Prairielands Groundwater Conservation District

REDLINE PROPOSED AMENDMENTS TO DISTRICT RULES FOR SEPT. 18, 2023, HEARING

District Rules for Water Wells in Ellis, Hill, Johnson, and Somervell Counties, Texas

PROPOSED AMENDMENTS TO RULES

~~As Amended and Effective on January 1, 2023~~

Procedural History of Rules Adoption

These rules of the Prairielands Groundwater Conservation District were initially adopted by the Board of Directors on December 17, 2018, at a duly posted public meeting in compliance with the Texas Open Meetings Act and following notice and hearing in accordance with Chapter 36 of the Texas Water Code. Amendments to the rules were adopted by the Board of Directors on October 21, 2019, on November 16, 2020, on December 20, 2021, on July 18, 2022, and on January 17, 2023. In accordance with Section 59 of Article XVI of the Texas Constitution, the District Act, and Chapter 36 of the Texas Water Code, the following rules are hereby adopted as the rules of this District by its Board. Prior to its adoption of these permanent rules, the District operated under its Temporary Rules for Water Wells, initially adopted by the District's Board of Directors on November 15, 2010.

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Groundwater Conservation District
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Prairielands Groundwater Conservation District

District Rules

PREAMBLE

The Prairielands Groundwater Conservation District ("District") was created by the 81st Texas Legislature under the authority of Section 59, Article XVI, of the Texas Constitution, and in accordance with Chapter 36 of the Texas Water Code ("Water Code"), by the Act of May 31, 2009, 81st Leg., R.S., ch. 1208, 2009 Tex. Gen. Laws 3859, codified at TEX. SPEC. DIST. LOC. LAWS CODE ANN. ch. 8855 ("the District Act"). The District is a governmental agency and a body politic and corporate. The District was created to serve a public use and benefit, and is essential to accomplish the objectives set forth in Section 59, Article XVI, of the Texas Constitution. The District's boundaries are coextensive with the boundaries of Ellis, Hill, Johnson, and Somervell Counties, Texas, and all lands and other property within these boundaries will benefit from the works and projects that will be accomplished by the District.

The mission of the Prairielands Groundwater Conservation District is to develop rules to provide protection to existing wells, prevent waste, promote conservation, provide a framework that will allow availability and accessibility of groundwater for future generations, protect the quality of the groundwater in the recharge zone of the aquifer, ensure that the residents of Ellis, Hill, Johnson, and Somervell Counties maintain local control over their groundwater, and operate the District in a fair and equitable manner for all residents of the District.

The District is committed to manage and protect the groundwater resources within its jurisdiction and to work with others to ensure a sustainable, adequate, high quality, and cost-effective supply of water, now and in the future. The District will strive to develop, promote, and implement water conservation, augmentation, and management strategies to protect water resources for the benefit of the citizens, economy, and environment of the District. The preservation of this most valuable resource can be managed in a prudent and cost-effective manner through conservation, education, and management. Any action taken by the District shall only be after full consideration and respect has been afforded to the individual property rights of all citizens of the District.

SIMPLIFIED SUMMARY OF DISTRICT RULES FOR WATER WELLS

If you're in Ellis, Hill, Johnson, or Somervell counties and plan to drill a well for the purpose of pumping groundwater, or if you have a well drilled prior to 2019 that is capable of pumping more than 25 gallons per minute or any well supplying public water, the Prairielands Groundwater Conservation District (the "District") has rules that you need to comply with. Because the rules are quite lengthy, this Summary will give you an overview of the process and guide you through the basic steps that apply to your particular situation. This Summary is not intended as an actual rule of the District or as a substitute for careful review of the rules, but rather only as a tool to help you get started and understand the basics of the District rules.

I. What Do I Need to Know Before Drilling a Well?

General Rule: You may not drill, complete, alter, operate, or produce groundwater from a well without the District's prior approval.

(a) Different rules apply depending on when your well was drilled. In this summary, note the difference between the requirements for "existing" and "new" wells:

(1) Existing well: a well that was in existence or for which drilling was approved by the District prior to January 1, 2019.

(2) New well: a well for which drilling commenced or for which an application to drill was submitted on or after January 1, 2019.

(b) If you want to drill a groundwater well on your property, you must:

- have a minimum tract size of two (2) acres upon which to drill a well. There can only be one (1) well, regardless of type, per two (2) acres. However, for a single domestic well serving two (2) or more residential households, the required minimum tract size for the well is calculated by multiplying two (2) acres by the number of households served by the well. *Rule 4.4*

- meet spacing requirements to maintain certain distances from your well to your property lines and from other wells in existence at that time. *Rule 4.3*
  **Under certain limited circumstances, you may seek an exception to the well spacing and minimum tract size requirements. Rules 4.6 and 4.7*

- register the well, and get a permit if applicable, prior to drilling the well (*See more in Section II. below*.)

- comply with the well completion standards of the State of Texas and the District.

Assistance is available from the District or from the Texas Department of Licensing and Regulation, which regulates Water Well Drillers and Pump Installers. *Rule 4.5* Also, new wells must be completed and equipped to certain depths to help protect well owners from water level declines in the aquifer or layer of an aquifer.

II. Will I Need to Register or Permit My Well?

General Rule: There are two types of authorizations issued by the District for groundwater wells: registrations and permits. All wells that require a permit must also be registered. You must obtain a well registration before you drill a well, substantially alter a well or pump, or operate or produce groundwater from a well that is required to obtain a registration and/or permit. You are also required to get a permit for your well unless an exemption applies (mostly for small household wells).

Exceptions to registration and permitting apply to certain domestic (or household), wells; see the following page.

(a) Registration | Rule 3.2

(1) You *must* register your well if:

- it was drilled on or after April 1, 2011 (regardless of production capacity or type of use), including wells that are exempt from permitting and certain other regulatory requirements under Section 2;
- it was drilled before April 1, 2011, and is not listed as exempt from permitting and certain other regulatory requirements under Rule 2.1(a)(1), (2), (4), or (5).
- it is a public water supply well (regardless of production capacity or date drilled);
- it is a replacement well under Rule 3.17; or
- the well was otherwise required to be registered under the District's previous Temporary Rules for Water Wells.

(2) You *may* register your well if it existed prior to April 1, 2011, and is not otherwise required to be registered. Rule 3.2(b) explains the benefits of registering your well to protect it from encroachment by other new wells.

Guidance for Household Well Owners

The majority of wells within the District are small household wells. If that is your situation, you will not be subject to some of the rules of the District. This section helps you determine what rules apply to you.

1. Exempt from Registration

   You *are not* required to register or permit your household well with the District, *regardless of its production capacity,* if:

   - your well existed or drilling started on the well prior to April 1, 2011; and
   - the well is used solely for domestic use, livestock use, poultry use, or agricultural use.

   Existing household wells are exempt from registration and permitting by the District if they meet the above criteria. If your household well is exempt from permitting, you do not have to pay water use fees, meter the well, or submit water production reports on the well.

   You may voluntarily register your well with the District to protect it from encroachment from new wells. (See Rule 3.2(b))

2. Not Exempt from Registration

   You *are* required to register your household well if it was drilled on or after April 1, 2011. These household wells:

   - must be registered in accordance with Rule 3.2
   - must comply with the two (2) acre minimum tract size per household served by the well requirement and the well spacing requirements of Section 4 of the rules
   - are exempt from permitting, water use fees, metering, and water production reports if drilled before January 1, 2023, and used solely for domestic, livestock, poultry, or agricultural purposes. See the following page for more detail on permit exemptions.

No household well with a production capacity of 17.36 gallons per minute or less, whether new or existing, is required to obtain a permit from the District to operate the well, but must obtain registration approval before drilling commences.

Part II. Cont.

(b) Permits | Rules 3.4 and 3.5

(1) If required to register your well, you *must* also permit your well *unless* an exemption applies. These wells are exempt from permitting, reporting, fees, and metering requirements under Rule 2.1:

- all wells of any production capacity for which drilling commenced before January 1, 2023, that are used solely for domestic, livestock, poultry, or agricultural use;
- wells drilled prior to January 1, 2019, that don't produce more than 25 gallons per minute and are used for any purpose other than solely for domestic, livestock, poultry, or agricultural use, and are not public water supply wells;
- wells for which drilling commenced before January 1, 2023, that does not have the capacity, as equipped, to produce more than 17.36 gallons per minute and is used for any purpose of use other than public water supply;
- wells drilled after January 1, 2019, with a production capacity of 17.36 gallons per minute or less used solely for domestic use, livestock use, or poultry use;
- leachate wells, monitoring wells, and piezometers.

** Even if exempt from permitting and other requirements of the rules, most wells must still be registered unless an exemption applies.*

(2) These wells are exempt from permitting requirements only (must still register, report, pay fees, meter and meet the well completion, spacing and location requirements of the rules) under Rule 2.3:

- wells used to supply water for drilling rigs in oil and gas drilling or exploration if the water well is on the oil and gas lease (but not wells supplying water for hydraulic fracking for oil and gas);
- wells used for coal mining and authorized by a permit issued by the Railroad Commission of Texas.

(c) Multiple Wells on One Tract – Well System | Rule 2.1(b) or as defined in Rule 1.1

Wells feeding into a common distribution system, common storage, or common purpose of use will be considered a well system. The combined capacity of the wells in the system will be considered to determine whether it is above or below the threshold capacity for permitted or exempt.

III. Types of Permits

Depending on when your well was drilled and other considerations, you will be required to obtain either a Historic Use Permit, an Operating Permit, or both unless your well is exempt from the requirement to obtain a permit. The District has the authority to regulate the amount of groundwater produced from a well in accordance with the amount authorized in the permit.

(a) Historic Use Permit – Existing Wells | Rule 3.8

If you own a well that was completed and operational prior to January 1, 2019, you must apply for a Historic Use Permit from the District prior to November 1, 2019, if:

- The well is not exempt from registration or permitting requirements as set forth above (*see Rule 2.1(a) and Rule 2.3(a)*); and
- The well produced and used groundwater for a beneficial use in any year during the prior 15 years (calendar years 2004 through 2018) (the "existing and historic use period");
- OR, if you are otherwise authorized to file an application for a Historic Use Permit under Rule 3.8.

How Much Can I Pump Each Year Under a Historic Use Permit?

The District Board of Directors will consider your Historic Use Permit application in a hearing and will approve the total amount you can pump annually from your well or well system based on your Maximum Historic Use, as defined by Rule 1.1. If there has not yet been a full year of use because the well was drilled or well drilling authorization was approved by the District during the last year of the 15-year period, extrapolation for a full year of historic use will be allowed. Between the time you file your permit application and the time the Board takes final action on it, you will be authorized to pump the maximum historic amount declared in your permit application annually.

Historic users who seek increases in production are limited to the greater of the following:

- Their Historic Use Permit amount; or
- Their production allowable based upon acreage.

**Increased production may be authorized during extreme drought or other emergency conditions. Rule 5.10*

**Increased production may be authorized under a compliance order issued by the Board. Rule 5.5*

**Special requirements apply to existing wells for which metered records of groundwater production during the existing and historic use period are limited or do not exist. Rule 3.8(k)*

(b) Operating Permits – New Wells/Certain Existing Wells | Rule 3.9

1. If you are drilling a new well, an Operating Permit is required unless the well is exempt from permitting requirements (*see Rule 2.1(a) and Rule 2.3(a)*).

2. If you have an existing well for which you are required to obtain a Historic Use Permit and want to increase the amount of water you pump annually above the amount authorized under your Historic Use Permit, you must obtain an Operating Permit for the amount of the increased pumping. *Rule 3.9*

How Big of a Well Can I Drill?

The size of well you can drill on your land generally depends on the amount of land you own, because of well spacing requirements. *Rule 4.3*. The larger the well, the further your well has to be from your property lines and from other wells.

How Much Can I Pump Each Year Under an Operating Permit?

- The District Board of Directors will consider your Operating Permit application in a hearing. The maximum annual amount you will be authorized to pump under an Operating Permit will be limited by the Board to a reasonable amount based upon your need for the water using reasonable conservation measures and the number of surface acres of land you own (or lease for the right to produce groundwater) over the aquifer at the well site.

- The maximum annual amount that can be authorized in an Operating Permit is 50,000 gallons per surface acre of land around the well, which can be reduced in the future if necessary to meet adopted aquifer management goals. If you also have a Historic Use Permit for wells on the same land that the Operating Permit is based on (i.e. land you had and based your Historic Use Permit application on as of December 31, 2018), the amount of annual pumping authorized under the Historic Use Permit will be subtracted from the amount you would otherwise be able to produce under an Operating Permit. If your Historic Use Permit annual pumping authorization is greater than 50,000 gallons per surface acre of land around the well, you will not be eligible for an Operating Permit. Such authorized Historic Use Permit pumping will not be deducted from your Operating Permit for a well on land you first acquired after January 1, 2019.
- Special rules apply to retail public utilities who supply water to properties within their boundaries, and who are generally eligible to produce groundwater based on the acreage within their boundaries that does not have other private wells located on such acreage.

**Increased production may be authorized during extreme drought or other emergency conditions. Rule 5.10*

**Increased production may be authorized under a compliance order issued by the Board. Rule 5.5*

IV. What is the Approval Process?

The approval process varies depending on the type of authorization sought from the District. The District will walk you through the applicable requirements as you begin the application process.

In general:

- The General Manager and District staff will review applications for a registration or permit for administrative completeness, and work with you to make sure that you've met the requirements of the rules for your specific application. *Rules 3.2 and 3.4*

- For registration applications, the General Manager of the District may, in most situations, approve the application without notice or hearing before the Board of Directors. *Rule 3.2(d)*

- For permit applications requiring a hearing under Section 3 of the rules, the District Board of Directors will decide on the permit at a public hearing held by the Board. Notice to the public is required, and certain permits can be contested. A hearing can be very simple or very complex, depending on the type of permit and whether the permit application is contested. *Section 10: Hearings Processes and Procedures*

V. What Happens After I Get My Registration or Permit?

(a) Once any registered or permitted well is drilled or substantially altered, the rules require you to file a well completion report with the District within 60 days of completion. *Rule 3.13.* For wells that are exempt from the requirement to have a meter and pay fees (mostly domestic [household] and livestock wells), the submission of your well report is your final requirement under the rules, unless you change the purpose of use, and so long as you do not commit waste of groundwater (typically, overwatering such that water flows off of your property).

(b) Well registrations are perpetual in nature (they do not expire); however, if you sell your property, you and the new owner must change the well registration to the name of the new owner. Also, if you sell parts of your property in the future, you must maintain minimum well spacing and tract size requirements, or the District may order that the well be plugged or production reduced (although you may be able to reduce the production capacity of your well to reduce the minimum well spacing distances).

(c) Unless a well is exempt (typically small household wells) from the following requirements under Rule 2.1, you must also:

- Install a meter on your well prior to operating it, keep a log of meter readings monthly, and report the readings to the District monthly in the Water Production Report required under Rule 3.15. *Section 8 and Rule 3.15.*

- File a Water Production Report with the District monthly indicating the amount of groundwater produced and the purposes for which the water was used. *Rule 3.15*

**Some low-production permittees may be eligible to report semiannually. Rule 3.16*

- Pay fees for your water usage to the District either annually, quarterly, or monthly, at a rate set by the District. *Section 7*

- For Operating Permit holders:

    - Renew your Operating Permit every five (5) years
    - Obtain a permit amendment in the future prior to changing the type of use for the water, increasing the capacity of the well or the annual amount of water produced to an amount that is higher than your permitted capacity or amount, or changing ownership

- For Historic Use Permit holders:

    - Renew your Historic Use Permit every five (5) years
    - Obtain a permit amendment in the future prior to changing ownership (the type of use may not be amended for Historic Use Permits)

VI. What About Retail Public Water Suppliers?

General Rule: Public water supply wells of any capacity are subject to the permitting, reporting, fees, and metering requirements of the rules.

Some special rules apply to retail public water systems:

- For retail public utilities, the maximum acreage that can be assigned to an Operating Permit for production limits will be the acreage within their retail water CCN, or acreage within their corporate boundaries if they do not have a retail water CCN, or the acreage located in the area defined by both its CCN and its corporate boundaries for a political subdivision that has a CCN and corporate boundaries that are not coterminous, subtracting out all acreage assigned for groundwater production authorization recognized under any Operating Permit held by an individual landowner within those boundaries, up to two acres per well for a tract with one or more registered exempt domestic or livestock wells, certain acreage associated with exempt agricultural irrigation wells, and certain acreage associated with production under a Historic Use Permit of another landowner within those boundaries in certain situations as specifically described in Rule 5.3. In situations where a retail public utility has a retail water CCN that is wholly or partly inside another political subdivision's corporate boundaries, the overlapping acreage not assigned to the permits of individual landowners within those boundaries will be assigned to the CCN holder unless certain conditions exist. Like any other Operating Permit holder, retail public utilities must subtract the amount of any production authorization recognized under a Historic Use Permit they hold within the boundaries from the amount that they could otherwise produce under an Operating Permit for wells located on land on which the Historic Use Permit was based. *See Rule 5.3 for details regarding production limits for retail public utilities.*

- When drilling a new well, a retail public utility must meet well spacing requirements from other wells completed in the same aquifer or layer of an aquifer as the proposed well, just like with all other wells. However, for well spacing requirements from property lines, a retail utility may use its CCN or political subdivision boundary as its external property line. However, such a well not drilled in compliance with normal spacing distances from property lines will not be considered as a well already in existence and thus protected from encroachment from future wells by other landowners. *Rule 4.3*

VII. May I Transport Groundwater Out of the District?

Yes, but special rules apply to transport groundwater outside District boundaries. *Section 6*

VIII. Are There Other Rules?

Yes! In addition to the registration and permitting process and requirements included in this summary, the District rules address in detail:

- Definitions of Terms
- Renewals, Amendments, and Changes to Well Ownership
- Inspections, Penalties, and Enforcement of Rules
- Drilling Records
- Enforcement Policy and Penalty Schedule
- Hearings Processes and Procedures
- Appeals of Decisions

IMPORTANT DEADLINES

The following tables provides a quick view of some of the important deadlines contained in the District rules. This list is not inclusive of all deadlines, and should not be used as a substitute for careful attention to all deadlines that may apply to your situation.

For each date shown, compliance with the applicable rule is required on or before that date.

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Well Registration	Historic Use Permits	Operating Permits	Meters and Meter Readings	Water Production Reports and Fee Payments
Public water suppliers that were not required by the District's Temporary Rules for Water Wells to register their wells but that are now required to register wells under the new rules: • **March 1, 2019:** Must register wells previously exempt. **All new wells:** Registration must be approved by the District prior to drilling and, if applicable, the permit must also be approved.	**November 1, 2019:** Existing well owners that are not exempt from permitting requirements must apply for a Historic Use Permit. **January 1, 2021:** Any amendments or updates to information in a Historic Use Permit application must be made. **February 1, 2022:** Any amendments or updates to information in a Historic Use Permit application that is subject to the Verification Period must be made.	Beginning **January 1, 2019**: Must apply for and obtain an Operating Permit prior to drilling or operating a new, non-exempt well or increasing production above maximum use claimed in Historic Use permit application for an existing well, as set forth in Rule 3.9(a).	Public water suppliers that were not required by the District's Temporary Rules for Water Wells to register their wells but that are now required to register wells under the new rules: • **January 1, 2019:** Must begin recording meter readings on wells (already required to have meters under TCEQ rules). All other wells: Meter must be installed prior to operation of the well.	Water production reports and meter readings are due no later than the 15th day of the following month, or by July 15 and January 15 if eligible to report semiannually.

SECTION 1

DEFINITIONS, CONCEPTS, AND GENERAL PROVISIONS

Rule 1.1 Definitions of Terms

In the administration of its duties, the District follows the definitions of terms set forth in Chapter 36, Texas Water Code, and other definitions as follows, except where a term clearly has a different meaning as used when read in context in these rules:

(1) "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.

(2) "Agricultural use" means any use or activity involving agriculture, including agricultural irrigation.

(3) "Aquifer" means a water bearing geologic formation in the District. See also the definition "layer of an aquifer."

(4) "As equipped" for purposes of determining the production capacity of a well in gallons per minute means visible pipes, plumbing, and equipment attached to the wellhead or adjacent plumbing that, in combination with the pump, controls the maximum rate of flow of groundwater and that is permanently affixed to the well or adjacent plumbing by welding, glue or cement, bolts or related hardware, or other reasonably permanent means.

(5) "Beneficial use" or "use for a beneficial purpose" means use of groundwater for:

(a) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing,

industrial, commercial, or recreational purposes;

(b) exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals; or

(c) any other purpose that is useful and beneficial to the user that does not constitute waste.

(6) "Board" means the Board of Directors of the District.

(7) "Capacity" means the maximum rate in gallons per minute that a well, as equipped, is physically capable of producing groundwater at the wellhead.

(8) "Certificate of Convenience and Necessity" or "CCN" as used in these rules means a certificate issued by the Public Utility Commission of Texas or the Texas Commission on Environmental Quality or its predecessor agencies that provides the CCN holder the exclusive right to provide retail water service within the geographic area specified in the CCN, or with the facilities specified in the CCN for a CCN that is not a bounded service area, and within which geographic area or with such facilities the CCN holder has the legal duty to provide continuous and adequate retail water service. A "Bounded Service Area CCN" is a certificated service area with closed boundaries that often follows identifiable physical and cultural features. A "Facilities +200 Feet CCN" is a certificated service area represented by lines on a map that includes a buffer of a specified number of feet (usually 200 feet). A "Facilities Only CCN" is a certificated area represented by lines on a map and granted for a "point of use" that covers only the customer connections at the time the CCN was granted.

(9) "Contiguous" means property within a continuous perimeter boundary situated within the District, and as otherwise described in the definition of "contiguous controlled acreage."

(10) "Contiguous controlled acreage" means a surface acre of land on which a well is located that is the subject of an Operating Permit or an application for an Operating Permit, and each additional acre of land inside the boundaries of the District for which the Operating Permit applicant or holder has a legal right to produce groundwater that:

(a) is located over the same aquifer as the aquifer from which the well will be producing groundwater; and

(b) meets one of the following criteria:

(1) located within the perimeter of the same surface estate plat, deed, or other legally recognized surface estate property description filed in the deed records of the county clerk as the acre on which the well is located;

(2) located within a common perimeter of an area of land in which the well is

located and that is under the same right to produce and use groundwater, as established by deed, lease, or otherwise, as the surface acre of land upon which the well is located, although the property may be described in separate plats or deeds; or

(3) otherwise abuts acreage described under (1), but on a different tract of land that does not meet the description of acreage under (1) or (2).

The term "contiguous controlled acreage" also applies to acreage on separate properties divided by a road, highway, utility or pipeline route, a stream or other watercourse, or other long and narrow easement or strip of property if the properties would otherwise share a common border and constitute contiguous controlled acreage under this definition. The acreage of the road, highway, utility or pipeline route, watercourse, or other long and narrow easement or strip of property shall not be included for purposes of calculating the amount of total contiguous controlled acreage unless the permit applicant has the right to produce groundwater from the road, highway, utility or pipeline route, watercourse, or easement or strip of property. However, acreage on two otherwise non-contiguous tracts of land shall not be considered contiguous simply because they are joined by the length of a road, highway, utility or pipeline route, watercourse, or other long and narrow easement or strip of property. For an Operating Permit holder or applicant that is a retail public utility, "contiguous controlled acreage" has the meaning set forth under Rule 5.3 for wells of the retail public utility that are located within its CCN or corporate boundaries.

Nothing in this definition or in any part of these rules related to minimum well spacing distances requires an applicant for a well registration or permit who owns the right to produce groundwater on two (2) or more contiguous tracts to meet the minimum well spacing distances from the property line with regard to the property line separating the two (2) or more tracts. However, if a road, highway, utility or pipeline route, watercourse, or other easement or strip of property separates the tracts and the applicant does not own or lease the right to produce groundwater under the road, highway, utility or pipeline route, watercourse or other easement or strip of property, the minimum well spacing requirements for distance from the property line shall apply.

(11) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, Texas Water Code, of the desired condition of the groundwater resources in a management area at one or more specified future times.

(12) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.

(13) "District" means the Prairielands Groundwater Conservation District created in accordance with Section 59, Article XVI, Texas Constitution, Chapter 36, Texas Water Code, and the District Act.

(14) "District Act" means the Act of May 31, 2009, 81st Leg., R.S., ch. 1208, 2009 Tex. Gen. Laws 3859, codified at TEX. SPEC. DIST. LOC. LAWS CODE ANN. ch. 8855, as may be amended from time to time.

(15) "Domestic use" means the use of groundwater by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes, for irrigation of lawns or of a family garden and/or family orchard, or for watering of domestic animals. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold. Domestic use does not include use by or for a public water system. Domestic use does not include irrigation of crops in fields or pastures. Domestic use does not include water used for open-loop residential geothermal heating and cooling systems but does include water used for closed-loop residential geothermal systems. Domestic use does not include pumping groundwater into a pond or other surface water impoundment unless the impoundment has a surface area equal to or smaller than one-third of a surface acre (14,520 square feet).

(16) "Dry hole" means wells that do not encounter groundwater.

(17) "Economically feasible alternative water source" means a water source for which:

(a) the total up-front capital costs and fees to receive service of any alternative water source to the registration or permit applicant are no more than one-hundred and ten percent (110%) of the capital costs associated with the well construction or alteration activities, if any, proposed by the applicant; and

(b) the delivery rate cost of the alternative water source to the applicant per 1,000 gallons is no more than 25 times the District's water use fee rate per 1,000 gallons in effect at the time the application is received by the District.

(18) "Effective date" means January 1, 2019.

(19) "Emergency purposes" means the use of groundwater:

(a) to fight fires, manage chemical spills, and otherwise address emergency public safety or welfare concerns; or

(b) for training exercises conducted in preparation for responding to fires, chemical spills, and other emergency public safety or welfare concerns.

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

(21) "Exempt well" means a new or an existing well that is exempt under Section 2 from certain regulatory requirements in these rules.

(22) "Existing well" means a well that was in existence or for which drilling commenced prior to January 1, 2019, or which was approved by the District for drilling prior to January 1, 2019.

(23) "Existing and historic use period" means the time period of January 1, 2004, through December 31, 2018.

(24) "General Manager" as used herein is the chief administrative officer of the District, as set forth in the District's bylaws, or the District staff or other designee acting at the direction of the General Manager or Board to perform the duties of the General Manager.

(25) "Groundwater" means water percolating below the surface of the earth.

(26) "Groundwater reservoir" means a specific subsurface water-bearing stratum, or "aquifer."

(27) "Historic Use Permit" means a permit required by the District for the operation of any nonexempt, existing water well or well system that produced groundwater during the existing and historic use period or any other well that is otherwise authorized to apply for a Historic Use Permit under Rule 3.8.

(28) "Landowner" means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on the land surface.

(29) "Layer of an aquifer" means the Woodbine, Washita/Fredericksburg, Paluxy, Glen Rose, Twin Mountains, Hensell/Travis Peak, Hosston/Travis Peak geologic strata/hydrogeologic units as depicted in Appendix 2.

(30) "Leachate well" means a well used to remove contamination from soil or groundwater.

(31) "Livestock" means, in the singular or plural, grass- or plant-eating, single- or cloven-hooved mammals raised in an agricultural setting for subsistence, profit or for its labor, or to make produce such as food or fiber, including cattle, horses, mules, asses, sheep, goats, llamas, alpacas, and hogs, as well as species known as ungulates that are not indigenous to this state from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families, but does not mean a mammal defined as a game animal in section 63.001, Parks and Wildlife Code, or as a fur-bearing animal in section 71.001, Parks and Wildlife Code, or any other indigenous mammal regulated by the Texas Department of Parks and Wildlife as an endangered or threatened species. The term does not include any animal that is stabled, confined, or fed at a facility that is defined by TCEQ rules as an Animal Feeding Operation or a Concentrated Animal Feeding Operation.

(32) "Maintenance or repair" of a well means work done in the normal course of operation to ensure safe and proper operation, water quality, proper sanitary measures, and normal

replacement or repair of well components, including the pump, so long as the work does not "substantially alter," as defined herein, the production capacity of the well.

(33) "Management area" or "Groundwater 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.

(34) "Maximum Historic Use" means the amount of groundwater from the aquifer as determined by the District that, unless reduced by the Board under Rule 5.4 or otherwise altered by the District, an applicant for a Historic Use Permit is authorized to withdraw equal to the greater of the following:

(a) for an applicant who had beneficial use during the existing and historic use period for a full calendar year, the applicant's actual maximum beneficial use of groundwater from the aquifer excluding waste during any one full calendar year of the existing and historic use period; or

(b) for an applicant who had beneficial use during the existing and historic use period but, due to the applicant's activities not having been commenced and in operation for the full final calendar year of the existing and historic use period at the maximum designed and planned annual groundwater production amount for the project or activity supplied by the well, the applicant did not have beneficial use for a full calendar year at the maximum designed and planned annual groundwater production amount for the project or activity supplied by the well, the applicant's extrapolated maximum beneficial use. The applicant's extrapolated maximum beneficial use will be calculated as follows: the amount of groundwater that would normally have been placed to beneficial use without waste by the applicant for the last full calendar year during the existing and historic use period for the applied-for purpose if the applicant's project or activity when fully constructed, completed, or built out had been commenced and in full operation at the maximum designed and planned annual production amount during the full final calendar year of the existing and historic use period.

(35) "Meter" or "measurement device" means a water flow measuring device that meets the requirements of Section 8 of these rules.

(36) "Modeled available groundwater" means the amount of water that the Texas Water Development Board's Executive Administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108 of the Texas Water Code.

(37) "Monitoring well" means a well installed to measure some property of the groundwater or the aquifer that it penetrates and does not produce more than 5,000 gallons per year.

(38) "New well" means a well for which drilling commenced on or after January 1, 2019, except a well approved by the District prior to that date for drilling that was in fact drilled after

that date.

(39) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(40) "Operating Permit" means a permit required by the District for drilling, equipping, completing, substantially altering, operating, or producing groundwater from any nonexempt water well for which a Historic Use Permit has not been issued by the District or timely applied for and awaiting District action.

(41) "Penalty" means an administrative or civil penalty authorized by § 8855.106 of the District Act, Section 36.102(b) of the Texas Water Code, or other applicable law.

(42) "Person" means an individual, corporation, limited liability company, organization, government, governmental subdivision, agency, business trust, estate, trust, partnership, association, or other legal entity.

(43) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 67.

(44) "Poultry" means chickens, turkeys, nonmigratory game birds, and other domestic nonmigratory fowl, but does not include any other bird regulated by the Texas Parks and Wildlife Department as an endangered or threatened species. The term does not include any animal that is stabled, confined, or fed at a facility that is defined by TCEQ rules as an Animal Feeding Operation or a Concentrated Animal Feeding Operation.

(45) "Production" or "producing" means the act of extracting groundwater from an aquifer by a pump or other method.

(46) "Property line" means the outer perimeter of a tract of land.

(47) "Public water supply well" means a well that produces water for use by a public water system or by a retail public utility.

(48) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for "drinking water" in 30 Texas Administrative Code, Section 290.38. Such a system must have at least 15 service connections or serve at least 25 individuals at least sixty (60) days out of the year. This term includes any collection,

treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least sixty (60) days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(49) "Pump" means any facility, device, equipment, materials, or method used to obtain water from a well.

(50) "Recharge" means the amount of water that infiltrates to the water table of an aquifer.

(51) "Registrant" means a person required to submit an application for registration.

(52) "Registration" means a well owner providing certain information about a well to the District or an authorization that a well owner applies for from the District to engage in certain activities related to a well, as more particularly described under Section 3.

(53) "Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or raw water service, or both, for compensation.

(54) "Rule" or "Rules" means a rule or rules of the District compiled in this document, as supplemented or amended from time to time, and any rule adopted to implement these rules.

(55) "Spacing requirement" means a minimum well spacing requirement established under Rules 4.3 and 4.4.

(56) "Subsidence" means the lowering in elevation of the surface of the land caused by the withdrawal of groundwater.

(57) "Substantially alter" with respect to the capacity of a well means to increase the maximum production capacity of the well as equipped in gallons per minute to a level that is higher than the maximum capacity set forth in the approved well registration for the well, unless the well both before and after the alteration has a maximum production capacity of 17.36 gpm or less.

(58) "TCEQ" means the Texas Commission on Environmental Quality.

(59) "Tract" means a surface estate plat, surface estate deed, or other legally recognized surface estate property configuration recorded in the deed records of the county in which the property is located and any contiguous tracts of land under the same ownership or lease of a single landowner, such as a corporation, partnership, trust, or individual, or persons holding as joint owners, joint lessees, or tenants in common.

(60) "Transfer," in the context of production authorization, means a transfer of the right to make withdrawals and place the groundwater to beneficial use without a change in ownership of a well or a registration or permit associated with a well.

(61) "Variable frequency drive," or (VFD), is a type of motor drive used in electro-mechanical drive systems to control AC motor speed and torque by varying motor input frequency and voltage. For purposes of these rules, a variable frequency drive includes an adjustable-frequency drive (AFD), variable-voltage/variable-frequency (VVVF) drive, variable speed drive (VSD), AC drive, micro drive, and inverter drive.

(62) "Verification Period" means the period of time from January 1, 2020, to December 31, 2021, or as such period of time is established by the Board under Rule 3.8(k), during which a person required to obtain a Historic Use Permit under these rules who was not required by a rule of the District to meter groundwater withdrawals prior to January 1, 2019, or who does not otherwise have metered records of groundwater production for two (2) calendar years during the existing and historic use period shall be required to meter and report to the District their groundwater production volumes and pay associated groundwater use fees and groundwater transport fees, and during which such users may amend their Historic Use Permit applications to the extent that groundwater production during the Verification Period provides information relevant to the person's Maximum Historic Use during the existing and historic use period.

(63) "Waste" means one or more of the following:

(a) withdrawal of groundwater from the aquifer at a rate and in an amount that causes or threatens to cause an intrusion into the aquifer unsuitable for agriculture, gardening, domestic, stock raising, or other beneficial purposes;

(b) the flowing or producing of water from the aquifer by artificial means if the water produced is not used for a beneficial purpose;

(c) the escape of groundwater from the aquifer to any other underground reservoir or geologic stratum that does not contain groundwater;

(d) pollution or harmful alteration of groundwater in the aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

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

(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;

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

(h) operating a deteriorated well; or

(i) producing groundwater in violation of any District rule governing the withdrawal of groundwater through production limits on wells, managed depletion, or both.

(64) "Well" means any artificial excavation located within the boundaries of the District dug or drilled for the purpose of exploring for or withdrawing groundwater, including water wells producing less water than desired by the well owner, test holes, and dry holes. Any reference to a "well" in terms of a requirement under these rules also applies to a "well system," as defined in this rule, except as specifically distinguished in these rules.

(65) "Well owner" means the person or persons who own a possessory interest in: (1) the land upon which a well or well system is located or to be located; (2) the well or well system; or (3) the groundwater withdrawn from a well or well system.

(66) "Well system" means two or more wells providing groundwater to a common distribution system, natural or artificial storage facility, or consumptive use.

(67) "Withdraw" means the act of extracting or producing groundwater by pumping or other method.

(68) "Year" means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.

Rule 1.2 Authority of District

The Prairielands Groundwater Conservation District is a political subdivision of the State of Texas organized and existing under Section 59, Article XVI, Texas Constitution, Chapter 36, Texas Water Code, and the District Act. The District is a governmental agency and a body politic and corporate. The District was created to serve a public use and benefit.

Rule 1.3 Purpose of Rules

These rules are adopted under the authority of Section 36.101, Texas Water Code, and the District Act for the purpose of conserving, preserving, protecting, and recharging groundwater in the District in order to prevent subsidence, prevent degradation of water quality, prevent waste of groundwater, and to carry out the powers and duties of Chapter 36, Texas Water Code, and the District Act.

Rule 1.4 Use and Effect of Rules

These rules are used by the District in the exercise of the powers conferred on the District by law and in the accomplishment of the purposes of the law creating the District. 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 will they, or any part therein, be construed as a limitation or restriction upon the District to exercise powers, duties and jurisdiction conferred by law. These rules create no rights or privileges in any person or water well and shall not be construed to bind the Board in any manner in its promulgation of the District Management Plan or amendments to these rules.

Notwithstanding anything to the contrary in these rules, issuance of a permit or registration under these rules is not intended to act as a guarantee that a well owner or operator will successfully locate groundwater at a particular location or on a specific lot or parcel, or successfully produce groundwater in the amount authorized to be produced by the permit. Neither does the issuance of a permit or registration under these rules guarantee the quality of any groundwater authorized to be produced by the issuance of the permit, or that such groundwater is free from contamination or meets applicable federal or state water quality standards. Issuance of a permit or registration by the District is intended only as granting an authorized applicant the right to attempt to drill a well and to attempt to produce groundwater from a well in accordance with the terms of the permit or registration. The permittee or registrant assumes all risks in attempting to drill for and produce groundwater as authorized by a permit or registration, including without limitation all risks related to well construction and completion and potentially not being able to produce groundwater at all or in the quantity or quality desired.

Rule 1.5 Purpose of District

The purpose of the District is to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, referred to herein as "aquifers" and "layers of aquifers," consistent with the objectives of Section 59, Article XVI, Texas Constitution.

Rule 1.6 Construction

A reference to a title or chapter without further identification is a reference to a title or chapter of the Texas Water Code. A reference to a section or rule without further identification is a reference to a section or rule in these rules. Construction of words and phrases is governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code. The singular includes the plural, and the plural includes the singular. The masculine includes the feminine, and the feminine

includes the masculine.

Rule 1.7 Methods of Service

Except as provided in these rules, any notice or document required by these rules to be served or delivered may be delivered to the recipient or the recipient's authorized representative in person, by agent, by email, by commercial delivery service, by certified or registered mail sent to the recipient's last known address, or by fax to the recipient's current fax number and shall be accomplished by 5:00 o'clock p.m. on the date which it is due. Service by mail or commercial delivery service is complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. Service by fax is complete upon receipt, except that service completed after 5:00 o'clock p.m. local time of the recipient shall be deemed served on the following day. If service or delivery is by mail and the recipient has the right or is required to do some act within a prescribed period of time after service, three (3) days will be added to the prescribed period. If service by other methods has proved unsuccessful, service will be deemed complete upon publication of the notice or document in a newspaper of general circulation in the District.

Rule 1.8 Severability

If a provision contained in these rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability does not affect any other rules or provisions of these rules, and these rules shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in these rules.

Rule 1.9 Computing Time

In computing any period of time prescribed or allowed by these rules, order of the Board, or any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

Rule 1.10 Time Limits

Applications, requests, or other papers or documents required or allowed to be filed under these rules or by law must be received for filing by the District within the time limit for filing, if any, unless a required time limit for filing falls on a Saturday, Sunday, or legal holiday in which case the required time limit for filing shall be extended to the next day that is not a Saturday, Sunday, or legal holiday. An electronically filed document, including e-mail, is deemed filed when transmitted to the District's electronic service provider, except if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday. Filing of a document by fax is considered complete on receipt by the District. Faxes or e-mails received after 5:00 p.m. local time of the District shall be deemed filed on the following day.

Filing by mail or commercial delivery service is complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. Time periods

set forth in these rules shall be measured by calendar days, unless otherwise specified.

Rule 1.11 Amending of Rules; Petition to Amend Rules

(a) The Board may in its sole discretion, following notice and hearing, amend or repeal these rules or adopt new rules from time to time.

(b) Any person requesting that the Board amend these rules, including adding a new rule, repealing an existing rule, or amending the language of an existing rule, shall comply with the requirements of this subsection. The person must submit a petition in writing to the District office that meets the following requirements:

(1) each rule requested must be submitted by separate petition;

(2) each petition must be signed and state the name and address of each person signing the petition;

(3) each petition must include a brief description of the petitioner's real property interest in groundwater in the District;

(4) each petition must include a brief explanation of the proposed rule;

(5) each petition must include the text of the proposed rule prepared in a manner to indicate the words to be added to or deleted from the text of the current District Rules in underline and strikethrough form; and

(6) each petition must include an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(c) The General Manager may reject any petition for failure to comply with the requirements of Subsection (b) of this rule and shall provide notice to the petitioner of the reason for the rejection.

(d) Within 90 days after the District receives a petition that complies with this section, the Board shall either:

(1) deny the petition, stating its reasons for denial in the minutes of the Board meeting or in a letter providing a written explanation to the petitioner; or

(2) initiate rulemaking proceedings as provided by Section 36.101, Water Code.

(e) Nothing in this rule shall be construed to create a private cause of action for a decision by the Board to accept or deny a rulemaking petition filed under this rule.

Rule 1.12 Ownership of Groundwater

The District recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property, and nothing in these rules shall be construed as depriving or divesting a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by Section 36.002 of the Texas Water Code.

Rule 1.13 District Management Plan

Following notice and hearing, the District shall adopt a comprehensive Management Plan. The District Management Plan shall specify the acts and procedures and performance and avoidance measures necessary to prevent waste, the reduction of artesian pressure, or the draw-down of the water table. The District shall use the rules to implement the Management Plan. The Board shall review and readopt the Management Plan, with or without revisions, at least once every five (5) years. If the Board considers a new Management Plan necessary or desirable based on evidence presented at a hearing, a new Management Plan will be developed and adopted. A Management Plan, once adopted, remains in effect until the subsequent adoption of another Management Plan.

Rule 1.14 Effective Date

These rules were adopted by the Board on December 17, 2018, and take effect on January 1, 2019. An amendment to these rules takes effect on the date of its adoption, unless the Board establishes a different effective date for the amendment in the board resolution adopting the amendment. It is the District's intention that the rules and amendments thereto be applied retroactively to activities involving the production and use of groundwater resources located in the District, as specifically set forth in these rules.

SECTION 2

EXEMPTIONS FROM CERTAIN REGULATORY REQUIREMENTS

Rule 2.1 Wells Exempt from Permitting, Water Use Fee Payment, Metering, and Reporting Requirements

(a) The requirements of these rules relating to the payment of water use fees under Section 7, metering under Section 8, and permitting and reporting under Section 3 do not apply to the following types of wells:

(1) All wells for which drilling commenced before January 1, 2023, of any capacity, used solely for domestic use, livestock use, poultry use, or agricultural use;

(2) An existing well, as defined under Rule 1.1, that is not a public water supply well and that does not have the capacity, as equipped, to produce more than 25 gallons

per minute and is used for any purpose of use other than solely for domestic, livestock, poultry, or agricultural use, except as provided in this subsection or by Subsection (b) of this rule;

(3) A well for which drilling commenced before January 1, 2023, that does not have the capacity, as equipped, to produce more than 17.36 gallons per minute and is used for any purpose of use other than public water supply;

(4) A new well that does not have the capacity, as equipped, to produce more than 17.36 gallons per minute and is used solely for domestic use, livestock use, or poultry use;

(5) Leachate wells, monitoring wells, and piezometers.

(b) For purposes of determining whether the exemptions set forth under Subsections (a)(2) through (a)(4) apply, the capacity of a well that is part of a well system shall be determined by taking the sum of the capacities of each of the individual wells, as equipped, in the system. If the total sum of the capacities is greater than the threshold capacities for an exempt individual well under Subsection (a), the well system and the individual wells that are part of it shall comply with the applicable registration, permitting, water use fee payment, metering, and reporting requirements of these rules.

(c) A well exempted under Subsection (a) will lose its exempt status if the well is substantially altered or subsequently used for a purpose or in a manner that is not exempt under Subsection (a).

(d) A well or well system exempted under Subsections (a)(2) through (a)(4) will lose its exempt status if, while the well was registered as an exempt well, the District determines that the well had the capacity, as equipped, to produce more than the applicable threshold capacity or the well was part of a well system that had the capacity, based on the total sum of the capacities of the individual wells in the system, to produce more than the capacity required for the exemption. Such wells are subject to the permitting, fee payment, metering, reporting, and other requirements of these rules and may be subject to enforcement under Section 9.

(e) The owner of a new well that is exempt under this rule shall nonetheless register the well with the District, as required under Section 3, and comply with the well completion, minimum tract size, and well spacing requirements of Section 4.

Rule 2.2 Exemption from Production Fees, Metering, and Reporting Requirements for Groundwater Used for Well Development.

Groundwater produced from a well during its development or rehabilitation, including groundwater used in pump tests, is exempt from the requirements relating to the payment of fees under Section 7, the requirement to install and maintain a meter under Section 8, and the requirement to report to the District the amount of water produced from a well under Section 3.

However, use of the well must comply with those requirements before being placed into operation unless otherwise exempt under these rules.

Rule 2.3 Wells Exempt from Permitting Requirements Only

(a) The provisions of these rules relating to the requirement to obtain a permit under Section 3 do not apply to the following types of wells:

(1) A well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; ~~or~~

(2) A well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water; or~~.~~

(3) A well drilled for temporary use to supply water for a rig that is actively engaged in drilling another water well that requires a permit under these rules.

(b) A well exempt under Subsection (a)(1) from permitting requirements does not include a well used to supply water for hydraulic fracturing purposes.

(c) A well exempted under Subsections (a)(1) or (a)(3) will lose its exempt status if the well is subsequently to be used for a purpose or in a manner that is not exempt from permitting and must obtain a permit from the District prior to such use.

(d) A well exempted under Subsection (a)(1) or (a)(3) from permitting requirements is nonetheless subject to the registration, reporting, fee payment, metering, well completion, and well spacing, minimum tract size, and well location requirements of these rules.

(e) A well exempt under Subsection (a)(3) ends at the conclusion of 180 days after drilling begins, unless the District approves an extension, which shall not exceed an additional 180 days. Upon the expiration of the exemption, groundwater production from the well shall cease and the well shall be plugged by the driller or owner in compliance with the well plugging guidelines set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, which plugging shall be completed no later than ninety (90) days after the date the exemption expired. Not later than the 30th day after the date a well is plugged, a driller, licensed pump installer, or well owner who plugs the well shall submit a State of Texas Well Plugging Report to the District or send to the District the State of Texas Well Plugging Report Tracking number associated with the well. The driller and owner are jointly and severally liable for a violation of this rule.

SECTION 3

REGISTRATIONS, PERMITS, RECORDS, REPORTS, AND LOGS

Rule 3.1 General Provisions Applicable to Permits and Registrations

(a) No person may:

(1) Drill a well without first obtaining from the District an approved well registration and, if required by these rules, an approved permit;

(2) Alter the size of a well or pump such that it would disqualify the well from a registration or permitting exemption without first obtaining an approved registration and/or permit, as applicable, from the District;

(3) Substantially alter the size of a well or pump without first obtaining an approved registration, registration amendment, permit, and/or permit amendment, as applicable, from the District; or

(4) Operate a well or produce groundwater from a well that is subject to the requirement to obtain a registration and/or permit without first obtaining the approved registration, permit, or appropriate amendment thereto, as applicable, from the District.

(b) A violation of any of the prohibitions in Subsection (a) occurs on the first day that the prohibited drilling, alteration, operation, or production begins, and continues each day thereafter as a separate violation until cessation of the prohibited conduct, or until the necessary authorization from the District is formally granted.

(c) Registration and permit applications shall be sworn to and submitted to the District on a form provided by the District by mail, facsimile, email, hand-delivery, or by utilizing the District's online Groundwater Management System.

(d) An application pursuant to which a permit or registration has been issued is incorporated in the permit or registration, and the permit or registration is granted on the basis of, and its validity contingent upon the accuracy of the information supplied in that application. A finding that false information has been supplied in the application may be grounds to refuse or deny the application or for immediate revocation of the permit or registration.

(e) No person may violate the terms, conditions, requirements, or special provisions in a permit or registration. Any such violation shall be grounds for enforcement against the person for a violation of these rules.

(f) Submission of an application for a permit, registration, or change in ownership of a well constitutes an acknowledgment by the applicant of receipt of the rules and regulations of the District and agreement that the applicant will comply with all rules and regulations of the District.

(g) District approval of a permit or registration application may not automatically grant the applicant all necessary legal authority to drill, complete, or operate a well under another governmental entity's rules or regulations. The applicant should refer to the rules and regulations of other governmental entities with possible jurisdiction over the drilling and operation of water wells at the location of the water well or proposed water well, including but not limited to, the county, the city, the special district, the Texas Department of Licensing and Regulation, and/or the Texas Commission on Environmental Quality, where applicable, to determine whether there are any other requirements or prohibitions in addition to those of the District that apply to the drilling and operation of water wells.

(h) Notwithstanding any provision of this rule to the contrary, no application for a well registration or permit pursuant to these rules shall be granted by the District unless all outstanding fees, penalties, and compliance matters have first been fully and finally paid or otherwise resolved by the applicant for any other wells for which the applicant holds a registration or permit from the District.

(i) If the Board or General Manager approves a permit or registration for any well, the General Manager may have such permit or registration recorded in the real property records of the county in which the well is located for the property on which the well is located and any property on which the granting of the permit or registration was based if, in the sole discretion of the General Manager, the General Manager believes that the public, including without limitation a future purchaser of the property recognized in the permit or registration, could benefit from the recordation and such benefit will outweigh the time and expense required to record. The recordation shall include information about the permit or registration granted and any other appropriate information as determined by the General Manager.

Rule 3.2 Well Registration

(a) The following wells must be registered with the District:

(1) all wells drilled on or after April 1, 2011, regardless of capacity or type of use, including wells exempt under Section 2;

(2) all wells drilled before April 1, 2011, that are not listed as exempt under Rule 2.1(a)(1), (2), or (4);

(3) all replacement wells under Rule 3.17; and

(4) all wells that were required to be registered under the District's previous Temporary

Rules for Water Wells.

(b) Although not required under these rules, the owner of an exempt well drilled before April 1, 2011, may elect to register the well with the District to provide the owner with evidence that the well existed before the adoption of certain rules by the District for purposes of exempting the well from the requirement to comply with any well location, minimum tract size, or spacing requirements of the District, the protection of the owner's well against encroachment from new wells through the District's well spacing requirements, and any other entitlements that such existing wells may receive under these rules.

(c) A person seeking to register a well shall provide the District with the following information in the registration application either on a form provided by the District or through the District's Online ~~Registration~~Groundwater Management System:

(1) the name, mailing address, email address, phone number, and fax number of the registrant and the owner of the property, if different from the registrant, on which the well is or will be located, and the name of the well driller;

(2) if the registrant is other than the owner of the property, documentation establishing the applicable authority to file the application for well registration, serve as the registrant in lieu of the property owner, and construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the existing or proposed use of water from the well;

(4) the location or proposed location of the well, identified as a specific point measured by latitudinal and longitudinal coordinates, and the surface elevation of the well at land surface, expressed in terms of mean sea level (MSL);

(5) the location or proposed location of the use of water from the well, if used or proposed to be used at a location other than the location of the well;

(6) the maximum production capacity or proposed maximum production capacity of the well, as equipped, in gallons per minute, as well as the manufacturer's horsepower rating of the pump and motor;

(7) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines, as set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and report closure to the District; and

(8) a statement that the water withdrawn from the well will be put to beneficial use at all times.

(d) The General Manager, or the General Manager's designee, shall, within five (5) business

days after the date of receipt of an application for registration, make a determination and notify the applicant as to whether the application is administratively complete or incomplete. If an application is not administratively complete, the District shall request the applicant to complete the application. The application will expire if the applicant does not complete the application within one hundred twenty (120) days of the date of the District's request. An application will be considered administratively complete and may be approved by the General Manager without notice or hearing if:

(1) the application is for a well that is exempt from the requirements to obtain a permit under these rules;

(2) it substantially complies with the requirements of this rule, including providing all information required to be included in the application that may be obtained through reasonable diligence; and

(3) if it is a registration for a well drilled after January 1, 2019:

(A) includes the well registration fee; and

(B) proposes a well that complies with the spacing, minimum tract size, location, and well completion requirements of Section 4 in effect at the time the application is submitted.

The General Manager may set the application for consideration by the Board at the next available Board meeting or hearing in lieu of approving or denying an application. If the General Manager denies the application, the applicant may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board will hear the registration applicant's appeal at the next available regular Board meeting.

(e) The District may amend any registration, in accordance with these rules, to accomplish the purposes of the District rules, management plan, the District Act, or Chapter 36, Texas Water Code.

(f) The owner of an existing public water supply well that was drilled prior to January 1, 2019, and that was not required to register the well under the District's previous Temporary Rules for Water Wells but that is required to register the well under Subsection (a)(2) of this rule must begin recording meter readings from the well on or before January 1, 2019, and must register the well with the District on or before March 1, 2019. Failure of the owner of such a well to timely register and meter the well under this rule shall subject the well owner or operator to enforcement under these rules. The owner of a public water supply well described by this subsection shall comply with the metering, groundwater production, reporting, and fee payment requirements of these rules beginning on January 1, 2019.

(g) No person shall operate or otherwise produce groundwater from a well required under this section to be registered with the District before obtaining approval from the District of the application for registration or amendment application, if such approval is required under

these rules.

(h) An owner or well driller of a new well must obtain an approved well registration from the District before the new well may be drilled, equipped, or completed, or before an existing well may be substantially altered with respect to capacity.

(i) The person who drills or completes the well shall file the well completion report with the District within sixty (60) days after the date the well is completed as required by Rule 3.13. Upon receipt of the well completion report required by Rule 3.13, the registration of the well shall be perpetual in nature, subject to enforcement and/or cancellation for violation of the District rules. A well driller, pump installer, well owner, or any other person who equips a well shall file an updated well completion report with District within sixty (60) days after the date the well is equipped.

(j) In the event that a well completion report required under this rule or Rule 3.13 is not filed within the deadlines set forth therein, the driller, pump installer, or owner shall be subject to enforcement by the District for violation of this rule.

(k) Notwithstanding any other rule to the contrary, the owner and driller of a new well, and pump installer if applicable, are jointly responsible for ensuring that a well registration required by this section is timely filed with the District and contains only information that is true and accurate. Each will be subject to enforcement action if a registration required by this section is not timely filed by either, or by any other person legally authorized to act on the behalf of either.

(l) Notwithstanding any other rule to the contrary, an application for well registration for a well that requires a permit under these rules will only be approved if the corresponding permit application is approved.

(m) A registrant for a new well has one hundred eighty (180) days from the date of approval of its application for well registration to drill and complete the new well and must file the well completion report within sixty (60) days of well completion. However, a registrant may apply for up to two extensions of an additional one hundred eighty (180) days each to drill and complete the well, which may be granted by the General Manager without the need for consideration or action by the Board. Any further extensions may only be granted by the Board upon application by the registrant, and in no case ~~shall~~ shall the Board grant more than two additional extensions, with each such~~an~~ extension being limited to ~~granted for~~no more than one hundred eighty (180) days. If any drilling, equipping, well completion, or well alteration activities authorized by the registration are not completed before the end of the one hundred eighty (180) day period or before the end of the last approved extension of time, the registration will expire.

Rule 3.3 Amendment of Registration

A registrant shall file an application to amend an existing registration and obtain approval by the District of the application prior to engaging in any activity that would constitute a substantial

change from the information in the existing registration. For purposes of this rule, a substantial change includes a change that would substantially alter the capacity of a well; a change in the type of use of the water produced; a change in location of a well or proposed well; a change of the location of use of the groundwater, or a change in ownership of a well. A registration amendment is not required for maintenance or repair of a well if the "maintenance or repair" conforms to its definition in Section 1.

Rule 3.4 Application Requirements for All Permits

(a) A permit is required before drilling, substantially altering, operating, or producing groundwater from any well not exempt from the requirement to obtain a permit under Rule 2.1(a) or 2.3(a).

(b) A well for which a permit application is submitted must have either a well registration previously approved by the District or an administratively complete well registration application submitted to the District before the permit application will be considered administratively complete.

(c) The following information shall be included in the permit application form provided by the District:

(1) the name, mailing address, and e-mail address, phone number and fax number of the applicant and the owner of the land on which the well is or will be located, and the name of the well driller;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to file the application, hold the permit in lieu of the property owner, and construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a declaration that the applicant will comply with the District's Management Plan and rules;

(5) the location of each well and the maximum designed production capacity of the well;

(6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;

(7) a drought contingency plan, if the applicant is required by law to have a drought contingency plan;

(8) a statement by the applicant that the water withdrawn under the permit will be put

to beneficial use at all times;

(9) the location of the use of the water from the well;

(10) the name of the aquifer and layer of the aquifer from which water will be produced by the well;

(11) legal description of the tract of land on which the well is located;

(12) a digital map or plat of the tract of land on which the well is located, in a format designated by the District at the pre-application meeting required under Rules 3.7 or 3.9.

(13) the amount of contiguous controlled acreage associated with the well(s) that is the subject of a permit application, a legal description of all such contiguous controlled acreage, and information demonstrating the extent to which the acreage is located over the same aquifer or layer of the aquifer from which the well(s) will be producing;

(14) for political subdivisions and other retail public utilities, the number of acres within the corporate boundaries of the political subdivision, the number of acres within the political subdivision or other retail public utility's retail water service area (retail water Certificate of Convenience and Necessity (CCN)), if any, where the well is located or proposed to be located, a map of the corporate boundaries and a map of the retail water CCN where the well is located or proposed to be located, and a description of each tract of land within the service area on which an exempt or non-exempt well of the political subdivision or other retail public utility is located or proposed to be located; for retail public utilities that hold a retail water CCN that is not a bounded service area, such as a facilities-only or facilities plus 200 feet CCN, a map showing the CCN facilities, the properties served by the facilities, and the acreage of those combined properties;

(15) for a retail public utility that is applying for either an increase in authorized annual groundwater production for an existing system through an Operating Permit or an amendment to an Operating Permit, or for renewal of an Operating Permit or Historic Use Permit, the water audit and system loss information required under Rule 5.8;

(16) any additional information required for an Operating Permit under Rule 3.9, as applicable; and

(17) any additional information required for a Historic Use Permit under Rule 3.8, as applicable.

(d) An application shall be accompanied by payment by the applicant of any administrative fees required by the District for permit applications.

(e) An application may be rejected as not administratively complete if the District finds that substantive information required by the permit application is missing, false, or incorrect.

(f) An application will be considered administratively complete if it complies with all requirements set forth under this rule, including all information required to be included in the application.

(g) A determination of administrative completeness shall be made by the General Manager.

(h) The Board shall promptly consider and act on each administratively complete permit application. No later than sixty (60) days after the date an administratively complete application is submitted, the Board shall act on an administratively complete permit application or set the administratively complete permit application for hearing on a specified date.

(i) For a well that requires a permit, approval or denial by the Board of the permit application also constitutes approval or denial of any underlying well registration application.

(j) For applications requiring a public hearing under Rule 10.3, the initial hearing shall be held within thirty-five (35) days after the setting of the date, and the Board shall act on the application within sixty (60) days after the date the final hearing on the application is concluded.

(k) The applicant bears the burden of proof in any application for a permit or permit amendment under these rules.

Rule 3.5 Permits Issued by District

(a) Upon the Board's approval of a permit application and prior to issuance of the permit, the General Manager shall ensure that any fees due and owing to the District have been received from the applicant.

(b) All permits issued by the District shall include the following:

(1) the name of the person to whom the permit is issued;

(2) the date the permit is issued;

(3) the date the permit is to expire;

(4) the conditions and restrictions, if any, placed on the rate and amount of withdrawal of groundwater;

(5) any other conditions or restrictions the District prescribes; and

(6) any other information set forth in Section 36.1131, Water Code, or otherwise that the District determines necessary or appropriate.

Rule 3.6 Considerations for Granting or Denying a Permit Application

Before granting or denying a permit application, the Board shall consider whether the application is accompanied by the prescribed fees and conforms to the requirements prescribed by Chapter 36, Texas Water Code, the District Act, and the District rules, including without limitation:

(1) whether the proposed use of water unreasonably affects existing groundwater and surface water resources;

(2) whether the proposed use of water unreasonably affects the property rights of landowners or groundwater rights owners in the District;

(3) whether the proposed use of water unreasonably affects the owners and permit holders of other wells that are in existence or have been approved by the District at the time an administratively complete permit application is filed;

(4) whether the proposed use of water is dedicated to any beneficial use;

(5) whether the proposed use of water is consistent with the District's Management Plan;

(6) whether the applicant has agreed to avoid waste and achieve water conservation;

(7) whether the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure;

(8) the spacing, minimum tract size, and completion requirements under Section 4 of these rules;

(9) for Operating Permit applications, the amount of contiguous controlled acreage at the well site;

(10) for Historic Use Permit applications, all relevant information regarding the Maximum Historic Use for each well in the application and, if applicable, for the well system;

(11) whether special conditions should be included in the permit; and

(12) whether the issuance of the requested permit or permits would authorize the

withdrawal of groundwater in amounts that are greater than necessary for the project proposed in the application.

Rule 3.7 Authorization for Construction of New Wells; Test Wells; Variable Frequency Drives

(a) Before any new well may be drilled or completed, or before any well may be substantially altered with respect to its capacity, the well owner, water well driller, or any other person acting on behalf of the well owner pursuant to written, legal authority, must:

(1) submit an application in accordance with Rule 3.2 for well registration with the District, using a form provided by the District;

(2) submit an application for a permit, if the well is not exempt from the requirement to obtain a permit; and

(3) receive specific authorization from the District in the form of an approved well registration and, if applicable, an approved permit to commence drilling, completing, or altering the well.

(b) The General Manager shall review the application submitted under Subsection (a) of this rule and shall determine, based on information provided by the applicant, whether the proposed well qualifies for a permitting exemption under Rule 2.1(a) or Rule 2.3(a). The General Manager shall inform the applicant of this determination within five (5) business days of the District's receipt of the completed application.

(c) For proposed wells that qualify for a permitting exemption under Rule 2.1(a) or Rule 2.3(a), the registrant may begin drilling upon receipt of the approved registration.

(d) For proposed wells that do not qualify for a permitting exemption under Rule 2.1(a) or Rule 2.3(a), application must be made, and fees must be submitted, for all appropriate permits required by these rules, and the District must approve the permit application before drilling commences on the new well. An applicant may appeal the General Manager's determination under Subsection (b) by filing, within thirty (30) days of the date of the written determination, a written request for a hearing before the Board.

(e) Once the General Manager has determined under Subsection (b) that a well does not qualify for a permitting exemption under Rule 2.1(a) or Rule 2.3(a), a pre-application meeting with the permit applicant and General Manager is required.

(f) The requirements in this rule do not apply to proposed leachate wells or monitoring wells.

(g) **Test Wells.** Upon approval by the District, the applicant at its own risk may drill a test well to conduct a pumping test to determine actual hydraulic property values at the well site, to conduct other tests to measure actual impacts on other wells, to conduct aquifer

tests for the purpose of groundwater availability certification for platting under Title 30, Chapter 230, of the Texas Administrative Code, to serve as an observation well in such tests, or to explore for groundwater, or for any other lawful purpose. Prior to drilling a test well, the applicant must submit an application fee as provided in Rule 7.7 and an application on a form provided by the District, which shall include, at a minimum, the following information:

(1) the name and physical address of the legal owner of the property on which the proposed production well is to be located;

(2) the name, mailing address, telephone number, and license number of the well driller that will be responsible for drilling the proposed test well;

(3) the legal description of the property on which all test wells will be drilled;

(4) the drilling method proposed to be used;

(5) a description of each layer of each aquifer that will be explored through the test well;

(6) a declaration that the test wells will be drilled and either completed or plugged in a manner that complies with the requirements of these rules;

(7) and other pertinent information the District requests on a form approved by the District.

The General Manager is authorized to approve an administratively complete application to drill a test well. The hearing procedures under Section 10 of these rules do not apply to an application for test well authorization, unless the General Manager submits the application to the Board for consideration in lieu of approving it. District authorization to drill a test well does not guarantee the applicant an approved well registration or approved well permit if the applicant decides to complete the well. The applicant assumes all risks in attempting to drill a test well as authorized by the District, including without limitation all risks related to well construction and completion and potentially not being able to produce groundwater at all or in the quantity or quality desired. No registration or permit will be approved for a test well that the applicant decides to complete as a permanent well unless the well complies with all applicable requirements of these rules, including, but not limited to: well completion, minimum tract size, minimum well spacing distances, registration, permitting, reporting, and fee payment requirements A test well authorization does not authorize any person to access or drill upon property that the person does not otherwise have an independent legal right to access or drill upon. A test well shall not be open at the surface or allow water zones of different chemical qualities to commingle.

(h) An applicant that is approved to drill a test well shall:

(1) submit a copy of any lithologic, geophysical, or other well log from the State Well Report to the District within sixty (60) days of the cessation of drilling the test well; ~~and~~

(2) commence drilling within one hundred and eighty (180) days from the date of approval of the test well application by the District, unless an extension of this deadline is granted by the General Manager, which extension may only be granted once for no more than an additional 180-day period; and

~~(2)~~(3) within ninety (90) days from the date drilling commences, either:

(A) plug the well in accordance with Subsection (h)(4); or

(B) complete the well and submit an administratively complete well registration application to the District and, if applicable, any permit or replacement well applications. If the well registration or, if applicable, permit application is denied by the District, the test well applicant shall plug the well within ninety (90) days of such denial in accordance with Subsection (h)(4).

(4) Wells required to be plugged under this subection shall be plugged in compliance with the well plugging guidelines set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. Not later than the 30th day after the date a well is plugged, a driller, licensed pump installer, or well owner who plugs the well shall submit a State of Texas Well Plugging Report to the District or send to the District the State of Texas Well Plugging Report Tracking number associated with the well.

(i) **Variable Frequency Drives.** Any well, whether or not exempt from the permitting requirements of these rules, that is equipped with a variable frequency drive capable of being set at a level that would increase the maximum production capacity of the well higher than the maximum production capacity authorized in the approved well registration must be equipped with a flow restrictor, such as a dole valve, restriction orifice plate, or similar device that mechanically restricts the maximum production capacity of the well at the wellhead to no more than the maximum capacity authorized in the approved well registration. A well that was equipped with a variable frequency drive prior to January 1, 2022, must comply with this rule no later than July 1, 2022. Any alternative method for demonstrating that a well equipped with a variable frequency drive will not be operated at a capacity that is higher than the capacity authorized in the well registration must be approved by the Board.

Rule 3.8 Historic Use Permits

(a) In addition to certain wells described under Subsection (k) of this rule, the owner of an

existing well shall apply to the District for a Historic Use Permit on or before November 1, 2019, in the manner prescribed by this rule for any well that:

(1) is not exempt from the requirement to obtain a permit under Rules 2.1(a) or 2.3(a);

(2) was completed and operational prior to January 1, 2019, the effective date of these rules; and

(3) produced and used groundwater for a beneficial use in any year during the existing and historic use period (calendar years 2004 through 2018).

(b) The annual groundwater allocation for the Historic Use Permit will be based on the well owner's Maximum Historic Use.

(c) If the owner of a well described by Subsection (a) of this rule fails to apply for a Historic Use Permit on or before November 1, 2019, the well owner shall forfeit his right to make any future claim or application to the District for a Historic Use Permit under these rules and shall forfeit his rights and ability to operate the well under these rules, unless the owner thereafter applies for and obtains an Operating Permit from the District that authorizes production from the well.

(d) Any owner of an existing well who has not used the well during the existing and historic use period but that may want to use the well in the future for an activity in which the well owner has made an economic investment prior to January 1, 2019, that is supported by the water well and desires to obtain a Historic Use Permit for the well must submit a Historic Use Permit application on or before November 1, 2019. The application will be processed by the District in the manner for other Historic Use Permit applications, save and except that the Board will also consider whether the applicant has abandoned the historic activity for which the permit is sought in considering the application. Any such application shall comply with the applicable provisions of Subsection (k) including the two (2) year Verification Period. Failure to submit a Historic Use Permit application on or before November 1, 2019, shall preclude the person from being eligible to obtain a Historic Use Permit in the future, and the person shall forfeit his right to make any future claim or application to the District for a Historic Use Permit under these rules and shall forfeit his rights and ability to operate the well under these rules, unless the owner thereafter applies for and obtains an Operating Permit from the District that authorizes production from the well.

(e) An application for a Historic Use Permit shall be on a form provided by the District and shall include evidence of existing and historic use of a well, including the information required under Rule 3.4, and the following information:

(1) the year in which the well was drilled;

(2) the purpose for which the well was drilled and all subsequent purposes of use of the

water;

(3) if the well is part of a well system, as defined under Section 1, identification of all other wells in that well system;

(4) annual water production history of the well for each calendar year during the existing and historic use period in which the well was completed and operational;

(5) a declaration by the applicant of the Maximum Historic Use of the well;

(6) a declaration by the applicant of the Maximum Historic Use of the well system, if applicable;

(7) a legal description of the tract of land on which the well is located; and

(8) a description of any and all investment-backed expectations associated with the well and the groundwater produced from the well. An investment-backed expectation represents the financial resources the applicant has invested based upon a reasonable expectation that the applicant will be able to produce a certain amount of groundwater from the well.

(f) During the time between January 1, 2020, and the issuance or denial of the Historic Use Permit, an applicant for a Historic Use Permit may annually produce no more than the amount of groundwater specified in the application or most recent amendment thereto, as the Maximum Historic Use, and shall pay the water use fees as required in Section 7 of these rules. This interim authorization by rule, based on the information included in the Historic Use Permit application, or most recent amendment thereto, shall constitute the applicant's permit to operate and produce groundwater from the well identified in the application for purposes of Chapter 36, Texas Water Code, until the Board acts on the application.

(g) An applicant shall amend the applicant's application to include any new information or to update information that the applicant has determined to be inaccurate or incorrect on or before January 1, 2021, or for applicants subject to a Verification Period, no later than February 1 of the calendar year following the conclusion of the applicant's Verification Period.

(h) After January 1, 2021, the District shall commence its review and determination of the Maximum Historic Use for each applicant as set forth in Section 11 of these rules. An applicant who produces more groundwater from a well or well system than designated in the approved Historic Use Permit or, for permits that have not yet been approved or denied by the Board, the amount claimed as the Maximum Historic Use for that well or well system in the application or most recent amendment thereto, will be subject to enforcement for violation of the District rules, unless the applicant is authorized under an Operating Permit to produce the additional groundwater from the well or well system.

(i) In the interest of promoting conservation of groundwater, the District shall allow an applicant for a Historic Use Permit to apply for a permit authorization in an amount less than the applicant's Maximum Historic Use. However, any such applicant shall forfeit their right to make any future claim or application to the District for a Historic Use Permit for a greater amount of groundwater production authorization and the right to file a lawsuit or make any claim against the District for taking a person's property without just compensation.

(j) Notwithstanding Subsection (f) of this rule, Rule 5.1(b), or any other rule to the contrary, if the application for a Historic Use Permit is one that has been contested and is still contested one (1) year after the date of publication of the proposed Historic Use Permit, the District may limit the amount of water that the applicant may produce until the contested case has concluded and the Board has made its final decision on the application for the Historic Use Permit. Such an interim production limitation shall be established by the Board only after an expedited interlocutory hearing before the Board to be initiated by motion of the General Manager.

(k) Notwithstanding anything to the contrary in this rule:

(1) An owner of a well described by Subsection (a) of this rule that was not required to be metered by the District prior to January 1, 2019, or for any well eligible for a Historic Use Permit for which at least two (2) full calendar years of metered records of groundwater production for the well during the existing and historic use period do not exist shall commence the two (2) year Verification Period, as defined by Rule 1.1, or a Verification Period of another two-year time period as determined by the General Manager based on the circumstances involved in the particular permit application.

(2) If a well described under Subsection (k)(1) of this rule does not already have an approved well registration from the District, the owner of the well shall submit an administratively complete well registration application to the District no later than March 1, 2019, in addition to submitting an administratively complete application for a Historic Use Permit to the District no later than November 1, 2019. Upon completion of the Verification Period, the applicant shall provide as part of the application the annual groundwater production history of the well for each year of the two-year Verification Period.

(3) The well owner of a well that was not required to be metered by the District prior to January 1, 2019, shall comply with the metering, groundwater production reporting, and fee payment requirements of these rules beginning on January 1, 2019.

(4) For a well that was registered and required to comply with the metering, fees, and reporting requirements prior to January 1, 2019, compliance with such requirements is not suspended and shall continue during the Verification Period.

(5) A well owner described by Subsection (k)(1) of this rule shall amend the Historic Use Permit application for the well or well system during or at any time prior to February 1 of the calendar year following the conclusion of the applicable Verification Period to include any new information or to update information that the applicant has determined to be inaccurate or incorrect.

(6) Production of groundwater by a well owner described by Subsection (k)(1) of this rule during the Verification Period shall not itself be eligible for a claim of Maximum Historic Use from the well, but rather is intended as relevant information to assist the well owner in determining the Maximum Historic Use of the well.

(7) For the owner of any well system that includes one or more wells that did not have two (2) full calendar years of metered production during the existing and historic use period and that have not been plugged and are still operational, the Historic Use Permit application of such an owner shall be subject to the Verification Period.

(8) The provisions of this Subsection (k) and eligibility for a Historic Use Permit based on the extrapolated Maximum Historic Use of the well as described under Rule 1.1(34)(b) shall also apply to:

(A) an owner of a well described by Subsection (a) of this rule who had beneficial use during the existing and historic use period, but not at the maximum designed and planned annual groundwater production amount for the project or activity supplied by the well; and

(B) the owner of a well for which the District approved a well registration prior to January 1, 2019, and which continued to hold a valid registration on January 1, 2019, but for which the well had not yet been drilled and completed on January 1, 2019, only if the well has been drilled, completed, and equipped with a meter on or before December 31, 2019.

(9) After February 1, 2022, the District shall commence its review and processing of Historic Use Permit applications and determination of the Maximum Historic Use as set forth in Section 11 of these rules for each applicant's well as described by this subsection. For applications subject to a Verification Period, this provision shall apply after February 1 of the calendar year following the conclusion of the Verification Period.

(10) For approved well registrations or well registration applications deemed to be administratively complete prior to January 1, 2019, but for which no groundwater has been produced prior to January 1, 2020, the Board may authorize the two (2) year Verification Period to begin the first calendar year after production begins.

(11) Any person who has submitted an administratively complete well registration

application under Rule 3.2 prior to January 1, 2019, even if the District has not yet acted on the application, is eligible to apply for a Historic Use Permit under this rule for the well for which a registration application was submitted, and must submit a Historic Use Permit application on or before November 1, 2019, or shall otherwise forfeit his rights as set forth under Subsection (a) of this rule.

(l) The validity of a Historic Use Permit issued by the District is contingent upon payment by the permittee of the applicable fee as set forth under Rule 7.1.

Rule 3.9 Operating Permits

(a) An Operating Permit is required by the District for drilling, equipping, completing, substantially altering, operating, or producing groundwater from any well that is not exempt from the requirement to obtain a permit under Rule 2.1(a) or Rule 2.3(a) and that is:

(1) any new well, except for a new well included under a Historic Use Permit as a replacement well and the well owner does not desire to increase the production of groundwater from the replacement well to an amount higher than the amount of Maximum Historic Use designated in the approved Historic Use Permit or most current version of the application for a Historic Use Permit for the well that was replaced; or

(2) any existing well or replacement well for which a Historic Use Permit has been issued by the District or timely applied for and awaiting District action and the well owner desires to increase the production of groundwater from the well to an amount higher than the amount of Maximum Historic Use designated in the approved Historic Use Permit or most current version of the application for a Historic Use Permit for the existing well or the well that was replaced; or

(3) an existing well for which a Historic Use Permit or amendment thereto to include the well as a replacement well has not been issued by the District nor timely applied for and awaiting District action.

(b) The requirement in Subsection (a) of this rule is effective on January 1, 2019.

(c) Prior to applying for an Operating Permit, the applicant shall meet with the General Manager for a pre-application meeting, at which time the District shall assist the applicant in the completion of all necessary application forms as required under the District rules.

(d) An application for an Operating Permit shall, in addition to the information required under Rule 3.4, include the following information on an application form provided by the District:

(1) any Historic Use Permit or application for a Historic Use Permit associated with the well or well system, if any, as well as the amount of Maximum Historic Use

designated in the approved Historic Use Permit or most current version of the application for a Historic Use Permit;

(2) if the well is to be part of a well system, as defined under Rule 1.1, identification of all other wells in that well system.

(e) A person who already holds an Operating Permit for a well or well system shall file an application to amend the Operating Permit to make any substantial changes to the well or well system, including without limitation changing the location of a well, substantially altering the capacity of a well, increasing the annual production authorization, changing the location or type of use of the groundwater produced, or adding any additional wells to a well system.

(f) Subject to the considerations listed in Rule 3.6 and Section 5 of these rules, an application for an Operating Permit submitted under this rule shall not be unreasonably denied by the District if the application describes a well that meets the District's well completion standards and complies with all location, minimum tract size, and well spacing regulations included in these rules or required by other state law. Except as provided by Subsection (g) of this rule, the maximum annual authorized production from the well or well system shall be limited by the Board to the lesser of:

(1) the reasonable non-speculative amount of annual groundwater demand during the term of the permit, for which the General Manager shall provide a recommendation to the Board based upon a technical evaluation of the applicant’s water demand by the General Manager; or

(2) the applicable production allowable per contiguous controlled acre established by the Board under Section 5 of these rules multiplied by the number of contiguous controlled acres of the Operating Permit applicant, as more specifically described under Section 5.

(g) If a well authorized under an Operating Permit is also authorized under a Historic Use Permit, the maximum annual authorized production from the well under the Operating Permit shall be limited by the Board to the difference between the amount that would otherwise be authorized under Subsection (f) of this rule and the amount of Maximum Historic Use authorized for the well under the Historic Use Permit, as more specifically described under Section 5.

(h) The Operating Permit holder shall equip the well with a meter that complies with Section 8 of these rules prior to producing from the well and shall comply with the groundwater production reporting and fee payment requirements of these rules.

(i) The District may impose more restrictive permit conditions on Operating Permit applications if the limitations:

(1) apply uniformly to all subsequent Operating Permit applications, or to all subsequent Operating Permit applications within the same aquifer or layer of an aquifer, as set forth under Rule 5.4;

(2) bear a reasonable relationship to the District's Management Plan; and

(3) are reasonably necessary to protect existing use.

(j) Once an Operating Permit that authorizes drilling, equipping, completing, or substantially altering the capacity of a well is approved, the permit holder has one hundred eighty (180) days from the date of issuance of the permit to complete the drilling, equipping, well completion, or well alteration activities authorized in the permit. If drilling, equipping, well completion, or well alteration activities are not completed within one hundred eighty (180) days of permit issuance, the permit will expire unless an extension is requested and granted. The permit holder may apply for up to two extensions of an additional one hundred eighty (180) days each, which may be approved by the General Manager without further action by the Board. Thereafter, the permit holder must apply for and obtain Board approval for any further extension, or otherwise the Operating Permit shall expire upon one hundred eighty (180) days from the date the last extension of time was granted and a new Operating Permit must be applied for and obtained. A well completion report must be filed with the District within sixty (60) days of well completion as required by Rule 3.13.

(k) The holder of an Operating Permit is authorized to produce groundwater only in accordance with the terms of the permit and these rules.

(l) The continuing validity of an Operating Permit issued by the District is contingent upon payment by the permit holder of the applicable fees set forth under Section 7 of these rules.

(m) An Operating Permit is subject to the pumping reduction regulations set forth in Rule 5.4. The Operating Permit applicant or Operating Permit holder expressly assumes the risk of this occurrence in applying for the permit and in drilling, operating, or otherwise investing in the well or the water to be produced from it.

(n) No person shall drill, equip, complete, substantially alter, operate, or produce groundwater from a well in violation of this rule. A violation of this rule occurs on the first day the unauthorized activity occurs and continues each day thereafter until a permit for the well is issued.

Rule 3.10 Aggregation of Production for Well Systems

(a) Multiple wells that are part of a well system and that are owned by the same permit holder will be authorized under a single Historic Use Permit and/or Operating Permit and amendments to those permits to add replacement wells or new wells to the well system.

(b) For the purposes of limiting the amount of total authorized annual groundwater production,

when wells that are part of a well system are permitted with an aggregate withdrawal under a single permit or through the combination of a Historic Use Permit and an Operating Permit, the aggregate annual groundwater production limit amount shall be assigned to the well system, rather than allocating to each well its prorated share of estimated production.

(c) A person or entity that owns or operates two or more otherwise independent public water systems, commercial operations, or well systems that are at different geographic locations and are not tied to a common distribution system will be permitted under separate Historic Use Permits and Operating Permits by the District for each such public water system, commercial operation, or well system. The District in its sole discretion shall determine whether to permit a group of wells as a well system under a single Historic Use Permit and/or Operating Permit or under separate Historic Use Permits and/or Operating Permits.

Rule 3.11 Permit Terms and Renewal

(a) A Historic Use Permit or an Operating Permit shall be issued for a term not to exceed five (5) years. The Board may issue a permit with an initial term of less than five (5) years for the purpose of causing the permit term to align with a renewal schedule applicable to other permits issued by the District in the same year of original issuance or to align with the renewal schedule for other permits held by the applicant.

(b) The permit term will be shown on the permit. A permit expires on the date the permit term ends unless the permit is renewed prior to that date or until the conclusion of a pending enforcement action or permit amendment process as set forth in Subsections (d) or (e) of this rule. A permit subject to renewal to which Subsection (d)(2) of this rule applies remains in effect until the final settlement or adjudication on the matter of an enforcement action for a substantive violation) of these rules.

(c) Permit renewal procedures are as follows:

(1) A permit holder shall make application to renew a permit required under these rules prior to the expiration of the current permit term on a form provided by the District. In order to ensure adequate time for approval by the District of a renewal application prior to the expiration of its term, an administratively complete application to renew a permit shall be filed and submitted to the District no later than sixty (60) days prior to the expiration of the permit term. The General Manager shall provide the permit application renewal form to the permit holder no less than one hundred twenty (120) days prior to the expiration of the permit term. The permit holder shall indicate on the renewal application form whether any changes to the well, well operations, purpose of use, amount of use, or other changes are requested.

(2) A retail public utility shall also include in its application for renewal of a permit a water audit and a calculation of its average annual real water losses for the previous five-year period, as required by Rule 5.8.

(3) Subject to Subsection (g), permit renewals shall be approved by the General Manager without notice or hearing if:

(A) the application is submitted in a timely manner and accompanied by any required fees in accordance with these rules; and

(B) the permit holder is not requesting a change related to the renewal that would require a major permit amendment under these rules.

(d) The General Manager may not approve a permit renewal application if the applicant:

(1) is delinquent in paying a fee required by the District;

(2) is subject to a pending enforcement action for a violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; or

(3) has not paid a 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.

(e) If the permit holder seeks, as part of the renewal application, to increase the amount of authorized withdrawal under an Operating Permit or otherwise change any of the permit terms or conditions of an Operating Permit or Historic Use Permit that would require a permit amendment, the application will be scheduled for a hearing and consideration by the Board under Rule 10.4. If the requested changes or amendments are denied, the permit shall be renewed under the original permit conditions as it existed before the permit amendment process, unless the District proposes an amendment under Subsection (f) of this rule. The permit, as it existed before the permit amendment process, remains in effect until the later of:

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

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

(f) The District may initiate an amendment to an Operating Permit or Historic Use Permit, in connection with the renewal of a permit or otherwise, to achieve a reduction in pumping under Section 5.2 or 5.4 of these rules or as otherwise authorized under these rules or state law. If the District initiates an amendment to a 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.

(g) For an Operating Permit permittee that is a retail public utility, the production authorization under the Operating Permit will be reduced when the permit is renewed to account for any

reduction in contiguous controlled acreage in the utility's CCN or corporate boundaries that is not owned or leased by the permittee for the right to produce groundwater, as set forth under District Rule 5.3. For all Operating Permit permittees, if any contiguous controlled acreage owned or leased by the permittee for the right to produce groundwater and associated with the Operating Permit is sold or otherwise no longer owned or leased by the permittee at any time during the term of the permit, the permittee shall immediately notify the District and obtain an amendment to the Operating Permit under Rule 3.12 to account for the reduction in contiguous controlled acreage, and shall not produce an annual amount of groundwater that would exceed the production authorization as based on the reduced amount of contiguous controlled acreage.

Rule 3.12 Permit Amendments

(a) A permit amendment is required prior to any deviation from the permit terms regarding the maximum amount of groundwater to be produced from a well, ownership of a well or permit, the location of a proposed well, the purpose of use of the water, the location of use of the groundwater, the drilling and operation of additional wells in a well system, even if aggregate withdrawals remain the same, or a reduction in contiguous controlled acreage recognized under an Operating Permit and owned or leased by the Operating Permit holder. A permit amendment is not required for maintenance or repair of a well if the maintenance or repair does not substantially alter the production capacity of the well.

(b) A permit holder shall make application for a major amendment to a permit on a form provided by the District.

(c) A major amendment to a permit includes, but is not limited to, a change that would substantially alter the capacity of a well, an increase in the annual quantity of groundwater authorized to be produced, a change in the type of use of the water produced, the addition of a new well to be included in an already permitted aggregate system, or a change of location of groundwater withdrawal or location of use, except for a replacement well authorized under Rule 3.17.

(d) A retail public utility shall also include with an application for a major amendment to a permit seeking an increase in authorized annual groundwater production for an existing system a water audit and a calculation of its average annual real water losses for the previous five-year period, as required by Rule 5.8.

(e) A major amendment to a permit shall not be made prior to notice and hearing.

(f) Amendments that are not major, as determined by the General Manager and these rules, such as a change in ownership of the land where the well or well system is located or an amendment sought by the permit holder for a decrease in the quantity of groundwater authorized for withdrawal and beneficial use, are minor amendments and may be made by the General Manager.

(g) The General Manager is authorized to deny or grant in full or in a part a minor permit

amendment and may grant minor amendments without public notice and hearing. Such decision by the General Manager may be appealed to the Board. This appeal is a prerequisite to filing suit against the District to overturn the General Manager's decision. Any minor amendment sent to the Board for consideration shall be set on the Board's agenda and shall comply with the notice requirements of the Texas Open Meetings Act.

(h) A Historic Use Permit may only be amended to reflect a change in ownership of the permit and well or well system, or to permanently transfer production authorization to a public water system from another Historic Use Permit of an interconnected public water system for the purpose of continuing to supply water to the historically served system of the transferor. In order to use a well or well system for a different purpose of use or at a different location, to add a new well to an existing system that is not a replacement well, or to otherwise increase the annual groundwater production authorization above the Maximum Historic Use, the Historic Use Permit holder must obtain an Operating Permit or an amendment to an Operating Permit and will be subject to the same rules and regulations as non-historic users of groundwater.

(i) The District may amend any permit, in accordance with these rules, to accomplish the purposes of the District rules, management plan, the District Act, or Chapter 36, Texas Water Code.

Rule 3.13 Records of Drilling, Pump Installation and Alteration Activity, and Plugging

(a) Each person who drills, deepens, completes or otherwise alters a well shall make, at the time of drilling, deepening, completing or otherwise altering the well, a legible, complete, and accurate well completion report recorded on the State Well Report forms prescribed by the Texas Department of Licensing and Regulation. Replacement of a pump that does not substantially alter the capacity of the well, or that has a maximum production capacity of 17.36 gpm or less, shall not constitute an alteration for purposes of the requirement to submit a well completion report under this section.

(b) The person who drilled, deepened, completed or otherwise altered a well pursuant to this rule shall, within sixty (60) days after the date the work on the well is completed, file the well completion report described in Subsection (a) with the District. The report shall contain the information prescribed by the Texas Department of Licensing and Regulation.

(c) Not later than the 30th day after the date a well is plugged, a driller, licensed pump installer, or well owner who plugs the well shall submit a State of Texas Well Plugging Report to the District or send to the District the State of Texas Well Plugging Report Tracking number associated with the well.

Rule 3.14 Change of Well Ownership or Transfer of Production Authorization

(a) Within ninety (90) days after the date of a change in ownership of a registered well exempt under Rule 2.1, the current well owner (transferor) or the new owner of the well (transferee) shall notify the District in writing of the effective date of the change in ownership and the

name, daytime telephone number, and mailing address of the new owner of the well. Such notice shall include:

(1) either:

(A) the signatures of both the transferor and the transferee of the well; or

(B) other evidence such as a deed or other document sufficient to show a transfer in ownership of the well;

(2) any other contact or well-related information reasonably requested by the General Manager; and

(3) payment of a fee for a change in ownership of a registered exempt well as required under Rule 7.7. This is the total amount owed for a single change in ownership of one or more wells on a property, regardless of how many wells are changing ownership.

(b) Upon completion of the requirements of Subsection (a) of this rule, the General Manager shall amend the registration to reflect the change in ownership. Within ninety (90) days of a change in ownership of a well that is required to be registered under these rules but that is not yet registered, the new owner of a well shall submit an application for registration of the well with the District. The transferor and the transferee are jointly and severally liable for a violation of this rule.

(c) Within ninety (90) days after the date of a change in ownership of a well that is permitted with the District or that is otherwise not exempt under Rule 2.1 from the water use fee payment, metering, and reporting requirements of these rules, the current well owner (transferor) or new owner of the well (transferee) shall submit to the District, on a form provided by the General Manager, a sworn-to application signed by both the transferor and transferee for change of ownership of the permit or well registration, as applicable. The written sworn-to application shall include:

(1) a request to make the ownership change;

(2) the authority for requesting the change; and

(3) payment of a fee for a change in ownership of a registered or permitted non-exempt well as required under Rule 7.7. This is the total amount owed for a single change in ownership of one or more wells on a property or under a permit.

(d) The General Manager may grant or deny such an amendment without notice, hearing, or further action by the Board. The transferor and the transferee are jointly and severally liable for a violation of this rule.

(e) If a permit holder or registrant or permit holder conveys by any lawful and legally enforceable means to another person the real property interests in one or more wells that is recognized in the permit or registration so that the transferring party (the transferor) is no longer the "well owner" as defined herein, and if an application for change of ownership under Subsection (c) has been approved by the District, the District shall recognize the person to whom such interests were conveyed (the transferee) as the permit holder or registrant, subject to the conditions and limitations of these District rules.

(f) The burden of proof in any proceeding related to a question of well ownership or status as the legal holder of a permit or registration issued by the District and the rights thereunder shall be on the person claiming such ownership or status.

(g) Notwithstanding any provision of this rule to the contrary, no application made pursuant to Subsection (c) of this rule shall be granted by the District unless:

(1) all outstanding fees, penalties, and compliance matters have first been fully and finally paid or otherwise resolved by the transferring party (transferor) for all wells included in the application or existing permit or registration, and each well and permit or registration made the subject of the application is otherwise in good standing with the District; and

(2) all outstanding fees, penalties, and compliance matters have first been fully and finally paid or otherwise resolved by the new owner of the well (transferee) for all wells included in the new owner's existing permit or registration, if any.

(h) The new owner of a well that is the subject of a change in ownership described in this rule (transferee) may not operate or otherwise produce groundwater from the well after ninety (90) days from the date of the change in ownership until the transferor or transferee has provided the required change of ownership information to the District.

(i) A new owner of a well that intends to alter or use the well in a manner that would constitute a substantial change from the information in the existing permit or registration or that would trigger the requirement to register the well under these rules must also submit and obtain District approval of an application for a permit, permit amendment, registration or registration amendment, as applicable, prior to altering or operating the well in the new manner.

(j) If multiple wells have been aggregated under one permit and ownership of one or more wells under the permit will change, the District may require separate registration and permit applications from each new owner for the wells retained or obtained by that person.

(k) A public water system authorized to produce groundwater under a permit may transfer the authority to produce all or part of its annual groundwater authorization under the permit to another public water system that is interconnected to the first system upon application to and approval of the District either permanently or temporarily under a Historic Use Permit

or temporarily under an Operating Permit. However, the transferee system must be able to produce the increased groundwater amount from its current wells at their current capacities or from new wells that meet the minimum well spacing requirements of these rules. Transfer requests under this subsection shall be submitted on a form provided by the District and may be approved by the General Manger or set for consideration by the Board. A temporary authorization approved under this subsection shall be limited to no longer than a single calendar year. No more than two consecutive temporary authorizations to produce groundwater may be approved by the General Manager. Additional requests must by authorized by the Board. Nothing in this subsection shall be construed to impact the ability of a permittee to permanently change ownership of an Operating Permit for a system to pump out of that system's wells as authorized under Subsection (c) of this rule.

Rule 3.15 Water Production Reports

(a) The owner or operator of any well in the District that is not exempt from the reporting requirements under Rule 2.1 must submit a monthly Water Production Report on a form provided by the District or through the District's Online Groundwater Management ~~Reporting~~ System, found on the District's website. The owner of two (2) or more well systems shall file a separate report for each well system. The report shall be sworn to by the owner or a legally authorized representative of the owner verifying the accuracy of the information contained in the report, which shall contain the following:

(1) the name of the registrant or permit holder;

(2) a method of identifying the registered and/or permitted wells or well system owned or operated by the registrant or permit holder that are associated with the report;

(3) the total amount of groundwater produced by each well during the immediately preceding month;

(4) meter readings and a true and correct copy of the meter log required by Rule 8.5;

(5) the purposes for which the water was used;

(6) for water used at a location other than the property on which the well is located, and that is not used by a fire department or emergency services district for emergency purposes or by a public water system:

(A) the location of the use of the water, and

(B) if the water was sold on a retail or wholesale basis, the name of the person to whom it was sold and the quantity sold to each person; and

(7) for a retail public utility submitting its final year-end Water Production Report that is due on or before January 15, the report must include a water audit that calculates system water losses for the water system of the retail public utility for the calendar

year as described by Rule 5.8.

(b) The Water Production Report required by Subsection (a) of this rule must be received by the District no later than the 15th day of the month following the month for which groundwater production is being reported. The Water Production Report must be timely submitted in person, by mail, by fax, or online using the District's Groundwater Management System.

(c) In order to comply with Subsection (a)(4) of this rule, the well owner or operator shall, at the end of the month, read each water meter associated with a well and record in a log the meter reading and the actual amount of pumpage since the previous month's meter reading. Such meter reading shall be included in the Water Production Report and received by the District no later than the 15th day of the month following the month in which the reading was taken. The final meter reading for a calendar year shall be included with the final Water Production Report and received by the District no later than January 15 of the following calendar year.

(d) Notwithstanding any rule to the contrary, the owner and any operator of a well are jointly responsible for ensuring that the Water Production Reports required by this rule are timely filed with the District and contain only information that is true and accurate. Each will be subject to enforcement action if a report is not timely filed by either, or by any other person legally authorized to act on the behalf of either.

Rule 3.16 Semiannual Reporting for Low Production Permittees

(a) This rule applies only to a permittee that is not a public water system and that has a total annual groundwater production authorization of ten million (10,000,000) gallons or less for a well or well system.

(b) Notwithstanding any rule to the contrary, owners of wells that are permittees described by Subsection (a) of this rule may apply to the District for approval to submit meter readings in a Water Production Report on a semiannual basis. If a well owner applies for and receives approval from the District to submit the Water Production Report semiannually under this rule, the owner:

(1) shall read each water meter associated with a well within fifteen (15) days before or after June 30 and December 31 of each year;

(2) submit the readings to the District in the Water Production Report on a form provided by the District or though the District's Online Groundwater Management ~~Reporting~~ System that is received by the District no later than July 15 and January 15 of each year in the manner prescribed by Subsection (c) of this rule.

(c) The Water Production Report required to be submitted under this rule shall:

(1) include the information required under Subsection (a)(1-7) of Rule 3.15(a), with the exception of Subsections (a)(3) and (a)(4), and must also include the total amount of groundwater produced by each well during the immediately preceding semiannual reporting period;

(2) be sworn to by the owner or a legally authorized representative of the owner verifying the accuracy of the information contained in the report; and

(3) include a separate report for each well system.

(d) If a well owner applies for and receives approval from the District to submit the Water Production Report semiannually under this rule but subsequently fails to comply with the deadlines under Subsection (b), the General Manager or the Board may revoke the approval authorized under this rule, and the well owner or operator will be required to comply with the monthly reporting of meter readings under Rule 3.15 for a period of at least one year, after which the owner or operator may re-apply for semiannual reporting of meter readings if all monthly reports have been submitted by the required deadlines.

Rule 3.17 Replacement Wells

(a) No person may replace a well without first having obtained authorization for such work from the District. Authorization for the construction of a replacement well may only be granted following the submission to the District of an application for registration of a replacement well and, if applicable, for amendment of the Historic Use Permit or Operating Permit associated with the original well.

(b) Each application described in Subsection (a) shall include the information required under Rule 3.2(c) as well as any other information and fees required by these rules for the registration of a new well. In addition, information submitted in the application must demonstrate to the satisfaction of the General Manager each of the following:

(1) the proposed location of the replacement well is within fifty (50) feet of the location of the well being replaced;

(2) the replacement well will be completed and screened at an equal or greater depth than the well being replaced;

(3) the capacity of the replacement well as equipped will not exceed the maximum production capacity authorized in the approved well registration for the well that is being replaced, unless the maximum production capacity is 17.36 gpm or less; and

(4) immediately upon commencing operation of the replacement well, the well owner will cease all production from the well being replaced and will begin efforts to plug the well being replaced in compliance with the well plugging guidelines set forth

in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, which plugging shall be completed within ninety (90) days of commencing operation of the replacement well.

(c) Except as required under Subsection (d), applications for registration of replacement wells or for permit amendments associated with replacement wells submitted under this rule may be granted by the General Manager without notice or hearing. A person may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next available regular Board meeting or hearing called for that purpose, as determined by the General Manager in the General Manager's discretion.

(d) Notwithstanding Subsection (b)(1) of this rule, the General Manager may authorize the drilling of a replacement well at a location that is beyond fifty (50) feet of the location of the well being replaced if the applicant demonstrates to the satisfaction of the General Manager that water quality, sanitation, or other issues prevent the replacement well from being located within fifty (50) feet of the location of the well being replaced. Requests to locate a replacement well beyond one-hundred (100) feet of the location of the well being replaced may be granted only by the Board. The Board may authorize a replacement well to be drilled at a location beyond one-hundred (100) feet of the location of the well being placed if the Board determines that such authorization will not cause unreasonable impacts to other landowners or well owners or on other reasonable grounds, including without limitation if the well is drilled on the same property as the well being replaced and in compliance with the well spacing and minimum tract size requirements under Section 4.

(e) Notwithstanding Subsections (b)(1) and (d) of this rule, the General Manager shall authorize a person to drill a replacement well at any location on the same contiguous property where the well that is being replaced is located if the replacement well meets all of the well spacing requirements set forth in Rule 4.3. For a retail public utility, a replacement well authorized under this subsection must be drilled within the same political subdivision boundaries or within the same perimeter of the same contiguous acreage area of the utility's retail water CCN where the well that is being replaced is located and must meet all of the well spacing requirements set forth in Rule 4.3. A replacement well authorized under this subsection must nonetheless comply with the provisions of Subsection (b)(2) – (4) of this rule.

(f) The groundwater production authorization of a replacement well shall be the groundwater production authorization authorized under a Historic Use Permit and/or an Operating Permit of the well that is being replaced.

SECTION 4

SPACING AND LOCATION OF WELLS; WELL COMPLETION

Rule 4.1 Spacing and Location of Existing Wells

Wells drilled prior to January 1, 2019, shall be drilled in accordance with the District Rules, Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and state law, if any, in effect on the date such drilling commenced and are exempt from the spacing and location requirements of these rules to the extent they were drilled lawfully and the owner does not further subdivide the property on which the well is located in a manner that will cause the well to no longer be in compliance with the well spacing rules, if any, that were in effect when the well was drilled . If a person wishes to substantially alter the capacity of an existing well, the well shall become subject to the spacing, location, and tract size requirements of this section.

Rule 4.2 Spacing and Location of New Wells

(a) All new wells shall comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant.

(b) To prevent interference between wells and impacts to neighboring wells within the same layer of an aquifer and to protect the investment-backed expectations of other well owners while recognizing the concurrent rights of property owners to the common pool, wells must be drilled and completed in compliance with this section, including the minimum distances from property lines and from the nearest well pursuant to Rule 4.3, the minimum tract size requirements pursuant to Rule 4.4, and the minimum well completion and screening depths pursuant to Rule 4.5, unless an exception is granted by the District under Rule 4.6 or 4.7, as applicable.

(c) Minimum spacing requirements from other wells apply only to other wells completed in the same layer of an aquifer, as defined under Rule 1.1 of these rules, as the proposed new well. The District shall consider the hydrogeologic regions designated in the most recently approved Texas Water Development Board Northern Trinity Woodbine Groundwater Availability Model ("NTWGAM") and other hydrogeologic information in determining whether wells are in the same layer of an aquifer.

(d) After authorization to drill a new or replacement well has been granted by the District, the well may only be drilled at a location that is within thirty (30 feet) of the location specified in the registration or permit. New wells must nonetheless be actually drilled in compliance with the minimum well spacing requirements under Rule 4.3 and the minimum tract size requirements under Rule 4.4. Replacement wells must be drilled and completed so that they are located no more than fifty (50) feet from the well being replaced, unless otherwise authorized by Rule 3.17(d).

(e) The owner and driller of a well are jointly responsible for ensuring that the well is drilled at a

location that strictly complies with the location and spacing requirements of this section. If the board determines that a well is drilled at a location that does not strictly comply with the location and spacing requirements of this section, the Board may, in addition to taking all other appropriate enforcement action, including without limitation revoking or suspending the well registration or permit, require the well to be permanently closed and plugged or authorize the institution of legal action to enjoin any continued drilling activity or the operation of the well.

(f) Once a well that is subject to the spacing and minimum tract size requirements of these rules, or a prior version of these rules, is registered or permitted, the well owner must retain ownership of the acreage or groundwater rights necessary to maintain compliance with the tract size and spacing requirements applicable to the well for the registration or permit to remain valid. In the event the well owner sells a portion of the property upon which the well is located or dedicates a portion to a public right of way or easement, the well owner must retain the required minimum acreage of the surface estate, or the groundwater estate if severed from the surface estate, and maintain the required distance from the nearest property line, to ensure compliance with the minimum tract size and spacing requirements in effect at the time the well was drilled. Furthermore, the owner of any well used for domestic or livestock purposes, whether drilled prior to or after the District's adoption of well spacing requirements under these rules or a prior version of these rules, may not subdivide the property on which the well is located in a manner that would cause the well to be located: (i) closer than fifty (50) feet to the any property line after the subdivision of the property, for wells that are currently fifty (50) feet or more from all property lines, or (ii) any nearer to any property line that is already less than fifty (50) feet from an existing well prior to the subdivision of the property. Failure to retain ownership of the acreage or groundwater rights necessary to maintain compliance with the tract size and spacing requirements under this rule may result in fees for a major violation of District rules, in addition to penalties and suspension or revocation of the registration or permit pursuant to Appendix 1 of these rules. Additionally, the District may:

(1) reduce the amount of groundwater authorized to be produced from the well or its authorized maximum production capacity as necessary to comply with the minimum tract size and spacing requirements in effect at the time the well was drilled or to otherwise be protective of neighboring wells and landowners; or

(2) require the well to be plugged.

Property that is sold or transferred may be ineligible for a groundwater well to the extent that the acreage of the sold or transferred property is insufficient in size for the drilling of a new well or to allow continued groundwater production from a well that depended upon the acreage sold or transferred for that well's authorized maximum production capacity.

(g) In situations where an applicant owns the right to produce groundwater on two (2) or more contiguous tracts, the applicant is not required to meet minimum well spacing distances from the property line with regard to the property line separating the two (2) tracts. However, if a road, highway, or other easement separates the tracts and the applicant does not own or lease the right to produce groundwater under the road, highway, or easement,

the minimum well spacing requirements for distance from the property line shall apply. As set forth in Subsection (f) of this rule, if the applicant sells the tract in the future, the well becomes subject to the provisions of that subsection.

Rule 4.3 Well Spacing Requirements

(a) All (1) new wells drilled or completed in any layer of an aquifer in the District, as defined under Section 1 of these rules, and (2) all wells that are substantially altered, unless the maximum amount of water the altered well can actually produce as equipped is 17.36 gpm or less, shall comply with the spacing requirements of this rule.

(b) With regard to minimum spacing requirements from other wells, the requirements of this rule shall apply only to other registered or permitted wells or well sites previously approved by the District or otherwise known to exist by the District at the time it acts on an application, including without limitation other wells or well sites owned by the person applying for the new well.

(c) A new well with a maximum production capacity of 17.36 gpm or below must be located at least one hundred (100) feet from other wells and well sites already in existence that are screened in the same layer of an aquifer as the proposed new well, and at least fifty (50) feet from the property line, regardless of whether or not the well is pressure sealed.

(d) A new well with a maximum production capacity over 17.36 gpm must be located at minimum distances from other wells that are screened in the same layer of an aquifer as the proposed new well and from property lines so as to limit the impact of the new well on the available drawdown in the applicable layer of the aquifer: (1) at the location of the other well to no more than one percent (1%); and (2) at the location of any property line on the tract where the new well is located to no more than ten percent (10%), using the methodology set forth in this rule. The burden of proof is on the applicant to demonstrate that the other well is screened in a different layer of the aquifer than the layer in which the proposed new well will be screened.

(1) Minimum spacing distances shall be derived from application of the Cooper-Jacob formula:

$$r = \sqrt{\frac{0.3Tt}{S\left(10^{\frac{sT}{264Q}}\right)}}$$

where: r = required minimum distance from other well or property line (feet)
T = transmissivity (gpd/ft)
S = storativity

s = drawdown at the location of the other well or property line (feet), which is 0.01 x available drawdown and 0.1 x available drawdown, respectively, at the location of the nearest well or property line
Q = pumping rate (gpm), which shall be the maximum production capacity of the proposed new well; and
t = pumping duration (days), which shall be 36 hours or 1.5 days.

(2) "Available drawdown" at the site of the nearest well or the property line shall be calculated using the difference between the static water level elevation and the elevation of the bottom of the applicable layer of the aquifer at the locations of the other well and the property line. If calculated or measured values for storativity, transmissivity, the elevation of the bottom of the applicable layer of the aquifer, or post-2009 static water level elevations are available based on actual aquifer tests and measurements within a one-mile radius of the proposed well are available, the calculated and measured values based on aquifer tests and measurements closest to the location of the proposed well may be used in the formula. Otherwise, (1) the default storativity and transmissivity values to be used in the formula shall be the values designated in the most recently approved NTWGAM for the applicable layer of the aquifer and location where the proposed new well will be completed and screened; and (2) the default "available drawdown" values to be used in the formula at the location of the nearest well or nearest property line shall be calculated using the 2010 static water level elevation and elevation of the bottom of the applicable layer of the aquifer in which the proposed well will be screened as designated in the NTWGAM. The District shall continue to use the NTWGAM model values for storativity for pre-development (pre-transition to unconfined) conditions for the confined subcrop areas in situations where the subcrop of the applicable layer of the aquifer has gone from confined to unconfined conditions. The General Manager shall approve and issue a guidance document detailing acceptable methods and examples of calculating minimum spacing distances under this subsection. Any calculated or measured values for storativity, transmissivity, or the elevation of the bottom of the applicable layer of the aquifer used for calculations under this rule in lieu of those in the NTWGAM must be sealed by a licensed professional geoscientist or licensed professional engineer.

(3) The applicant may apply to drill a test well under Rule 3.7 to conduct a pumping test to determine actual hydraulic property values at the well site and/or to conduct other tests to measure actual impacts on other wells. Applicants who wish to drill and complete a well only in the uppermost outcrop sand layer of an aquifer may utilize the true unconfined storativity of the applicable layer of the aquifer based upon a pump test to seek a variance from the spacing requirements of this rule.

(e) For an applicant that is a retail public utility, the external boundary of the applicant's retail water bounded service area CCN or external boundary of a polygon defined by each property served by the utility as described by Rule 5.3(b)(2) for a retail public utility with a CCN that is not a bounded service area, or the applicant's corporate boundary if the applicant does not have a CCN, can be utilized by the applicant as the applicant's property line for purposes of determining minimum spacing distances from a property line under this

rule for a well to be located within such boundaries. However, normal well spacing distances from other wells completed in the same layer of an aquifer, as calculated under Subsection (d), apply to a new well for a retail public utility.

(f) An applicant that is a retail public utility and that utilizes its CCN or corporate boundary as its property line as authorized under Subsection (e) for purposes of determining minimum spacing distances under Subsection (d):

(1) shall not be entitled to the protection of the spacing requirements of these rules in the future as a well in existence at the time of filing of an application for a new well by other landowners in the general area; and

(2) shall be required to provide notice of the application for the registration or permit for the well in the manner of notice for an exception to spacing requirements as set forth under Rule 4.7

(g) A retail public utility with insufficient property or acreage in its CCN to comply with the minimum spacing requirements of this rule or the minimum tract size requirements of Rule 4.4 may:

(1) purchase or lease the land or groundwater rights for the property needed;

(2) drill a replacement well if applicable;

(3) file an application for an exception from the District's spacing or minimum tract size requirements; or

(4) for a retail public utility that holds a "Facilities +200 Feet CCN or a "Facilities Only" CCN, apply for a bounded service area from the Public Utility Commission.

(h) An applicant may apply for an exception to the minimum spacing requirements under certain conditions, as set forth under Rule 4.7.

Rule 4.4 Minimum Tract Size Requirements

(a) All (1) wells drilled or completed in any aquifer in the District after May 15, 2017, and (2) all wells that are substantially altered after May 15, 2017, shall be located on a minimum tract size of two (2) acres. However, for such a single domestic well serving two (2) or more residential households, the required minimum tract size for the well is calculated by multiplying two (2) acres by the number of households served by the well. Notwithstanding anything to the contrary in these rules, if the property where any existing domestic well is located is subdivided on or after January 1, 2023, and the owner desires to expand the number of residential households served by the domestic well on or after that date, or if the owner of the well desires to expand the number of residential households serviced by the domestic well without further subdividing the property, the well must

obtain a registration or amendment to a registration and comply with the two (2) acre minimum tract size requirements of this rule for each household served.

(b) There shall be no more than one (1) well, regardless of type, per two (2) acres, unless an exception has been granted by the District pursuant to Rule 4.6, in which case there shall be no more than one (1) well per number of acres of tract size approved pursuant to the exception.

(c) Subsection (a) of this rule shall not apply to:

(1) a well that is substantially altered if the maximum amount of water the altered well can actually produce as equipped is 17.36 gpm or less and the well is used solely for domestic use, livestock use, or poultry use; or

(2) a well for which an exception is granted under Rule 4.6.

(d) For purposes of compliance with the minimum tract size requirements of this rule, a retail public utility may use the acreage that is both eligible for permitting to the retail public utility under Rule 5.3 and contiguous to the location of the well. However, such a well must comply with the well spacing requirements of Rule 4.3 unless an exception is granted under Rule 4.7 and the retail public utility must have the legal right to drill the well at the location of the well.

Rule 4.5 Standards of Completion for All Wells

(a) 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.

(b) Water well drillers shall indicate on the well completion report the method of completion performed.

(c) To prevent the commingling of water between aquifers or layers of an aquifer which can result in a loss of artesian (or static) head pressure or the degradation of water quality, each well penetrating more than one aquifer or layer of an aquifer must be completed in a manner so as to prevent the commingling of groundwater between aquifers or between layers 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 driller shall indicate on the well completion report the method of completion used to prevent the commingling of water. The well driller may use any lawful method of completion calculated to prevent the commingling of groundwater.

(d) In order to protect water quality, the integrity of the well, or loss of groundwater from the well, the District may impose additional well completion requirements on any well as determined necessary or appropriate by the Board.

(e) In addition to the requirements under Subsection (a), all new wells, re-worked wells, and re-completed wells shall be equipped in such a manner as to allow the measurement of the water level in the applicable layer of the aquifer supplying water to the well.

(f) All new wells must be completed, screened, and equipped at a depth such that, at the time that well completion and equipping has concluded, there is either:

(1) a minimum depth of fifty (50) feet of groundwater in the well bore over the pump; or

(2) the well fully penetrates the aquifer or layer of the aquifer in which the well is screened and the pump is placed at the lowest practicable location in the well.

(g) Well drillers, well owners, and pump installers shall:

(1) make a good faith effort to complete and screen the well in a manner consistent with the information in the well registration application as approved by the District but may take into account any differences between the actual geology encountered in the well and the geologic information relied on in the approved registration in determining what depths to screen the well in each layer of the aquifer in which the well is required to be screened;

(2) complete and screen the well in each layer of the aquifer where it is approved for completion in the well registration; and

(3) complete and equip the well in a manner that does not exceed the maximum production capacity for the well as approved by the District in the well registration.

(h) A well owner or pump installer shall submit any information related to the equipping of the well that is not provided by the well driller to the District within sixty (60) days of equipping the well.

(i) A well owner, well driller, pump installer, or operator shall not:

(1) allow a well to be equipped at a capacity higher than what is authorized in the approved well registration; or

(2) operate a well that is completed, screened, or equipped in a manner that does not comply with the requirements of the registration or permit and the District rules, including, without limitation, the well spacing requirements under Rule 4.3 and the maximum production capacity for the well under the registration as approved by the District.

(j) The District may reduce the authorized production capacity of, or require to be plugged or modified, as appropriate, a well that is completed, screened, equipped, or operated in violation of Subsections (g) or (i) of this rule, and the well driller, pump installer, and owner

jointly and severally assume this risk in completing, screening, equipping, or operating the well improperly.

Rule 4.6 Exceptions to Minimum Tract Size Requirements

(a) The Board or General Manager may grant exceptions to the minimum tract size requirements of the District only after consideration of an exception application filed by an applicant that is consistent with these rules.

(b) An application for an exception filed pursuant to this rule must be sworn to or affirmed by the applicant, who shall swear or affirm that the facts contained in the application are true and correct to the best of the person's knowledge. A plat filed pursuant to this rule must be certified by the county clerk's office where the land is located or sworn to or affirmed by a person with personal knowledge of relevant facts set forth in the plat, unless the District already has a certified plat by the appropriate county clerk's office on file at the District office that covers the property in question. If the proposed well involves a preliminary plat, the applicant must have personal knowledge of the information set forth in the preliminary plat and must swear or affirm that the information is true and correct to the best of the person’s knowledge.

(c) An application for an exception filed pursuant to this rule shall include payment of a non-refundable application fee as established in Rule 7.7.

(d) All well registration applicants for non-exempt wells shall schedule a pre-application meeting with the General Manager prior to submitting a minimum tract size requirements exception application to review project options that may be available to the applicant.

(e) An applicant may seek an exception to the minimum tract size requirements of the District only if the applicant is able to present evidence that no water from a public water system is available to the property, unless the applicant is a retail public utility, and the drilling of a well is not inconsistent with any approved plat related to the property, and:

(1) A well is proposed to be located on a tract of land that was platted, meets an exception to platting, or was otherwise lawfully conveyed prior to May 15, 2017, as a tract that is too small to comply with the minimum tract size set forth under Rule 4.4, but only if:

(A) such tract is not further subdivided into smaller tracts of land after May 15, 2017; and

(B) the applicant provides a plat or other evidence of the date the tract of land was platted or was otherwise lawfully conveyed; or

(2) An applicant was in the process of platting or otherwise lawfully conveying a tract that is too small to comply with the minimum tract size requirements set forth under

Rule 4.4 as of May 15, 2017, but only if:

(A) to require compliance with Rule 4.4 would cause unreasonable economic hardship on the applicant;

(B) for proposed wells that are not exempt from the regulatory requirements of Rule 2.1, no other economically feasible alternative water source is available to the applicant; and

(C) the applicant provides evidence demonstrating that the applicant was in the process of platting or otherwise lawfully conveying the tract, that compliance with Rule 4.4 would cause unreasonable hardship to the applicant, and that no other economically feasible alternative water source is available to the applicant.

For purposes of this Subsection (e), water from a public water system is available to a property if it is already physically available on the property, a water main is located on or adjacent to the property to which the landowner has a legal right to be connected, or if the approved plat for the property calls for public water to be delivered to the property and it can be delivered to the property within a reasonable amount of time upon request by the property owner. Moreover, for purposes of this Subsection (e), an alternative water source is economically feasible if it meets the definition of "economically feasible alternative water source" under Rule 1.1.

(f) Applications for an exception under Subsection (e)(1) of this rule for a well less than 17.36 gallons per minute in maximum production capacity to be used solely for domestic, livestock, or poultry watering use may be approved or denied by the General Manager or, in the discretion of the General Manager, set for consideration by the Board at a Board meeting or hearing called for that purpose. An applicant may appeal the General Manager's decision to deny an application by filing a written request for a hearing before the Board. The Board shall hear the applicant's appeal at the next available regular Board meeting. Upon approval or denial of an application, the General Manager shall inform the registrant in writing by utilizing a method described in Rule 1.7.

(g) Applications for an exception under Subsection (e)(2) of this rule, or for an exception under Subsection (e)(1) of this rule for any well other than a well described by Subsection (f) of this rule, shall be presented to the Board for consideration at a regularly scheduled Board meeting or hearing. Furthermore, any application for an exception to the minimum tract size requirements of Rule 4.4 for a well that will not comply with the minimum well spacing requirements under Rule 4.3 shall be presented to the Board for consideration at a Board meeting or hearing called for that purpose under Rule 4.7.

(h) If the Board or General Manager grants an exception to the minimum tract size requirements, the General Manager shall have such exception recorded in the property deed records of the county in which the well is located for the property on which the well will be drilled. The recordation shall include information about the exception granted and any

other appropriate information as determined by the Board or General Manager in their discretion, and shall be recorded only after the registration and, if applicable, permit for the well to be drilled pursuant to the exception have been approved by the District.

(i) The burden of proof in any proceeding related to an application for an exception to a minimum tract size requirement shall be on the applicant. The Board may impose additional restrictions or special conditions on the exact location, construction, completion, operation, or production of a well to be drilled pursuant to an exception that it grants.

(j) The Board or General Manager may grant an application for an exception under this rule to a person who owns multiple tracts of land or lots in a platted subdivision for each tract or lot that meets the requirements of Subsection (e) of this rule without the need to include a well registration application with the application for an exception. However, no well shall be drilled on any such tract until a well registration application for such well has been approved by the District.

Rule 4.7 Exceptions to Well Spacing Requirements

(a) An exception to the well spacing requirements of Rule 4.3 may be granted by the District only after consideration of an application filed pursuant to either Subsection (b) or Subsection (c) of this rule on an application form approved by the District and submission to the District of the well spacing exception application fee under Rule 7.7.

(b) A well registration applicant for a proposed new well with a maximum production capacity of 17.36 gpm or less may apply for an exception to the required minimum spacing distance of at least one hundred (100) feet from a well or well site already in existence under Rule 4.3(c). An application for an exception under this subsection will only be considered by the District if adequate space is not available on the property to comply with the required minimum spacing distance from other wells. The General Manager may approve an application under this subsection if the proposed well complies with the required minimum spacing distance of at least fifty (50) feet from the property line without Board consideration or action, or may set the application for consideration by the Board.

(c) A well registration applicant for a proposed new well with a maximum production capacity over 17.36 gpm that does not meet the minimum spacing requirements from property lines or other wells under Rule 4.3 or for a proposed new well with a maximum production capacity of 17.36 gpm or less that does not meet the minimum spacing requirements from property lines under Rule 4.3 shall be informed of the deficiency by the General Manager. Such applicants may apply for an exception to the applicable required minimum spacing requirements. All well registration applicants for non-exempt wells, and all well permit applicants, are required to schedule a pre-application meeting with the General Manager prior to submitting a spacing requirement exception application to review project options that may be available to the applicant. Rather than pursuing an exception to the spacing requirements of these rules, a potential applicant has the option to buy or lease additional groundwater rights that will eliminate the need for an exception, or to modify its CCN for an applicant that is a retail public utility. If an applicant decides to proceed with the filing

of an exception application, the exception application must include:

(1) a short, plain statement explaining each circumstance that the applicant believes justifies the requested exception to the spacing requirements of the District;

(2) a plat, satellite image, or digital map of the property upon which the applicant proposes to locate the well that is the subject of the application for exception to the spacing requirements of the District that is prepared by the General Manager and that:

(A) is drawn to scale;

(B) accurately identifies and depicts the location of the boundaries of each property located, in whole or in part, within the minimum well spacing distances from the proposed well location under Rule 4.3; and

(C) accurately identifies and depicts the location of each other registered well or previously approved well site identified by the General Manager in the General Manager's review of the registration application under this rule that is located within the minimum spacing distances from the proposed well location under Rule 4.3;

(D) accurately identifies and depicts a circle surrounding the location of the proposed well as its center, and the radius of which is defined by the applicable minimum well spacing distances from property lines under Rule 4.3; and

(E) accurately identifies and depicts a circle surrounding the location of the proposed well as its center, and the radius of which is defined by the applicable minimum spacing distances from other registered wells or previously approved well sites under Rule 4.3;

(3) a list of the names and mailing addresses of the owners of record of each property, as such names and addresses are identified in the records of the applicable county appraisal district at the time the application is filed, located within:

(A) the radius of the circle described under Subsection (c)(2)(D); and

(B) the radius of the circle described under Subsection (c)(2)(E), but only for such owners of record with a registered well or previously approved well site; and

(4) a completed application for new well registration and, if applicable, a completed application for a permit.

(d) An application for an exception filed pursuant to this rule must be sworn to or affirmed by the applicant, who shall swear or affirm that the facts contained in the application are true and correct to the best of the person's knowledge. A plat filed pursuant to this rule must be certified by the county clerk's office or municipal platting authority where the land is located, unless the District already has a certified plat by the appropriate platting authority on file at the District office that covers the property in question. If the proposed well involves a preliminary plat, the applicant must have personal knowledge of the information set forth in the preliminary plat and must swear or affirm that the information is true and correct to the best of the person's knowledge.

(e) An application for an exception filed under Subsection (c) of this rule must be approved by the Board. At any time before taking final action on an application for an exception under this rule, the Board may require an applicant to perform site-specific testing by drilling a monitoring well completed and screened at a depth determined by the Board as appropriate for determining impacts to other wells, or by other hydrogeologic testing and analysis approved by the Board. Any such testing shall be performed using approved hydrogeologic testing and analysis methods and guidelines approved by the Board or that have been presented to and approved by the Board in advance of testing. The District has the right to notice and the opportunity to be present when the well test is being conducted.

(f) The Board may not approve an application filed pursuant to Subsection (c) of this rule unless:

(1) the General Manager has declared the application to be administratively complete;

(2) following the General Manager's written declaration of administrative completeness to the applicant, the applicant has, using a form provided by the District, provided written notice to each person described in Subsection (c)(3) in accordance with Subsection (g); and

(3) following the applicant's satisfaction of the notice requirements of Subsection (g)(2), the Board holds a public hearing on the application at the next available Board meeting or hearing called for that purpose, as determined by the General Manager in his or her discretion, where the applicant may be required to appear and show cause why the application should be granted, and at which all persons shall be given an opportunity to appear and be heard on the application.

(g) The notice required by Subsection (f)(2) shall:

(1) include each of the following:

(A) the name and address of the applicant;

(B) a description of the location of the property upon which the applicant proposes to locate the well that is the subject of the application for exception to the spacing requirements of the District;

(C) a general description of the applicant's request; and

(D) the date, time, and location of the public hearing on the application.

(2) be delivered to each person described in Subsection (c)(3), using a method of service that complies with Rule 1.7, no less than ten (10) calendar days before the date of the Board meeting or public hearing on the application; and

(3) be deemed sufficient by the District for purposes of providing notice to the proper persons even if there are inaccuracies in the records of the applicable county appraisal district. The applicant must provide the District with evidence that the required notice was provided in compliance with Subsection (f)(2) of this rule. A Certificate of Mailing (Form 3817) issued by the U.S. Postal Service is sufficient evidence for the purposes of providing notice under this rule.

(h) The Board may grant or deny an application filed pursuant to this rule on any reasonable grounds based on information contained in the application or properly and timely presented to the Board for its consideration at the public hearing, including without limitation anticipated impacts to other landowners, any registered well, previously approved well site, or unregistered well of which the Board is aware prior to granting or denying the application, and whether the well in the application will produce groundwater from a layer of an aquifer other than the layer from which the wells that are closer than the minimum distances are producing. The Board will not approve an application for an exception to spacing requirements from the applicant's own wells or well sites that is sought in order to circumvent, or has the effect of circumventing, the well spacing requirements for a single larger capacity well on the applicant's property.

(i) In addition to the considerations set forth in Subsection (h), reasonable grounds for the Board to grant an application for an exception from the spacing requirements under this rule may include, but are not limited to:

(1) there is no water from a public water system available to the tract, for an applicant that is not a retail public utility;

(2) for a well that is not exempt from the regulatory requirements of Rule 2.1, there is no economically feasible alternative water source available to the applicant;

(3) drilling the well would not be in conflict with an approved plat or other authorizations from the platting authority that are applicable to the tract; and

(4) whether the proposed well is for a retail public utility that is a political subdivision and will be drilled at a location within the boundaries of the political subdivision which has prohibited the drilling of wells by other persons through a lawful ordinance, rule, resolution, or order of the political subdivision, or whether the drilling of wells on other land in the area of the proposed well is prohibited through

deed restrictions or other lawful means. The Board may consider whether and to what extent the well drilling prohibitions may reasonably be expected to limit the impact of the proposed well on surrounding landowners and well owners.

For purposes of Subsection (i)(1), water from a public water system is available to a property if it is already physically available on the property, a water main is located on or adjacent to the property to which the landowner has a legal right to be connected, or if the approved plat for the property calls for public water to be delivered to the property and it can be delivered to the property within a reasonable amount of time upon request by the property owner. For purposes of Subsection (i)(2), an alternative water source is economically feasible if it meets the definition of "economically feasible alternative water source" under Rule 1.1.

(j) Any person interested in supporting or challenging the application may:

(1) submit comments or other information in writing to the District, if received by the District prior to a final decision on the application;

(2) appear before the Board in person at the public hearing or Board meeting; or

(3) request a contested case hearing in accordance with Rule 10.6(d). A contested case hearing on an application for an exception to the spacing requirements may be requested whether or not such application is considered in conjunction with a public hearing on the well permit application.

(k) If the Board or General Manager grants an exception to the spacing requirements, the General Manager shall inform the registrant in writing by utilizing a method described in Rule 1.7, and the General Manager shall have such exception recorded in the property deed records of the county in which the well is located for the property on which the well will be drilled. The recordation shall include information about the exception granted and any other appropriate information as determined by the Board or General Manager in their discretion, and shall be recorded only after the registration and, if applicable, permit for the well to be drilled pursuant to the exception have been approved by the District.

(l) The burden of proof in any proceeding related to an application for an exception to a spacing requirement shall be on the applicant. The Board may impose additional restrictions or special conditions on the exact location, construction, completion, operation, or production of a well to be drilled pursuant to an exception that it grants.

(m) The Board may grant an application for an exception to the well spacing requirements of Rule 4.3 to a person who owns multiple tracts of land or lots in a platted subdivision for each tract or lot that meets the requirements of Subsection (f) of this rule without the need to include a well registration application with the application for an exception, but with any special well spacing restrictions deemed appropriate by the board for any future wells to be drilled on such properties. However, no well shall be drilled on any such tract until a well registration application for such well has been approved by the District.

(n) Any well drilled pursuant to an approved exception to the District's well spacing requirements is not considered or protected by the spacing requirements of these rules in the future as a well in existence at the time of filing of an application by another landowner.

(o) A hearing will be held on registered wells that are exempt from permitting requirements only when an exception to spacing requirements is sought, except for applications for exceptions to minimum tract size requirements that are set for consideration by the Board under Rule 4.6.

(p) For wells requiring a permit hearing, if an exception to spacing requirements is also sought, the hearing on the spacing exception shall be held in conjunction with the hearing on the permit application, and the notice required under this rule shall be provided in addition to the notice required for the permit application.

(q) The General Manager shall set the date and time for a public hearing to be held pursuant to this rule, and such date and time shall be included in the notice required to be provided by the applicant under Subsection (f)(2) of this rule.

SECTION 5

REGULATION OF PUMPING

Rule 5.1 Maximum Allowable Production

(a) The maximum annual quantity of water that may be produced from a well or well system beginning January 1, 2020, under an Operating Permit issued by the District shall be the amount authorized in the permit. Such amount shall be subject to the pumping reduction regulations of the District under Rule 5.4.

(b) The maximum annual quantity of water that may be produced from an individual well beginning January 1, 2020, under a Historic Use Permit issued by the District shall be the amount authorized in the permit as the Maximum Historic Use for the individual well, unless the individual well is part of a well system as authorized under Rule 3.10(c). The maximum annual quantity of water that may be produced from a well system beginning January 1, 2020, under a Historic Use Permit issued by the District shall be the amount authorized in the permit as the Maximum Historic Use for the well system. The maximum annual quantity of groundwater that may be produced from a well or well system by an applicant for a Historic Use Permit during the time between January 1, 2020, and the issuance or denial of the permit shall be the amount specified in the applicant's Historic Use Permit application or most recent amendment thereto as the Maximum Historic Use for the well or well system. Such amounts shall be subject to the pumping reduction regulations of the District under Rule 5.4.

(c) The maximum annual quantity of water that may be withdrawn beginning January 1, 2020, for a well or well system operating under both a Historic Use Permit and an Operating

Permit shall be the sum of the annual production authorizations for the well or well system, as applicable, under the two permits. Such amounts shall be subject to the pumping reduction regulations of the District under Rule 5.4.

Rule 5.2 Limitation on Maximum Allowable Production Under Operating Permits

(a) The maximum annual quantity of groundwater that may be authorized by the Board for production from contiguous controlled acreage under an Operating Permit shall be the production allowable per contiguous controlled acre for the aquifer, layer of an aquifer, or aquifers in which the well is completed multiplied by the number of contiguous controlled acres associated with the well of the Operating Permit applicant, subtracting out:

(1) Subject to Subsection (f) of this rule, all annual groundwater production authorization recognized under any Historic Use Permit, pending application for a Historic Use Permit, or other Operating Permit for any well or well system located on such contiguous controlled acreage; and

(2) an estimate of production by exempt wells located on such contiguous controlled acreage; for each exempt well used exclusively for domestic or livestock purposes, two (2) acres shall be subtracted in lieu of an estimate of production.

(b) The initial annual production allowable per contiguous controlled acre is hereby established as 50,000 gallons per acre, regardless of the aquifer or layer of an aquifer in which any well on the acreage is completed.

(c) The production allowable per contiguous controlled acre set forth under Subsection (b) may be reduced by the Board for an aquifer or layer of an aquifer, and thus reduced for wells and well systems completed or screened in such an aquifer or layer of an aquifer, as necessary or appropriate under Rule 5.4 in order to achieve the adopted desired future conditions for an aquifer or layer of an aquifer. However, in order to ensure that all landowners have an opportunity to produce their fair share of groundwater from their properties, under no circumstances may the Board reduce the production allowable per contiguous controlled acre for an aquifer or layer of an aquifer lower than its true production allowable per contiguous controlled acre.

(d) The true production allowable per contiguous controlled acre for any aquifer or layer of an aquifer in the District will be determined by the Board by dividing the amount of Modeled Available Groundwater established by the Texas Water Development Board for an aquifer or layer of an aquifer inside the boundaries of the District by the estimated total number of surface acres overlying the aquifer or layer of the aquifer inside the boundaries of the District.

(e) Subject to Subsection (f) of this rule, if a well is authorized to produce groundwater under a Historic Use Permit or application for a Historic Use Permit in an amount that is greater than the amount set forth under Subsection (a) of this rule, the well is not eligible for additional groundwater production under an Operating Permit unless or until the applicant

secures a sufficient number of contiguous controlled acres to qualify for such additional production under this rule. The Board may, however, authorize additional groundwater production from such a well under Rule 5.5.

(f) For purposes of calculating the maximum annual amount of groundwater that may be produced under an Operating Permit under Subsection (a), the contiguous controlled acreage associated with a well from which, after multiplying by the production allowable, must be subtracted all annual groundwater production authorization recognized under any Historic Use Permit or pending application for a Historic Use Permit only includes that contiguous controlled acreage that was associated with the Historic Use Permit or pending application as of December 31, 2018, the close of the existing and historic use period. Any additional contiguous controlled acreage that was acquired on or after January 1, 2019, by purchase, lease, expansion of a CCN or corporate boundary of a retail public utility, or otherwise may be multiplied by the production allowable without the need to subtract the production authorization recognized under a Historic Use Permit or pending application; provided, however, that all groundwater production authorized under any other Operating Permit for any well or well system located on such additional contiguous controlled acreage, as well as an estimate of production by exempt wells located on such additional contiguous controlled acreage, shall be subtracted out as provided by Subsection (a).

(g) The total groundwater production that can be authorized to be produced from contiguous controlled acreage under an Operating Permit under this rule applies regardless of how many wells or well systems are producing that groundwater from the contiguous controlled acreage.

(h) For all Operating Permit permittees, including retail public utilities, if any contiguous controlled acreage owned or leased by the permittee for the right to produce groundwater and associated with the Operating Permit is sold or otherwise no longer owned or leased by the permittee at any time during the term of the permit, the permittee shall immediately notify the District and obtain an amendment to the Operating Permit under Rule 3.12 to account for the reduction in contiguous controlled acreage, and must not produce an annual amount of groundwater that would exceed the production authorization for the permit as amended as based on the reduced amount of contiguous controlled acreage. Groundwater production during the calendar year of the reduction of the contiguous controlled acreage shall be reasonably prorated by the District.

Rule 5.3 Regulation of Production under Operating Permits for Retail Public Utilities

(a) For a retail public utility, the maximum contiguous controlled acreage that may be assigned under Rule 5.2 to an Operating Permit for a well located within the corporate boundaries or CCN of the utility is determined by the acreage within the utility's CCN, or the acreage within the utility's corporate boundaries if the utility is a political subdivision that does not have a CCN, or the acreage located in the area defined by both its CCN and its corporate boundaries for a political subdivision that has a CCN and corporate boundaries that are not coterminous, subtracting out:

(1) all acreage already assigned for groundwater production under any other Operating

Permit within those boundaries;

(2) for any property with an exempt well under Rule 2.1 that is registered with the District or otherwise known by the District to exist:

(A) for an exempt well used for any purpose other than agricultural irrigation, the lesser of the actual size of the tract where the well is located or two (2) acres per exempt well; or

(B) for an exempt well used for agricultural irrigation, the average number of acres annually irrigated by the well over the previous five-year period as determined by a good-faith estimate by the General Manager ; and

(3) any acreage owned by a person other than the retail public utility on which a well is located for which production is authorized under a Historic Use Permit or application for a Historic Use Permit, but only if and to the extent that the amount authorized for production under the Historic Use Permit or application for a Historic Use Permit is less than the amount that the person would be eligible to produce from the acreage under an Operating Permit as calculated under Rule 5.2(a) and for which the person is not currently authorized to produce under an Operating Permit; in such a situation, the acreage to be subtracted from the utility's overall contiguous controlled acreage is calculated as follows: (the total contiguous controlled acreage owned by the person) MINUS (the amount of acreage from which the person would be eligible to produce groundwater under an Operating Permit as calculated under Rule 5.2(a) and for which the person is not currently authorized to produce under an Operating Permit).

(b) For purposes of calculating the maximum contiguous controlled acreage within the corporate boundaries of a political subdivision under Subsection (a), where a retail public utility's CCN wholly or partially overlaps the political subdivision's corporate boundaries, the overlapping acreage not assigned to the permits of individual landowners within those boundaries will not be counted toward the political subvision's maximum contiguous controlled acreage, but will be assigned to the CCN holder in accordance with Subsection (f) of this rule.

(c) For a retail public utility, the maximum annual quantity of groundwater that may be authorized by the Board under an Operating Permit for production for a well located within the corporate boundaries or CCN of the utility is determined by the amount of contiguous controlled acreage within its CCN, or in its corporate boundaries if it does not have a CCN, or the acreage located in the area defined by both its CCN and its corporate boundaries for a political subdivision that has a CCN and corporate boundaries that are not coterminous, prior to making the acreage subtractions set forth under Subsection (a)(1)-(3) of this rule. For a retail public utility with a CCN, the amount of contiguous controlled acreage prior to making the acreage subtractions set forth under Subsection (a)(1)-(3) of this rule shall be calculated based on the type of CCN held by the permit applicant as follows:

(1) Bounded Service Area: the contiguous controlled acreage shall be calculated as the total amount of acreage inside the bounded service area; and

(2) Facilities +200 Feet or Facilities Only: the contiguous controlled acreage shall be calculated as the amount of acreage of each property actually being served by the retail public utility that the retail public utility can demonstrate through evidence to the satisfaction of the Board at the hearing on the Operating Permit. For purposes of this provision, a "property" is a surface estate plat, surface estate deed, or other legally recognized surface estate property configuration recorded in the deed records of the county in which the property is located.

(d) The maximum annual quantity of groundwater that may be authorized under an Operating Permit for a retail public utility for production from its contiguous controlled acreage within its CCN or corporate boundary, or the acreage located in the area defined by both its CCN and its corporate boundaries for a political subdivision that has a CCN and corporate boundaries that are not coterminous, as such acreage is calculated by Subsection (b) of this rule and then making the acreage subtractions set forth under Subsection (a)(1)-(3) of this rule, shall be:

(1) the production allowable per contiguous controlled acre as described under Rule 5.2 multiplied by the number of contiguous controlled acres established for the utility under Subsection (b) of this rule; MINUS

(2) any amounts authorized under a Historic Use Permit or pending application for a Historic Use Permit for any well or well system of the retail public utility within the CCN or corporate boundaries.

(e) For purposes of calculating the maximum annual amount of groundwater that may be produced under an Operating Permit for a retail public utility under Subsection (a), the contiguous controlled acreage associated with a well from which, after multiplying by the production allowable, must be subtracted all annual groundwater production authorization recognized under any Historic Use Permit or pending application for a Historic Use Permit only includes that contiguous controlled acreage that was associated with the Historic Use Permit or pending application as of December 31, 2018, the close of the existing and historic use period. Any additional contiguous controlled acreage that was acquired on or after January 1, 2019, by purchase, lease, expansion of a CCN or corporate boundary of a retail public utility, or otherwise may be multiplied by the production allowable without the need to subtract the production authorization recognized under a Historic Use Permit or pending application; provided, however, that all groundwater production authorized under any other Operating Permit for any well or well system located on such additional contiguous controlled acreage, as well as an estimate of production by exempt wells located on such additional contiguous controlled acreage, shall be subtracted out as provided by Subsection (a).

(f) The contiguous controlled acreage of a retail public utility under Subsection (a) of this rule, which will likely change over time, shall be calculated by the General Manager during the period of time between the filing of an administratively complete application for an

Operating Permit or for renewal of an Operating Permit and the time the Operating Permit is approved or renewed.

(g) If a retail public utility has a CCN that overlaps wholly or partially with another political subdivision's corporate boundaries, the overlapping acreage not assigned to the permits of individual landowners within those boundaries will be assigned to the CCN holder unless:

(1) the CCN holder has not been issued an Operating Permit utilizing the acreage; and

(2) the CCN holder has agreed in writing that the political subdivision may utilize the acreage in lieu of the CCN holder.

(h) The District will authorize a political subdivision to utilize acreage within its corporate boundaries that overlaps with the CCN of another retail public utility only to the extent and duration allowed by the CCN holder in a written agreement under Subsection (~~e~~g). A political subdivision's Operating Permit is subject to an acreage and corresponding groundwater production reduction in the future if the CCN holder seeks to assert its right to any overlapping acreage, and the political subdivision expressly assumes the risk of such reductions in investing in its well and related infrastructure.

(i) For an investor-owned utility or non-profit water supply corporation that provides retail water service but is exempt from the requirement to obtain a CCN from the Public Utility Commission of Texas and is registered as an exempt utility with that agency, the maximum contiguous controlled acreage that may be assigned under Rule 5.2 to an Operating Permit is determined by the combined acreage of the properties to which the utility is actually providing retail water service at the time the Operating Permit is approved or renewed, subtracting out all annual groundwater production authorization recognized under any permit held by an individual landowner and the acreage of a tract with a registered exempt well that is receiving retail water service from the utility.

(j) For any situation in which the Public Utility Commission of Texas has approved dual certification for two retail public utilities for providing retail water service to a designated geographic area:

(1) any acreage associated with a property to which a first utility is actually providing service or to which the first utility is obligated to provide service pursuant to a written agreement with the second dual-certified utility shall be assigned to the first utility;

(2) any acreage associated with a property to which a second utility is actually providing service or to which the second utility is obligated to provide service pursuant to a written agreement with the first dual-certified utility shall be assigned to the second utility; and

(3) all remaining acreage in the area of dual-certification will be split equally between the two utilities.

After the assignment of acreage to each of the dual-certified utilities as set forth above, all annual groundwater production authorization recognized under any permit held by an individual landowner and the acreage of a tract with a registered exempt well that is located on the acreage assigned to one of the utilities will be subtracted from that utility's production authorization.

(k) For any situation in which a retail public utility owns a well or well system outside of its CCN and political subdivision boundaries, the contiguous controlled acreage for such well or well system shall be limited to the contiguous controlled acreage owned or controlled by the utility at the well site or well system site, excluding any acreage located within its CCN or political subdivision boundaries.

(l) For any situation in which a retail public utility has multiple CCNs for which the boundaries are otherwise not contiguous to each other, but such CCNs are connected by a common water transmission or distribution system, the CCNs shall be considered to be contiguous for purposes of this rule. If a retail public utility buys or leases land for the right to produce groundwater, the land shall be considered to be contiguous not only to any well located on such land, but also contiguous to the acreage in any CCN or political subdivision boundaries of the retail public utility that are connected by a common water transmission or distribution system to the land bought or leased by the retail public utility.

(m) With the exception of the method for calculating the maximum contiguous controlled acreage of a retail public utility for its wells that are located within its CCN or corporate boundaries under this rule, all other provisions of Rule 5.2 apply to the groundwater production of a retail public utility. Rule 5.2 applies to groundwater production from any well of a retail public utility located outside of its CCN or corporate boundaries, and the calculation of the contiguous controlled acreage for such a well shall be the same as for any person that is not a retail public utility.

Rule 5.4 Pumping Reductions and Other Aquifer Management Measures

(a) The Board shall, if necessary or appropriate to achieve an adopted desired future condition in an aquifer or layer of an aquifer, impose additional limitations on the production of groundwater from that aquifer or layer of an aquifer, as set forth in this rule. In implementing pumping reductions under this rule, the Board shall consider an estimate of total average exempt and permitted production from the aquifer or layer of an aquifer and compare it to the Modeled Available Groundwater number for that aquifer or layer of an aquifer, as well as other factors set forth under Section 36.1132, Water Code. The Board may consider projected future increases in total average exempt and permitted production in implementing this rule as necessary or appropriate to address overall pumping levels from an aquifer or layer of an aquifer to begin to reduce total production from an aquifer or layer of an aquifer before aquifer conditions reach critical levels from a standpoint of achieving desired future conditions. In implementing this rule, the Board may change the production authorization for wells from the initial annual production allowable per contiguous controlled acre established under Rule 5.2, which disregards the aquifer or layer of the aquifer in which a well is completed, and instead base the production authorization

from a well on the annual production allowable per contiguous controlled acre established for the aquifer or layer of an aquifer in which the well is completed.

(b) Before implementing any reductions in pumping under Historic Use Permits or pending applications for Historic Use Permits under this rule, the Board shall first reduce production under Operating Permits by reducing the production allowable per contiguous controlled acre for the aquifer, layer of an aquifer, or aquifers under Rule 5.2. The Board shall reduce the production allowable per contiguous controlled surface acre incrementally as necessary or appropriate to ensure achievement of the applicable adopted desired future conditions. However, under no circumstances may the Board reduce the production allowable per contiguous controlled acre for any aquifer or layer of an aquifer below the true production allowable per contiguous controlled acre for that aquifer or layer of an aquifer.

(c) If the Board has reduced the production allowable per contiguous controlled acre for any aquifer or layer of an aquifer down to the level of the true production allowable per contiguous controlled acre for that aquifer or layer of an aquifer and the Board determines that additional pumping reductions must be implemented in order to achieve the applicable desired future condition established for the aquifer or layer of an aquifer, the Board shall reduce groundwater production among Historic Use Permits by reducing the amount authorized under each on an equal percentage basis until total permitted and exempt production from the aquifer or layer of an aquifer has been reduced to a level determined by the Board that will achieve the applicable adopted desired future conditions.

(d) If the Board implements any pumping reductions under this rule, the Board may also implement increased well spacing minimum distances, increased minimum tract size requirements, or other measures determined by the Board to be necessary or appropriate to achieve an applicable adopted desired future condition. This provision shall not be construed to limit the authority of the Board to implement such measures absent the imposition of pumping reductions under this rule.

(e) The Board may in its sole discretion implement the pumping reductions and other measures set forth in this rule on a District-wide basis or for a particular aquifer or layer of an aquifer, and may adopt different pumping reductions and other measures for each where such aquifers or layers of an aquifer are distinguishable and identifiable by the Board. Moreover, if the Board determines that conditions in or use of an aquifer or layer of an aquifer differ substantially from one geographic area in the District to another, the Board may define such geographic areas and implement different pumping reductions and other measures set forth in this rule for such defined geographic areas.

(f) Notwithstanding anything to the contrary in this rule, the Board may implement the pumping reductions and other measures set forth in this rule in order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to prevent interference between wells, to prevent degradation of water quality, to prevent waste, or to achieve applicable adopted desired future conditions.

Rule 5.5 Additional Production Authorization Through Compliance Orders and Disincentive Fees

(a) It shall be a violation of these rules for a person to produce groundwater in an amount annually that exceeds the amounts authorized under Rule 5.1. However, a person may apply to the Board for issuance of an enforcement compliance order that allows the person to produce groundwater from a well or well system in an annual amount that exceeds the amounts otherwise authorized under an Operating Permit or a Historic Use Permit and requires the person to pay a disincentive fee for such excess groundwater production.

(b) The Board may approve a compliance order under this rule in its sole discretion, provided however that requests for approval of such orders shall not be unreasonably denied by the Board if the Board determines that:

(1) no economically feasible alternative water sources are available to the applicant within a reasonable time to meet the applicant's water need if the applicant were to exercise due diligence in the pursuit of such alternative water sources; and

(2) the purchase or lease of additional contiguous controlled acreage that would provide the applicant with the necessary acreage under Rules 5.2 or 5.3 to meet the applicant's water need is not feasible within a reasonable time to meet the applicant's water need if the applicant were to exercise due diligence in the pursuit of such additional acreage.

For purposes of this rule, an alternative water source is economically feasible if it meets the definition of "economically feasible alternative water source" under Rule 1.1.

(c) An applicant for a compliance order shall pay the District a non-refundable application fee in an amount determined by resolution of the Board.

(d) The terms and conditions of a compliance order issued under this rule shall be established in the sole discretion of the Board. However, such terms and conditions shall generally:

(1) require the applicant to timely pay a disincentive fee to the District in the applicable amount set forth in the Enforcement Policy and Penalty Schedule attached to these rules as Appendix 1 for all excess groundwater production under the compliance order;

(2) require the applicant to utilize due diligence in the pursuit of alternative water sources or the purchase or lease of additional contiguous controlled acreage during the term of the compliance order; and

(3) provide for expiration of the compliance order to coincide with expiration of the underlying Operating Permit or Historic Use Permit associated with the well. In approving an initial five-year compliance order, the Board may extend the terms of any associated permit as necessary or appropriate to have the permits expire on the same date as the compliance order.

(e) The Board may approve subsequent compliance orders for an applicant that has already been issued a compliance order under this rule. Such subsequent compliance orders may be issued by the Board:

(1) after considering the provisions of Subsection (b) of this rule and the performance and due diligence exercised by the applicant under the criteria set forth under Subsection (d) of this rule in prior compliance orders;

(2) with incrementally increased cost per 1,000-gallon fee payments imposed on the applicant for the excess groundwater production authorized under the compliance order, through a combination of disincentive fee payments and penalties as set forth in the Enforcement Policy and Penalty Schedule attached to these rules as Appendix 1, so long as the amount of the penalty component of those fee payments per day of violation does not exceed the penalty authority of the Board under Section 36.102, Water Code, and the District Act; and

(3) with such additional terms and conditions that the Board may determine are necessary or appropriate to reduce the applicant's reliance on groundwater produced in the District and bring the applicant into compliance with the rules of the District.

(f) A person who produces groundwater within the terms and conditions of the person's permit and any compliance order approved by the Board shall not be subject to additional enforcement under these rules for violations related to overproduction of groundwater. However, a person who in any year produces groundwater in excess of the amounts authorized by permit and a valid compliance order approved by the Board shall be subject to enforcement for an additional major violation of these rules.

(g) Any groundwater authorized to be produced under a compliance order under this rule shall not be authorized by or included in the associated Operating Permit or Historic Use Permit for the well, nor shall such authorization to produce groundwater under a compliance order be a contestable subject in a permit or permit amendment hearing related to the well. However, other activities and requirements related to the well, such as the drilling, completion, equipping, or altering of the well, compliance with minimum tract size and well spacing requirements, and other activities and requirements that require authorization through issuance of a permit or permit amendment under these rules shall apply to such a well and shall be issues to be considered at any hearing for a permit or permit amendment for the well otherwise required by these rules.

Rule 5.6 Accounting for Production by Owner or Lessee of Mineral Estate or Mineral Interest

(a) The ownership and right to produce groundwater from land is, unless expressly severed by conveyance or reservation, part of the surface estate.

(b) In instances where the right to explore for, develop, or produce minerals from land, including without limitation oil, gas, or other hydrocarbons, has been severed, sold, leased, or otherwise authorized to someone other than the landowner, the sum total of annual production of groundwater by the landowner and annual production of groundwater by the person authorized to explore for, develop, or produce such minerals shall not exceed the maximum annual groundwater production authorization limits applicable to a landowner only under these rules.

(c) The landowner and the person authorized to explore for, develop, or produce minerals are jointly and severally responsible for coordinating their groundwater production activities so that total groundwater production between them does not exceed the maximum annual groundwater production authorization limits for the land. If total groundwater production between them does exceed those limits, the landowner and the person authorized to explore for, develop, or produce minerals are jointly and severally liable for such a violation of these rules, and any other violation of these rules that is related to their combined groundwater production activities. The burden of proof in demonstrating that theviolation resulted from the unlawful activity of only one of the two parties shall be on the party making such a claim, and the District shall bear no such burden of proof to apportion liability between the parties in an enforcement action by the District for a violation of these rules. A party shall not be held jointly and severally liable for such a violation to the extent that the party can demonstrate to the satisfaction of the Board that the party does not bear any individual responsibility for the violation. The Board may consider all relevant information related to the violation, including without limitation any agreements between the parties, in making its determination under this subsection.

Rule 5.7 Prohibition on Waste and Deteriorated or Abandoned Wells

(a) No person shall engage in any conduct subject to the District's regulatory jurisdiction that constitutes waste, as that term is defined in Rule 1.1.

(b) Any discharge of groundwater into a surface water course, except as authorized by a permit, rule, or other order issued by the TCEQ under Chapter 26 of the Texas Water Code, shall be prohibited as waste.

(c) Deteriorated or abandoned wells, as defined by Section 1901.255, Texas Occupations Code, are prohibited. The District shall:

1) require the owner or operator of an abandoned well to cap or plug the well;

2) require the owner or operator of a deteriorated well, which constitutes waste as defined by these rules, to plug the well in accordance with the rules of the Texas Department of Licensing and Regulation.

(d) Not later than the 180th day after the date a landowner, well owner, or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner , well owner, or other person shall have the well plugged or capped under standards and procedures adopted by the Texas Department of Licensing and Regulation.

(e) The District may require the owner of a well or the owner of the property on which an open or uncovered well is located to keep the well permanently closed or capped in accordance with standards adopted by the Texas Department of Licensing and Regulation except when the well is actually in use. The landowner or well owner of an open or uncovered well shall cap or close a well within ten (10) days of receiving notice from the District requiring the well to be capped or closed.

(f) As used in this rule, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the aquifer that is not capped or covered as required by this rule.

(g) Failure to comply with the requirements of this rule constitutes a major violation of the District's rules and subjects the well owner or operator to civil penalties as provided in Appendix 1 of these rules.

Rule 5.8 System Water Loss for Retail Public Utilities

(a) The requirements of this rule apply to an application by a retail public utility for an Operating Permit or amendment to an Operating Permit that seeks an increase in the annual groundwater production authorization for an existing system, and to an application by a retail public utility for renewal of an Operating Permit or Historic Use Permit, submitted to the District on or after January 1, 2023~~2~~.

(b) To promote conservation of water and prevent waste, the District shall not authorize by permit or permit amendment to an applicant that is a retail public utility any amount of water for wasteful system water losses for a water system. For purposes of this rule, "wasteful system water losses" of a retail public utility are any real water losses greater than twenty-five percent (25%), based on a five-year rolling average. "Real water losses" include both reported and unreported losses from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks, but do not include authorized consumption or apparent losses from unauthorized consumption, under-registering of customer meters, and billing adjustments and waivers. The District subscribes to the definitions included in Section 3.1 of the Texas Water Development Board's "Water Loss Audit Manual for Texas Utilities" and refers applicants to that section for assistance in determining what is considered as authorized consumption, and other helpful information.

(c) Each retail public utility that applies for an Operating Permit or amendment to an Operating Permit seeking an increase in authorized annual groundwater production for an existing system, or for renewal of an Operating Permit or Historic Use Permit shall include in its application a water audit on a form provided by the District for each of the previous five (5) calendar years that is consistent with the methodology required for water audits by the Texas Water Development Board adopted under Texas Water Code Section 16.0121 and Title 31, Part 10, Chapter 358, Subchapter B, Section 358.6, Texas Administrative Code. The applicant shall also provide a calculation of its average annual real water losses for the previous five-year period. If the average annual real water losses constitute wasteful system water losses under this rule, the applicant shall be required to pay the disincentive

fee rate as calculated under Subsection (d) of this rule until the earlier of the expiration of the ensuing five-year period or until the applicant can demonstrate to the satisfaction of the District in any intervening calendar year that the applicant's average annual real water losses for the then-previous five-year period is twenty-five percent (25%) or less. Applicants are encouraged to refer to the Texas Water Development Board's "Water Loss Audit Manual for Texas Utilities" for guidance on water audits and calculating water loss.

(d) Notwithstanding any rule to the contrary, if a retail public utility applicant has wasteful system water loss as calculated under Subsection (c), the District shall multiply the applicant's average annual groundwater production for the same five-year period by the applicant's wasteful system water loss percentage to determine the applicant's average annual wasteful water loss in gallons. The applicant shall be required to pay the disincentive fee rate for the number of gallons determined to be the applicant's average annual wasteful water loss, which disincentive fee rate is set forth in Appendix 1 under the Fee and Penalty Schedule for Excessive Groundwater Pumping applicable to permittees producing under a compliance order. If the applicant fails to eliminate wasteful system water losses during the ensuing five-year period, the disincentive fee rate will continue to escalate each five-year period as set forth under Appendix 1 and shall be applied to the applicant's average annual wasteful water loss calculated for the then-previous five-year period. For all purposes under these rules, the number of gallons determined to be the average annual wasteful water loss in effect in any calendar year under this rule shall be considered to be the first equal number of gallons actually produced by the permit holder in each calendar year.

(e) Each retail public utility shall also ~~include~~ submit to the District a water audit as described by this rule on a form provided by the District ~~with its end-of-year Water Production Report that is due to the District~~ on or before May 1 of each year~~January 15~~. The water audit shall calculate the system water losses for the previous calendar year ~~that is being reported~~. This requirement begins with submitting a water audit in 2023 for water loss in calendar year 2022 ~~for the Water Production Report that is due to the District on or before January 15, 2023~~. Failure to timely comply with the requirements of this subsection constitutes a minor violation of these rules; provided, however, that failure to comply with the requirements of this subsection by August 1 of the year in which the audit is required to be submitted to the District constitutes a major violation of these rules; a minor or major violation subjects the well owner or operator to civil penalties as provided in Appendix 1 of these rules.

Rule 5.9 Petition for Additional Production Authorization

(a) Notwithstanding anything to the contrary in these rules, a person may petition the District for approval of a permit application or permit amendment application that would authorize the production of groundwater in an amount greater than the amount otherwise authorized pursuant to the requirements of these rules if the person can demonstrate to the satisfaction of the Board that the request for increased production is necessary in order for the person to produce their fair share of the groundwater beneath their land or to prevent loss of reasonable investment-backed expectations that are impacted by and were made prior to the adoption of these rules. In determining whether a person may be entitled to produce more groundwater, the Board may consider factors including, but not limited to, the size of

the surface area of land owned by the person over the aquifer, historic use, future needs, the relative importance of various uses, and concerns unrelated to use, such as the nature and conditions of the aquifer underlying the land including any site-specific conditions or unique hydrogeology, and environmental impacts, as well as the criteria set forth in Rule 3.6.

(b) The Board may require a person who submits a petition under this rule to perform site-specific hydrogeologic testing and analysis to demonstrate the nature of the groundwater resources on the property and the impacts of the increased production sought in the petition, including without limitation impacts on achievement of the relevant desired future conditions for the aquifer or layer of the aquifer that will be impacted by the groundwater production, and impacts to other property owners, owners of permitted wells, and owners of wells exempt from the requirement to obtain a permit. All hydrogeologic testing or analysis provided to the District pursuant to this subsection must be conducted in compliance with hydrogeologic guidelines approved by the Board. A person making a claim related to loss of reasonable investment-backed expectations under this section shall provide evidence to support the petition as generally described under Paragraphs (A) and (B) under Rule 11.3(d).

(c) A petition as described by Subsection (a) shall be submitted to the District in conjunction with an application for an Operating Permit or Operating Permit amendment in accordance with Section 3 of these rules. A petition under this rule must be submitted prior to any deadline established by these rules for the submission of the associated permit or permit amendment application, and where there is no such deadline established by these rules, the petition must be received by the District prior to the District issuing notice of the hearing on the associated permit or permit amendment application for hearing.

(d) The applicant has the burden of proof in a hearing on a petition and application for permit submitted under this rule to prove the applicant is entitled to additional groundwater production in accordance with the evidence and issues to be considered under Subsections (a) and (b) of this rule. A hearing on the petition and permit or permit amendment application shall be held in accordance with the procedures required in Section 10 of these rules related to permit and permit amendment hearings before the Board.

(e) Submitting a petition under Subsection (a) in conjunction with a permit or permit amendment application as required by Subsection (c) and completing the combined hearing process on the petition and the permit or permit amendment application is a prerequisite to filing suit against the District:

(1) on a decision of the Board regarding a permit or permit amendment application that involves the amount of groundwater to be produced; or

(2) for taking a person’s property without just compensation on grounds that the application of these rules on a person has resulted in their inability to produce a fair share of the groundwater beneath their property or a loss of reasonable investment-backed expectations.

Rule 5.10 Board Authorization to Increase Groundwater Production during Periods of Extreme Drought or other Emergency Conditions

(a) In any calendar year in which any part of the District has been designated as in "extreme drought" or worse under the U.S. Drought Monitor, the Board by resolution may authorize an increase in production for all permittees that allows each permittee to overproduce their permit by a certain percentage designated by the Board.

(b) In setting the percentage, the Board shall consider the difference in sum of the total amount of groundwater produced in the District in each of the previous five (5) years and the sum of the Modeled Available Groundwater amounts for each of those years, and shall not set a percentage that would authorize total additional groundwater production in an amount higher than the difference, so as to support achievement of the Desired Future Conditions adopted by the District under § 36.108, Texas Water Code.

(c) As applied to permittees required by law or TCEQ rules to have a drought contingency plan related to the well or well system covered by the permit, the Board in adopting the resolution shall limit eligibility to produce additional groundwater to those permittees that have implemented their drought contingency plans during the calendar year of the resolution, including implementation of mandatory water use restrictions by a permittee that is a retail public water system.

(d) A permittee who produces groundwater above its maximum annual permitted amount but in compliance with the Board's resolution and who timely pays the Water Use Fee for the extra groundwater produced pursuant to the Board's resolution shall not be in violation of the District Rules for overproduction of groundwater.

(e) In addition to the foregoing provisions regarding increases in production during periods of extreme drought, the Board may similarly authorize by resolution increased production for a calendar year for a specific public water system permittee that is experiencing an emergency or other unforeseen event that has impacted its system in a manner that could cause imminent public health or safety risks. In any resolution approved under this subsection, the Board shall require that the permittee implement its drought contingency plan including mandatory water use restrictions.

(f) An eligible permittee must submit a written request to the Board for an emergency authorization to increase groundwater production under Subsection (e) that describes the emergency or other unforeseen event and the amount of additional groundwater production authorization requested. The Board shall not approve a resolution authorizing increased production for a specific permittee under Subsection (e) in situations where the permittee is eligible under these rules for an increase in authorized production under an Operating Permit or amendment thereto for the amount of groundwater needed for the calendar year unless and until the permittee has also submitted an application to the District for an Operating Permit or amendment to the Board requesting the increase in authorized production up to the amount needed by the permittee and for which the permittee is eligible under these rules. The Board may approve a resolution under Subsection (e) prior to

holding a hearing or taking final action on the application for an Operating Permit or amendment thereto.

(g) A public water system permittee who produces groundwater above its maximum annual permitted amount but in compliance with a Board resolution issued under Subsection (e) and who timely pays the Water Use Fee for the extra groundwater produced pursuant to the Board's resolution shall not be in violation of the District Rules for overproduction of groundwater.

SECTION 6

TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT

Rule 6.1 General Provisions

(a) A person who produces or wishes to produce water from a well not exempt under Rule 2.1(a) that is located or is to be located within the District and transport such water for use outside of the District must register the well and, if applicable, obtain a permit for the well, and submit timely payment of the groundwater transport fee to the District under Rule 7.2 for any water transported out of the District. The District may require the person to install any meters necessary to report the total amount of groundwater transported outside of the District for reporting purposes and for purposes of calculating the groundwater transport fee.

(b) The District may not, in a manner inconsistent with rules and fees applied to production and use occurring wholly within the boundaries of the District, regulate production of groundwater or assess fees against the transport of water produced in an area of a retail public utility that is located inside the District boundaries and transported for use to an area that is within the same retail public utility but that is located outside the District boundaries if the majority of the groundwater produced inside the District is used within the boundaries of the District. If conditions change over time such that the majority of such use is not within the boundaries of the District, the groundwater transported for use outside of the District shall be assessed the groundwater transport fee.

Rule 6.2 Reporting

A person transporting groundwater for use outside of the District and subject to the requirement to pay the groundwater transport fee shall include the amount of water transported and used outside the District in the Water Production Report required under Rule 3.15. The information to be included in the Water Production Report for groundwater transported is as follows:

(1) the name of the person;

(2) the well registration numbers of each well from which the person has produced groundwater transported for use outside the District;

(3) the total amount of groundwater produced from each well or well system during the immediately preceding reporting period;

(4) the total amount of groundwater transported outside of the District from each well or well system during the immediately preceding reporting period;

(5) the purposes for which the water was transported;

(6) the amount and source of surface water transported, if any; and

(7) any other information requested by the District.

SECTION 7

FEES AND PAYMENT OF FEES

Rule 7.1 Water Use Fees

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(a) A water use fee rate schedule shall be established by Board resolution annually at least sixty (60) days before the end of the calendar year. The rate shall be applied to the groundwater pumpage authorized to be produced in the ensuing calendar year for each well not exempt under Rule 2.1. The District will review the account of any person changing the use of a well from non-exempt to exempt or vice versa to determine if additional water use fees are due or if a refund of water use fees is warranted.

(b) Wells exempt under Rule 2.1 shall be exempt from payment of water use fees. However, if exempt well status is withdrawn, the District may assess fees and penalties in accordance with the District rules.

(c) Wells exempt from permitting requirements only under Rule 2.3 shall submit the monthly Water Production Report required under Rule 3.15 along with payment of water use fees based on monthly pumpage amounts. The Water Production Report and required fees must be received by the District no later than the 15th day of the month following the month for which production is being reported.

(d) No later than forty-five (45) days prior to the end of the calendar year, the District shall send by regular mail, internet account, or electronic mail to the owner or operator of each registered well that is required to pay the water use fee a reminder statement setting forth:

(1) the rate applicable to the water produced in the ensuing year;

(2) the total amount of groundwater authorized to be produced under the permit;

(3) the total amount of water use fees due if paid:

(A) on a quarterly basis, as described under Rule 7.3(a)(2);

(B) on an annual basis, as described under Rule 7.3(a)(1); or

(C) on a monthly basis, as described under Rule 7.3(a)(3), including the five (5) percent surcharge added to monthly amounts owed as described under Rule 7.3(b); and

(4) deadlines for submission of all water use fee payments and groundwater transport fee payments, deadlines for submission of monthly Water Production Reports, and other information deemed appropriate by the District.

(e) Notwithstanding any other rule to the contrary, the owner and any operator of a well are jointly responsible for ensuring that water use fees and groundwater transport fees required by this rule or Rule 7.2 are timely submitted to the District. Each will be subject to enforcement action if a fee required by this rule is not timely filed by either, or by any other person legally authorized to act on the behalf of either.

(f) The District will not accept any fee payments in cash.

(g) Any well that is subject to fee payment under this rule and that provides water for both agricultural and non-agricultural purposes of use shall pay the water use fee rate applicable to non-agricultural purposes for all water produced from the well, unless the applicant can demonstrate through convincing evidence to the satisfaction of the District that a system is in place so as to assure an accurate accounting of water for each purpose of use.

Rule 7.2 Groundwater Transport Fee

The District shall impose a fifty (50) percent export surcharge in addition to the District's water use fee rate for in-District use for groundwater produced in the District that is transported for use outside of the District, except as provided by Rule 6.1(b). With the exception of the process for payment of groundwater transport fees under Rule 7.3(c), The procedures, requirements, exemptions, and penalties related to payment of the water use fee set forth under these rules shall also apply to payment of the groundwater transport fee.

Rule 7.3 Payment of Water Use and Groundwater Transport Fees

(a) Effective January 1, 2021, all fees for groundwater production in a calendar year shall be paid to the District by one of the following methods:

(1) annual pre-payment of the entire water use fee for the ensuing calendar year, based on the total amount of groundwater authorized to be produced under the applicable permit, with such payment being due in advance on or before January 10;

(2) quarterly payments of the water use fee for the ensuing quarter, based on one

quarter ($1/4^{th}$) of the total amount of groundwater authorized to be produced annually under the applicable permit, with such payments being due in advance on or before the tenth day of the months of January, April, July, and October; or

(3) monthly payments of the water use fee for the ensuing month, based on one twelfth ($1/12^{th}$) of the total amount of groundwater authorized to be produced annually under the applicable permit, with such payments being due in advance on or before the tenth day of each month. A five (5) percent surcharge shall also be paid monthly as required under Subsection (b) of this rule. The option to pay water use fees monthly is not available for monthly payments of less than fifty dollars ($50.00).

(b) A well owner or operator who pays the water use fee on a monthly basis as described under Rule 7.3(a)(3) shall pay an additional surcharge of five (5) percent on the amount owed for the ensuing month.

(c) Groundwater transport fees shall be paid on a quarterly basis in arrears, even if water use fees are paid annually in accordance with Subsection (a)(1) of this rule. Quarterly payments for transport fees are calculated by adding a fifty (50) percent surcharge to the water use fee rate for any groundwater transported out of the District during the preceding quarter. Groundwater transport fees are due on the 10th day of the months of January, April, July, and October for the preceding three-month period.

(d) Payments for water use fees or groundwater transport fees under this rule may be made by personal check, cashier's check, money order, Automated Clearing House ("ACH") withdrawal from the well owner or operator's bank account, or by credit or debit card. The District will assess a processing fee not to exceed five (5) percent of the water use fee or groundwater transport fee for payments made by credit card.

(e) A well owner or operator who fails to pay annual, quarterly, or monthly water use fees, or quarterly groundwater transport fees, within thirty (30) days of the applicable deadlines under Subsections (a) and (b) will incur late fees in accordance with Rule 7.6.

Rule 7.4 Water Use Refund

(a) Beginning January 1, 2022, in order to encourage groundwater conservation, eligible permittees will receive a refund for payment of water use fees from the previous calendar year for not-to-exceed twenty (20) percent of the amount of groundwater authorized by permit to be produced that was not actually produced. Refunds will only be given to permit holders who have timely paid all water use fees to the District for the prior calendar year on an annual, quarterly, or monthly basis in accordance with the requirements of Rule 7.3. The amount of any refund due to a permittee will be determined by the District each calendar year after receipt of the Water Production Report due by January 15 and after a period of time not later than March 15 for the District to verify actual groundwater production through meter readings.

(b) An eligible permittee will receive a refund under Subsection (a) after March 15 of each year in the form of a direct payment by check from the District if the refund is $25.00 or greater, or as a statement credit to the permittee's account if the refund is less than $25.00.

Rule 7.5 Payment of Disincentive Fee

A well owner who is required to pay a disincentive fee under Rule 5.5 shall pay such fee in conjunction with the option chosen by the well owner for submission of water use fee payments under Rule 7.3.

Rule 7.6 Failure to Make Fee Payments

(a) Payments not received by the date that water use fees or groundwater transport fees are due and owing to the District pursuant to Rule 7.3 will be subject to a late payment fee of the greater of the following:

(1) $25.00; or

(2) ten (10) percent of the total amount of water use fees due and owing to the District.

(b) Persons failing to remit all water use fees or groundwater transport fees due and owing to the District within thirty (30) days of the date such fees are due pursuant to Rule 7.3 shall be subject to a civil penalty not to exceed three times the amount of the outstanding water use fees or groundwater transport fees due and owing, in addition to:

(1) the late fee penalty prescribed in Subsection (a) of this rule; and

(2) the civil penalties for major violations set forth in Appendix 1 to these rules.

(c) Persons in violation of this rule may also be subject to additional enforcement measures provided for by these rules or by order of the Board.

(d) For purposes of determining whether a fee payment that is mailed to the District is timely, the date of the postmark on the mailing will be used by the District as the date the payment was received.

Rule 7.7 Application and Other Administrative Fees

(a) The Board, by resolution, shall establish annually a schedule of fees for administrative acts of the District, including the cost of reviewing and processing applications, the cost of hearings for permit applications, and any other administrative fees the Board deems necessary and appropriate. The fees shall not unreasonably exceed the cost to the District of performing the administrative function for this the fee is charged. The established schedule of fees may include, but is not limited to, the following:

(1) **Returned Check Fee.** A fee shall be assessed for checks returned to the District for insufficient funds, account closed, signature missing, or any other reason causing a check to be returned by the District's depository.

(2) **New or Replacement Well Registration Fee.** The owner of any well or replacement well for which drilling commences on or after April 1, 2011, including a well exempt under Rule 2.1, shall submit payment to the District of a non-refundable well registration fee per well, which is due by the same deadline established under these rules for registration of the well. If an Operating Permit or an amendment to an Operating Permit is also required for the well under Rule 3.9, the well registration fee under this rule shall be reduced. A registrant for a well with a previously approved exception to the minimum tract size requirements under Rule 4.6 shall pay a reduced administrative registration fee to the District, which shall be refunded by the District if the well registration is denied. Otherwise, application fees paid under these rules are non-refundable, even if the application is denied. The well registration fee must be received by the District in order for the District to find a registration application administratively complete.

(3) **Historic Use Permit Application Fee.** An applicant for a Historic Use Permit shall submit payment to the District of a non-refundable permitting fee per well along with an application for a Historic Use Permit. The well permitting fee must be received by the District in order for the District to find a Historic Use Permit application administratively complete.

(4) **Operating Permit Application Fee.** An applicant for an Operating Permit shall submit payment to the District of a non-refundable permitting fee per well along with an application for an Operating Permit. The well permitting fee must be received by the District in order for the District to find an Operating Permit application administratively complete.

(5) **Well Spacing or Minimum Tract Size Requirements Exception Application Fee.** An applicant for an exception to either the well spacing or minimum tract size requirements of these rules shall submit payment to the District of a non-refundable fee per well along with the appropriate application for an exception. The amount of the fee will depend on whether the General Manager is authorized to approve the exception under these rules or whether the application for exception must be approved by the Board. If the well owner seeks an exception to both the well spacing and minimum tract size requirements of these rules, the well owner shall submit a separate application for each exception sought and a non-refundable fee payment per well indicated in each application for an exception. The application fee must be received by the District in order for the District to find the application administratively complete.

(6) **Permit Renewal Fee.** The holder of any permit under these rules that is subject to renewal, where there is no substantive change to the permit and the permit may be approved by the General Manager, shall submit payment to the District of a non-refundable fee for renewal of such permit.

(7) **Change of Well Ownership or Production Authorization Fee.** In the case of the change of ownership or transfer of production authorization of a well, the current well owner (transferor), or the new owner of the well, or the person to whom authorization to produce from the well has been transferred (transferee) shall, along with the other requirements of Rule 3.14, pay a fee for each of the following, as applicable:

(A) a change in ownership of a registered exempt well;

(B) a change in ownership of a registered or permitted non-exempt well; or

(C) a transfer of production authorization.

(8) **Compliance Order Application Fee.** An applicant for a compliance order shall pay the District an application fee in an amount established by resolution of the Board.

(9) **Notice Publication Fee.** The District shall assess a fee against permit applicants to help reimburse the District for the costs of publishing notice of a hearing related to a permit matter for each notice published for a particular application.

(10) **Test Well Authorization Fee.** An applicant for authorization to drill a test well or wells under Rule 3.7 shall submit payment to the District of a non-refundable application fee per test well to be drilled. This fee is separate from the application fee for a well registration or permit which shall be required for any completed wells.

(b) The purpose of all fees adopted in accordance with this Rule is to cover the administrative costs to the District associated with the processing of applications, hearings for permit applications, and administering the rules and operations of the District. Fees will not unreasonably exceed the actual administrative costs incurred by the District for such administrative actions.

Rule 7.8 Enforcement

(a) After a well is determined to be in violation of these rules for failure to make payment of water use fees or groundwater transport fees on or before the 30th day following the date such fees are due pursuant to Rule 7.3, all enforcement mechanisms provided by law and these rules shall be available to prevent unauthorized use of the well and may be initiated by the General Manager without further authorization from the Board.

(b) The owner and any operator of a well are jointly responsible for compliance with these rules. Each will be subject to enforcement action and are jointly and severally liable for a violation of these rules.

SECTION 8

METERING

Rule 8.1 Water Meter Required

(a) The owner of a well located in the District and not exempt under Rule 2.1 shall equip the well with a flow measurement device meeting the specifications of these rules and shall operate the meter on the well to measure the flow rate and cumulative amount of groundwater withdrawn from the well.

(b) A totalizing water meter that is not resettable by the applicant is the only type of meter that may be installed on a well registered with the District unless approval for another type of meter is applied for and granted by the General Manager. The totalizer must be capable of a maximum reading greater than the maximum expected annual pumpage. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for cold-water meters as those standards existed on the date of adoption of these rules. Meters must be able to measure instantaneous flow rate of the groundwater produced from the well, except as follows: a meter that was installed on a well as of November 15, 2010, that is not capable of measuring the instantaneous flow rate will not have to be replaced, provided that the meter has the ability to measure the cumulative amount of groundwater withdrawn from the well and meets all other requirements herein.

(c) The water meter must be installed according to the manufacturer's published specifications in effect at the time of the meter installation, or the meter's accuracy must be verified by the registrant in accordance with Rule 8.3. If no specifications are published, there must be a minimum length of five pipe diameters of straight pipe upstream of the water meter and one pipe diameter of straight pipe downstream of the water meter. These lengths of straight pipe must contain no check valves, tees, gate valves, back flow preventers, blow-off valves, or any other fixture other than those flanges or welds necessary to connect the straight pipe to the meter. In addition, the pipe must be completely full of water throughout the region. All installed meters must measure only groundwater.

(d) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's standards, instructions, or recommendations, and shall be calibrated to ensure an accuracy reading range of 98.5% to 101.5% of actual flow.

(e) The owner of a well is responsible for the purchase, installation, operation, maintenance, and repair of the meter associated with the well.

(f) Bypasses are prohibited unless they are also metered.

Rule 8.2 Metering Aggregate Withdrawal

Where wells are part of an aggregate system, meters must be installed so as to measure the groundwater production from each well included in the system. The provisions of Rule 8.1 apply to meters measuring aggregate pumpage.

Rule 8.3 Accuracy Verification

(a) Meter Accuracy to be Tested: The General Manager may require the registrant, at the registrant's expense, to have the accuracy of a water meter tested by a third party qualified to perform such tests and submit a certificate of the test results to the District. For a well that requires a permit under these rules, the permit holder must provide a certificate of such test results verifying the accuracy of the meter within the previous five-year period as a condition of permit renewal. Except as otherwise provided herein, certification tests will be required no more than once every five (5) years for the same meter. If the test results indicate that the water meter is registering an accuracy reading outside the range of 98.5% to 101.5% of the actual flow, then appropriate steps shall be taken by the registrant to repair or replace the water meter within ninety (90) calendar days from the date of the test. The District, at its own expense, may undertake random tests and other investigations at any time for the purpose of verifying water meter readings. If the District's tests or investigations reveal that a water meter is not registering within the accuracy range of 98.5% to 101.5% of the actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or wells, the registrant shall reimburse the District for the cost of those tests and investigations within ninety (90) calendar days from the date of the tests or investigations, and the registrant shall take appropriate steps to bring the meter or meters into compliance with these rules within ninety (90) calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement of accuracy is impaired, the District may require the registrant, at the registrant's expense, to take appropriate steps to remedy the problem and to retest the water meter within ninety (90) calendar days from the date the problem is discovered and reported to the registrant.

(b) Meter Testing and Calibration Equipment: Only equipment capable of accuracy results of plus or minus 1.5 percent of actual flow may be used to calibrate or test meters.

(c) Calibration of Testing Equipment: All approved testing equipment must be calibrated every two (2) years by an independent testing laboratory or company capable of accuracy verification. A copy of the accuracy verification must be presented to the District before any further tests may be performed using that equipment.

Rule 8.4 Removal of Meter for Repairs

A water meter may be removed for repairs and the well remain operational provided that the District is notified prior to removal and the repairs are completed in a timely manner. The readings on the meter must be recorded immediately prior to removal and at the time of reinstallation. The record of pumpage must include an estimate of the amount of groundwater

withdrawn during the period the meter was not installed and operating.

Rule 8.5 Water Meter Readings

Not later than the last day of each month, the owner or operator of a well not exempt under Rule 2.1 shall read each water meter associated with a well and record in a log the meter reading and the actual amount of pumpage since the previous month's meter reading. The logs containing the recordings shall be submitted to the District by regular mail or email within ten (10) days of receipt of a written request by the District. The meter readings and logs shall be included in the Water Production Report, which is required under Rule 3.15 to be submitted to the District no later than the 15thth day of the month following the month for which groundwater production is being reported. The final meter reading for a calendar year shall be submitted to the District no later than January 15 of the following calendar year.

Rule 8.6 Installation of Meters

Except as otherwise provided by these rules, a meter required to be installed under these rules shall be installed before producing water from the well.

Rule 8.7 Enforcement

(a) It is a major violation of these rules to fail to meter a well and report meter readings in accordance with this section. After a well is determined to be in violation of these rules for failure to meter or maintain and report meter readings, all enforcement mechanisms provided by law and these rules shall be available to prevent unauthorized use of the well and may be initiated by the General Manager without further authorization from the Board.

(b) It is a minor violation of these rules to fail to timely provide water meter logs within ten (10) days of receipt of a written request by the District in accordance with Rule 8.5.

SECTION 9

INSPECTION AND ENFORCEMENT OF RULES

Rule 9.1 Purpose and Policy

The District's ability to effectively and efficiently manage the limited groundwater resources within its boundaries depends entirely upon the adherence to the rules promulgated by the Board to carry out the District's purposes. Those purposes include providing for the conservation, preservation, protection and recharge of the groundwater resources within the District, to protect against subsidence, degradation of water quality, and to prevent waste of those resources. Without the ability to enforce these rules in a fair, effective manner, it would not be possible to accomplish the District's express groundwater management purposes. The enforcement rules and procedures that follow are consistent with the responsibilities delegated to the District by the Texas Legislature through the District Act, and through Chapter 36 of the Texas Water Code.

Rule 9.2 Rules Enforcement

(a) If it appears that a person or entity has violated, is violating, or is threatening to violate any provision of the District Rules, the Board may institute and conduct a suit in a court of competent jurisdiction in the name of the District for payment of fees owed, injunctive relief, recovery of an administrative and/or civil penalty in an amount set by District rule per violation, both injunctive relief and a penalty, or any other appropriate remedy. Each day of a continuing violation constitutes a separate violation.

(b) Unless otherwise provided in these rules, the penalty for a violation of any District rule shall be either:

(1) $10,000.00 per violation; or

(2) a lesser amount, based on the severity of the violation, as set forth in the Enforcement Policy and Penalty Schedule, which is attached to these rules as Appendix 1 and adopted as a rule of the District for all purposes.

(c) A penalty under this section is in addition to any other penalty provided by law and may be enforced by filing a complaint in a court of competent jurisdiction in the county in which the District's principal office or meeting place is located.

(d) If the District prevails in a suit to enforce its rules, the District may seek, in the same action, 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.

Rule 9.3 Failure to Report Pumpage and/or Transported Volumes

The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources in the District. Failure of a well owner required by these rules to submit complete, accurate, and timely pumpage and transportation reports may result in:

(a) the assessment of any fees or penalties adopted under Rule 9.2 for meter reading and inspection as a result of District inspections to obtain current and accurate pumpage and/or transported volumes; and

(b) additional enforcement measures provided by these rules or by order of the Board.

Rule 9.4 District Inspections

No person shall unreasonably interfere with the District's efforts to conduct inspections or otherwise comply with the requirements, obligations, and authority provided in Section 36.123 of

the Texas Water Code.

Rule 9.5 Notices of Violation

Whenever the District determines that any person has violated or is violating any provision of the District's Rules, including the terms of any rule or order issued by the District, it may use any of the following means of notifying the person or persons of the violation:

(a) Informal Notice: The officers, staff or agents of the District acting on behalf of the District or the Board may inform the person of the violation by telephone by speaking or attempting to speak to the appropriate person to explain the violation and the steps necessary to satisfactorily remedy the violation. The information received by the District through this informal notice concerning the violation will be documented, along with the date and time of the call, and will be kept on file with the District. Nothing in this subsection shall limit the authority of the District to act, including emergency actions or any other enforcement action, without first providing notice under this subsection.

(b) Notice of Violation: The District may inform the person of the violation through a written notice of violation issued pursuant to this rule. Each notice of violation issued hereunder shall explain the basis of the violation, identify the rule or order that has been violated or is being violated, and list specific required actions that must be satisfactorily completed, which may include the payment of applicable penalties, to address each violation raised in the notice. Notices of violation issued hereunder shall be tendered by a delivery method that complies with Rule 1.7. Nothing in this rule subsection shall limit the authority of the District to act, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(c) Compliance Meeting: The District may hold a meeting with any person whom the District believes to have violated, or to be violating, a District rule or District order to discuss each such violation and the steps necessary to satisfactorily remedy each such violation. The information received in any meeting conducted pursuant to this subsection concerning the violation will be documented, along with the date and time of the meeting, and will be kept on file with the District. Nothing in this subsection shall limit the authority of the District to act, including emergency actions or any other enforcement action, without first conducting a meeting under this subsection.

Rule 9.6 Show Cause Hearing

(a) Upon recommendation of the General Manager to the Board or upon the Board's own motion, the Board may order any person that it believes has violated or is violating any provision of the District Rules, or any term of a District permit or order, to appear before the Board at a public meeting called for such purpose and show cause why an enforcement action, including the initiation of a suit in a court of competent jurisdiction, should not be pursued by the District against the person or persons made the subject of the show cause hearing.

(b) No show cause hearing under Subsection (a) of this rule may be held unless the District first serves written notice on each person to be made the subject of the hearing not less than twenty (20) days prior to the date of the hearing. Such notice shall include the following:

(1) the time and place for the hearing;

(2) the basis of each asserted violation;

(3) the rule or order that the District believes has been violated or is being violated; and

(4) a request that the person cited duly appear and show cause why enforcement action should not be pursued.

(c) The District may pursue immediate enforcement action against the person cited to appear in any show cause order issued by the District where the person so cited fails to appear and show cause why an enforcement action should not be pursued.

(d) Nothing in this rule shall limit the authority of the District to act, including emergency actions or any other enforcement action, against a person at any time regardless of whether the District holds a hearing under this rule.

SECTION 10

HEARINGS PROCESSES AND PROCEDURES

Rule 10.1 Types of Hearings

(a) The District conducts five general types of hearings under this section:

(1) hearings involving the issuance of permits or permit amendments, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing;

(2) rules enforcement hearings, in which the obligation and authority of the District to impose penalties are considered under specific relevant circumstances, after an opportunity for an adjudicative hearing;

(3) rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District;

(4) hearings on proposed desired future conditions; and

(5) hearings on applications for an exception to the spacing or minimum tract size requirements of these rules.

(b) Any matter designated for hearing before the Board may be heard by a quorum of the Board, referred by the Board for hearing before a Hearing Examiner, or heard by a quorum of the Board along with an appointed Hearing Examiner who officiates during the hearing.

Rule 10.2 General Procedures for All Hearings

(a) Authority of Presiding Officer: The Board president, or another Board member designated by the president, or a Hearings Examiner shall serve as the Presiding Officer for a hearing. The Presiding Officer may conduct a hearing or other proceeding in the manner the Presiding Officer determines most appropriate for the particular proceeding. The authority of a Hearing Examiner appointed by the Board to serve as Presiding Officer may be limited at the discretion of the Board. The Presiding Officer may:

(1) convene the hearing at the time and place specified in the notice for public hearing;

(2) set hearing dates other than the initial hearing date on a permit matter, which is set by the General Manager;

(3) establish the jurisdiction of the District concerning the subject matter under consideration;

(4) rule on motions, the admissibility of evidence, and amendments to pleadings;

(5) designate parties and establish the order for presentation of evidence;

(6) administer oaths to all persons presenting testimony;

(7) examine persons presenting testimony;

(8) prescribe reasonable time limits for the presentation of evidence and oral argument;

(9) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party to the proceeding;

(10) conduct public hearings in an orderly manner in accordance with these rules;

(11) recess a hearing from time to time and place to place;

(12) reopen the record of a hearing for additional evidence when necessary to make the record more complete;

(13) 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; and

(14) exercise any other lawful power necessary or convenient to effectively carry out the responsibilities of the Presiding Officer.

(b) Registration form: Each individual attending a public hearing or other proceeding of the District who wishes to testify or otherwise provide information to the District must submit a form to the Presiding Officer providing the following information:

(1) the individual's name and signature;

(2) the individual's address;

(3) whether the individual plans to testify;

(4) whom the person represents, if the person is not there in the person's individual capacity; and

(5) any other information relevant to the hearing or other proceeding.

(c) Appearance; representative capacity: An interested person may appear in person or may be represented by counsel, an engineer, or other representative, provided the representative is authorized to speak and act for the principal. The person or the person's representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. A partner may appear on behalf of a partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear on behalf of the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority to so appear.

(d) Alignment of parties; number of representatives heard: Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The Presiding Officer may require the members of an aligned class to select one or more persons to represent the class in the proceeding or on any particular matter or ruling and may limit the number of representatives heard but must allow at least one representative from each aligned class to be heard in the proceeding or on any particular matter or ruling.

(e) Appearance by applicant, movant, or respondent: The applicant, movant, party, or respondent, or their authorized representative, should be present at the hearing or other proceeding. Failure to appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the Presiding Officer determines that action is necessary to

fully develop the record. For respondents who have requested a contested case hearing on an enforcement matter under Rule 10.11, the failure to appear at the hearing on the merits will be grounds for the issuance of a default order in favor of the enforcement actions at issue.

(f) Recording:

(1) Contested case hearings: A record of the hearing in the form of an audio or video recording or a court reporter transcription shall be prepared and kept by the Presiding Officer in a contested case hearing. The Presiding Officer shall have the hearing transcribed by a court reporter upon a request by a party to a contested case hearing. The Presiding Officer may assess court reporter transcription costs against the party requesting the transcription or among the parties to the hearing. The Presiding Officer may exclude a party from further participation in a contested case hearing for failure to pay in a timely manner costs assessed against that party under this rule, unless the parties have agreed that the costs assessed against such party will be paid by another party.

(2) Uncontested hearings: In an uncontested hearing the Presiding Officer may use the means available in Subsection (f)(1) of this rule to record a proceeding or substitute meeting minutes or the report set forth under Rule 10.5(c) for a method of recording the hearing.

(3) Rulemaking hearings: 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.

(g) Filing of documents; time limit: Applications, petitions, motions, exceptions, communications, requests, briefs, or other papers and documents required to be filed under these rules or by law must be received at the District office within the time limit, if any, set by these rules or by the Presiding Officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit, unless the filing party is able to demonstrate that a postal system error prevented the submission from arriving within the time limit.

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(h) Affidavit: If a party to a hearing or other proceeding is required to make an affidavit, the affidavit may be made by the party or the party's representative. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.

(i) Broadening the issues: No person will be allowed to appear in a hearing or other proceeding that in the opinion of the Presiding Officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.

(j) Conduct and decorum: Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding

that interferes with the orderly conduct of District business. If, in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer determines necessary.

(k) Public comment on applications: Documents that are filed with the Board that comment on an application but do not request a hearing will be treated as public comment. The Presiding Officer may allow any person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application.

Rule 10.3 Permit Application Hearings

(a) Permit Applications and Amendments: The District shall hold a public hearing for each activity for which a permit or permit amendment is required pursuant to Section 3, subject to the exception in Rule 10.3(b). A public hearing involving permit matters may be scheduled before a Hearing Examiner.

(b) The District shall hold a public hearing for minor amendments as determined by the General Manager and these rules only if the General Manager determines that a hearing is required.

(c) Continuances: The Presiding Officer may continue a preliminary hearing or a contested case hearing from time to time and from place to place without providing notice under Rule 10.4. If the Presiding Officer continues a preliminary hearing or a contested case hearing without announcing at the hearing the time, date, and location of the continued hearing, the Presiding Officer must provide notice of the continued hearing by regular mail to the parties. In a proceeding in which the District has contracted with the State Office of Administrative Hearings for a contested case hearing, a continuance issued after receipt of the final proposal for decision of the administrative law judge may not exceed the time limit for the issuance of a final decision under Rule 10.14(g-2).

(d) Hearings on Motions for Rehearing: Motions for rehearing will be heard by the Board pursuant to Rule 10.15(d).

Rule 10.4 Notice and Scheduling of Hearings on Permit Applications and Applications for an Exception to Minimum Tract Size and Spacing Requirements

(a) This rule applies to all permit matters for which a public hearing is required, except as provided under Section 11 for Historic Use Permit applications.

(b) Scheduling of Hearing. Unless these rules specifically provide that a public hearing is not required for an application, the General Manager or Board will schedule the application for a hearing at a regular or special meeting of the Board. The Board may schedule hearings for additional dates, times, and places if the hearing is to be presided over by a Hearing

Examiner. The General Manager or Board may schedule more than one application for consideration at a public hearing. Well registrations do not require a public hearing or Board action.

(c) Not later than the 10th day before the date of a hearing, the General Manager, as instructed by the Board, is responsible for giving notice in the following manner:

(1) by posting notice in a place readily accessible to the public at the District's office;

(2) by providing the notice to the County Clerk of each county in the District;

(3) by regular mail to the applicant;

(4) by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d);

(5) if an exception to the minimum well spacing distances is requested, by providing notice as required by Rule 4.7; and

(6) by regular mail to any other person entitled to receive notice under the District's rules.

(d) A person having an interest in the subject matter of a public hearing on a permit application or application for an exception to the minimum tract size or spacing requirements may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service by first class mail, fax, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this subsection does not invalidate any action taken by the Board.

(e) The notice provided under Subsections (c) and (d) must include:

(1) the name of the applicant;

(2) the name or names of the owner or owners of the land if different from the applicant;

(3) the address or approximate location of the well or proposed well;

(4) if the notice is for a permit, permit amendment, or exception from spacing requirements, provide a brief explanation, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;

(5) the time, date, and location of the hearing; and

(6) any other information the Board or General Manager deems relevant and appropriate to include in the notice.

(f) An administratively complete application shall be set for a public hearing on a specific date within sixty (60) days after the date the administratively complete application is submitted to the District. A hearing shall be held within thirty-five (35) days after the setting of the date, and the District shall act on the application within sixty (60) days after the date the final hearing on the application is concluded.

(g) A public hearing may be scheduled during the District's regular business hours, excluding District holidays. All permit hearings will 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. The Board may change or schedule additional dates, times, and places for hearings.

(h) Failure to provide notice in accordance with this rule does not invalidate an action taken by the District at the hearing.

Rule 10.5 Uncontested Applications

(a) The Board may act 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:

(1) grant the application;

(2) grant the application with special conditions; or

(3) deny the application.

(b) The District may allow any person, including the General Manager or a District employee, to provide comments at a public hearing on an uncontested application.

(c) Any case not declared a contested case under Rule 10.6 is an uncontested case, and the Presiding Officer will summarize the evidence and issue a report to the Board within thirty (30) days after the date a public hearing is concluded. Such report 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 to the Board. A copy of the report must be provided to the applicant and each person who provided comment. A report is not required if the hearing was conducted by a quorum of the Board and the hearing was recorded pursuant to Rule 10.2(f).

Rule 10.6 Contesting a Permit Application

(a) Contested case hearings may be requested in connection with the following applications:

(1) Historic Use Permits;

(2) Operating Permits;

(3) major amendments to any existing permit; and

(4) exceptions to spacing requirements.

(b) The following may request a contested case hearing on an application for a permit, a permit amendment, or an exception to spacing requirements:

(1) the General Manager;

(2) the applicant; or

(3) a person who has 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 the application for permit, permit amendment, or exception to spacing requirements, not including persons who have an interest common to members of the public.

(c) A request for a contested case hearing must be in writing and be filed on or before the date noticed for the initial public hearing on an application, and before Board action on the application, regardless of any continuance of the public hearing.

(d) Requirement for contested case hearing requests on applications: A request for a contested case hearing must be in writing and substantially comply with the following:

(1) provide the name, address, daytime telephone number, e-mail address, and fax number of the person who files the request. If the request is made by a corporation, partnership, or other business entity, or a group or an association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the entity, group, or association;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) state whether the person requesting the contested case hearing is the applicant for that permit, holder of another groundwater withdrawal permit, owner of a registered well, or a landowner or other person with a justiciable interest pursuant to Subsection (d)(2) of this rule;

(4) set forth the grounds on which the person is protesting the application;

(5) request a contested case hearing;

(6) be timely under Subsection (f) of this rule;

(7) be sworn to; and

(8) provide any other information required by the public notice of application.

(e) Contested case hearing request on more than one application: If a person or entity is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

(f) Deadline for contested case hearing requests on applications: A hearing request is considered timely if it complies with Subsection (d) of this rule and:

(1) it is submitted in writing to and received by the District on or before the date of the hearing and action by the Board on the application; or

(2) the person appears before the Board at the hearing and submits a written contested case hearing request opposing the application.

(g) For a hearing request on a Historic Use Permit application, the date of the public hearing set forth in accordance with Rule 11.5(a) shall be used for purposes of determining timeliness under this subsection.

(h) Contested case: A matter regarding an application is considered to be contested if a hearing request is made pursuant to Subsections (d) and (e) of this rule, made in a timely manner pursuant to Subsection (f) of this rule, and declared as such by the Presiding Officer. Any case not declared a contested case under this rule is an uncontested case.

Rule 10.7 Processing of Contested Case Hearing Requests

(a) After a contested case hearing request is timely filed, the Board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with these rules.

(b) At least twenty (20) days prior to a preliminary hearing to hear the request for a contested case hearing, District staff will provide notice to the applicant and any persons who filed a

timely hearing request. The General Manager is deemed to have constructive notice of the preliminary hearing.

(c) Potential parties may submit a written response to the contested case hearing request no later than ten (10) days before the scheduled preliminary hearing to hear the request for a contested case hearing. Responses must be filed with the District and served on the General Manager, the applicant, and any other persons who timely filed a hearing request in connection with that matter.

(d) The person requesting a contested case hearing may submit a written reply to a response no later than five (5) days before the scheduled preliminary hearing to hear the request for a contested case hearing. All replies shall be filed with the District and served on the same day on the General Manager, the applicant, and any other person who timely filed a contested case hearing request.

(e) The preliminary hearing may be conducted by:

(1) a quorum of the Board;

(2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or

(3) the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Rule 10.8.

(f) The determination of whether a contested case 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 has standing or that no justiciable issues were raised, the Board may take any action authorized under Texas Water Code Section 36.4051 and Rule 10.5.

(g) 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.

(h) At the discretion of the Board or hearing examiner, persons not designated as parties to the contested case hearing 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.

(i) If the Board grants the contested case hearing request, a contested case hearing must be conducted by:

(1) a quorum of the Board;

(2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or

(3) the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Rule 10.8.

(j) Except as provided by Rule 10.8, the Board president, or another Board member designated by the president, or a hearing examiner shall serve as the Presiding Officer for a contested case hearing. The Presiding Officer shall:

(1) schedule a preliminary hearing;

(2) at least twenty-one (21) days after the preliminary hearing, schedule an evidentiary hearing; and

(3) following the evidentiary hearing, prepare a proposal for decision including proposed findings of fact and conclusions of law, and transmit that proposal to the Board.

(k) The Board shall schedule a final hearing where it will consider the evidence and testimony presented during the evidentiary hearing and the Presiding Officer's proposal for decision.

(l) Following the final hearing, the Board may:

(1) grant the application;

(2) grant the application with conditions; or

(3) deny the application.

(m) The Presiding Officer may recommend issuance of a temporary permit for a period not to exceed four (4) months, with any special provisions the Presiding Officer deems necessary, for the purpose of completing the contested case hearing process.

Rule 10.8 Delegation to State Office of Administrative Hearings

(a) By order, the Board may delegate to the State Office of Administrative Hearings the authority to conduct hearings designated by the Board.

(b) If the Board refers a contested case hearing to the State Office of Administrative Hearings, then Subchapters C, D, and F, Chapter 2001, Texas Government Code, and the applicable rules of practice and procedure of the State Office of Administrative Hearings (1 TEX.

ADMIN. CODE Ch. 155) govern any contested case hearing of the District, as supplemented by this subchapter.

(c) If the Board refers a preliminary hearing or contested case hearing to the State Office of Administrative Hearings, the administrative law judge who conducts the contested case hearing shall serve as the Hearing Examiner and consider applicable District rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.

(d) If the Board refers a contested case hearing to the State Office of Administrative Hearings, the District may not attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.

(e) 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 party must file such a request not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by the State Office of Administrative Hearings. 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, before the hearing begins, deposit with the District an amount sufficient to pay the contract amount. At the conclusion of the hearing, the District shall refund any excess money to the paying party.

Rule 10.9 Consolidated Hearing on Application

(a) Except as provided by Subsection (b), the Board shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant.

(b) The Board is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.

Rule 10.10 Remand to Board

(a) A Hearing Examiner may remand an application to the Board as follows:

(1) all timely hearing requests have been withdrawn;

(2) all parties to a contested case reach a settlement so that no facts or issues remain controverted; or

(3) the party or parties requesting the hearing defaults.

(b) 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.

Rule 10.11 Contested Case Hearings on Enforcement Matters

(a) A person in receipt of a written notice of violation from the District, or an order of the Board involving a matter for which an opportunity for a contested enforcement action has not previously been provided, may formally contest the enforcement action or actions at issue by submitting to the District a written petition contesting the actions or proposed actions and seeking a hearing on the merits of the same.

(b) A petition filed pursuant to Subsection (a) of this rule must be filed within forty-five (45) days following the date the notice of violation or order is delivered. For purposes of this rule only, the date a notice of violation or order will be considered delivered is the date of delivery as evidenced by a return receipt or written delivery confirmation generated by the United States Postal Service. In the absence of either a return receipt, a delivery confirmation, or other convincing evidence indicating otherwise, a notice of violation or order is considered delivered on the third business day following the date such notice or order was deposited by the District for delivery with the United States Postal Service.

(c) Petitions filed under Subsection (a) shall be addressed directly to the Board of Directors of the Prairielands Groundwater Conservation District, and shall contain the following:

(1) the name, physical address, email address, daytime telephone number and, if available, the facsimile number of the Respondent;

(2) the name and contact information of all other known parties;

(3) a concise statement of the facts relied upon in defense of each violation asserted by the District to which a contest is being filed;

(4) a concise statement of any law relied upon in defense of each violation asserted by the District to which a contest is being filed;

(5) a statement regarding the type of relief requested; and

(6) the signature of the Respondent or the Respondent's authorized representative.

(d) A petition may adopt and incorporate by reference any part of any document or entry in the official files and records of the District. Copies of the relevant portions of such documents must be attached to the petition.

(e) Parties to an enforcement action formally contested under this rule may file supplemental or amended pleadings no later than seven (7) days before a hearing on the merits of the matter.

Rule 10.12 Notice and Scheduling of Contested Case Hearings on Enforcement Matters

(a) This rule applies to all enforcement matters for which a contested case hearing has been requested in accordance with Rule 10.11.

(b) Not later than the 20th day before the date of a hearing, the General Manager, as instructed by the Board, shall notify the respondent of the contested case hearing by providing notice of the same:

(1) in a place readily accessible to the public at the District's office; and

(2) by mail, facsimile, or electronic mail to the respondent or the respondent's designated representative.

(c) The notice provided under Subsection (b) must include:

(1) the name of the respondent;

(2) the mailing address of the respondent;

(3) the date or dates of all notices of violation or Board orders that will be the subject of the contested case hearing, along with a description of the violations noticed in each pertinent notice of violation or Board order;

(4) the date that the request for a contested case hearing on the proposed enforcement action was received by the District;

(5) a statement informing the respondent of the need to appear at the contested case hearing;

(6) the time, date, and location of the contested case hearing; and

(7) any other information the Board or General Manager deems relevant and appropriate to include in the notice.

(d) A contested case hearing on the merits of the enforcement matters noticed under this rule shall begin within sixty (60) days after the date that the request under Rule 10.11 is received by the District.

(e) Requisites for notice of show cause hearings ordered by the Board shall be governed by

Rule 9.6(b).

Rule 10.13 Contested Permit Application and Enforcement Hearings Procedures

(a) A procedural hearing may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process in contested matters. Matters that may be considered at a procedural hearing include:

(1) the designation of parties;

(2) the formulation and simplification of issues;

(3) the necessity or desirability of amending applications or other pleadings;

(4) the possibility of making admissions or stipulations;

(5) the scheduling of depositions, if authorized by the Presiding Officer;

(6) the identification of and specification of the number of witnesses;

(7) the filing and exchange of prepared testimony and exhibits; and

(8) the procedure at the evidentiary hearing.

(b) A procedural hearing or evidentiary hearing may be held at a date, time, and place stated in a notice given in accordance with Rule 10.4 or Rule 10.12, as applicable, or at the date, time, and place for hearing stated in the notice of public hearing and may be continued at the discretion of the Presiding Officer.

(c) Action taken at a procedural hearing may be reduced to writing and made a part of the record or may be stated on the record at the close of the hearing.

(d) Designation of parties:

(1) Parties to a contested permit hearing will be designated as determined by the Presiding Officer in accordance with these rules.

(2) The General Manager and the applicant are automatically designated as parties in matters involving permit or permit amendment applications.

(3) The General Manager and the respondent are automatically designated as parties in contested cases involving enforcement actions.

(4) In order to be admitted as a party, persons other than the automatic parties must

appear at the contested case hearing in person or by representation and seek to be designated as a party.

(5) A person requesting a contested case hearing that is unable to attend the first day of the proceeding must submit a continuance request to the Presiding Officer, in writing, stating good cause for his inability to appear at the proceeding. The Presiding Officer may grant or deny the request, at his or her discretion.

(6) After parties are designated, no other person may be admitted as a party unless, in the judgment of the Presiding Officer, there exists good cause and the hearing will not be unreasonably delayed.

(e) Service of Documents:

(1) For any document filed in a contested case hearing, the person filing that document must serve a copy on all parties.

(2) A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served.

(f) Continuances:

(1) The Presiding Officer may continue a contested case hearing from time to time and from place to place without providing notice under Rules 10.4 or 10.12. In a proceeding in which the District has contracted with the State Office of Administrative Hearings for a contested case hearing, a continuance issued after receipt of the final proposal for decision of the administrative law judge may not exceed the time limit for the issuance of a final decision under Rule 10.14(g-2

(2) If the Presiding Officer continues a contested case hearing without announcing at the hearing the time, date, and location of the continued hearing, the Presiding Officer must provide notice of the continued hearing by regular mail to the parties.

(3) Parties to a contested case hearing, with the approval of the Presiding Officer, may agree to modify any time limit prescribed by these rules related to conducting contested case hearings.

(g) Discovery:

Discovery in contested case proceedings will be governed by Chapter 2001, Subchapter D, Texas Government Code and Title 1, Chapter 155, Subchapter F, Texas Administrative Code, as supplemented by this subchapter. Depositions in a contested case shall be governed by Texas Government Code §§ 2001.096-2001.102.

(h) Evidentiary matters:

(1) Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.

(2) The rules of privilege recognized by law shall be given effect.

(3) An objection to an evidentiary offer may be made and shall be noted in the record.

(4) Evidence may be received in writing if:

(A) it will expedite the hearing; and

(B) the interests of the parties will not be substantially prejudiced.

(5) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.

(6) A party may conduct cross-examination required for a full and true disclosure of the facts.

(7) Witnesses shall be sworn and their testimony taken under oath.

(8) Official notice may be taken of:

(A) all facts that are judicially cognizable; and

(B) 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 noticed, including staff memoranda or information. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledge of District staff may be used in evaluating the evidence.

(i) Depositions and Subpoenas:

(1) 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.

(2) 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.

(3) 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.

(4) In the case of a contested case 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.

(j) Furnishing copies of pleadings: After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every party or party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies to a party or a party’s representative may be grounds for withholding consideration of the pleading or the matters set forth therein.

(k) Disabled parties and witnesses: Persons who have special requests concerning their need for reasonable accommodation, as defined by the Americans With Disabilities Act, 42 U.S.C.12111(9), during a Board meeting or a hearing shall make advance arrangements with the General Manager of the District. Reasonable accommodation shall be made unless undue hardship, as defined in 42 U.S.C. 12111(10), would befall the District.

(l) Interpreters for deaf parties and witnesses: If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. “Deaf person” means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(m) Agreements to be in writing: No agreement between parties or their representatives affecting any pending matter will be considered by the Presiding Officer unless it is in writing, signed by all parties, and filed as part of the record, or unless it is announced at the

hearing and entered on the record.

(n) Ex Parte communications: Neither the Presiding Officer nor a Board member may communicate, directly or indirectly, in connection with any issue of fact or law in a contested case with any agency, person, party, or representative, except with notice and an opportunity for all parties to participate. This subsection does not apply if:

(1) the Board member abstains from voting on a matter in which he or she engaged in ex parte communications;

(2) the communications were by and between members of the Board consistent with the Texas Open Meetings Act;

(3) 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

(4) the communications are with legal counsel representing the Board.

(o) Written testimony: The Presiding Officer may allow testimony to be submitted in writing, either in narrative or question and answer form, and may require the written testimony be sworn to. On the motion of a party to a contested case hearing, the Presiding Officer may exclude written testimony if the person who submits the testimony is not available for cross-examination in person or by phone at the hearing, by deposition before the hearing, or other reasonable means.

(p) Cross-examination: The opportunity for cross-examination shall be provided for all testimony offered in a contested case hearing.

(q) Evidence:

(1) The Presiding Officer shall admit evidence if it is relevant to an issue at the contested case hearing. The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) Notwithstanding Paragraph (1) of this subsection, the Texas Rules of Evidence govern the admissibility and introduction of evidence of historic use or existing use in a Historic Use Permit application, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(r) Burden of Proof:

(1) The General Manager has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed remedial provisions and penalties. The Respondent has the burden of proving by a

preponderance of the evidence all elements of any affirmative defense asserted.

(2) Except as provided by Paragraph (1) of this subsection, the burden of proof is on the moving party by a preponderance of the evidence.

Rule 10.14 Proposal for Decision

(a) Except as provided by Subsection (e) of this rule, 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 recommendation required by this rule.

(b) The proposal for decision must include a summary of the subject matter of the contested case hearing, a summary of the evidence, and the Presiding Officer's recommendations for Board action on the subject matter of the hearing.

(c) The Presiding Officer or the General Manager must provide a copy of the proposal for decision to the Board and each designated party to the proceeding.

(d) A party may submit to the Board written exceptions to the proposal for decision.

(e) If the contested case hearing was conducted by a quorum of the Board and if the Presiding Officer prepared a record of the hearing as provided by Rule 10.2(f), the Presiding Officer shall determine whether to prepare and submit a proposal for decision to the Board under this rule.

(f) The Board shall consider the proposal for decision, any exceptions to the proposal for decision, and replies to the exceptions at a final hearing. Additional evidence may not be presented during the 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 in accordance with these rules.

(g) In a proceeding for a permit application or amendment in which the District has contracted with the State Office of Administrative Hearings for a contested case hearing, the Board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge. The Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, only if the Board determines that:

(1) the administrative law judge did not properly apply or interpret applicable law, the District rules or written District policies provided to the administrative law judge pursuant to Texas Water Code Section 36.416(e), or prior administrative decisions;

(2) a prior administrative decision on which the administrative law judge relied is

incorrect or should be changed; or

(3) a technical error in a finding of fact should be changed.

(g-1) A final decision issued by the Board under Subsection (g) must be in writing and must either adopt the proposed findings of fact and conclusions of law as proposed by the administrative law judge or include revised findings of fact and conclusions of law consistent with that subsection.

(g-2) Notwithstanding any other law, the Board shall issue a final decision under Subsection (g) not later than the 180th day after the date of receipt of the final proposal for decision from the State Office of Administrative Hearings. The deadline may be extended if all parties agree to the extension.

(g-3) Notwithstanding any other law, if a motion for rehearing is filed and granted by the Board under Rule 10.15(d), the Board shall make a final decision on the application not later than the 90th day after the date of the decision by the Board that was subject to the motion for rehearing.

(g-4) The Board is considered to have adopted a final proposal for decision of the administrative law judge as a final order on the 181st day after the date the administrative law judge issued the final proposal for decision if the Board has not issued a final decision by:

(4) adopting the findings of fact and conclusions of law as proposed by the administrative law judge; or

(5) issuing revised findings of fact and conclusions of law as provided by Subsection (g-1).

(g-5) A proposal for decision adopted under Subsection (g-4) is final, immediately appealable, and not subject to a request for rehearing.

Rule 10.15 Final Decision; Appeal

(a) Board Action on R~~r~~ulemaking H~~h~~earings: After the record is closed on a rulemaking hearing and the matter is submitted to the Board, the Board may take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought, grant the action sought in whole or part, or take any other appropriate action. Board action on a rulemaking hearing takes effect at the conclusion of the meeting in which the Board took the action and is not affected by a request for rehearing.

(b) Board Action on P~~p~~ermit H~~h~~earings: The Board shall act on a matter involving an application for a permit or an application for a permit renewal or amendment not later than

the 60th day after the date the final hearing on the matter is concluded. The Board shall ensure a decision on a permit or permit amendment application is timely rendered in accordance with the provisions set forth in these rules and Chapter 36, Texas Water Code. The Board may act on an uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The public meeting may be held in conjunction with a regularly scheduled or special called Board meeting. The Board may issue a written order to grant an application, grant the application with special conditions, or deny the application. The Board, on the motion of any party or on its own motion, may order a remand to reopen the record for further proceedings on specific issues of dispute.

(c) Determination of merit in enforcement hearings:

(1) Following the closing of a hearing presided over by the Board pursuant to this section, or following receipt of a proposal for decision from the Presiding Officer pursuant to Rule 10.14, the Board shall consider the evidence admitted on each issue in contest and shall, based upon the preponderance of the credible evidence admitted, render a decision on the matter that shall include provisions requiring remedial relief, where appropriate, and one of the following findings:

(A) that a violation has occurred and that a specific amount of penalties should be assessed;

(B) that a violation has occurred but that no penalty should be assessed; or

(C) that no violation has occurred.

(2) When assessing a penalty, the Board shall analyze each factor prescribed by the applicable statute or rule to be considered by the Board in determining the amount of the penalty.

(3) The Board shall act on contested enforcement matters no later than the 60th day following the date of submission of closing arguments, or within thirty (30) days following receipt of the hearings report submitted by the Presiding Officer pursuant to Rule 10.5(c), whichever is later.

(d) Requests for Rehearing or Findings of Fact and Conclusions of Law:

(1) An applicant in a contested or uncontested case hearing on a permit application or a party to a contested case hearing may administratively appeal a decision of the Board on a permit or permit amendment application, or on an enforcement matter, by making a request in writing to the Board. A party seeking to appeal a decision by the Board must request~~by requesting~~ written findings of fact and conclusions of law ~~or a rehearing before the Board~~ not later than the 20th day after the date of the Board's decision unless the Board issued findings of fact and conclusions of law as

part of the final decision.

(2) On receipt of a timely written request under Subsection (d)(1) of this rule, the Board shall make written findings of fact and conclusions of law regarding a decision of the Board on a permit or permit amendment application or on an enforcement matter. The Board shall provide certified copies of the findings of fact and conclusions of law 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 person who receives a certified copy of the findings and conclusions from the Board may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.~~

(3) A party to a contested hearing may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings of fact and conclusions of law. 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 case hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.

(4) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(5) The Board shall consolidate requests for rehearing filed by multiple parties to the contested case hearing, but only one rehearing may be considered per matter.

(6) A timely filed motion for rehearing shall be denied under operation of law should the Board fail to grant or deny the request before the 91st day after the date the request is submitted.

(e) Decision; when final: A decision by the Board on a permit or permit amendment application or on an enforcement matter is final:

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

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

(A) the Board denies the request for rehearing, either expressly or by operation of law; or

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

Rule 10.16 Notice and Scheduling of Rulemaking Hearings

(a) Not later than the 20th day before the date of a rulemaking hearing, for rulemaking hearings

that require notice under Section 36.101, Water Code, the General Manager, as instructed by the Board, is responsible for giving notice in the following manner:

(1) Publish notice of the hearing at least once in a newspaper of general circulation in the county in which the District is located;

(2) Post a copy of the notice in a place readily accessible to the public at the District's office;

(3) Provide notice of the hearing to the County Clerk of each county in the District;

(4) Provide notice by mail, fax, or electronic mail to any person who has requested notice under Subsection (b); and

(5) Make available a copy of all proposed rules at the District's offices during normal business hours and post an electronic copy on the District's website.

(b) A person having an interest in the subject matter of a rulemaking hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this subsection does not invalidate any action taken by the Board.

(c) The notice provided under Subsection (a) must include:

(1) the time, date, and location of the rulemaking hearing;

(2) a brief explanation of the subject of the rulemaking hearing; and

(3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

(d) A rulemaking hearing may be scheduled during the District's regular business hours, excluding District holidays. All rulemaking hearings will 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. The Board may change or schedule additional dates, times, and places for hearings.

Rule 10.17 Rulemaking Hearings Procedures

(a) General procedures: 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 matter of the hearing as conveniently, inexpensively, and expeditiously as possible. In conducting a rulemaking hearing, the Presiding Officer may elect to utilize procedures set forth in these rules for permit hearings to the extent that and in the manner that the Presiding Officer deems most appropriate for the particular rulemaking hearing. The Presiding Officer will prepare and keep a record of the rulemaking hearing in the form of an audio or video recording or a court reporter transcription at his or her discretion.

(b) Submission of documents: Any interested person may submit to the Presiding Officer written statements, protests, comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject matter of the hearing. Such documents must be submitted no later than the time of the rulemaking hearing as stated in the notice of hearing given in accordance with Rule 10.16. The Presiding Officer may grant additional time for the submission of documents.

(c) Oral presentations: Any person desiring to testify on the subject matter of the rulemaking hearing must so indicate on the registration form provided at the hearing. The Presiding Officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. The Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

Rule 10.18 Hearings on Desired Future Conditions

(a) At least ten (10) calendar days before a public hearing or a Board meeting required for the adoption of the Desired Future Condition(s) under Section 36.108(d-2) or (d-4) of the Texas Water Code, the District shall post notice that includes the following:

(1) the proposed Desired Future Condition(s) and a list of any other agenda items;

(2) the date, time, and location of the meeting or hearing;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the name of the other groundwater districts in the Groundwater Management Area; and

(5) information on how the public may submit comments.

(b) Notice for a hearing required under Section 36.108(d-2), Texas Water Code, shall be posted and published in the same manner as that for rulemaking hearings in Rule 10.16.

(c) During the public comment period, the District shall make available in its office a copy of the proposed Desired Future Condition(s) and any supporting materials.

Rule 10.19 Appeal of Desired Future Conditions

(a) Not later than one hundred twenty (120) calendar days after the date on which the District adopts a Desired Future Condition under Subsection 36.108(d-4), Texas Water Code, a person determined by the District to be an affected person may file a petition appealing the reasonableness of a Desired Future Condition. The petition must include:

(1) evidence that the petitioner is an affected person;

(2) a request that the District contract with the State Office of Administrative Hearings to conduct a hearing on the petitioner's appeal of the reasonableness of the Desired Future Condition;

(3) evidence that the districts did not establish a reasonable Desired Future Condition of the groundwater resources within the Groundwater Management Area.

(b) Not later than ten (10) calendar days after receiving a petition described by Subsection (a), the District shall determine whether the petition was timely filed and meets the requirements of Rule 10.19(a) and, if so, shall submit a copy of the petition to the Texas Water Development Board. If the petition was untimely or did not meet the requirements of Rule 10.19(a), the District shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than sixty (60) calendar days after receiving a petition under Rule 10.19(a), the District shall:

(1) contract with the State Office of Administrative Hearings to conduct the requested hearing; and

(2) submit to the State Office of Administrative Hearings a copy of any petitions related to the hearing requested under Rule 10.19(a) and received by the District.

(c) A hearing under Rule 10.19(a) and (b) must be held:

(1) at the District office unless the District's Board provides for a different location; and

(2) in accordance with Chapter 2001, Texas Government Code, and the State Office of Administrative Hearing's rules.

(d) Not less than ten (10) calendar days prior to the date of the State Office of Administrative Hearings hearing under this rule, notice shall be issued by the District and meet the following requirements:

(1) state the subject matter, time, date, and location of the hearing;

(2) be posted at a place readily accessible to the public at the District's office;

(3) be provided to the county clerk's office for posting; and

(4) be sent by certified mail, return receipt requested; hand delivery; first class mail; fax; email; FedEx; UPS; or any other type of public or private courier or delivery service to:

(A) the petitioner;

(B) any person who has requested notice in writing to the District;

(C) each nonparty district and regional water planning group located within the Groundwater Management Area 8;

(D) Texas Water Development Board's Executive Administrator; and

(E) TCEQ's Executive Director.

(e) Before a hearing is conducted under this rule, the State Office of Administrative Hearings shall hold a prehearing conference to determine preliminary matters, including:

(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and

(3) each affected person that shall be named as a party to the hearing.

(f) The burden of proof is on the petitioner to demonstrate at the hearing that the adopted Desired Future Condition is unreasonable.

(g) The petitioner shall pay the costs associated with the contract for the hearing conducted by the State Office of Administrative Hearings under this rule. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, the State Office of Administrative Hearings may assess costs to one or more of the parties participating in the hearing and the District shall refund any money exceeding actual hearing costs to the petitioner. The State Office of Administrative Hearings shall consider the following in apportioning costs of the hearing:

(1) the party who requested the hearing;

(2) the party who prevailed in the hearing;

(3) the financial ability of the party to pay the costs;

(4) the extent to which the party participated in the hearing; and

(5) any other factor relevant to a just and reasonable assessment of costs.

(h) On receipt of the Administrative Law Judge's findings of fact and conclusions of law in a proposal for decision, which may include a dismissal of a petition, the District shall issue a final order stating the District's decision on the appeal of the Desired Future Conditions and the District's findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the Administrative Law Judge or may vacate or modify an order issued by the Administrative Law Judge, as provided by Section 2001.058(e), Texas Government Code.

(i) If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the Administrative Law Judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.

(j) If the District in its final order finds that a Desired Future Condition is unreasonable, not later than the 60th calendar day after the date of the final order, the District shall coordinate with the districts in the Groundwater Management Area at issue to reconvene in a joint planning meeting for the purpose of revising the Desired Future Condition found to be unreasonable. The districts in the Groundwater Management Area shall follow the procedures in Section 36.108, Texas Water Code, to adopt new Desired Future Conditions applicable to the District.

(k) The Administrative Law Judge may consolidate hearings requested under this rule that affect two or more districts. The Administrative Law Judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

SECTION 11

HISTORIC USE PERMIT PROCESSES AND PROCEDURES

Rule 11.1 Implementation of Historic Use Permit Program

This section has been adopted to implement the District's Historic Use Permit program in furtherance of the requirements set forth in Rule 3.8 and shall apply solely to Historic Use Permit applications.

Rule 11.2 Determination of Administrative Completeness

(a) Upon receipt of an application for a Historic Use Permit, the deadline for which is November 1, 2019, for existing wells as defined by Rule 3.8(a), the General Manager shall conduct an initial review of the application for administrative completeness. The applicant must provide evidence of an existing and historic use in accordance with the requirements of these rules to be determined eligible for a Historic Use Permit.

(b) Applications for a Historic Use Permit that are required to complete a groundwater production Verification Period under Rule 3.8(k) will be reviewed for administrative completeness by the General Manager in the same manner as other Historic Use Permit applications, except that the final determination of administrative completeness and technical review of such applications may be delayed as described in Subsection (c).

(c) During this initial review, or upon determination that an application is or is not administratively complete, the General Manager shall mail written notification to the applicant of any deficiencies in the application or of the General Manager's determination that the application is administratively complete. Any additional information received from the applicant will become part of the application. An application shall not be considered administratively complete until all requested information has been submitted and all applicable fees have been paid. The application may be deemed to have expired, at the discretion of the Board, if the applicant does not complete the application within ninety (90) days of the date of the District's initial request for additional information.

Rule 11.3 Technical Review and Issuance of Notice of Proposed Permit

(a) Upon determination that an application is administratively complete, the General Manager shall conduct a technical review of the application and prepare a recommendation for Board action on the application based upon the information contained in the application and after consideration of the applicable criteria set forth in Chapter 36 of the Texas Water Code, the District Act, and the District rules. The General Manager may request additional information from the applicant to support the General Manager's technical review and development of a recommendation, and may consider all relevant information regarding the Maximum Historic Use of individual wells or well systems. If the General Manager's recommendation is to grant a permit in whole or in part, the recommendation shall include an amount that the General Manager believes the weight of the evidence will support as the applicant's Maximum Historic Use, and the General Manager shall not be constrained by the amount designated as Maximum Historic Use by the applicant in the application or most recent amendment thereto in developing the recommendation. If after the technical review the General Manager recommends issuance of a permit with a Maximum Historic Use amount that is different than the amount claimed by the applicant, the applicant may in its sole discretion agree to amend the application to make the Maximum Historic Use amount equal to the General Manager's recommendation, notwithstanding any deadline to the contrary in these rules for an applicant to amend or update a Historic Use Permit.

(b) Because of the high volume of Historic Use Permit applications expected to be submitted

during a relatively brief time period and the associated administrative burden that will be placed on the District to process such applications, the General Manager is authorized to process technical reviews and schedule applications for hearing by groups of applications in the method that the General Manager deems most efficient.

(c) For Historic Use Permit applications requiring a groundwater production Verification Period, the production history of the well for the entirety of the Verification Period must be submitted as part of the application. The General Manager may conduct an initial review of the application upon receipt under this rule, but an application shall not be declared administratively complete until all required production records have been submitted to and reviewed by the District. Until such time as the Verification Period is completed and the required production history is submitted to the District, the applicant may operate and produce groundwater under an interim authorization by rule as described in Rule 3.8(f).

(d) An applicant for a Historic Use Permit that includes a well or well system for which extrapolated Maximum Historic Use under Rule 1.1(34)(b) is claimed should provide the following to the District in support of the application:

(A) evidence in the form of planning or design documents, records, or otherwise that the applicant reasonably expected to be able to produce the amount of groundwater declared as the Maximum Historic Use in the future, including without limitation evidence of the maximum designed and planned annual groundwater production amount for the project or activity when fully constructed, completed, or built out that would be supplied by the well, and, if applicable, well system, that is the subject of the Maximum Historic Use declaration; and

(B) a description and evidence of any and all investment-backed expectations associated with the well or well system and the groundwater produced from the well or well system. An investment-backed expectation represents the financial resources the applicant invested in a project or activity prior to the District's adoption of these rules based upon a reasonable expectation that the applicant would be able to produce a certain amount of groundwater from the well or well system.

(e) Issuance of Notice of Proposed Permit:

After completing the technical review and developing a recommendation on an application, and no less than thirty (30) days prior to the public hearing, the General Manager shall issue notice of the recommendation and setting of the public hearing in the following manner:

(1) The General Manager's recommendation shall be incorporated into a proposed permit and provided to the applicant by regular mail, along with an advisory on how to protest the recommendation, and notice of the date, time, and place of the public hearing.

(2) The General Manager's recommendation shall be posted at a place convenient to the public in the District office, provided to the County Clerk of each county in the District for posting on a bulletin board at a place convenient to the public at the County Courthouse, and provided by mail, facsimile, or email to any person who has requested notice under Paragraph (3) of this subsection. This notice may include recommendations on one or more applications and shall include the following information:

(A) name and address of the applicant;

(B) the approximate location or address of the well or wells that are the subject of the application;

(C) the Maximum Historic Use claimed by the applicant;

(D) a brief explanation of the proposed permit, including the historic purpose of use of the groundwater, and the General Manager's recommended action, including both the applicant's and the General Manager's proposed Maximum Historic Use recommendation, if applicable;

(E) notice of the date, time, and place of the public hearing;

(F) an advisory on how to protest the recommendation; and

(G) any other information the General Manager deems appropriate to include in the notice.

(3) A person having an interest in the subject matter of a public hearing on a Historic Use Permit application may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for the remainder of the calendar year in which the request is received by the District. To receive notice of a public hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this paragraph does not invalidate any action taken by the Board.

Rule 11.4 Contesting a Historic Use Permit Application

The requirements set forth in Rule 10.6 relating to requests for contested case hearings shall apply to Historic Use Permit applications.

Rule 11.5 Hearing Before the Board

(a) A Historic Use Permit application designated for hearing before the Board may be heard

by the Board, referred by the Board for hearing before a Hearing Examiner, or may be heard by the Board along with an appointed Hearing Examiner who officiates during the hearing. Upon issuance of the notice of proposed permit under this section, the Board shall proceed with setting and conducting the following hearings on an application, as applicable:

(1) public hearing: a public hearing shall be held after issuance of the notice of a proposed permit;

(2) preliminary hearing: a preliminary hearing shall be held on any applications for which a contested case hearing is timely filed;

(3) pre-evidentiary hearing: if determined by the Board or Hearing Examiner to be necessary;

(4) evidentiary hearing: if a request for a contested case hearing on an application is granted, an evidentiary hearing shall be held beginning no later than seventy-five (75) days from the date the request for a contested case hearing is approved by the Board;

(5) final hearing: for Board's consideration of hearing report and final decision;

(6) hearing on any filed motions for rehearing; and

(7) rehearing, if a motion for rehearing is granted.

(b) The parties shall bear their own costs and the District shall not assess costs associated with the hearing beyond any application fee to the applicant or other parties, except as provided by these rules.

Rule 11.6 Public Hearing on Historic Use Permit Applications

(a) Uncontested Historic Use Permit applications: For any application determined to be uncontested, as set forth in Rule 10.5, the Hearing Body may proceed at the public hearing to review the evidence on file with the District and upon consideration of the relevant factors decide on the application if the Hearing Body is the Board. If the Hearing Examiner or two or more members of the Hearing Body disagree with the General Manager's proposed permit, the applicant and General Manager shall be given an opportunity to present additional argument and evidence to address the Hearing Examiner's or Hearing Body's concerns. The Hearing Body or Hearing Examiner may continue the hearing to grant additional time to the applicant to file supplemental evidence with the District. For any application determined to be uncontested, the uncontested hearing procedures of Section 10 of these rules shall apply. At the discretion of the Hearing Body, the procedures of Rule 10.13 may also be applicable.

(b) Contested Historic Use Permit applications: For any application determined to be

contested, the contested case hearings procedures of Section 10 of these rules shall apply to Historic Use Permit applications.

SECTION 12

OTHER DISTRICT MANAGEMENT ACTIONS AND DUTIES

Rule 12.1 District Management Plan

Following notice and hearing, the District shall adopt a comprehensive Management Plan. The District Management Plan shall specify the acts and procedures and performance and avoidance measures necessary to prevent waste, the reduction of artesian pressure, or the draw-down of the water table. The District shall use the rules to implement the Management Plan. The Board will review the Management Plan at least every five (5) years. If the Board considers a new Management Plan necessary or desirable based on evidence presented at a hearing, a new Management Plan will be developed and adopted. A Management Plan, once adopted, remains in effect until the subsequent adoption of another Management Plan.

APPENDIX 1

ENFORCEMENT POLICY AND PENALTY SCHEDULE

General Guidelines

(a) When the General Manager discovers a violation of the District rules that constitutes either a Minor Violation or a Major Violation, the General Manager is authorized to either:

(1) settle the violation in lieu of litigation for an amount not to exceed the applicable amount in the Penalty Schedule set forth below within ninety (90) days of discovering the violation, and report such settlement to the Board; or

(2) recommend to the Board an appropriate settlement offer based upon the Penalty Schedule or institution of a civil suit.

(b) If a violation is brought before the Board under Subsection (a)(2), the Board may instruct the General Manager to tender an offer to settle the violation, order a show cause hearing to be set, or instruct the General Manager to institute a civil suit in the appropriate court to seek administrative and/or civil penalties, injunctive relief, and costs of court and expert witnesses, damages, and attorneys' fees.

I. Minor Violations

The following acts each constitute a minor violation:

1. Failure to conduct a meter reading within the required period.

2. Failure to timely notify the District regarding change of ownership.

3. Failure to timely file a well completion report.

4. Failure to timely submit required documentation reflecting alterations or increased production.

5. Operating a meter that is not accurately calibrated.

6. Failure to timely provide meter logs within ten (10) days of a written request by the District.

~~6.~~7. Failure to submit required water loss audit prior before May 1 of year due.

PENALTY SCHEDULE FOR MINOR VIOLATIONS

First Violation:	**$50.00**
Second Violation:	**$100.00**
Third Violation:	**Major Violation**

II. Major Violations

The following acts each constitute a major violation:

1. Drilling, equipping, completing, altering, or operating a well without a compliant and approved registration or permit if a registration or permit is required by these rules.

2. Operating a well that has a variable frequency drive without the required flow restrictor, as set forth in Rule 3.7.

3. Failure to timely meter a well when required.

4. Operating a well that is required to be metered without a meter that complies with the requirements of Section 8 of these rules.

5. Failure to submit a complete and accurate Water Production Report within the required period.

6. Drilling a well at a different location than authorized or in violation of spacing or minimum tract size requirements.*****

7. Failure to plug a deteriorated well.**

8. Failure to cap or plug an abandoned well.**

9. Failure to close or cap an open or uncovered well.**

10. Failure to submit water use fees within thirty (30) days of the date the fees are due.*******

11. Failure to submit groundwater transport fees within thirty (30) days of the date the fees are due.********

12. Committing waste.

13. Falsification of documents.****

14. Pumping groundwater in excess of the authorized amount.*****

15. Operating a well at a capacity that is higher than the capacity authorized in the well registration.

16. Failure to submit required water loss audit prior before August 1 of year due.

PENALTY SCHEDULE FOR MAJOR VIOLATIONS

First Violation:	**$250.00**
Second Violation:	**$500.00**
Third Violation:	**$1000.00**

Fourth and Subsequent Violations: Civil Suit for injunction and maximum penalties and damages authorized by law.

DETERMINING THE LEVEL OF A MINOR OR MAJOR VIOLATION

Whether a minor or major violation is a first, second, third, fourth, or subsequent minor or major violation will be determined by a five-year period immediately preceding the violation and how many violations the person has incurred during that five-year period. After five years have lapsed, a minor or major violation shall no longer be included in the determination of the level of a subsequent minor or major violation being considered by the Board. For violations of a compliance order, any violation during the term of the compliance order shall be included in the determination of the level of the violation, but violations that occurred during a previous compliance order shall not be included in the determination of the level of a violation during the current compliance order.

* In addition to the applicable penalty provided for in the Penalty Schedule for Major Violations, persons who drill a well in violation of applicable well spacing or minimum tract size requirements may be required to plug the well.

** In addition to the applicable penalty provided for in the Penalty Schedule for Major Violations, persons who fail to plug deteriorated wells, plug or cap an abandoned well, or close or cap an open or uncovered shall be required to do so by the District.

*** In addition to the applicable penalty provided for in the Penalty Schedule for Major Violations, persons who do not submit all water use fees and groundwater transport fees due and owing within thirty (30) days of the date the fees are due pursuant to Rule 7.3 shall be subject to a penalty not to exceed three (3) times the total amount of outstanding water use fees, groundwater transport fees, or both, that are due and owing.

**** In addition to the applicable penalty provided for in the Penalty Schedule, the Board may refer any person it suspects of falsifying documents or records submitted to the District to the district attorney or other local prosecuting authority for criminal prosecution.

***** For violations related to producing more groundwater than authorized by the District, the Board will assess penalties and take other action as indicated in the Fee and Penalty Schedule for Excessive Groundwater Pumping.

III. Renewal of Compliance Orders

Compliance orders are renewable every five (5) years, up to a maximum of twenty (20) years. Renewal of a compliance order is contingent upon the applicant providing evidence every five (5) years demonstrating to the satisfaction of the Board that the applicant has utilized due diligence in the pursuit of alternative water sources or the purchase or lease of additional contiguous controlled acreage during the term of the compliance order. Once a person has entered into a compliance order with the District, any production of groundwater over the amount authorized in the permit during the period of the compliance order is subject to the applicable disincentive fee payment, even if the person does not produce groundwater in excess of the amount authorized in the permit in some years during the period of the compliance order. If a person has ever entered into a compliance order with the District and enters into another compliance order through renewal or otherwise, the provisions of any subsequent compliance order shall be those provisions applicable for the next higher five (5) year level of fees and penalties as set forth in the "Fee and Penalty Schedule for Excessive Groundwater Pumping" from the previous compliance order of the person, regardless of any intermittent years of pumping within the terms of the permit or permits held by the person.

IV. Violations of Compliance Orders

In addition to the disincentive fee required in the compliance order, a person who produces groundwater in excess of the amount authorized by the compliance order shall pay fees and penalties as set forth in the "Fee and Penalty Schedule for Excessive Groundwater Pumping." Once a person has violated a compliance order by producing groundwater in excess of the amount authorized under such order, penalties for additional violations will continue to increase in accordance with the schedule established by this policy, even if there are intermittent periods of compliance. Each violation of the compliance order, regardless of the length of time between violations, incurs the next level of penalties in accordance with this rule.

V. Water Well Construction and Completion Requirements

Failure to use approved construction materials:	**$250 + total costs of remediation**
Failure to properly cement annular space:	**$500 + total costs of remediation**

In addition to the penalties provided for in this schedule, persons who drill a well in violation of applicable well spacing, minimum tract size, or completion requirements may be required to recomplete or reconstruct the well in accordance with the District's rules or may be ordered to plug the well. A violation of the District's well construction and completion requirements is a Major Violation of these rules and is subject to the penalty amounts set forth in the Penalty Schedule for Major Violations.

VI. Other Violations of District Rules Not Specifically Listed Herein

Any violation of a District rule not specifically set forth herein shall be presented to the Board for a determination of whether the violation is Minor or Major, based upon the severity of the violation and the particular facts and issues involved, whereupon the procedures and the appropriate penalty amount set forth herein for Minor and Major Violations shall apply to the violation.

FEE AND PENALTY SCHEDULE FOR EXCESSIVE GROUNDWATER PUMPING****

Pumping in Excess of Authorized Amount	**Compliance Order: No Violation** *See Rule 5.5(f)*	**Compliance Order: Violation** *See Rule 5.5(f)* *In addition to the disincentive fee required in the compliance order, a person who produces groundwater in excess of the amount authorized by the compliance order shall pay fees as follows:*
First Violation: 1. Three (3) times the water use fee for the amount of production exceeding the amount authorized by registration or permit; and 2. Civil penalties totaling 5% of the water use fee for the entire amount of production authorized by registration or permit, or a civil penalty of $100, whichever is greater.	**First Five Years:** Disincentive fee in an amount equal to ten (10) times the amount of the water use fee for all excess groundwater production under the compliance order.	**First Violation:** 1. Three (3) times the water use fee for the amount of production exceeding the amount authorized by the compliance order; and 2. Civil penalties totaling 5% of the water use fee for the entire amount of production authorized by the compliance order, or a civil penalty of $100, whichever is greater.

Second Violation: 1. Ten (10) times the water use fee for the amount of production exceeding the amount authorized by registration or permit; and 2. Civil penalties totaling 10% of the water use fee for the entire amount of production authorized by registration or permit, or a civil penalty of $500, whichever is greater.	**Second Five Years:** Disincentive fee in an amount equal to fifteen (15) times the amount of the water use fee for all excess groundwater production under the compliance order.	**Second Violation:** 1. Ten (10) times the water use fee for the amount of production exceeding the amount authorized by the compliance order; and 2. Civil penalties totaling 10% of the water use fee for the entire amount of production authorized by the compliance order, or a civil penalty of $500, whichever is greater.

Third Violation: 1. Three (3) times the water use fee for the entire amount of production authorized by registration or permit; or 2. Ten (10) times the water use fee for the amount of production exceeding the amount authorized by registration or permit, whichever is greater; and 3. Civil penalties totaling 10% of the water use fee for the entire amount of production authorized by registration or permit, or a civil penalty of $1,000, whichever is greater, not to exceed $10,000; and 4. Civil suit, including injunctive relief to prevent continued violations.	**Third Five Years:** Disincentive fee in an amount equal to twenty (20) times the amount of the water use fee for all excess groundwater production under the compliance order.	**Third Violation:** 1. Three (3) times the water use fee for the entire amount of production authorized by the compliance order; or 2. Ten (10) times the water use fee for the amount of production exceeding the amount authorized by the compliance order, whichever is greater; and 3. Civil penalties totaling 10% of the water use fee for the entire amount of production authorized by the compliance order or a civil penalty of $1,000, whichever is greater, not to exceed $10,000; and 4. Civil suit, including injunctive relief to prevent continued violations.

Fourth Violation: 1. Permit suspension; and 2. Ten (10) times the water use fee for the entire amount of production authorized by registration or permit; and 3. Civil penalties not to exceed $10,000/day for pumping without a permit; and 4. Civil suit, including injunctive relief to prevent continued violations.	**Fourth Five Years:** Disincentive fee in an amount equal to twenty-five (25) times the amount of the water use fee for all excess groundwater production under the compliance order.	**Fourth Violation:** 1. Compliance order suspension; and 2. Ten (10) times the water use fee for the entire amount of production authorized by the compliance order registration; and 3. Civil penalties not to exceed $10,000/day for pumping excess groundwater without a permit; and 4. Civil suit, including injunctive relief to prevent continued violations.

APPENDIX 2

AQUIFERS AND AQUIFER LAYERS

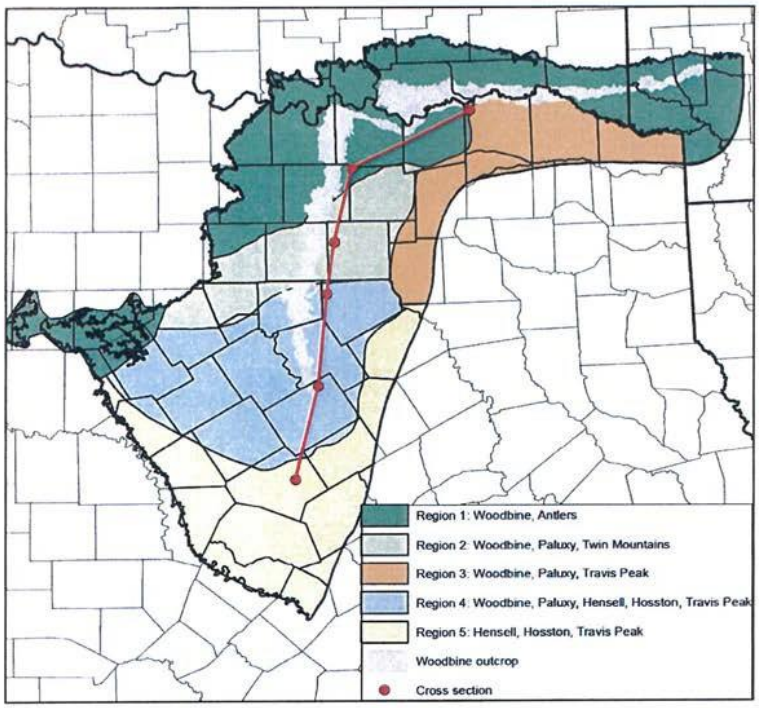

Figure 12. Regions of the Trinity and Woodbine Aquifers.[18] (Note – these regional delineations are not to be confused with regional water planning area boundaries illustrated on Figure 4.)

[18] Kelley, -V.A., Ewing, J., Jones, T. L., Young, S. C., Deeds, N., and Hamlin, S., 2014, Updated groundwater availability model of the Northern Trinity and Woodbine Aquifers: - Final Report: Prepared for the North Texas Groundwater Conservation District, Northern Trinity Groundwater Conservation District, Prairielands Groundwater Conservation District, and Upper Trinity Groundwater Conservation District by INTERA, Inc., The Bureau of Economic Geology, and LBG-Guyton Associates, Volumes I, II, and III, variously paginated.

Model Terminology	Region 1	Region 2	Region 3	Region 4	Region 5
Woodbine Aquifer	Woodbine	Woodbine	Woodbine	Woodbine	Woodbine (no sand)
Washita/ Fredericksburg Groups	Washita/ Fredericksburg	Washita/ Fredericksburg	Washita/ Fredericksburg	Washita/ Fredericksburg	Washita/ Fredericksburg
Paluxy Aquifer	Antlers	Paluxy	Paluxy	Paluxy	Paluxy (no sand)
Glen Rose Formation	Antlers	Glen Rose	Glen Rose	Glen Rose	Glen Rose
Hensell Aquifer	Antlers	Twin Mountains	Travis Peak	Hensell/ Travis Peak	Hensell/ Travis Peak
Pearsall Formation	Antlers	Twin Mountains	Travis Peak	Pearsall/ Sligo	Pearsall/ Sligo
Hosston Aquifer	Antlers	Twin Mountains	Travis Peak	Hosston/ Travis Peak	Hosston/ Travis Peak

Figure 13. Aquifer names by region shown in Figure 12. Modified from Kelley and others (2014).

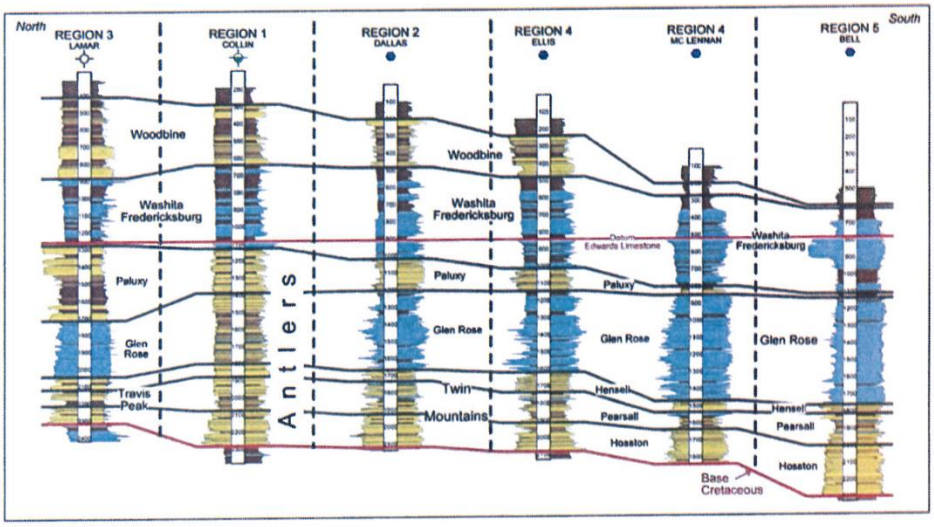

Figure 14. Cross-section showing representative geophysical logs for each aquifer region. The cross-section location is shown in Figure 12.

APPENDIX A

ADOPTION AND AMENDMENTS TO DISTRICT RULES