesses.

If a party or subpoenaed witness in a contested case is deaf, the party who subpoenaed the witness will provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person.

k. Agreements to be in Writing.

No agreement between parties or their representatives affecting any pending matter will be considered by the presiding officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered of record.

l. Discovery.

Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the presiding officer. Unless specifically modified by these Rules or by order of the presiding officer, discovery will be governed by, and subject to the limitations set forth in, the Administrative Procedure Act (APA), Texas Government Code §2001.001 et seq., as amended, and the State Office of Administrative Hearings (SOAH) Rules of Procedure, as amended. In addition to the forms of discovery authorized under the APA and SOAH Rules, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer. Discovery commences at the time indicated in the Discovery Control Plan as approved by the presiding officer.

m. Subpoenas.

Requests for issuance of subpoenas or commissions in a contested case shall be in writing and directed to the Board. A party requesting the issuance of a subpoena shall file an original and one copy of the request with the General Manager, which shall arrange for the request to be presented to the Board at a regular or special meeting of the Board, in compliance with the Open Meetings Act and other applicable law. If good cause is shown for the issuance of a subpoena, the Board shall issue the subpoena or request that the Hearings Examiner issue the subpoena, in compliance with §2001.089 of the Texas Government Code.

n. Ex Parte Communications.

During a contested case, neither the presiding officer nor any member of the Board may communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with District staff not directly involved in the hearing in order to utilize the special skills and knowledge of the District in evaluating the evidence and does not apply to proceedings other than a contested permit hearing.

o. Compelling Testimony; and Swearing Witnesses.

Except where expressly limited by statute, such as under Government Code Section 2009.054, the presiding officer may compel any person to testify who is necessary, helpful, or appropriate to the hearing. The presiding officer shall administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth.

p. 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.

q. Written Testimony.

Testimony may be received in written form if the proceeding will be expedited and the interests of the parties not substantially prejudiced by doing so. 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.

r. Requirements for Exhibits.

Exhibits of a documentary character must be of a size that will 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.

s. Abstracts of Documents.

When documents are numerous, the presiding officer 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.

t. Introduction and Copies of Exhibits.

Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the presiding officer and to each of the parties, unless the presiding officer rules otherwise.

u. 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 shall be included in the record for the purpose of preserving the objection to excluding the exhibit.

v. Official Notice.

The presiding officer 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.

w. 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.

x. Oral Argument.

At the discretion of the presiding officer, oral arguments may be heard at the conclusion of the presentation of evidence.

Reasonable time limits may be prescribed. The presiding officer 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.

y. Closing the Record.

At the conclusion of the presentation of evidence and any oral argument the presiding officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer.

RULE 18 REHEARING

The decision of the Board on any matter contained herein may be reconsidered by it on its own motion or upon receiving a motion for rehearing, or upon receiving a motion showing changed or new conditions. If the Board should decide to reconsider a matter it shall give notice to persons who were parties to the original action. Conduct of the hearing shall be in the same manner and procedure as a contested case hearing.

RULE 19 WATER RIGHTS

Permits represent permission to drill a well or produce a set amount of water over the term of the permit. A permit does not represent a permanent water right nor may any water rights be permanently severed from the land.

RULE 20 TRANSPORTATION OF WATER FROM THE DISTRICT

A Transportation Permit is required to transport water outside the boundaries of the District. The application for a Transportation permit must be filed with the District on forms promulgated by the District.

An application for the transportation of water for which a permit is required under this Rule must:

- (1) be in writing and sworn to;
- (2) contain the name, post-office address and place of residence or principal office of the applicant;
- (3) identify the location of the well from which the water to be transported is produced or to be produced;
- (4) describe specifically the proposed transportation facilities;
- (5) state the nature and purposes of the proposed use and the amount of water to be used for each purpose;
- (6) state the time within which the proposed construction or alteration is to begin;
- (7) state the length of time required for the proposed use of water, and the amount of water to be used;
- (8) provide information showing the effect of the proposed transportation on the quantity and quality of water available within the District;
- (9) provide information on the method or methods of transportation; and
- (10) identify any other liquids that could be substituted for the fresh groundwater and possible sources of such liquid including quantity and quality.

The application must be accompanied by a map or plat drawn to a scale not less than one inch equals 4,000 feet, showing substantially:

- (1) the location of the existing or proposed well; and
- (2) the location of the place of use.

The District shall determine whether the application, maps, and other materials comply with the requirements of these rules, the District Management Plan, the State Water Plan, and state law. The District may require amendment of the application, maps, or other materials to achieve necessary compliance.

The District shall conduct a public hearing on each application within ninety (90) days of the filing of the complete application.

Notice of the public hearing shall include the following:

- (1) the name and address of the applicant;
- (2) the date the application was filed;
- (3) the location and purpose of the well from which the water to be transported is produced or to be produced;
- (4) the time and place of the hearing; and
- (5) any additional information the District considers necessary.

At the time and place stated in the notice, the District shall hold a public hearing on the application. The hearing may be held in conjunction with any regular or special meeting of the District or a special meeting may be called for the purpose of holding a hearing. Any person may appear at the hearing, in person or by attorney, or may enter his appearance in writing. The District may receive evidence, orally or by affidavit, in support or in opposition to the issuance of the permit, and it may hear arguments.

After the hearing, the Board may determine if the application is going to be contested and schedule a contested case hearing. If no protests are filed against the application the board may approve the application as filed.

An application for a Transportation Permit shall be approved if the Board of Directors finds:

- (1) that the applicant has a legitimate need for the amount of water to be transported as evidenced by inclusion of the proposed project in the approved regional water plan and the current State Water Plan;

- (2) that the permit will not substantially affect the availability of water in the district;

- (3) that the permit will not have a substantially negative effect on aquifer conditions or cause excessive aquifer depletion;

- (4) that the permit will not have a substantially negative impact on existing permit holders or other groundwater users within the district; and

- (5) that the method of transportation will not result in waste.

In considering the permit, the Board shall consider the following:

- (1) the quantity of water proposed to be transported;
- (2) the requested term; and
- (3) the approved District Management Plan.

On approval of an application, the District shall issue a permit to the applicant. The applicant's right to transport shall be

limited to the extent and purposes stated in the permit. A transportation permit is transferable.

The permittee shall file with the District quarterly reports describing the amount of water transported and used for the permitted purpose. Such report shall be filed on the appropriate form or forms provided by the District within ten (10) days of the March 31, June 30, September 30, and December 31 next following the commencement of transporting of water, and within ten (10) days of each such quarterly date thereafter.

Each quarterly report shall be accompanied by a fee payment equal to two and one-half cents (\$0.025) per thousand (1000) gallons actually transported during that quarter. In addition to any other remedy provided by law, the District may enforce payment of these fees by suspending the transportation permit and prohibiting further exports until all fees due are paid.

All permitted transportation facilities must be equipped with flow monitoring devices approved by the District and available for District inspection at any time.

Any permit granted under this Subsection shall be subject to revocation for nonuse or waste by the permittee, or for substantial deviation from the purposes or other terms stated in the permit. Revocation of a permit for nonuse shall require that no water is transported under the permit for a period of five years.

RULE 21 REQUEST FOR INJUNCTIVE RELIEF AND ASSESSMENT OF PENALTIES

If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Act or any Board order, rule or permit, the Board may authorize the General Manager to institute and conduct a suit in the name of the District for injunctive relief, or to recover a civil penalty of up to ten thousand dollars (\$10,000) for each violation and for each day a violation continues, or for both injunctive relief and civil penalties.

RULE 22 GENERAL RULES

a. Computing Time:

In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Sunday

or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday or a legal holiday.

b. Time Limit:

Applications, requests, or other paper or documents required or permitted to be filed under these rules or by law must be received for filing at the Board's offices at Tilden, Texas, within the time limit, if any, for such filing. The date of receipt and not the date of posting is determinative.

c. Show Cause Orders And Complaints:

The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite any person operating within the District to appear before it in a public hearing and require him to show cause why operating authority or permit should not be suspended, canceled, or otherwise restricted and limited, for failure to comply with the orders or rules of the board or the relevant of the State, or for failure to abide by the terms and provisions of the permit or operating authority itself. The matter of evidence and all other matters of procedure at any such hearing will be conducted in accordance with these rules of procedures and practice.

RULE 23 REPEAL OF PRIOR REGULATIONS

All of the previous rules and regulations of the District have been revised and amended; and except as they are herein republished, they are repealed. Any previous rule or regulation which conflicts with, or is contrary to, these rules is hereby repealed.

RULE 24 SAVINGS CLAUSE

If any section, sentence, paragraph, clause, or part of these rules and regulations should be held or declared invalid for any reason by a final judgment of the courts of this state or of the United States, such decision or holding shall not affect the validity of the remaining portions of these rules; and the Board does hereby declare that it would have adopted and promulgated such remaining portions of such rules irrespective of the fact that any other sentence, section, paragraph, clause, or part thereof may be declared invalid.