

**SUTTON COUNTY UNDERGROUND  
WATER CONSERVATION DISTRICT**

**AMENDED DISTRICT RULES**

Approved:

November 13, 2018

Effective:

November 13, 2018

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[Link to Chapter 36 – Water Code](#)

## **SUTTON COUNTY UNDERGROUND WATER CONSERVATION DISTRICT**

Notice of the Rules of the Sutton County Underground Water Conservation District was published on November 13, 2018.

In accordance with Section 59 of Article XVI of the Texas Constitution and Act of March 28, 1985, 69th Leg., R.S., ch. 377, 1985 Tex. Gen. Laws (HB 1161) (“District Act”), Act of May 23, 2001, 77th Leg., R.S., ch. 966, 2001 Tex. Gen. Laws (SB 2), and the 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.

These Rules have been adopted to facilitate the administration of the water laws of the State and to set forth the governance of the District and shall be construed to achieve those ends. 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 state 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 state law.

In adopting these rules, the District considered all groundwater uses and needs; developed rules that are fair and impartial; considered the groundwater ownership and rights described by Texas Water Code Section 36.002; considered the public interest in conservation, preservation, protection, recharging of groundwater, and the prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution; and considered the goals developed as part of the District’s management plan under Section 36.1071; and developed rules that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

The District acknowledges a landowner’s rights in the groundwater under his property as described in Texas Water Code Chapter 36.002. Landowners own groundwater in place, and it is therefore a vested property right. *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814, 817 (Tex. 2012). Further, “a district’s discretion to preserve historic or existing use is . . . tied both to the amount and purpose of the prior use.” *Guitar Holding Co. v. Hudspeth County Underground Water Conservation Dist. No. 1*, 263 S.W.3d 910, 916 (Tex. 2008).

The District is authorized by Texas Water Code Section 36.101 to make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by 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 these Rules. These Rules are effective as of November 13, 2018.

## **MISSION STATEMENT**

*It is the Mission of the Sutton County Underground Water Conservation District to preserve and optimize our groundwater resources for the use by current and future residents of the District.*

## **STRATEGY STATEMENT**

*It is the Strategy of the Sutton County Underground Water Conservation District to manage the resource through the application of adopted rules:*

*That are fair and impartial, which consider:*

- *Ownership Rights;*
- *Conservation;*
- *Preservation;*
- *Protection;*
- *Recharging; and*
- *Prevention of Waste*

*in accordance with Article XVI of the Texas Constitution and Texas Water Code, Chapter 36 and the District's enabling legislation.*

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## CHAPTER 1

### DEFINITIONS

#### RULE 1.1: DEFINITIONS

Definitions of Terms: In the administration of its duties, the Sutton County Underground Water Conservation District follows the definitions of terms set forth in Chapter 36 of the Texas Water Code (the “Texas Water Code”) and other definitions as follows. Any word not defined below shall have the definition as provided by and used in the Texas Water Code.

1. “Abandoned well” means a water well that has not been used for six consecutive months. A water well is considered to be in use in the following cases:
  - (a) a non-deteriorated well which contains the casing, pump, and pump column in good condition; or
  - (b) a non-deteriorated well which has been capped.
2. “Acre-foot” means the amount of water necessary to cover one acre of land one foot deep, or about 325,851 gallons of water.
3. “Agriculture” means any of the following activities:
  - a. cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
  - b. the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
  - c. raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
  - d. planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
  - e. wildlife management; and
  - f. raising or keeping equine animals.
4. “Alter the size of a well,” means any modification to a well that increases or decreases its capacity.
5. “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.

6. "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.
7. "Beneficial Use" or "Beneficial Purpose" means using groundwater for:
  - a. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational or pleasure purposes;
  - b. exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals;  
or
  - c. any other purpose that is useful and beneficial to the user and not harmful to other users.
8. "Board" means the board of directors of the Sutton County Underground Water Conservation District.
9. "Brackish water" means water containing between 3,000 and 10,000 milligrams per liter total dissolved solids.
10. "Casing" means a tubular watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the groundwater to its zones or origin and prevent the entrance of surface pollutants.
11. "Cement" means a neat Portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum, or other additives to which all manufacturer's recommendations regarding the water content for the mix have been strictly adhered to.
12. "Code" means the Texas Water Code.
13. "Commercial Use" means the use of groundwater to supply water to properties or establishments that are in business to build, supply or sell products, or provide goods, services or repairs and that use water in those processes, or the use of groundwater to the business establishment primarily for employee and customer conveniences (i.e. flushing of toilets, sanitary purposes, or limited landscape watering).
14. "Commingling" means the mixing, mingling, blending or combining through the borehole casing annulus or the filter pack of waters that differ in chemical quality, which causes quality degradation of any aquifer or zone.
15. "Community Water System" means a public water system that has the potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.
16. "Completion" means sealing off access of undesirable water to the well bore by proper casing and/or cementing procedures.

17. "Conservation" means practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
18. "Desired Future Condition" or "DFC" means a quantitative description, adopted in accordance with Texas Water Code Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.
19. "Deteriorated Well" means a well in a condition that will cause or is likely to cause pollution of any water in the District.
20. "District" means the Sutton County Underground Water Conservation District (Sutton County UWCD or SCUWCD).
21. "District Office" means the office of the District at 301 S. Crockett Ave., Sonora, TX 76950, or any future location of the office.
22. "Domestic Use" means beneficial use of groundwater by an individual or a household (not a business or other commercial structure) to support essential domestic activity, including but not limited to: uses inside the residence; irrigation of lawns, flower beds, shrubs, trees shading the residence, or of a garden or orchard that produces vegetables and fruit for consumption within the residence and not for sale; protection of foundations; and non-commercial recreation associated with the residence. Essential domestic activity does not include water used to support activities for which consideration is given or for which the product of the activity is sold;
23. "Drilling Permit Application" means a District-created *Application to Drill, Equip, Complete, or Alter the Size* of either an exempt or a non-exempt well in the District.
24. "Drilling Permit" means a District-created *Permit to Drill, Equip, Complete, or Alter the Size of a Well*.
25. "Drought Contingency Plan" means the plan adopted by the Board of Directors, which may be triggered by adverse environmental conditions that require implementation of emergency plans.
26. "Exempt Well" means
  - a. a registered well located on a tract of land 10 acres or more, and used solely for domestic purposes or for providing water for livestock, that is drilled, completed, equipped, or managed so that it is incapable of producing more than 25,000 gallons per day ("gpd");
  - b. a well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for oil or gas permitted by the Railroad Commission of Texas provided that the person holding the Railroad Commission permit is

responsible for drilling and operating the water well, and that the well is located on the same lease or land associated with the drilling rig;

- c. a water well authorized under a permit issued by the Railroad Commission of Texas under Texas Natural Resources Code Chapter 134, or for production from such a well to the extent that the withdrawals are required for mining activities regardless of any subsequent use of the water;
27. "Existing Well" means a well located within the District that was drilled and properly completed on or before the date of these amended rules. These wells are considered "grandfathered" only in their existence, but must comply with applicable rules of the District.
28. "Fresh Water" means water with bacteriological, physical, and chemical properties that are suitable and feasible for beneficial use.
29. "General Manager" means the person employed by the Board to manage employees and day-to-day operations and affairs of the District and whose title is "General Manager."
30. "Groundwater" means water percolating below the surface of the earth.
31. "Groundwater Availability Model (GAM)" means a three dimensional numerical groundwater flow model capable of simulating regional-scale groundwater flow systems.
32. "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries and containing groundwater.
33. "Industrial Use" means the use of groundwater in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric.
34. "Irrigation" means the artificial use of groundwater to supply water for application to plants or land in order to promote growth of plants, turf, or trees, other than for domestic use.
35. "Livestock Use" means using groundwater for agricultural practices as defined in Texas Tax Code Section 23.51 or any amendment thereto. Livestock use does not include providing water to pets, which is considered domestic use. Water used for concentrated animal feeding operations as defined in Title 30 Texas Administrative Code Section 321.32 or any amendment thereto is not considered livestock use under these rules; it is considered industrial use.
36. "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.
37. "Measure" means effort made to accurately quantify the amount of water used for some purpose

- a. by using a water meter;
  - b. by extrapolating from the amount of electricity used, over time, to pump the desired quantity of water;
  - c. by knowing the flow rate and the time it takes to fill a known volume then using this information to determine total amount of water used; or
  - d. by any other reasonable method of quantifying the amount of water used.
38. "Meter" means a District-approved meter properly sized for the well's production capability, which is not capable of being "reset" by the well owner, which measures the water flow and can accurately record the amount of water produced during a measured time in gallons per minute.
39. "Modeled Available Groundwater" means the amount of water that the Texas Water Development Board determines may be produced on an average annual basis to achieve a desired future condition established under Texas Water Code Section 36.108.
40. "Mud" means a relatively homogeneous, relatively viscous fluid produced by the suspension of clay-size particles in water.
41. "Municipal Water Supplier" means a water supplier who uses groundwater to supply potable drinking water by a retail public water supply entity including but not limited to an incorporated city.
42. "New Well" means a well that is drilled or properly completed after the date of these amended rules.
43. "Non-Exempt Well" means a well for which the owner is required to obtain an operating permit. A well used for irrigation, industrial, commercial, or municipal uses, or located on a tract of land less than 10 acres is a non-exempt well.
44. "Operating Permit Application" means a District-created *Application for a Non-Exempt Well Permit* completed by an applicant applying to operate a non-exempt well in the District.
45. "Operating Permit" means a District-created *Non-Exempt Well Permit* that allows the applicant to operate a non-exempt well in the District.
46. "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.
47. "Party" means, with reference to a contested case:
- a. the General Manager of the District;

- b. the applicant; and
  - c. a person who is granted a contested case hearing by Board action.
48. "Permitted Well" means a non-exempt well which has been issued an operating permit by the District for the withdrawal of groundwater.
  49. "Person" means any individual, partnership, firm, corporation, organization, government, agency, business trust, estate, trust, association, or any other legal entity.
  50. "Plugging" means sealing a well bore by any method that meets the requirements of these rules and state law.
  51. "Polluted" or "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of 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.
  52. "Rate of Production" means the rate stated in an operating permit that limits the number of gallons of groundwater produced per acre, with a maximum annual cap of overall groundwater production specified in a specific unit of volume.
  53. "Retail Public Water Utility" means any person, corporation, public utility, water supply corporation, municipality, political subdivision or agency operating, maintaining, or controlling within the District facilities for providing potable water service for compensation.
  54. "Surface Impoundment" means any excavation or man-made structure into which water has been pumped for impoundment or storage and is open to the air allowing evaporation.
  55. "Transport" means transferring or moving groundwater outside the District.
  56. "Transport Application" means a District-created *Transport and/or Transportation Facility Permit Application* completed by an applicant applying to transport water outside the District and/or build a transportation facility.
  57. "Transport Permit" means a District-created *Transport and/or Transportation Facility Permit* allowing the transport of a specific quantity of water outside the District's boundaries for a designated time period and/or allowing for the construction of a transportation facility.
  58. "Transportation Facility" means a facility that provides for the transport of groundwater out of the District, including the pumping, capturing and containment of water within the District and transporting the water outside the District. A facility that bottles groundwater onsite and transports the bottled groundwater outside the District is also a transportation facility.

59. "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 or is used in an amount in excess of the amount reasonably needed for that 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 unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality under Chapter 36;
  - f. groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or
  - g. for water produced from an artesian well, "waste" has the meaning assigned by Texas Water Code Section 11.205.
60. "Water" means groundwater, fresh or brackish. The terms water and groundwater are used interchangeably.
61. "Well" or "Water Well" means any facility, device, or method used to withdraw groundwater from water-bearing formations under the surface of the earth.
62. "Well Location" means the location, as indicated by GPS coordinates, of a proposed water well on a registration, notice of intent to drill, permit application, or permit amendment application until such application is granted or denied, or the location of a well on a District-issued permit.
63. "Well Log" means a log, accurately kept, on forms prescribed by the Texas Department of Licensing and Regulation ("TDLR") or any successor regulatory agency with jurisdiction therefor, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any special-purpose geophysical logs that may be available for any given well, such as a gamma-ray log, a temperature log, an electric log, or a caliper log, and other data or information required by TDLR or this Board.

64. "Well Registration" means District recording of exempt well information such as owner, address, location, type, use, log, yield, and quality.
65. "Withdraw" or "Withdrawal" means the act of extracting groundwater by pumping or any other method, other than the discharge of natural springs.

## **CHAPTER 2**

### **USE OF WATER, BENEFICIAL VS. WASTE**

*This Chapter describes waste and beneficial use of groundwater.*

#### **RULE 2.1: WASTE PROHIBITED**

1. Groundwater shall not be produced within, or used within or without the District in such a manner or under such conditions as to constitute waste.
2. Any person producing or using water shall use every possible precaution to stop and prevent waste of such water.
3. No person shall pollute or harmfully alter the character of the water by means of salt water or other deleterious matter and/or substance admitted from some other stratum or strata or from the surface of the ground.
4. Transporting water, for other than irrigation, in an open ditch, canal or other such water course is per se waste and is strictly prohibited.

#### **RULE 2.2: DETERMINING BENEFICIAL USE WITHOUT WASTE**

1. When setting the production limit for a non-exempt well for agricultural or irrigation use, the District may base its calculations on industry standards from a knowledgeable source such as a county extension agent. The information must be based on number of acres, crop type, and time of year.
2. When setting a production limit for a non-exempt well for agricultural or livestock use, the District may base its calculation on industry standards from a knowledgeable source. The information may be based on number of animals, type of animals, and time of year.
3. When setting a production limit for a non-exempt well for commercial use, the District may consider the minimum water capacity requirements of Title 30 Texas Administrative Code Section 290.45(c) and (d).
4. When setting a production limit for a non-exempt well for an industrial, municipal, community water system, or retail public utility use, the District may consider industry standards.

## CHAPTER 3

### EXEMPT WELLS AND REGISTRATION

*This Chapter specifies rules for registration of exempt wells. See Texas Water Code Sections 36.111 and 36.117.*

#### RULE 3.1: EXEMPT WELLS - GENERAL

1. Wells that are drilled, completed, or equipped so that they are incapable of producing more than 25,000 gpd are exempt and shall be registered.
2. An exempt well registration does not need to be renewed as long as there have been no changes to the well requiring a permit application or report of change of ownership.
3. Any exempt well as defined by Rule 1.1.26 related to oil or gas exploration, and (c), related to mining activities, shall report annual water production.
4. A registered exempt well may be converted to a permitted non-exempt well after drilling and completion if the required permit application is completed, permit application fees are paid, and a permit is obtained after approval by the District's Board of Directors.

#### RULE 3.2: EXISTING EXEMPT WELLS

In order to provide notice to the District of adverse conditions affecting the aquifer or well-spacing issues, all existing exempt wells should be registered with the District. A *Well Registration Form* should be filed within one year from the date of adoption of these rules. A well is considered registered if an existing record is on file, or when a completed *Well Registration Form* is returned to the District office. Existing wells need only provide as much information as is available.

*Note: In the first year following implementation of these rules, in order to simplify and encourage the Registration of all existing Exempt wells, the District will send a confirmation notice to all Registered Well Owners currently on file. If you do not receive a notice for your well, contact the District office for assistance.*

#### RULE 3.3: NEW EXEMPT WELLS

1. A person desiring to drill a new exempt well must file a *Notice of Intent to Drill* with the District on a form provided by the District. District staff will then arrange a site visit to review the proposed well location for compliance with spacing requirements, septic system setbacks, and property line setbacks.
2. Drilling of a new exempt well must commence within one year from District approval of the notice described in Rule 3.1.2. Upon request by the registrant in writing, the District will consider and may grant an extension for up to an additional six months. The General Manager may act on a request for an extension of an approved notice of intent to drill.

3. The applicant must complete the *Intent to Drill* on the District's form and include:
  - a. Name and contact information of the owner, or the applicant and the owner of the land on which the well is located or to be drilled;
  - b. If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
  - c. Property information including the deed to the property on which the well is located or to be drilled; the deed or lease for the groundwater to be pumped, if applicable; and map or survey, if available, for the property on which the well is to be drilled; information and payment, of any liens or unpaid fees owed to the District by the Applicant from any other well or permit owned by Applicant in the District's jurisdiction or other obligation to the District;
  - d. Date the well is to be drilled or altered, if applicable;
  - e. Name and contact information for the water well driller or party conducting well work;
  - f. Specify whether the application is to drill, equip, complete, or alter the size of the well;
  - g. Description of the well site, including latitude; longitude; elevation above mean sea level; distance from property lines; distance from nearest existing well; number of contiguous acres owned on which water is to be produced, if applicable; and aquifer from which water is to be produced;
  - h. Description of well equipment, including the type, size, and horsepower of pump; depth of pump/bowls, etc.; casing diameter; power supply; and if altering the size of a well, the same information for the current well;
  - i. Description of well use, including whether the use will be domestic or livestock; the total annual water use requested in gallons or acre feet per acre; and the rate of withdrawal requested.
4. All wells must comply with the location standards of Title 16 Texas Administrative Code Section 76.100 and with the minimum required separation distance for on-site sewage facilities of Title 30 Texas Administrative Code Section 285.91(10), which dictate horizontal distance from potential sources of pollution.
5. The well must be within 30 feet of the proposed location listed on the Intent to Drill.
6. Within 30 days of drilling a new exempt well pursuant to an approved notice of intent to drill, the well owner shall file a *Well Registration Form* with the District.

7. Within 60 days of completing the well, the water well driller must file a copy of the well log with the District and provide such information to the well owner.

## **CHAPTER 4**

### **NON-EXEMPT USE PERMITS**

*This Chapter describes the District's process for permitting of non-exempt wells. See Texas Water Code Section 36.113.*

#### RULE 4.1: NON-EXEMPT RULES - GENERAL

1. Wells that are drilled, completed, equipped, or managed so that they are capable of producing more than 25,000 gpd are non-exempt and shall be permitted.
2. Any non-exempt well as defined by Rule 1.1.43, shall report annual water production.
3. The permit holder for a non-exempt well used for irrigation, industrial, commercial, or municipal uses, or used on a tract less than 10 acres shall report annual water production.
4. A non-exempt well permit shall be renewed every five years as long as there have been no changes to the well requiring a permit application or report of change of ownership.

#### RULE 4.2: EXISTING NON-EXEMPT WELLS – OPERATING PERMIT

1. The owner of an existing unpermitted non-exempt well must file an *Operating Permit Application* with the District within one year from the date of adoption of these rules.

*Note: In the first year after the implementation of the rules, in order to simplify and encourage the permitting of existing wells that qualify as Non-Exempt, the District will work with all well owners on an individual basis to identify, qualify, and permit the existing well. During this one year period, there will be no fees or penalties for this service. However, after the first year, applicants must pay the full application fee.*

2. The applicant must complete the Operating Permit on the District's form and include the following, as well as any other information that was not otherwise provided in the Drilling Permit Application:
  - a. Name and contact information of the owner or the applicant and the owner of the land
  - b. Property information including the deed to the property on which the well is located; the deed or lease for the groundwater, if applicable;
  - c. Description of the well site, including latitude; longitude; elevation above mean sea level; distance from property lines; distance from nearest existing well; number of contiguous acres owned; and the aquifer

- d. Description of well equipment if known to include the type, size, and horsepower of pump, depth of pump/bowls, casing diameter, and power supply; and if altering the size of a well, the same information for the current well;
  - e. Description of well use, including whether the use will be municipal, industrial, commercial, or irrigation; the total annual water use requested in gallons or acre feet per acre; and the rate of withdrawal requested;
3. The District May Also Request:
    - a. A water conservation plan or a declaration that the applicant will comply with the district's management plan;
    - b. A water well closure plan or a declaration that the applicant will comply with the well plugging guidelines and report closure to the Texas Commission on Environmental Quality;
    - c. A drought contingency plan.
  4. The General Manager or authorized District staff will review all *Operating Permit Applications* pursuant to this Chapter.
    - a. For an uncontested *Operating Permit Application* for a new or existing well, the General Manager may, after determining that the application is administratively and technically complete, prepare and propose a permit to the Board, which the Board may vote to grant, with or without modification, without the need for a hearing on the application.
    - b. For contested *Operating Permit Applications*, the General Manager shall, after determining that the application is administratively and technically complete, refer the application to the Board for a hearing pursuant to Chapter 5.
  5. Notwithstanding the requirement to obtain an *Operating Permit*, an existing well owner who has submitted an *Operating Permit Application* may continue to produce water from his existing well until the owner is granted an *Operating Permit*. Thereafter, the well owner must operate the well according to the terms of the *Operating Permit*.
  6. A permit or permit amendment application is not required for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.

**RULE 4.3: NEW NON-EXEMPT WELLS - DRILLING PERMIT**

1. A well owner (or his/her agent) in order to drill a new non-exempt well, or to equip, complete, or alter the size of any non-exempt, well must submit an *Application to Drill, Equip, Complete, or Alter the Size of Well* ("*Drilling Application*") with the District and

receive an approved *Permit to Drill, Equip, Complete, or Alter the Size of Well* (“*Drilling Permit*”) from the District. Failure to comply is a violation of the Rules subject to enforcement as set out herein.

2. The applicant must complete the *Drilling Application* on the District’s form and include:
  - a. Name and contact information of the owner of the applicant and the owner of the land on which the well is located or to be drilled;
  - b. If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
  - d. Property information including the deed to the property on which the well is located or to be drilled; the deed or lease for the groundwater to be pumped, if applicable; and map or survey, if available, for the property on which the well is to be drilled; information regarding any liens or unpaid fees owed to the District by the Applicant from any other well or permit owned by Applicant in the District’s jurisdiction or other obligation to the District;
  - c. Date the well is to be drilled or altered, if applicable;
  - d. Name and contact information for the water well driller or party conducting well work;
  - e. Specify whether the application is to drill, equip, complete, or alter the size of the well;
  - f. Description of the well site, including latitude; longitude; elevation above mean sea level; distance from property lines; distance from nearest existing well; number of contiguous acres owned; and the aquifer;
  - g. Description of well use, including whether the use will be municipal, industrial, or irrigation; the total annual water use requested in gallons or acre feet per acre; and the rate of withdrawal requested;
3. The District may require an applicant, at the applicant’s expense, to provide the following supporting documents:
  - a. The results of a step draw down well test conducted at the time the well is completed;
  - b. Information that includes a hydrogeological study that shows current water availability and the projected effects of the proposed pumping on aquifer conditions, depletion, and other groundwater users in the District.

- c. Information showing the availability of water in the District during the period for which the water supply is requested, and any additional water supply that were not chosen and why.
- d. Information showing that the project is consistent with the approved Regional Water Plan and approved District Management Plan, including the desired future conditions.
- e. A water well closure plan or a declaration that the applicant will comply with the well plugging guidelines and report closure to the Texas Department of Licensing and Regulation.

**RULE 4.4: GENERAL PROVISIONS FOR DRILLING AND OPERATING PERMIT APPLICATIONS**

1. Applicant’s Signature:

- a. If the applicant is an individual, the application shall be signed by the applicant or his/her duly appointed agent. The agent must present proof of authority to represent the applicant. If the application is submitted by a partnership, the application must be signed by at least one of the general partners duly authorized to bind all of the partners. A copy of the resolution or other authorization to make the application must be submitted along with the application.
- b. If the application is submitted by a corporation, government agency, county, municipality, or any other political subdivisions, the application shall be signed by a duly authorized official. A copy of the resolution or other authorization to make the application must be submitted along with the application.
- c. In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.
- d. If the applicant is any other entity, the application shall be signed by the duly authorized representative of such entity. In any case, proof of authorization must accompany the application.

2. Application Fee and Deposit:

Each application for a permit or permit amendment shall be accompanied by an application fee as listed on the application. This application fee shall not exceed the cost of administrative expenses related to the application. Permit renewals do not require the application fee, unless permit amendments are sought with the renewal.

**RULE 4.5: REVIEW PROCESS FOR ADMINISTRATIVE AND TECHNICAL COMPLETENESS**

- 1. An application shall be considered filed if it is administratively complete, accompanied by the required application fee, and all outstanding liens and fees owed to the District by

- the Applicant from any other well or permit owned by the Applicant in the District's jurisdiction or other obligation to the District;
2. An administratively complete application consists of a completed, signed, application on the District's form and all required supporting documents, maps, surveys, studies, or other information required by the District to analyze the application. Administratively incomplete applications will not be considered.
  3. All applications for permits shall be reviewed by the General Manager of the District or authorized District staff in the District office for administrative completeness within seven working days of receipt of the application by the District ("Staff Review Period").
  4. The District shall notify the applicant when the application has been fully reviewed and deemed complete ("Administratively Complete Notification"). If an application is received that is not administratively complete, the staff shall notify the applicant of the deficiencies. If the applicant fails to respond at all within 30 days, the District may return the incomplete application to the applicant.
  5. After determining that a *Drilling Application* is administratively and technically complete under Chapter 4, the General Manager shall prepare and propose a permit (*Drilling Permit*) to the Board, which the Board may vote to grant, with or without modification, without the need for a hearing on the application. If the General Manager determines after review that the application is one on which the Board may desire to conduct a hearing, the General Manager may refer the application to the Board for such consideration at its next Board meeting, at which time the Board shall determine whether the application requires a hearing under Chapter 5.
  6. Technical Review.
    - a. After the application has been deemed administratively complete, the General Manager or authorized District staff shall conduct further technical review of the application.
    - b. As a part of the technical review, the General Manager and District staff may determine whether the District needs the results of a pump test, hydrogeological study, or other relevant testing or studies for complete review of the application. If the General Manager or District staff determines such testing or study is necessary, the General Manager shall make that recommendation to the Board at the next Board meeting.
    - c. As part of the technical review of a *Drilling Application*, the General Manager may determine that the District should send notice of the *Drilling Application* pursuant to Rule 4.5.
    - d. The General Manager or authorized District staff shall notify the applicant of any additional technical materials necessary for complete staff review. If the applicant does not respond within 10 working days of the request for additional technical material, and such data is deemed necessary or essential information by

the staff to make recommendations to the Board, the staff may return the application to the applicant as incomplete.

#### RULE 4.6: NOTICE OF APPLICATION

1. Within 10 days of the date of the *Administratively Complete Notification*, the District shall provide written notice described in this rule.
2. The provisions of this rule apply to applications for:
  - a. at the General Manager's discretion, as described in Rule 4.5.6, a *Drilling Permit* as described by Chapter 4;
  - b. an *Operating Permit* as described by Chapter 4;
  - c. a *Permit Amendment* as required by Rule 9.3; and
  - d. a *Transport Permit* as described by Chapter 11.
3. The District shall provide notice to all registered well owners with wells located within a half-mile radius of the well that is the subject of the application.
4. The notice shall contain the following information:
  - a. the name of the applicant;
  - b. the date on which the application was filed with the District;
  - c. the address or approximate location of the well(s) that is the subject of the permit or permit amendment application;
  - d. a statement that an affected person may contest the application by filing a request for a contested case hearing on the application with the District office within 10 days of the date of the notice;
  - e. a statement that the Board may proceed to decide on the application if no contest is filed; and
  - f. a description of the application's purpose.

#### RULE 4.7 EXTENSIONS

A request by an applicant for an extension of time to respond to requests from the District under this Chapter must be in writing and addressed to the General Manager. The General Manager may exercise his discretion in determining whether to grant any requested extension, and any extension granted must be in writing and signed by the General Manager.

#### RULE 4.8 UPON RECEIPT OF DRILLING PERMIT

1. The well owner or water well driller may begin drilling, equipping, completing, or altering the well upon receipt of a *Drilling Permit* by the District.
2. A *Drilling Permit* will automatically expire within one year from its issuance if the permitted well(s) has not been completed or is not significantly under development. Upon request by the permit holder in writing, the District will consider and may grant one extension for up to an additional six months. The General Manager may act on a request for an extension of a *Drilling Permit*.
3. Within 60 days of completing the well, the water well driller must file a copy of the well log with the District and provide such information to the well owner. If requested, the well driller will also provide the District additional information as needed to adequately assess any permit request.

### **CHAPTER 5**

#### **PERMIT AND PERMIT APPLICATION HEARINGS**

##### RULE 5.1: APPLICABILITY

This chapter applies to the notice and hearing process used by the District for permit and permit amendment applications.

##### RULE 5.2: SCHEDULING OF PUBLIC HEARING

1. The General Manager or Board may schedule a public hearing on permit or permit amendment applications received by the district as necessary.
2. The General Manager or Board may schedule more than one application for consideration at a public hearing, and a public meeting may be held in conjunction with a regularly scheduled meeting of the Board.
3. Except as provided by Rule 5.2.4, 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 Texas Water Code Section 36.113 and Chapter 4 of these Rules;
  - b. the spacing of water wells or the production of groundwater under Texas Water Code Section 36.116 and Chapters 6 and 7 of these Rules; or
  - c. transferring groundwater out of the District under Texas Water Code Section 36.122 and Chapter 11 of these rules.

4. 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.
5. Except for hearings conducted under Rule 5.6, a hearing must be held at the District office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location.

#### RULE 5.3 NOTICE

1. If the District schedules a hearing on an application for a permit, permit amendment, or exception from spacing requirements, the General Manager shall give notice of the hearing as provided by this rule.
2. The notice must include the name of the applicant; the address or approximate location of the well or proposed well; 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; the time, date, and location of the hearing; and 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 shall:
  - a. post notice in a place readily accessible to the public at the District office;
  - b. provide notice to the county clerk of Sutton County; and
  - c. provide notice by:
    - i. certified mail, return receipt requested, to the applicant;
    - ii. certified mail, return receipt requested, facsimile, or electronic mail to any person who has requested notice under Rule 5.3.4; and
    - iii. certified mail, return receipt requested, 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 certified mail, return receipt requested, 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 Rule 5.3.4 does not invalidate an action taken by the District at the hearing.

## RULE 5.4 BOARD ACTION; CONTESTED CASE HEARING REQUESTS; PRELIMINARY HEARING

1. The Board may take action on any uncontested permit or permit amendment application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The Board may issue a written order to grant the application, grant the application with special conditions, or deny the application.
2. The District may allow any person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application.
3. Contested case hearings may be requested in connection with the following: *Drilling Permits* that have been set for public hearing, *Operating Permits*, *Transport Permits*, permit amendment applications, requests for exceptions to spacing requirements, and recharge permits.
4. Requests for contested case hearings must be submitted by 5:00 pm the day before the public hearing at which the application is scheduled to be heard. Participation in a hearing on a contested application will be limited 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.
5. A protest or request for a contested case hearing shall be submitted in writing and must include the following:
  - a. The name and address of the protestant/requestor.
  - b. The protestant/requestor shall identify any injury that will result from the proposed action or matter to be considered by the Board.
  - c. If the protest or request is based on claim of interference with some present right of the protestant/requestor, the protest or request shall include a statement of the basis of the protestant/requestor's claim of right.
  - d. The protestant/requestor shall call attention to any amendment of the application which, if made, would result in withdrawal of the request.
  - e. If a contested case hearing is desired, the person desiring the hearing must include the statement "I/we request a contested case hearing."
6. After a hearing request is timely filed, the Board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance these Rules.
  - a. At least 20 days prior to the preliminary hearing the District staff will provide notice of the preliminary hearing to the applicant, General Manager, and any persons who timely filed a contested case hearing request.

- b. Affected persons may submit a written response to the hearing request no later than 10 days before the preliminary hearing. Responses must be filed with the District and served the same day on the General Manager, the applicant, and any other persons who timely filed a contested case hearing request.
    - c. The person requesting the contested case hearing may submit a written reply to a response no later than five days before the preliminary hearing. All replies shall be filed with the District and served the same day on the General Manager, the applicant, and any other person who timely filed a hearing request.
7. For any document filed with the District, a hearings examiner, or the State Office of Administrative Hearings related to a contested case, the filer must:
  - a. Serve a copy on all parties and/or the contestant at or before the time that the document is filed; and
  - b. Include a certificate of service on all documents presented for filing that indicates the date and manner of service and the name and address of each person served.
8. The preliminary hearing may be conducted by a quorum of the Board, an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing, or the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Rule 5.6.
9. An applicant or other party who desires a preliminary and/or contested case hearing before the State Office of Administrative Hearings must make that request concurrent with the request for a contested case hearing.
10. The determination of whether a hearing request should be granted is not a contested case hearing. Following a preliminary hearing, the Board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the Board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the Board may take any action authorized under Rule 5.4.1.
11. An applicant may, not later than the 20th day after the date the Board issues an order granting the application, demand a contested case hearing if the order includes special conditions that were not part of the application as finally submitted, or grants a maximum amount of groundwater production that is less than the amount requested in the application.
12. At the discretion of the Board or hearing examiner, persons not designated as parties 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.

## RULE 5.5 HEARING PROCEDURES

1. A hearing must be conducted by: a quorum of the Board, an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing, or the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Rule 5.6.
2. Except as provided below or by Texas Water Code Section 36.416 and Rule 5.6, the Board president or the hearings examiner shall serve as the presiding officer at the hearing. 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.
3. The presiding officer may:
  - a. convene the hearing at the time and place specified in the notice;
  - b. set any necessary additional hearing dates;
  - c. designate the parties regarding a contested application;
  - d. establish the order for presentation of evidence;
  - e. administer oaths to all persons presenting testimony;
  - f. permit the receipt of and rule on the admissibility of evidence;
  - g. rule on motions;
  - h. examine and allow cross-examination of persons presenting testimony;
  - i. issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
  - j. require the taking of depositions and compel other forms of discovery under these Rules;
  - k. ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
  - l. prescribe reasonable time limits for testimony and the presentation of evidence;
  - m. exercise the procedural rules of the District; and
  - n. determine how to apportion between the parties costs related to a contract for the services of a presiding officer and the preparation of the official hearing record.
4. 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.

5. 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.
6. The presiding officer, at the presiding officer's discretion, may issue an order at any time before Board action under Rule 5.13 that refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing; determines how the costs of the procedure shall be apportioned among the parties; and appoints an impartial third party as provided by Texas Government Code Section 2009.053 to facilitate that procedure.

#### RULE 5.6 HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

1. By order, the Board may delegate to the State Office of Administrative Hearings the authority to conduct hearings designated by the Board.
2. If requested by the applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct the hearing. The hearing must be held in Travis County or at a location within the District chosen by the District.
3. The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party. All other costs may be assessed as authorized by Texas Water Code Chapter 36 and these Rules.
4. If the Board refers a preliminary hearing or contested case hearing to the State Office of Administrative Hearings, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code, as supplemented by these Rules.
5. An administrative law judge who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing, but the District deciding the case may not supervise the administrative law judge.
6. The District shall provide the administrative law judge with a written statement of applicable rules or policies.

7. The District may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

#### 5.7 DISCOVERY; EXPENSES; EVIDENTIARY MATTERS; DEPOSITIONS AND SUBPOENAS; EX PARTE COMMUNICATIONS

1. Discovery and depositions in contested case proceedings will be governed by Texas Government Code Chapter 2001, Subchapter D and Texas Administrative Code Section 155.251 *et seq.* Depositions in a contested case will be governed by Texas Government Code Section 2001.103.
2. A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or a proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary or proper for the purposes of a contested case is entitled to receive compensation in accordance with the provisions of Government Code Section 2001.103. Amounts required to be reimbursed or paid shall be reimbursed or paid by the party at whose request the witness appears or the deposition is taken.
3. Evidentiary matters:
  - a. The presiding officer shall admit evidence that is relevant to an issue at the hearing. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
  - b. An objection to an evidentiary offer may be made and shall be noted in the record.
  - c. Evidence may be received in writing if it will expedite the hearing and will not substantially prejudice the interests of any party.
  - d. A copy or excerpt of documentary evidence may be received if an original documents is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.
  - e. A party may conduct cross-examination.
  - f. The Board may take official notice of all facts that are judicially cognizable, and generally-recognized facts within the area of the District's specialized knowledge. Each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noted, including staff memoranda or information. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledges of District staff may be used in evaluating the evidence.

4. Depositions and Subpoenas:

- a. On its own motion, or on the written request of a party, and on deposit of an amount that will reasonably ensure payment of the estimated total amount, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested matter pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case will be in writing and directed to the Board.
- b. A party requesting the issuance of a commission requiring deposition or a subpoena will file an original of the request with the District. District staff will arrange for the request to be presented to the Board at its next meeting.
- c. In the case of a deposition, the Board will issue a commission addressed to the officer authorized by statute to take a deposition, requiring that the deposition of a witness be taken. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers or other objects that may be necessary and proper for the purpose of the proceeding. Additionally, the commission will require the officer to whom it is addressed to examine the witness before the officer on the date and at the place named in the commission; and take answers under oath to questions asked the witness by a party to the proceeding, the District, or an attorney for a party or the District. The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.
- d. In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the District will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers or other objects that may be necessary or proper for the purpose of the proceeding.

5. Ex Parte Communications:

- a. For applications for which there is a right to a contested case hearing, a member of the Board may not, at any time after the application has been filed and before the Board has taken final action, communicate, directly or indirectly, about any issue of fact or law with any representative of the District or other designated party to the application, except on notice and opportunity for all parties to participate.
- b. Subsection (a) does not apply if:
  - i. The Board member abstains from voting on a matter in which he or she engaged in ex parte communications;

- ii. The communications are by and between members of the Board consistent with the Texas Open Meetings Act;
- iii. The communications are with District staff who have not participated in any hearing in the contested case and are for the purpose of using the special skills or knowledge of the staff in evaluating the evidence; or
- iv. The communications are with legal counsel representing the Board of Directors.

#### RULE 5.8 RECORDING

1. Except as provided by Rule 5.8.2, 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 Rule 5.8.1 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 the proposal for decision required under Rule 5.12 for a method of recording the hearing provided by Rule 5.8.1.

#### RULE 5.9 CONTINUANCES

1. The presiding officer may continue a hearing from time to time and from place to place without providing notice under Rule 5.2, above.
2. 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 certified mail, return receipt requested, to the requestor and/or all parties.
3. If a hearing is not concluded on the day it begins, the Board shall, to the extent possible, proceed with the hearing on each subsequent working day until the hearing is concluded.

#### 5.10 REMAND TO BOARD

1. A hearings examiner may remand an application to the Board as follows:
  - a. All timely hearing requests have been withdrawn;
  - b. All parties to a contested case reach a settlement so that no facts or issues remain controverted; or

- c. The party or parties requesting the hearing fails to appear.
2. After remand, the application will be uncontested, and the applicant will either be deemed to have agreed to the action proposed by the General Manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration. District staff will set the application for consideration at a Board meeting.

#### 5.11 CERTIFIED QUESTIONS

1. At any time during a contested case proceeding, on a motion by a party or on the hearings examiner's own motion, the hearings examiner may certify a question to the Board.
2. Issues regarding District policy, jurisdiction, or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are appropriate for certification. Policy questions for certification purposes include, but are not limited to:
  - a. The District's interpretation of its rules and applicable statutes;
  - b. The portion of the Act, the District Rules, or other statutes that are applicable to a proceeding; and
  - c. Whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
3. If a question is certified, the hearings examiner shall submit the certified issue to the District. District staff will place the certified issue on the agenda of a meeting of the Board. The District will give the hearings examiner and parties 30 day notice of the meeting at which the certified question will be considered. Within ten days after the certified question is filed with the District, parties to the proceeding may file briefs. Within ten days of the filing of such briefs, parties may file responses. Briefs and responses shall be filed with the District with copies served on the hearings examiner. The District will provide copies of the certified questions and any briefs and responses to the Board. The hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.
4. The Board will take action and issue a written decision on the certified issue and provide copies to the parties and the hearings examiner. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

#### RULE 5.12 PROPOSAL FOR DECISION

1. Except as provided by Rule 5.12.5, the presiding officer shall submit a proposal for decision to the Board not later than the 30th day after the date the evidentiary hearing is concluded. The presiding officer may direct the General Manager or other District

representative to prepare the proposal for decision and recommendations required by this Rule.

2. The proposal for decision must include a summary of the subject matter of the hearing; a summary of the evidence or public comments received; and 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 proposal for decision to the applicant and each designated party.
4. A party may submit to the Board written exceptions to the proposal for decision.
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 Rule 5.8.1, the presiding officer shall determine whether to prepare and submit a proposal for decision to the Board under this rule.
6. The Board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Rule 5.9.

#### RULE 5.13 BOARD ACTION

The Board shall act on a permit or permit amendment application not later than the 60<sup>th</sup> day after the date the final hearing on the application is concluded.

#### RULE 5.14 REQUEST FOR REHEARING OR FINDINGS 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 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 designated party, not later than the 35th day after the date the Board receives the request. A party to a contested hearing may request a rehearing 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 party 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.

#### RULE 5.15 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:
    - i. the Board denies the request for rehearing; or
    - ii. the Board renders a written decision after rehearing.
2. Except as provided by Rule 5.15.3, an applicant or a party to a contested hearing may file a suit against the District under Texas Water Code Section 36.251 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 Texas Water Code Section 36.251 if a request for rehearing was not filed on time.

## **CHAPTER 6**

### **WELL LOCATION AND SPACING RULES**

*This Chapter describes required well locations, required setbacks, spacing between wells, and exceptions to spacing rules. See, e.g. Texas Water Code Section 36.116.*

#### RULE 6.1: LOCATION OF ALL WELLS

1. After a *Drilling Permit* has been granted, the well, if drilled, must be drilled within 30 feet of the well location.
2. A well must be located a minimum horizontal distance of 50 feet from any watertight sewage and liquid-waste collection facility.
3. A well must be located a minimum horizontal distance of 150 feet from any concentrated sources of contamination or pollution, such as existing or proposed livestock or poultry yards, privies, and septic system absorption fields.

4. A well may not be located in a site prone to flooding. However, the District may allow drilling of a well in a flood-prone area if there are no other reasonable alternative well sites, and the wells is completed with a watertight sanitary well seal and steel casing extending a minimum of 24 inches above known flood level.
5. Determining Distances of a Tract Bordered By a Public Roadway. In determining the minimum distances set out in this rule, if the tract on which the well is requested is bounded by a public road easement, it is permissible to use the centerline of a public roadway to calculate the distance required for the setback of a well from that boundary line.
6. Existing wells are exempt from the requirements of this rule.

#### RULE 6.2: MINIMUM SPACING OF NON-EXEMPT WELLS

1. Distance from Property Lines and Other Wells
  - a. All new non-exempt wells shall be located the minimum horizontal distance from property lines as required by Title 16 Texas Administrative Code Section 76.100, unless covered by the more stringent spacing requirements of this rule. In addition, permitted wells must follow the spacing rules as set out below.
  - b. Spacing distance = (Production Rate of Proposed Well + Production Rate of Nearest Existing Well) x One (1) ft/gpm. In no event shall a spacing distance of more than 1,500 feet be required.

##### Example:

- Production rate of proposed well = 600 gpm
  - Production rate of existing well = 400 gpm
  - Spacing distance = (600gpm + 400gpm) X 1 ft./gpm
  - Spacing distance = 1,000 feet
- c. During technical review of a permit or permit-amendment application, the General Manager shall determine whether to recommend to the Board that the applicant conduct a pump test at the time of drilling the well, to determine any production rate required by the spacing limits of the proposed well.
  - f. If an existing tract of land is subdivided in such a way as to result in the formation of new property lines that are located closer to a well than the spacing requirements of this rule, the result shall be grounds for cancellation of such well's *Operating Permit* or revocation of that well's exempt status.
  - g. The District may include exempt wells in applying these spacing rules.
  - h. In the interest of protecting life and for the purpose of preventing waste and preventing undue hardship, the Board reserves the right, in particular subterranean

water zones and/or reservoirs, to enter special orders increasing or decreasing distances provided by this rule.

- i. Existing wells are exempt from the requirements of this rule.
6. Horizontal water wells are not permitted in the District, due to karst formations.

**RULE 6.3: EXCEPTION TO SPACING RULE**

1. To prevent undue hardship, protect vested property rights, protect landowners' fair share of groundwater resources, and prevent waste, the Board may grant an exception to the above spacing requirements.
2. A permit applicant or filer of a notice of intent to drill a new exempt well may request an exception to the District's spacing requirements. The exception request shall include the following:
  - a. a plat or sketch drawn to scale of one inch equaling 300 feet showing the property lines in the immediate area and all wells within one-quarter (1/4) mile of the proposed well site;
  - b. the names and addresses of all property owners adjoining the tract on which the new well is to be located and the ownership of the wells within one-half (1/2) mile of the well location; and
  - c. certification that the application and plat are true and correct.
3. Upon receipt of a request for an exception pursuant to this Rule, District staff shall review the request for completeness within ten days, and if complete, the General Manager shall refer the application to the Board for consideration and a hearing if the Board deems it necessary.
4. If the applicant presents waivers signed by the adjoining landowner(s) whose property line will be closer to the proposed new well than the applicable spacing requirements mandated by Rule 6.2 stating that the adjoining landowner(s) has no objection to the proposed well location, then the Board may proceed to decide upon the granting or refusing of such application without hearing.

**CHAPTER 7**

**PRODUCTION LIMITS**

*See Texas Water Code Section 36.116.*

**RULE 7.1: PREAMBLE**

These rules limit the production of groundwater as authorized by the District's enabling legislation and Texas Water Code Sections 36.101 and 36.116. This method of limiting

groundwater is appropriate based on the hydrogeological conditions of the aquifers in the District and is consistent with the approved District Management Plan developed and adopted under Texas Water Code Section 36.1071. These rules limit production of groundwater based on demonstrated well production, not an allocation of water per acre of land owned (sometimes called “correlative rights”).

#### RULE 7.2: ALL NON-EXEMPT WELLS

1. Existing Wells Non-exempt wells that were pumping groundwater prior to the date of these amended rules, whether for irrigation, industrial, commercial, community water system, or retail public water utility uses will be issued a permit in an amount equal to the maximum pumping of groundwater demonstrated by evidence satisfactory to the District. When setting a production limit for a non-exempt well, the District must consider historical data if supported by reliable documentation.
2. New Wells or wells that require a permit amendment The Board may issue a permit for an amount the well is capable of producing based on the well test results, not to exceed one acre foot per year per acre of contiguous land owned by the same landowner. The District will only issue permits for beneficial use without waste.
3. The maximum amount of any permit will be one acre foot of groundwater per acre of land per year unless historical use as described in Rule 7.2.1 requires otherwise.

#### RULE 7.3 AGGREGATING WELLS FOR OPERATING PERMIT

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 its 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 permit for each individual well.

#### Rule 7.4. PRODUCTION LIMITS FOR WELLS SUPPLYING COMMUNITY WATER SYSTEM AND RETAIL WATER UTILITIES.

1. For a community water system (“system”) or retail public water utility (“utility”) that utilizes groundwater as a source of supply, the beneficial use without waste requirement shall be based on the service area within the district instead of ownership of acreage. Once a permit is issued containing a production limit based on this rule, any expansion of the service area requires a permit amendment.
2. When setting a production limit for a system or utility well, the District shall consider, among other things, the size of the service area and the number of connections being served. Notwithstanding the foregoing, the District must issue an existing system or

utility well a permit containing a production limit no less than the highest production level ever previously used by the system or utility well.

3. The Board may include a condition in a permit for a system or utility well that requires the system or utility to achieve the threshold normalized apparent loss as calculated by the Texas Water Development under 31 Texas Administrative Code 358.6, and, if the system or utility exceeds that threshold, the permit condition may require the system or utility to make the necessary changes or upgrades to achieve the specified level within a specified timeframe or face enforcement action by the District.

## **CHAPTER 8**

### **RECORD KEEPING, REPORTING, MONITORING, AND WELL LOG**

*This Chapter describes the record-keeping, reporting, and monitoring requirements for Non-Exempt Well permit holders. See, e.g. Texas Water Code, Sections 36.112 and 36.113*

#### **RULE 8.1: RECORD KEEPING AND REPORTING FOR ALL NON-EXEMPT WELLS (INCLUDING COMMERCIAL/INDUSTRIAL/IRRIGATION/COMMUNITY WATER SYSTEM AND RETAIL PUBLIC WATER UTILITY)**

1. All permit holders shall keep records of the amount of groundwater produced and the purpose of the production; such records shall be available for inspection by District representatives upon request and with reasonable notice to the permit holder.
2. A permit holder shall notify the District in writing if production exceeds the quantity authorized to be produced by the permit. Such written notification is due at the latest by the end of the calendar year in which the unauthorized quantity of groundwater was produced.
3. A permit holder shall give immediate written and verbal notice to District staff if the permitted well becomes contaminated, causes pollution, or contaminates surrounding aquifers or surface impoundments.
4. All permit holders must file with the District an annual report containing water production and usage amounts (“Annual Production Report”). A report covering production from the preceding year must be filed on the appropriate form no later than March 1<sup>st</sup> of each year.
5. The Annual Production Report shall be filed on forms provided by the District and submitted to the District office or reported online through the District website. If a well owner files an Annual Production Report late, \$50.00 fee will be assessed each day past the deadline the report is due until the date the Annual Production Report is filed. At the Board’s discretion, the late fees may be waived. In the event the Annual Production Report is 30 days late, the Board will hold a hearing to show cause why legal action should not be taken against the well owner, and upon a showing of cause, the Board will take any and all legal action necessary to procure the owed fees. In addition to the

charging of fees for the failure to file the Annual Production Report, the Board shall have the right to enjoin the use of the well until the Annual Production Report is provided.

6. In the event a late fee is assessed against a permit holder pursuant to this rule, the Board shall refund 90% of the late fee to the permit holder the following year if the permit holder files that year's report before the deadline for filing.

#### RULE 8.2: MONITORING DEVICES

Water production from all non-exempt wells must be measured as defined in Rule 1.1.37.

### **CHAPTER 9**

#### **WELL PERMIT RENEWAL, CONDITIONS, AND AMENDMENTS**

*This Chapter describes the procedures for permit renewal, permit amendments, changes to permits, permit revocation, and permit conditions. See, e.g. Texas Water Code Sections 36.113, 36.1131, 36.114, and 36.1145.*

#### RULE 9.1: PERMIT RENEWAL

1. Permits shall be issued for a term of not less than five (5) years.
2. Except as provided by Rule 9.1.3, the District shall, without a hearing, renew an *Operating Permit* before the date on which the permit expires, provided that the permit holder is not requesting a change related to the renewal that would require a permit amendment under the rules.
3. The District is not required to renew a permit if:
  - a. The applicant is delinquent in paying a fee or in filing a report required by the District;
  - b. The applicant is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication;
  - c. The applicant has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or rule; or

- d. The conditions on which the original permit was granted have substantially changed.
4. If the District is not required to renew a permit under Rule 9.1.3(b), the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.
5. Six months before the expiration of an *Operating Permit*, the District may conduct a site visit and review the well's operation for compliance with the terms and conditions of the *Operating Permit*. If the District discovers that the permit holder is out of compliance with permit terms and conditions, the District shall proceed according to its Enforcement and Civil Penalty Policy. Nothing in this rule precludes the District from monitoring for permit compliance at other times during the term of the permit.
6. Permits issued by the District before the date of adoption of these amended rules will enter the permit-renewal cycle on the five-year anniversary of the adoption of these amended rules. Nothing in this rule precludes the District from monitoring for permit compliance at other times during the term of the permit.

#### RULE 9.2: CHANGE IN PERMITS

1. If the holder of an *Operating Permit*, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District rules, the permit as it existed before the permit amendment process remains in effect until the later of:
  - a. the conclusion of the permit amendment or renewal process, as applicable; or
  - b. final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.
2. If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Rule 9.1 without penalty, unless Rule 9.1.3 applies to the applicant.
3. The District may initiate an amendment to an *Operating Permit*, in connection with the renewal of a permit or otherwise, in accordance with the District's rules. If the District initiates an amendment to an *Operating Permit*, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

#### RULE 9.3: PERMIT AMENDMENTS

1. A permit holder must apply for a permit amendment for:
  - a. an increase in the annual quantity of groundwater authorized to be produced from a well;
  - b. a change in the location of a proposed well;

- c. a change in the purpose of use of the groundwater allowed to be pumped under the permit;
  - d. expansion of the service area of a community water system or retail public water utility; or
  - e. any other substantial change to a permit that the Board determines requires a permit amendment.
2. Permits may be amended by filing an amendment application with the Board. An amendment application and the appropriate application fee must be submitted to the Board at least 90 days prior to the date of the requested amendment. After the District receives a permit amendment application, it shall review the application for administrative and technical completeness as described in Chapter 4. If, following review of the permit amendment application, the District determines that the application is administratively and technically complete, the General Manager shall refer the application to the Board for a hearing pursuant to Chapter 5 of these rules.
3. The District may require an applicant, at the applicant's expense, to provide the following supporting documents:
- a. The results of a step draw down well test conducted at the time the well is completed;
  - b. Information that includes a hydrogeological study that shows current water availability and the projected effects of the proposed pumping on aquifer conditions, depletion, and other groundwater users in the District.
  - c. Information showing the availability of water in the District during the period for which the water supply is requested, and any additional water supply that were not chosen and why.
  - d. Information showing that the project is consistent with the approved Regional Water Plan and approved District Management Plan, including the desired future conditions.
  - e. A water well closure plan or a declaration that the applicant will comply with the well plugging guidelines and report closure to the Texas Commission on Environmental Quality;

**RULE 9.4: EXEMPT WELL CHANGE IN USE**

- 1. A change in use or condition of an exempt well from the uses and conditions described in Rule 1.1.26 shall require a permit.
- 2. If an exempt well is located on a tract of land 10 acres or more, and the tract of land is subdivided after the date of these amended rules in such a way that the well tract is less

than 10 acres, the well owner shall submit an application for an *Operating Permit* to the District within 60 days of the subdivision of land.

#### RULE 9.5: CHANGE IN OWNERSHIP

Any change in ownership of a well must be reported to the District by the new well owner, on a District form, within 60 days of the change in ownership occurring. If there are unpaid fees associated with the Well at the time of the change in ownership, the new Owner shall become responsible for payment of the pending fees. For permitted wells, failure to timely notify the District of a change in ownership may result in the permit being revoked or suspended.

#### RULE 9.6: PERMIT REVOCATION

1. A well permit may be subject to revocation or involuntary revision as a consequence of deviation from the purposes and terms of the permit.
2. If an *Operating Permit* is revoked or involuntarily revised, the well owner is entitled to a hearing before the Board. The well owner must file a written request for such a hearing with the District, and the District will provide notice of and conduct such a hearing.

#### RULE 9.7: PERMIT CONDITIONS

1. All holders of District-issued permits and registrations shall be subject to the District Rules, as may be amended from time to time, as well as permit terms and conditions regarding the drilling, equipping, completion, or modification of wells or pumps.
3. The District may conduct well and well site inspections at times including, but not limited to change in ownership review, registration, permitting, drilling, completion, and after completion to confirm well location, status, completion, or other well-related investigations deemed necessary by the District.
4. A permit is only transferrable pursuant to Rule 9.5, regarding change in ownership. The District may revoke or suspend a permit if the new well owner fails to file a change of ownership application pursuant to Rule 9.5.
5. A permit confers no permanent rights on the permittee.
6. Emergency Suspension of Permit Conditions:
  - a. The District may suspend permit conditions without notice to a well owner or permit holder if the District finds that an emergency exists and cannot practically be resolved in other ways and/or pursuant to the District's drought contingency plan, and as it may be amended from time to time.
  - b. As soon as possible after an emergency suspension, the District shall give the well owner written notice of the suspension and reasons for the suspension. The District shall give the well owner an opportunity to submit comments on the suspension within 72 hours.

- c. The District may suspend the permit without notice to any other interested party other than the well owner as provided by these rules. However, all affected persons shall be notified by publication, and a hearing to determine whether the suspension should be continued shall be held within 15 days of the date on which the order to suspend is issued.

## **CHAPTER 10**

### **REWORKING, REDRILLING, RECOMPLETING, REEQUIPPING, AND REPLACING EXISTING WELLS**

*See Texas Water Code Section 36.113.*

#### **RULE 10.1: APPLICATION REQUIRED**

No person shall rework, redrill, recomplete, or reequip a non-exempt well in a manner that would increase the rate of production of water from such well without first submitting a permit amendment application as required by Chapter 9 and receiving a permit amendment to rework, redrill, or reequip the well.

#### **RULE 10.2: REPLACEMENT WELLS**

1. Any well owner desiring to drill a replacement well shall file a notice of intent to drill with the District. In order to be considered a replacement well, a well must be drilled within 150 feet of the old well and shall not be completed or equipped so as to increase the rate of production of water from the well it replaces. For a non-exempt well, the replacement well must be used for the same purpose, watering the same acreage as the well it replaces, and must be completed in the same aquifer as the well it replaces, otherwise the replacement well will be considered a new well requiring a *Drilling Permit* and *Operating Permit* pursuant to Chapter 4.
2. The well being replaced shall be protected in accordance with the spacing rules of the District until the replacement well is drilled and tested. The well owner or his agent must, within 120 days of the issuance of the permit, declare in writing, to the District which one of these two wells the well owner desires to produce. If the well owner does not notify the District of his choice within 120 days, then it will be conclusively presumed that the new well is the well the well owner desires to retain. Immediately after determining which well will be retained for production, the well owner shall cap or plug the other well according to Rule 13.1.

#### **RULE 10.3: RECOMPLETIONS**

1. During a recompletion, the well owner must prevent the commingling of undesirable water and fresh water or the unwanted loss of water through the wellbore to other porous strata.
2. 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 recompleted in accordance with the provisions of these rules, the well shall be plugged as provided for in Rule 13.1 herein, such that the co-mingling or loss of water shall be prevented.

## CHAPTER 11

### TRANSPORTING WATER FROM THE DISTRICT

See *Texas Water Code Section 36.122*.

#### RULE 11.1: PERMIT REQUIRED

1. A *Transport and Transportation Facility Permit* (“Transport Permit”) is required to transport groundwater beyond the boundaries of the District. A person desiring a *Transport Permit* must file a *Transport and Transportation Facility Permit Application* (“Transport Application”) prior to beginning construction of any Transportation Facilities. *Transport Applications* shall be on forms provided by the District and shall be in accordance with and contain the information called for in the application form and in these rules. A *Transport Application* shall be accompanied by an *Operating Permit Application* or permit amendment application for each well that is used to produce groundwater that is proposed to be transported out of the District.
2. If the *Transport Application* does not contain all the required information it will be returned as administratively incomplete. Water wells used or to be used for the transportation of water out of the District shall be subject to permitting requirements as described in Chapter 4, and production limits as described in Chapter 7. The Board reserves the right to approve a *Transport Application* at a lower rate than requested based upon consideration of:
  - a. The projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the District; and
  - b. The approved regional water plan, certified District management plan, the desired future conditions, and the future condition of the aquifer.
3. *Transport Applications* may only be approved for an amount below the sustainable yield of the aquifer and the proposed use must be a beneficial purpose without waste.

#### RULE 11.2: TRANSPORTATION FEES

The District shall assess a transportation fee based on the conditions at the time an application is submitted.

### RULE 11.3: EVALUATION

1. In evaluating a *Transport Application*, the District will evaluate:
  - a. the projected total supply and demand of usable groundwater within the District, including modeled available groundwater and the desired future condition of the aquifer; and
  - b. the amount of water requested for transfer out of the District;
  - c. the period proposed for transport; and
  - d. if applicable, whether the water proposed to be transferred exceeds the amount authorized by a relevant *Operating Permit*.

### RULE 11.4: EXCEPTIONS

A *Transport Permit* is not required for transportation of water that began prior to the date of these amended Rules. To claim this exemption, the applicant must register the project with the District and provide evidence of the project completion date. Water used for emergency purposes such as for firefighting may be transported by truck out of the District on a per incident basis without need for a transport permit. Likewise occasional transport by truck out of the District of water for support of county or state construction or paving projects may be made without need for a transport permit.

### RULE 11.5: INFORMATION TO BE PROVIDED IN THE TRANSPORT APPLICATION

1. The following information shall be provided in or be submitted with a *Transport Application*:
  - a. The name and address of the applicant.
  - b. The legal description of the exact location of the well(s) from which water to be transported is to be produced.
  - c. The names and addresses, as applicable, of the property owner, the water-rights owner and/or lessee, and the well owner (if different from the property owner).
  - d. The time schedule for construction and/or operation of the facility.
  - e. A complete construction and operations plan that will include, but is not limited to, information as to:
    - i. A technical description of the proposed well(s) and production facility, including depth of the well, the casing diameter, type and setting, the perforated interval, and the size of the pump;

- ii. A technical description of the facilities to be used for transportation of water.
  - f. The use of water to be transported.
  - g. The volume of water to be transported annually.
  - h. Scientific evidence showing that the proposed operation will NOT:
    - i. Cause pollution;
    - ii. Cause waste;
    - iii. Conflict with the desired future condition, GMA-7 mandates, the District's Drought Contingency Plan, or the applicant's *Operating Permit*; or
    - iv. Detrimentially impact the aquifer during a drought condition; by quantifying the reduced pumpage when incorporating the trigger points described in the District's Drought Contingency Plan for each critical stage of drought conditions.
  - i. Information showing the effect of the proposed transportation on the quantity and quality of water available within the District.
  - j. At the discretion of the Board, information showing the effect of the proposed transportation on existing wells in the District by including a draw down test if the well is a new well, the cost of the test to be paid by the applicant.
  - k. A copy of an "in force" water conservation plan and a drought management plan for the end-user of the water to be transported.
  - l. Additional information concerning the requested *Transport Permit* that may be required by the Board.
  - m. Any mitigation plan developed by the applicant to offset adverse social, economic, or hydrologic impacts within the District.
2. The Board may consider any other information, provisions, or requirements of Chapter 36.122 Texas Water Code.

**RULE 11.6: NOTICE OF HEARING**

- 1. The District shall provide notice of a hearing on a *Transport Application* as follows:
  - a. By mail to the applicant and any person who owns property adjacent to or within one-half (1/2) mile of the applicant's property; and
  - b. By publication in a newspaper of general circulation in Sutton County.

2. The notice shall contain the following:
  - a. the name and address of the applicant;
  - b. the date the application was filed;
  - c. the time and place of the hearing;
  - d. the location of the proposed well(s) from which water to be transported is to be produced;
  - e. a statement that an affected person may contest the application by filing a request for a contested case hearing on the application with the District office within 10 days of the date of the notice;
  - f. a statement that the Board may proceed to decide on the application if no contest is filed; and
  - g. a description of the transportation facility; and
  - h. a brief summary of the information in the application.

#### RULE 11.7: HEARING

A hearing on a *Transport Application* shall be conducted in accordance with Chapter 5 of these Rules.

#### RULE 11.8: MONITORING AND REPORTING:

1. All transportation facilities subject to registration or permitting shall be equipped with flow meters or monitoring devices approved by the District and shall be available at all reasonable times for inspection by District personnel.
2. The operator of a transportation facility must keep any additional records as required in the permit and make reports to the District as to the operation of the transportation facility.
3. Registered transportation facilities shall submit reports to the District on a monthly basis, beginning at the time of registration. Each report shall state the volume of water transported during the preceding month.
4. Permitted transportation facilities shall submit reports to the District on a monthly basis, beginning at the time a permit is issued to operate. Each report shall state the volume of water transported during the preceding month.

#### RULE 11.9: RESPONSIBILITY

The owner of a transportation facility shall be responsible for preventing pollution and waste. The owner of a transportation facility shall also be responsible for any violation of these rules.

## **CHAPTER 12**

### **WELL COMPLETION**

#### **RULE 12.1: MINIMUM STANDARDS OF WELL COMPLETION**

1. All wells must be completed in accordance with the well completion standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and under these rules, and must be completed in compliance with applicable rules and regulations of any other governmental entity.
2. Water well drillers shall indicate the method of completion performed on the well log.
3. In order to prevent the mixing of water between aquifers, resulting in a loss of reservoir pressure, and to protect against degradation of water quality, each well penetrating more than one separate water-bearing zone of any aquifer shall be completed in a manner so as to prevent the mixing of groundwater between aquifers or between subdivisions of an aquifer if required by the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. The drillers shall indicate the method of completion used to prevent the mixing of water on the well report. The well driller may use any lawful method of completion in order to prevent the mixing of groundwater.
4. In order to protect water quality, the integrity of the well, and a loss of groundwater from the well, the District may impose any additional well completion requirements deemed necessary or appropriate by the District.

## **CHAPTER 13**

### **PLUGGING AND CAPPING OF WELLS**

*See Texas Water Code Section 36.118.*

#### **RULE 13.1: PLUGGING OF DETERIORATED OR ABANDONED WELLS**

1. It is the responsibility of the well owner to plug a well that is deteriorated or abandoned.
2. A deteriorated or abandoned well that does not penetrate an undesirable water zone(s) may be plugged with one of the following procedures:
  - a. all removable casing shall be removed from the well and the entire well filled with cement to the land surface; or

- b. the well may be filled with mud followed by a cement plug extending from the land surface to a depth of not less than ten feet; or
  - c. the cement plug may be started from a depth of four feet below the land surface and extend down the required length.
3. In the case of a well penetrating an undesirable water zone, the well must be plugged as described in rule 13.1.2(a).
4. Within 30 days of plugging a well, the water well driller shall file the plugging report with the District.

#### RULE 13.2: CAPPING OF WELLS

1. Every owner of any land within the District upon which is located any open or uncovered well shall be required to close or cap the well safely and securely with a covering capable of sustaining weight of at least 400 pounds, except when said well is in actual use by the owner thereof.
2. Every owner of any land within the District upon which is located a flowing artesian water well shall be required to close or cap the well with a covering capable of sustaining a pressure of at least 400 pounds as necessary to contain the flow and therefore prevent waste, except when the well is in actual use by the owner thereof.
3. Officers, agents, and employees of the District are authorized (pursuant to Rule 15.3) to serve or cause to be served written notice upon any owner of a well in violation of this rule, thereby requesting such owner to close or cap such well with a covering in compliance with this rule. In the event any owner fails to comply with such request within 60 days after such written notice, the District may go upon said land and close or cap said well in a manner complying with this rule, and all expenditures thereby incurred shall constitute a lien upon the land where such well is located. The District is authorized to perfect said lien by filing in the deed records of the county where the well is located, an affidavit stating the following:
  - a. the existence of the well;
  - b. the legal description of the property on which the well is located;
  - c. the approximate location of the well on the property;
  - d. the failure or refusal of the owner or lessee, after notification, to close the well within 60 days after the notification;
  - e. the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
  - f. the expense incurred by the District in closing the well.

## **CHAPTER 14**

### **WASTE REGULATION AND SITING**

#### **RULE 14.1: REQUIREMENTS FOR MANAGING SUBSTANCES**

All persons generating, transporting, disposing, applying, or otherwise managing substances defined under state or federal law as solid, hazardous, or radioactive waste, or as sludge, must follow any and all applicable federal, state, and local environmental statutes, requirements, and regulations, including but not limited to those imposed under the Solid Waste Disposal Act (RCRA), the Public Health Service Act (the Safe Drinking Water Act), the Federal Water Pollution Control Act (the Clean Water Act), the National Environmental Policy Act, the Atomic Energy Act, and the Low-Level Radioactive Waste Policy Act, as those statutes, requirements, or regulations are administered by the appropriate agency or governmental entity, including but not limited to the Texas Railroad Commission, the Texas Commission on Environmental Quality, the Texas Department of Health, the Environmental Protection Agency, or their successors.

#### **RULE 14.2: NOTICE OF APPLICATION TO GENERATE**

In the event that applicable statutes, requirements, or regulations require that the person generating, transporting, applying, disposing, or otherwise managing a waste or a sludge obtain a permit from an agency or governmental entity, and where those activities occur within the boundaries of the District, notice of the application must be provided to the District by the applicant within ten days of the date of application.

#### **RULE 14.3: SPECIFIC PROTECTIONS FOR DRAWS**

No person may apply or dispose of waste or sludge in any manner in Sutton County within a one mile radius of Granger Draw, the North Llano River within Sutton County, the watershed for the San Saba River within Sutton County, the Dry Devils River within Sutton County, or any other major or minor draw within Sutton County that conducts water during rain events.

#### **RULE 14.4: NOTICE OF APPLICATION TO PROCESS**

In the event that Sutton County receives an application for a license to process, store, or dispose of solid waste, the county shall notify the District within ten working days of receiving the application and allow the District to comment on the application.

#### **RULE 14.5: MONITORING**

The District's officers, employees, agents, or representatives may monitor the site of any person that obtains a permit as described in Rules 14.1 and 14.2.

## **CHAPTER 15**

### **ENFORCEMENT OF RULES**

See *Texas Water Code Chapter 36.102 and 36.123.*

#### RULE 15.1 PURPOSES AND POLICY

The District's authorized purposes include providing for the conservation, preservation, protection, and recharge of the groundwater resources within the District, to protect against degradation of water quality, and to prevent waste of those resources. The District's ability to enforce these rules in a reasonable, uniform, and effective manner will make it possible for the District to accomplish its purposes. The enforcement rules and procedures provided in this chapter are in accordance with the responsibilities delegated to the District by the Texas Legislature through the District Act and through Texas Water Code Chapter 36.

#### RULE 15.2 ENFORCEMENT PROVISIONS

1. 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 \$10,000.00 for each violation and for each day a violation continues, or for both injunctive relief and civil penalties.
2. Unless otherwise provided in these rules, the penalty for a violation of any District rule shall be the lower of either:
  - a. \$10,000.00 per violation; or
  - b. A lesser amount, based on the severity of the violation, as set forth in the Enforcement Policy and Civil Penalty Schedule attached to these rules as Appendix A, which is adopted as a Rule of the District for all purposes. The Board may amend such schedule from time to time via resolution in a properly noticed meeting.
3. A penalty under this rule is in addition to remedies provided by law, and these rules may be enforced by filing a complaint in a court of competent jurisdiction in Sutton County.
4. If the District prevails in a suit to enforce its rules, the District may seek, and the court shall grant, in the same action, in the interests of justice and as provided by Section 5, below, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of attorney's fees awarded by a court under this rule shall be fixed by the court.
5. If the District prevails on some, but not all, of the issues in the suit, the court shall award attorney's fees and costs only for those issues on which the District prevails. The District has the burden of segregating the attorney's fees and costs in order for the court to make an award.

#### RULE 15.3: POWER TO ENTER AND TO INSPECT AND TEST WELLS

1. Upon notice to the well owner, the District's employees and agents may at reasonable times enter lands on which a well or wells are located to inspect or test such well or wells as necessary for the enforcement of the rules of the District.
2. District employees or agents acting on the District's behalf who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection; shall notify any occupant or management of their presence; and shall exhibit proper credentials.
3. A landowner who refuses to allow the District to gather information pursuant to this Chapter will be subject to the enforcement policies of the District.

## **CHAPTER 16**

### **PROVISIONS APPLICABLE TO OTHER HEARINGS**

#### **RULE 16.1 NOTICE OF RULEMAKING HEARING.**

1. Not later than the 20<sup>th</sup> 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 Sutton County;
  - c. publish notice in one or more newspapers of general circulation in Sutton County;
  - d. provide notice by certified mail, return receipt requested, facsimile, or electronic mail to any person who has requested notice under Rule 18.2.6; 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 website.
2. The notice provided under Rule 16.1.1 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 website at which a copy of the proposed rules may be review 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 certified mail return receipt requested, 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 Rule 16.1.6 does not invalidate an action taken by the District at a rulemaking hearing.

#### RULE 16.2: EMERGENCY RULES

1. The 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 Rule 16.2.1.a.
2. Except as provided by Rule 16.2.4, a rule adopted under Rule 16.2 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.

#### RULE 16.3: 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.

### **CHAPTER 17**

#### **JOINT PLANNING MANAGEMENT AREA**

*This Chapter describes Ground Management Area (GMA) procedures for approval of management plans and establishment of Desired Future Conditions (DFCs).*

#### RULE 17.1: JOINT PLANNING IN MANAGEMENT AREA

1. Upon completion and approval of the District's comprehensive management plan, as required by Texas Water Code Sections 36.1071 and 36.1072, the District shall forward a copy of the new or revised management plan to the other groundwater conservation districts in Groundwater Management Area 7 ("GMA 7"). The Board shall consider the plans of the other Districts individually and shall compare them to other management plans then in force in GMA 7.
2. The presiding officer, or the presiding officer's designee, of the District shall meet at least annually to conduct joint planning with the other groundwater conservation districts within GMA 7 to review the management plans and accomplishments for the GMA and proposals to adopt new or amend existing DFCs. In reviewing the management plans, the districts shall consider:
  - a. the goals of each management plan and its impact on planning throughout the management area;
  - b. 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;
  - c. 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
  - d. the degree to which each management plan achieves the DFCs established during the joint planning process.

3. 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 propose for adoption DFCs for the relevant aquifers within the management area. Before voting on the proposed DFCs of the aquifers under the districts shall consider:
  - a. aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
  - b. the water supply needs and water management strategies included in the state water plan;
  - c. hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
  - d. other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
  - e. the impact on subsidence;
  - f. socioeconomic impacts reasonably expected to occur;
  - g. the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Texas Water Code Section 36.002;
  - h. the feasibility of achieving the DFC; and
  - i. any other information relevant to the specific DFC.
4. The Districts may establish different DFCs for:
  - a. each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
  - b. each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.
5. The DFCs must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This rule does not prohibit the establishment of DFCs that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Texas Water Code Section 36.1071(a).
6. The DFCs proposed must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not

less than 90 days for public comments begins on the day the proposed DFCs are mailed to the districts. During the public comment period and after posting notice as required by Texas Water Code Section 36.063, each district shall hold a public hearing on any proposed DFCs relevant to that district. During the public comment period, the District shall make available in its office a copy of the proposed DFCs and any supporting materials, such as the documentation of factors considered and GAM run results. After the public hearing, the District shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed DFCs, and the basis for the revisions.

7. After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period, the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed DFCs, and finally adopt them for the management area. The DFCs must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce an explanatory report for the management area and submit to the Board and each District in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:
  - a. identify each DFC;
  - b. provide the policy and technical justifications for each DFC;
  - c. include documentation that the factors under Rule 17.1.3 were considered by the districts and a discussion of how the adopted DFC impact each factor;
  - d. list other options considered, if any, and the reasons why those options were not adopted; and
  - e. discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated.

#### RULE 17.2 APPEAL OF DESIRED FUTURE CONDITIONS

If a DFC is appealed, the District shall proceed in accordance with Texas Water Code Section 36.1083.

### **CHAPTER 18**

#### **GENERAL PROVISIONS**

##### RULE 18.1: EFFECT OF INVALIDITY OF RULE

If any provision of any rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end, the provisions of the rule are severable.

#### RULE 18.2: SUSPENSION OF RULES

The Board may suspend or waive a rule, in part, upon the showing of good cause of when, in the discretion of the Board, the particular facts or circumstances render such waiver of the rule appropriate in a given instance.

#### RULE 18.3: PROCEDURES NOT OTHERWISE PROVIDED FOR

If, in connection with any hearing, the Board determines that there are no statutes or other applicable rules resolving particular procedural questions then before the Board, the Board will direct the parties to follow procedures consistent with the purpose of these rules.

#### RULE 18.4: COMPUTING TIME

In computing any period of time prescribed or allowed by these rule, by order of the Board, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

#### RULE 18.5: TIME LIMIT

Applications, requests, or other papers or document required or permitted to be filed under these rules or by law must be received for filing at the Board Office at Sonora, Texas, within the time limit, if any, for such filing. The date of receipt and not the date of posting is determinative.

#### RULE 18.6: DIRECTOR IMMUNITY

For liability purposes only, a director is considered a district employee under Chapter 101, Civil Practice and Remedies Code, even if the director does not receive fees of office voluntarily, by district policy, or through a statutory exception.

A District board member is immune from suit and immune from liability for official votes and official actions. To the extent an official vote or official action conforms to laws relating to conflicts of interest, abuse of office, or constitutional obligations, this Rule provides immunity for those actions.

#### RULE 18.7 FEES

The Board, by resolution, may establish a schedule of fees for administrative acts of the District, which may be appended to these rules. Fees may include, but are not limited to the cost of reviewing and processing permit and permit amendment applications and the cost of permit hearings. Such administrative fees shall not unreasonably exceed the cost to the District for performing such administrative acts. Applications shall not be accepted for filing or processing or hearings scheduled until receipt by the District of all applicable fees established by Board resolution.

## **RULE 18.8: COMPENSATION**

Directors of Sutton County UWCD shall receive no compensation of their services including their attendance at board meetings and committee meetings. Directors will be reimbursed by the District for any personal expenses that are required to be incurred in the conduct of the District's business. Such expenses shall be properly documented and approved prior to such reimbursement.

## **CHAPTER 19**

### **REPEAL**

#### **RULE 19.1: 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.