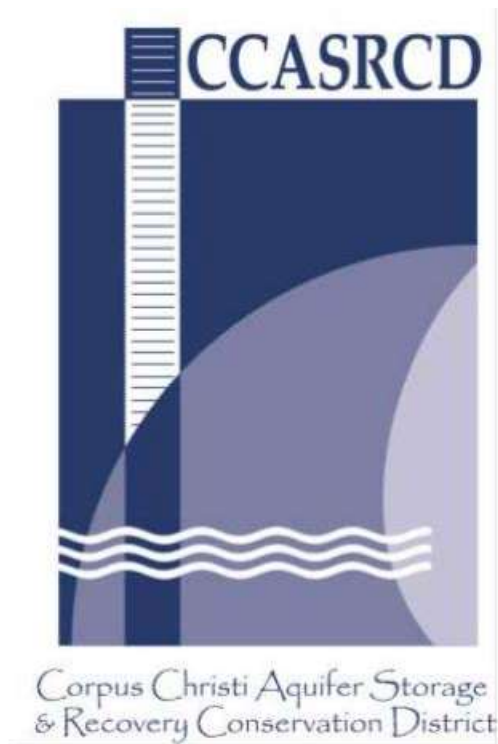


Rules and Regulations of the Corpus Christi Aquifer Storage and Recovery Conservation District



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**CORPUS CHRISTI AQUIFER STORAGE AND RECOVERY CONSERVATION DISTRICT
RULES AND REGULATIONS
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CORPUS CHRISTI AQUIFER STORAGE AND RECOVERY CONSERVATION DISTRICT RULES AND REGULATIONS

INTRODUCTION

Groundwater conservation Districts (GCDs) are the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of the state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a District in accordance with the provisions of The Texas Water Code, Title 2: Water Administration, Subtitle E: Groundwater Management, Chapter 36: Groundwater Conservation Districts. As with other GCDs, the major purposes of the District are to:

- 1) Provide for conservation, preservation, protection, and recharge;
- 2) Prevent waste; and,
- 3) Control land surface subsidence.

The Corpus Christi Aquifer Storage and Recovery Conservation District (District) was created in 2005 by the 79th Texas Legislature enactment of SB 1831, Section 1, Subtitle H, Title 6. Special District Local Laws Code was amended by adding Chapter 8811 to include the District. The District is located in Aransas, Kleberg, Nueces, and San Patricio Counties, Texas. The initial boundaries of the District (also known as CCASRCD) are coextensive with the city limits of the City of Corpus Christi and are bound:

- 1) To the north, by the metropolitan planning organization (i.e., Corpus Christi Metropolitan Planning Organization) boundary;
- 2) To the east, by the Gulf of Mexico and the city limits of Corpus Christi;
- 3) To the south, by the city limits of Corpus Christi; and,
- 4) To the west, by property owned by, or under contract to, the City of Corpus Christi.

The District's jurisdictional boundary covers four counties, including Aransas, Kleberg, Nueces, and San Patricio counties. The total land surface area of the District and the surface area of the District within each of these counties was calculated using a spatial analysis tool within GIS. The total area of the District is distributed in percentage of land in each county as follows: Aransas County: 0.01 %, Nueces County: 48.92 %, Kleberg County: 5.67 %, and San Patricio County: 45.40 %. The surface area of the District within each of these counties are as follows: Aransas County: 2.32%, Nueces County 35.43 %, Kleberg County: 2.38 %, and San Patricio County 2.92%.

Neighboring Districts include Kenedy County Groundwater District and San Patricio County Groundwater District, both Districts formed via legislation passed during the 2007 legislative session.

The District is committed to the management and protection of the groundwater resources of the District, including those injected into the ground for storage and later use. The District is committed to maintaining a sustainable, adequate, reliable, cost effective, and high quality source of groundwater to promote the vitality, economy, and environment of the District. The District will work with and for the citizens of the District and cooperate with other local, regional, and state agencies involved in the study and

management of groundwater resources. The District shall take no action without a full consideration of the groundwater needs of the citizens of the District.

The District's objectives are to enhance the City of Corpus Christi's (City) water supply, treatment, and distribution. A major concern when forming the District was to ensure that water stored in an aquifer storage and recovery (ASR) facility could not be diverted by nearby wells. According to the District's Groundwater Management Plan, the District's objectives include:

- 1) Seasonal, long-term, and emergency (strategic reserve) storage;
- 2) Augmentation of peak storage capacity;
- 3) Improving system water quality by maintaining minimum flows during seasons of low demand;
- 4) Deferring expansion of some of the water system infrastructure;
- 5) Mitigation of streamflow requirements;
- 6) Management of stormwater flow and estuary salinity; and,
- 7) Helping to meet large retail customer demands.

This document outlines the rules and regulations set forth by the Corpus Christi Aquifer Storage and Recovery Conservation District, as they apply to their District.

SECTION 1. DEFINITIONS AND MATTERS OF GENERAL APPLICABILITY

Rule 1.1 Definitions

In the administration of its duties, the Corpus Christi Aquifer Storage and Recovery Conservation District (District) follows the definitions of terms set forth in Chapter 36, Texas Water Code, with modifications. The definitions are as follows:

1. "Acre-foot" means the amount of water necessary to cover one acre of land to the depth of one foot, or 325,851 U.S. gallons of water.
2. "Act" means the Corpus Christi Aquifer Storage and Recovery Conservation District's enabling legislation, the 79th Texas Legislature enactment of SB 1831, Section 1, Subtitle H, Title 6. Special District Local Laws Code was amended by adding Chapter 8811 to include the District.
3. "Additional production" means the amount of water produced from an excluded well in excess of that amount produced under permit by the Railroad Commission of Texas.
4. "Affected person" means, for any matter before the District, a person who has a personal justifiable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by the matter before the District, not including a person who has an interest common to members of the public.
5. "Agricultural crop" means food or fiber commodities grown for resale or commercial purposes that provide food, clothing, animal feed, or other products.

6. "Agricultural use" or purposes means the use of groundwater for irrigation to produce an agricultural crop.
7. "Aquifer" means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring, and also includes subdivision(s) of an aquifer.
8. "Aquifer storage area" means an area demarcated and agreed upon by the District and permittee for the purpose of groundwater storage, which must abide by applicable rules outlined herein.
9. "Aquifer storage and recovery project" means a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator.
10. "Beneficial use" or "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 nonspeculative, useful, and beneficial to the user that does not commit or result in waste as that term is defined in these rules.
11. "Best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.
12. "Board" means the Board of Directors of the Corpus Christi Aquifer Storage and Recovery Conservation District.
13. "Casing" means a tubular, water tight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the groundwater to their zones of origin and to prevent the entrance of surface pollutants.
14. "Cement" means a neat Portland or construction cement mixture of not more than seven gallons of water per ninety-four (94) pound sack of dry cement, creating a cement slurry in which bentonite, gypsum, or other additives may be included.
15. "Desired future condition" means a quantitative description, adopted in accordance with Texas Water Code Section 36.108, of desired condition of the groundwater resources in a management area at one or more specified future times.
16. "Deteriorated well" means a well, the condition of which will cause, or is potentially likely to cause, pollution of any water in the District.

17. "Director" means a person appointed by the City Council of the City of Corpus Christi (City Council), or by the Board in the case of a resignation, and who is qualified and has taken the Constitutional oath of office.
18. "District" means the Corpus Christi Aquifer Storage and Recovery Conservation District as authorized under Acts 2005, 79th Legis., R.S., ch. 897, p. 3088. The legislation is codified as Chapter 8811, Vernon's Texas Codes Annotated, Special District Local Laws Code.
19. "District office" means the office of the District, which may be changed from time to time by resolution of the Board.
20. "Domestic use" means the use of groundwater by an individual or a household to support essential domestic activity.
21. "Drilling permit" means a permit for a water well to be drilled, including test wells, or an existing well that is to be re-drilled.
22. "Drilling registration" means the registration required for an exempt well that is to be drilled.
23. "Essential domestic activity" includes water for use inside the home, watering domestic animals, protecting foundations, and recreation only for swimming pools. The term does not include water use activities for which consideration is given or for which the product is to be sold, irrigation of lawns and landscaped areas, filling or refilling ponds, lakes, tanks, reservoirs, or other confinements that have a capacity greater than 25,000 gallons, or non-closed system geothermal heating/cooling systems.
24. "GPM" means gallons per minute.
25. "Groundwater" means water percolating below the surface of the earth.
26. "Groundwater reservoir" means a specific subsurface water-bearing stratum.
27. "Hearing body" means the Board, any committee of the Board, or a hearing examiner at any hearing held under the authority of law.
28. "Hearing examiner" means the person appointed by the Board of directors to conduct a hearing or other proceeding.
29. "Landowner" means the person who holds possessory rights to the land surface or the groundwater.
30. "Modeled available groundwater" means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Texas Water Code Section 36.108.

31. "Municipal setting designation" means an area designated by the City Council under the authority of Section 551.005, Texas Local Government Code and Subchapter W, Chapter 361, Texas Health and Safety Code.
32. "Municipal use" means the use of groundwater through public water supply systems authorized by the State of Texas and includes individual wells supplying water for irrigation for non-agricultural purposes.
33. "New well application" means an application for a permit for a water well that has not been drilled or an injection well permit to inject water into a groundwater aquifer.
34. "Open Meetings law" means Chapter 551, Texas Government Code, as it may be amended from time to time.
35. "Operating permit" means any type of permit issued by the District that relates to the operation of or production from a water well, which may include authorization to drill or complete a water well if the District does not require a separate permit for drilling or completing a water well.
36. "Party" means a person who is an automatic participant in a proceeding before the District or a person who is an affected person as defined under these rules and who has been designated as a participant in the proceeding before the District.
37. "Person" means an individual, corporation, Limited Liability Company, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
38. "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the District, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable use.
39. "Project Operator" means a person holding an authorization under Section 15 to undertake an aquifer storage and recovery project.
40. "Presiding officer" means the president, vice-president, secretary or other Board member presiding at any hearing or other proceeding or a hearing examiner conducting any hearing or other proceeding.
41. "Production limit" means a numerical limitation of the annual amount of Groundwater authorized to be produced under an operating permit. The production limit is generally expressed in acre-feet per year or gallons per year.
42. "Public Information Act" means Chapter 552, Texas Government Code, also called the "Open Records law," as it may be amended from time to time.

43. "Quorum" means a majority of the members of the Board of Directors.
44. "Registration" means the recordation of a certificate issued by the District for a well that is exempt from an operating permit.
45. "Rule" or "rules" mean the rules and regulations of the District.
46. "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.
47. "Texas Rules of Civil Procedure" and "Texas Rules of Evidence" mean the civil procedure and evidence rules, as adopted by the Supreme Court of Texas, as amended, and in effect at the time of the action or proceeding. Except as modified by these District rules, the rights, duties and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure and the Texas Rules of Evidence are the same as a court acting under those rules, without a jury.
48. "Transfer Permit" means a permit issued by the District allowing the transfer of groundwater outside of the District's boundaries.
49. "Waste" means any one or more of the following:
 - a. Withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural purposes, gardening, domestic use, stock raising purposes, or other beneficial purposes;
 - b. The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
 - c. Escape of groundwater from a groundwater reservoir to any other reservoir or geologic stratum that does not contain groundwater;
 - d. Pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
 - e. Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or other order issued by the Texas Commission on Environmental Quality, its predecessors or successors, under Chapter 26, 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;
 - i. Section 11.205. Wasting Water from Artesian Well: Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully

used on the owner's land, it is waste and unlawful to willfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

- h. Groundwater that is discharged into a watercourse for transit to another location when the losses in transit exceed 20%; or,
- i. Operating a deteriorated well.

50. "Water meter" or "water measuring device" for large volume users means a water flow measuring device that can within +/- 10% accurately record the amount of groundwater produced during a measured time.

51. "Well" means any facility, device, or method used to withdraw or sample groundwater from, or observe the water level in, a groundwater reservoir in the District.

a. Types of wells:

- i. "Additional production well" means a well that is otherwise excluded by law from regulation by the District that is also used for additional purposes regulated by the District.
- ii. "Artesian well" means a water well completed in the confined portion of an aquifer such that, when properly cased, water will rise in the well by natural pressure above the base of the overlying impermeable stratum.
- iii. "ASR well" means either an ASR Injection well, ASR Monitoring well, or ASR Recovery well."
- iv. "ASR Injection well" means a well drilled to inject water into an aquifer for storage.
- v. "ASR Monitoring well" means a well drilled to measure the level of stored water within an aquifer.
- vi. "ASR Recovery well" means a well drilled to recover water from aquifer storage.
- vii. "De-watering well" or "depressurizing well" means a well-used to remove water from a construction site or an excavation, or to relieve hydrostatic uplift on permanent structures. De-watering wells may include exempt, non-exempt, and excluded wells.
- viii. "Exempt well" means a well that is:
 - 1. Drilled or equipped to produce no more than 25,000 gallons per day; or,
 - 2. Drilled or equipped to produce water for watering livestock and poultry connected with farming, ranching, or dairy enterprises.
- ix. "Existing well" means a well that is in existence or for which drilling has commenced on the day of adoption of these rules.
- x. "Excluded well" means a well drilled for oil, gas, sulfur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluid or for any purpose, under permits issued by the Railroad Commission of Texas.
- xi. "Injection well" means a well into which fluids are injected.
- xii. "Monitoring well" means a well installed to measure some property of the groundwater or the aquifer that it penetrates.

- xiii. "New well" means a well not in existence or for which drilling has not commenced on the day of adoption of these rules.
 - xiv. "Non-exempt well" means either an existing or a new well subject to these rules.
52. "Well operator" means the person who operates a well or a water distribution system supplied by a well.
53. "Well owner" means the person who owns a possessory interest in a well, the land upon which a well is located or to be located, or the beneficial user of the groundwater.
54. "Well system" means a well or group of wells tied to the same distribution system.
55. "Withdraw" means the act of extracting or producing groundwater by pumping or some other method.

Rule 1.2 Purpose of Rules and Mission Statement

The purpose of these rules and regulations is to accomplish the intent of the creation of the District by the Act and to facilitate the purposes of Chapter 36 of the Texas Water Code.

The District's mission statement is as follows: The Corpus Christi Aquifer Storage and Recovery Conservation District (District) is committed to manage and protect the groundwater resources of the District, including those injected into the ground for storage and later use. The District is committed to maintaining a sustainable, adequate, reliable, cost effective, and high quality source of groundwater to promote the vitality, economy, and environment of the District. The District will work with and for the citizens of the District and cooperate with other local, regional, and state agencies involved in the study and management of groundwater resources. The District shall take no action without a full consideration of the groundwater needs of the citizens of the District.

Rule 1.3 Use and Effect of Rules

These rules and regulations are used by the District as guidelines to facilitate the duties assigned to the District by law, the Act, and Chapter 36 of the Texas Water Code. They shall not be construed as a limitation or restriction on the exercise of any discretion, where it exists; nor shall they be construed to deprive the District of the exercise of any powers, duties, or jurisdiction conferred by law; nor shall they be construed to limit or restrict the amount and character of data or information which may be required to be collected for the proper administration of the Act.

Rule 1.4 Amending Rules

The Board may, following notice and public hearing, amend these rules or adopt new rules from time to time.

Rule 1.5 Headings and Captions

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

Rule 1.6 Construction

A reference to a title, chapter, or section without further identification is a reference to a title, chapter or section of the Texas Water Code. Construction of words and phrases are governed by the Code Construction Act, Chapter 311, Subchapter B, Texas Government Code. Whenever a singular noun is used, it may refer to a plural; whenever a plural noun is used, it may refer to a singular.

Rule 1.7 Methods of Service under the Rules

Except as otherwise 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 courier receipted delivery, by certified or registered mail sent to 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. of the date on which it is due. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by fax is complete upon transfer, except that any transfer commencing after 5:00 o'clock p.m. shall be deemed complete the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed period of time after service, three days will be added to the prescribed period. Where service by other methods has proved unsuccessful, the service may be complete upon publication of the notice in a newspaper of general circulation in the District, or by such method as the hearing body may provide.

Rule 1.8 Severability

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

SECTION 2. BOARD OF DIRECTORS

Rule 2.1 Purpose of the Board

The purpose of the Board is to facilitate the implementation of these rules and regulations, to accomplish the intent of the creation of the District by the Act, and to facilitate the purposes of Chapter 36 of the Texas Water Code.

Rule 2.2 Board Structure and Officers

The District Board of Directors is composed of 5 members initially elected to staggered 2- and 4-year terms. All directors are appointed by the Corpus Christi City Council. The Board shall elect officers annually and the officers must be confirmed by the City Council. If a vacancy occurs on the Board, then the Board may appoint a Director to serve the remainder of the term.

The District's Board of Directors is comprised of a Chairman, Vice Chairman, Secretary, General Manager, and Member(s). The Board of Directors holds regular meetings at City Hall located at 1201 Leopard Street, Corpus Christi, Texas on a quarterly basis, unless otherwise posted. All meetings of the District's Board of Directors are public meetings noticed and held in accordance with all public meeting requirements. The District Board of Directors meetings are posted in each county along with other items of interest by the District.

Rule 2.3 Meetings

The Board will hold a regular meeting at least quarterly on a day and place that the Board may establish from time to time by resolution. At the request of the Chairman, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held in accordance with the Open Meetings law.

Rule 2.4 Committees

The Chairman may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees, which may be derived from the Board or outside of the Board. Committee members serve at the pleasure of the Chairman.

Rule 2.5 Ex Parte Communications

A Board member may communicate ex parte with other members of the Board and staff.

SECTION 3. GENERAL MANAGER

Rule 3.1 General Manager

The person employed by the Board as General Manager shall be the chief operating officer of the District and shall have full authority to manage, operate, and execute the affairs of the District, subject only to decisions made by the Board. The General Manager is responsible for employing all persons necessary to conduct the function, operation, and business of the District and for determining their compensation.

The General Manager is empowered to obtain official or legal status in matters of concern or interest to the District in public hearing processes or other proceedings. This will only occur when Board action cannot be obtained in a timely manner to establish an official Board or District position or when the

opportunity to obtain such status presents itself. Such matters will be brought to the Board for action at the earliest possible convenience.

Rule 3.2 Delegation of Authority

The General Manager may delegate his/her administrative duties in order to effectively and expeditiously execute his/her duties, providing that no such delegation shall ever relieve him/her of responsibilities which are ultimately his/hers under the Act, Rules and Regulations, or Board Orders.

SECTION 4. DISTRICT

Rule 4.1 Minutes and Records of the District

All documents, reports, records, and minutes of the District are available for public inspection and copying in accordance with the Public Information Act. Persons who are furnished copies may be assessed a copying charge, pursuant to policies established by the Board. A list of charges for copies will be furnished by the District.

Rule 4.2 Certified Copies

Requests for certified copies must be in writing. Certified copies may be made by the Secretary, Assistant Secretary, or the General Manager and will be affixed with the seal of the District. Persons furnished with certified copies may be assessed a certification charge, in addition to the copying charge, pursuant to policies established by the Board.

Rule 4.3 Official Office and Office Hours

The Board, by resolution, shall establish an official office for the District, and the office will maintain regular business hours.

SECTION 5. DISTANCE AND SPACING REQUIREMENTS

Rule 5.1 Required Distance from Aquifer Boundary

An applicant proposing to develop an aquifer storage area shall provide to the District the location of the storage area described by metes and bounds and the District shall enter an order demarcating the boundaries of the aquifer storage area. The order shall be recorded in the real property records of the affected county and, thereafter, no well shall be permitted to be drilled within one mile of the boundaries of the demarcated aquifer storage area except by the person who developed the storage area, but the Board may, if good cause is shown by clear and convincing evidence, that no harm or negative impact will occur to the aquifer storage area, allow drilling activity by others upon entering special orders or adding special permit conditions and requirements.

Rule 5.2 Required Distance from Property Lines

Except as provided in Rule 5.3, a new well may not be drilled within 50 feet from the property line of any adjoining landowner or an area designated with a municipal setting designation. This spacing may be reduced or increased by the Board upon demonstration either that such spacing is overly protective of neighboring wells or is insufficiently protective of neighboring wells. All other non-excluded wells completed in other aquifers in the District will be considered on a case by case basis.

Rule 5.3 Exceptions to Spacing Requirements

- (a) Provided that an applicant presents waivers signed by the adjoining landowner(s) or the developer of the demarcated aquifer storage area, stating that they have no objection to the proposed location of the well site, the minimum distance from the property line requirements will not apply to the new proposed well location, subject to the right of the Board to limit production of the well to prevent or minimize injury to adjoining landowners or the aquifer.
- (b) Provided that an applicant shows good cause why a new well should be allowed to be drilled closer than the required minimum distance of 50 feet from the property line of the adjoining landowner(s), or closer than the distances stated in Rules 5.1 and 5.2, the issue of distance requirements will be considered during the technical review process and/or the contested case process. If the Board chooses to grant a permit to drill a well that does not meet the distance requirements, the Board may limit the production of the well to prevent or to minimize injury to adjoining landowners or the aquifer.
- (c) In addition, the Board may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing the distance requirements.
- (d) ASR wells that are a part of an ASR project authorized by the Texas Commission on Environmental Quality are subject to the rules stated in Section 15.

Rule 5.4 Requirement of Monitor Well(s)

Applications for wells drilled and existing wells when reworked, equipped to pump more than 200 acre-feet per year, or the equivalent on a daily basis, shall include provisions for monitoring, on as frequent a basis as reasonably possible, water levels in the aquifer from which withdrawals are to be made using one or more existing wells, subject to more detailed orders of the Board as set forth in the permit and all applicable rules, including but not limited to Rules 7.3 and 8.3(b)(2)(D). The Board may, upon application, exempt an applicant from this rule.

Rule 5.5 Ownership of Water Stored in an Aquifer Storage Area

Water injected into an aquifer storage area is owned by the person who injected the water and is not percolating groundwater.

SECTION 6. PRODUCTION LIMITATIONS

Rule 6.1 Maximum Allowable Production from Aquifers in District

- (a) The amount of annual maximum production specified in the operating permit for a non-exempt well may be up to 0.04 acre-feet per contiguous surface acre¹ owned or operated by the applicant, unless a small amount is requested. Applicants may request that greater amounts of production per surface acre be authorized provided the applicant can demonstrate to the District's satisfaction that local hydrogeologic conditions will allow the withdrawal of a greater amount of groundwater per annum without negatively affecting water levels of adjoining properties or otherwise interfering with an adjacent landowner's ability to withdraw and use groundwater. If necessary, the Board may adjust downward the maximum allowable production upon permit renewal to achieve the desired future conditions under Section (b) below. In establishing the maximum allowable production for a retail public water utility, the District will consider the service needs and service area of the retail public water utility in addition to or in lieu of surface area owned or operated by the retail public water utility.
- (b) In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve the desired future condition and the District will also consider:
1. The modeled available groundwater determined by the executive administrator of the Texas Water Development Board;
 2. The executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by District rules;
 3. The amount of groundwater authorized under permits previously issued by the District;
 4. A reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and,
 5. Yearly precipitation and production patterns.

Rule 6.2 Areas of Depletion and Proration Orders

In order to protect public health and welfare and to conserve and manage the groundwater resources in the District during times of drought or depletion, the District may pro-rate groundwater use, place special requirements on, modify, delay, or deny a permit for a new well during a District-declared drought.

Rule 6.3 Additional Production Wells

An applicant must follow the rules and regulations outlined in this Section and Section 5 concerning the addition of production wells.

¹ Calculated by dividing the Gulf Coast Aquifer System (central portion) Groundwater Availability Model derived amount of water that flows through the system (620,000 acre-feet) by the total area of the GCAS (central portion; approximately 15,000,000 acres), providing amount of water available (in acre-feet) by area (acre). This is an estimation that requires further study.

Rule 6.4 Storage and Recovery Aquifers

Certain demarcated aquifer storage areas are to be designated for the specific purpose of aquifer storage and later recovery. These aquifers are to be deliberately injected with fresh water which are likely to cause the water levels to rise and, during withdrawal, cause the water levels to drop. In these areas, the rise and drop of water is normal and to be expected. Section 6 is not applicable to these demarcated areas.

Rule 6.5 Municipal Setting Designations

Production of water in areas with municipal setting designations is prohibited.

Rule 6.6 Subsidence

- (a) Permittees will follow the rules and regulations set forth in order to provide for the conservation, preservation, protection, recharge, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, and to prevent degradation of water quality.
- (b) Permittees will drill for and produce the groundwater below the surface of real property without causing waste or malicious drainage of other property or negligently causing subsidence.
- (c) The District reserves the right to amend these rules and regulations, following notice and public hearing, to reflect changes caused by regional subsidence.

SECTION 7. DEPOSITS AND FEES FOR OPERATING PERMITS, FEES, and FILING REPORTS

Rule 7.1 Initial Application Fee and Filing of State Well Reports and Plugging Reports

- (a) Each application for an operating permit of any type issued by the District or drilling registration must be accompanied by a one-time non-refundable application fee of \$250.00, which will be accepted and deposited in the District account by the General Manager. The purpose of the application fee is to cover the cost of reviewing an application and processing an operating permit and to ensure receipt by the District of the information set out herein. Such administrative deposit or fee shall not unreasonably exceed the cost to the District for such administrative acts. The applicant may be required by the Board to deposit with the District additional funds if the amount of the original deposit is expended prior to the Board's final action on the operating permit.
- (b) In the event that neither the driller's logs or completion logs of the well nor the operating permit marked "abandoned" is returned to the District office within 180 calendar days after the issuance date of the operating drilling permit or operating drilling registration, the deposit becomes the property of the District and the operating drilling permit or operating drilling registration is deemed cancelled without further action by the Board, unless an extension has

been granted. Extensions may be granted by the Board to the extent of 180 days or less, as the Board determines is appropriate.

- (c) As an additional fee for administrative acts of the District, after an application for any operating permit issued by the District has been determined to be administratively complete by the Board, the applicant shall deposit with the District an amount of money determined by the Board to cover the cost associated with an uncontested or contested hearing regarding the operating permit application. The amount of the deposit shall be sufficient to pay legal fees, expert fees, court reporter fees, hearing facility rental fees, and other expenses. The remaining deposit balance, if any, is refundable following approval of the operating permit, disposal of any motions for rehearing, and receipt of anticipated expenses. The applicant may be required by the Board to deposit with the District additional funds if the amount of the original deposit is expended prior to the Board's final action on the permit.

Rule 7.2 Regulatory Fees

- (a) Regulatory fees shall be paid to the District on a monthly basis for the amount of water actually produced from non-exempt wells under operating permits and transfer permits, which fees shall be established by resolution of the Board and paid to the District within 15 days after the end of the reporting month.
- (b) An exempt or excluded well is not excused from regulatory pumping fees if the groundwater is exported from the District. The owner of the well shall identify to the District the amount of water exported from the District on a monthly basis and pay a regulatory pumping fee to the District in an amount equal to the pumping fee of a non-exempt well plus the surcharge, as defined in Rule 7.2(e), which shall be paid to the District within 15 days after the end of the reporting month. Groundwater that is discharged pursuant to a permit issued by the Texas Commission on Environmental Quality or its predecessors and not sold is not considered to have been transferred from the District unless the discharge is part of an overall water transfer and sale.
- (c) The owner of all wells exporting water out of the District shall report the amount of water actually produced on a monthly basis under operating permits and transfer permits, which fees shall be established by resolution of the Board and paid to the District within 15 days after the end of the reporting month.
- (d) Regulatory fees not paid by 25 days after the end of the reporting month are considered delinquent and the fee payer shall be assessed a late fee of 5 percent of the amount due.
- (e) The District may impose a surcharge equivalent of up to 50 percent of the District's production fee for water transported out of the District.

Rule 7.3 Filing Reports

- (a) The driller's log and completion log, referred to by the Texas Department of Licensing and Regulation State Water Well Driller's Board as a "State Well Report," shall be filed with the

District within 30 days from the preparation of the report pertaining to groundwater production, groundwater quality, or aquifer testing. In the event a well is plugged, the person who plugs the well shall within 30 days after plugging and abandonment is complete, submit a plugging report to the District in accordance with the Rules of the Texas Department of Licensing and Regulation, unless an extension has been granted.

- (b) Water levels in monitoring wells designated under these rules shall be reported to the District at the same time as regulatory fees are paid to the District unless provided otherwise in the permit or in a written agreement with the District.

SECTION 8. OPERATING PERMITS, REGISTRATIONS, AND AMENDMENTS

Rule 8.1 Drilling Registrations and Drilling Permits

- (a) After the effective date of these rules, no person shall drill an exempt water well before filing an application for a drilling registration and receiving the registration or drill a non-exempt water well before filing an application for a drilling permit and receiving the drilling permit. Each original application for a water well drilling registration or drilling permit requires a separate application. Application forms will be provided by the District and furnished to the applicant upon request.
- (b) Contents of an application: An application for a drilling registration or drilling permit shall be in writing and sworn, and shall contain:
 1. The name and mailing address of the applicant and the name and address of the owner of the land, if different from the applicant, on which the well is to be located;
 2. If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;
 3. For exempt wells, a statement regarding the basis for asserting that the well will be exempt under Rule 8.6;
 4. A statement of the nature and purpose of the proposed well, its use and the amount of water to be used for each purpose;
 5. Except for exempt wells, availability of feasible and practicable alternative supplies to the applicant;
 6. Except for exempt wells, the projected effect of the proposed injection or withdrawal on the aquifer or any other aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the District;
 7. Except for exempt and injection wells, the applicant's water conservation plan and, if any subsequent user of the water is a municipality or entity providing retail water services, the water conservation plan of that municipality or entity shall also be provided and a declaration that the applicant will comply with the District's Groundwater Management Plan;
 8. The location of the well and the estimated or proposed rate at which water will be injected and/or withdrawn and where the water is proposed to be used; and,

9. A well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the District.
- (c) The General Manager will assist the applicant for a voluntary registration for a well exempt under these rules and for a monitoring well and issue the registration.
 - (d) A drilling registration or drilling permit application may be changed by the applicant by submitting a written, sworn amendment to the application, calling the attention of the District to the proposed changes. For drilling permit applications, if an amendment is filed, new notice may be required to be given if significant changes are requested. All amendments must be approved by the District and appropriate fees may be assessed to review the amendment. Such administrative deposit or fee shall not unreasonably exceed the cost to the District for such administrative acts.
 - (e) An individual or entity may mitigate or make emergency repairs to an existing well provided that the mitigation or repair is required by the Railroad Commission of Texas and the mitigation or repair does not violate Rule 10.1.

Rule 8.2 Registrations

- (a) This subsection concerns wells which are exempt pursuant to Rule 8.6 and in existence on the effective date of these rules or which are no longer subject to the rules of the Railroad Commission of Texas, but will continue to be used, provided they will be exempt wells according to these rules. All existing water wells exempt under these rules from the requirement of an operating permit may be registered with the District by the well owner or the well operator. If the exempt well is in existence on the effective date of these rules, the well owner or operator may file with the District an application for a certificate of registration. After review and the determination by the General Manager that the well is exempt, the owner or operator shall be issued a certificate of registration by the General Manager. A registration may be amended by following the procedures for a new registration and identifying the changes requested.
- (b) For proposed, exempt wells, not in existence on the effective date of these rules, the owner shall apply for a drilling registration and request that the well be registered. The application shall include the information set out in Rule 8.1(b). The General Manager shall review the drilling registration application and make a preliminary determination on whether the well meets the exemptions provided in Rule 8.6. If it is concluded that the applicant seeks a drilling registration for a well that will be exempt under these rules, the General Manager shall issue the drilling registration to the applicant. After the well is drilled and upon the filing of the driller's log and completion report with the District, the General Manager shall issue to the owner or operator a certificate of registration.
- (c) The driller's log and completion report (and on abandonment, if drilled, the plugging and abandonment report) shall be filed with the District as provided in Rule 7.3.

Rule 8.3 General Permitting Policies and Procedures

- (a) **Operating Permit Requirement:** The well owner or well operator must file a written, sworn application for an operating permit prior to operating any well for either injection of water or the withdrawal of water, not otherwise exempt under Rule 8.6 or excluded, unless additional production is obtained from the well. The connection of a water well to any means of distributing the water, whether temporary or permanent, shall be deemed as operating the well. Pumping tests of a well are not deemed operating the well. The operating permit may be approved by the General Manager under such terms and conditions as the Board shall direct, and the well shall remain permitted until an operating permit term has expired and is no longer required for the well/well system. For non-exempt wells in existence on the effective date of the creation of the District, an application for an operating permit or, after the District's Groundwater Management Plan is approved, an operating permit must be filed on or before August 31, 2007.
- (b) **Operating Permit Applications:** Every well shall have a separate application for an operating permit, unless it is an exempt well or an excluded well having no additional production. Every well requires a separate application for an operating permit. Application forms will be provided by the District and furnished to the applicant upon request. The application shall be in writing, sworn, and provide the following information:
1. For non-exempt wells in existence on the effective date of these rules, the information provided for drilling permits stated in Rule 8.1, and any additional information requested by the General Manager.
 2. For non-exempt wells not in existence on the effective date of these rules:
 - a. Any corrections to the information supplied in the drilling permit application;
 - b. The date the well was drilled and its location;
 - c. The instantaneous (gallons per minute; gpm), daily, and annual rate at which the applicant seeks to inject into the well or pump the well and/or withdraw from the well;
 - d. For wells to be drilled and equipped to produce more than 200 acre-feet per year, or the equivalent on a daily basis, excluding irrigation wells, such information must include, to the extent practical, the transmissivity and storativity of the aquifer from which groundwater is to be withdrawn and also shall include an assessment of the impact on the aquifer of the proposed pumpage. It is expected that these aquifer parameters be determined based on a pumping test of at least twenty-four hours duration. Any observation well used for determining transmissivity and storativity of an aquifer must be sufficiently close to the well being pumped to discern the effects of the pumping well on water levels in the aquifer in accordance with the anticipated transmissivity and storativity of the aquifer and duration of the pumping test. All testing is to be performed under the direction and control of a licensed professional engineer or a licensed professional geoscientist in the State of Texas, who shall affix his or her signature and seal to the test results and assessment

of aquifer impact. For recognized well fields, defined as two or more wells operated by the same entity at or within plus thirty percent of the minimum spacing prescribed in Section 5 of these rules, a single aquifer test will be sufficient.; and,

- e. Any additional information requested by the Board or the General Manager.
- (c) Notice of Permit Hearing: Once the District has received an original application for a drilling permit to withdraw water or to inject water or an operating permit for a non-exempt water well and the application is deemed administratively complete, the General Manager, with Board orders, will prepare a written notice of the application and public hearing as provided in Rule 13.2.
- (d) Decision and Issuance of Permit: In deciding whether or not to grant a permit or permit amendment, and in setting the terms of the permit, the Board shall consider the Texas Water Code and the District rules, including:
- 1. The application conforms to the requirements prescribed by Chapter 36, Water Code, and is accompanied by the prescribed fees;
 - 2. The proposed injection or use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
 - 3. The proposed use of water is dedicated to any beneficial use;
 - 4. The proposed use of water is consistent with the District's approved Groundwater Management Plan;
 - 5. The applicant has agreed to avoid waste and achieve water conservation;
 - 6. The applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure; and,
 - 7. The terms and conditions that shall be attached to the permit or permit amendment to protect the groundwater resources of the District and the users within the District.
- (e) Operating Permit Provisions: The operating permit will contain the name and address of the well owner or operator, the location of the well, the maximum rate at which water may be injected, where the water will be used and the purpose of use of the water, other criteria deemed necessary by the Board for the protection of the public health, safety, welfare, conservation, and management of the groundwater resources in the District, and the standard provisions listed in Rule 8.4. The operating permit may also contain provisions relating to the means and methods of transportation of water produced within the District, and any other provisions that the Board may direct.
- (f) Aggregation of Withdrawal: In issuing a permit, the authorized withdrawal for a given well may be aggregated, at the discretion of the District, with the authorized withdrawal from other permitted wells designated by the District. Geographic location of wells, operational or legal control of the wells, ownership or legal control of the property where the wells are

located, and use of the wells for a common purpose will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal shall be assigned to wells in aggregate, rather than allocating to each well a pro-rata share or estimated production.

- (g) Effect of Acceptance of Permit: Acceptance of the permit by the person to whom it is issued constitutes acknowledgment by that person and agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions stated in the permit and in these rules.

Rule 8.4 Operating Permit Provisions

All operating permits are granted subject to these rules, orders of the Board, and the laws of the State of Texas. An operating permit may be modified at any time by the Board in accordance with the District's Groundwater Management Plan. In addition to any special provisions or other requirements incorporated into the permit, each permit issued shall contain the following standard permit provisions:

1. This operating permit is granted in accordance with the provisions of the rules of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee accepts the terms and conditions of the permit and will comply with the rules and Groundwater Management Plan of the District.
2. This permit confers only the right to operate the well described in this permit under these rules, and its terms may be amended pursuant to the provisions of these rules. To protect the permit holder from illegal use by a new landowner, within 10 days after the date of sale, the operating permit holder must notify the District in writing of the name and address of the new owner. Any person who becomes the owner of a currently permitted well must, within 20 calendar days from the date of the change in ownership, file an application for a permit amendment to effect a transfer of the permit.
3. The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.
4. Injections or withdrawals from all non-exempt wells must be measured by a water meter or estimated by the owner or operator using a water measuring device or method that is within plus or minus 10% of accuracy. Measured or estimated water use shall be reported to the District monthly and the applicable fee paid. Permittees shall keep accurate records of the groundwater injected or withdrawn and the purposes of the withdrawal. Such records shall be available for inspection by District representatives.
5. The well site must be accessible to District representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site.
6. The application for which this operating permit has been issued is incorporated by reference in this permit, and this operating permit is granted on the basis of and contingent upon the

accuracy of the information provided in that application. A finding that false or inaccurate information has been provided is grounds for immediate revocation of the operating permit. Operating permits are subject to the imposition of additional provisions in accordance with the District's approved Groundwater Management Plan.

7. The maximum authorized withdrawal is limited to the amount stated in the permit on an annualized basis and the instantaneous rate of withdrawal can be no more than 1.25 times the amount authorized on an annual basis, except when groundwater production from wells is aggregated in accordance with Rule 8.3(g), unless otherwise authorized by the permit.
8. Violation of this permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawal, is grounds for revocation of the permit and/or punishable by civil penalties as provided by the District Rule 14.4.
9. Wherever special provisions in this permit are inconsistent with other provisions or rules of the District, the special provisions of the permit shall prevail.

Rule 8.5 Operating Permit Limitations

- (a) **Maximum Authorized Withdrawal:** No operating permittee shall inject, pump or withdraw any groundwater on an annual basis in excess of the amount of groundwater authorized in the operating permit and no rate of pumping shall be in excess of 1.25 times the instantaneous rate necessary to produce the authorized withdrawal on an annual basis, except when groundwater production from wells is aggregated in accordance with Rule 8.3(g) or unless otherwise authorized by the operating permit.
- (b) **Operating Permit Required:** Unless otherwise exempt or excluded, no person shall operate a well without an operating permit issued by the District. However, if there is additional production from an exempt or excluded well, the operating permit requirement of these rules do apply.
- (c) When an operating permit is granted, the permittee shall begin and complete construction of the permitted well diligently and, if the permit is for withdrawal, produce water from the well for the purpose(s) authorized within 24 months from the date the permit is issued. Failure of a permittee to begin and complete construction, and pump water from the permitted well for the authorized purpose(s) within the time period specified shall cause the permit to terminate and the permittee shall lose all rights thereunder without further action by the District; however, permittees may, upon a showing that it is not technically or economically feasible to connect the well to existing infrastructure or to a reasonably necessary extension of existing infrastructure within the 24 month period, be granted the full five year term of the operating permit to complete construction, and pump water from the permitted well for the authorized purpose(s). The permittee who has been granted an operating permit pursuant to this subsection must record a copy of the operating permit and the applicable spacing rule in effect at the time the operating permit is granted in the county real property records.

Rule 8.6 Exemptions

- (a) Except as otherwise provided in these rules, the operating permit requirements of this Section 8 do not apply to exempt wells, however, the drilling registration requirements of Rule 8.1 and the registration requirements of Rule 8.2 do apply to a well-used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than ten (10) acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater per day.
- (b) New and existing exempt wells may be registered with the District.

Rule 8.7 Registration or Operating Permit Not Required

Wells drilled for oil, gas, sulfur, uranium, lignite, or brine or core tests, or for injection of gas, saltwater, or other fluids, or for any other purpose under permits issued by the Railroad Commission of Texas, other than additional production, are excluded under these rules. The District may not require a drilling permit for a well to supply water for drilling any wells permitted by the Railroad Commission of Texas, except as allowed by the Texas Water Code. Any well that ceases to be used for these purposes and is then used or additionally used as an ordinary water well, is subject to the rules of the District to the extent of the non-excluded purposes.

Any water well drilled and operated under the authority of the Railroad Commission of Texas that produces water in excess of that quantity necessary and for purposes other than the Railroad Commission permitted activity shall be subject to the rules and fees of the District to the extent excess water is produced and the purposes of use that are different than the Railroad Commission permitted activity.

Water wells drilled to supply water for hydrocarbon production activities, including lignite, must meet the spacing requirements of the District, including the limitations imposed by the designation of an aquifer storage area, unless no space is available within 300 feet of the production well or central injection station, in which event the applicant must demonstrate to the Board that the storage aquifer will not be impacted.

Rule 8.8 Change in Operating Permits

- (a) If the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District rules, the permit as it existed before the permit amendment process remains in effect until the later of:
 - 1. The conclusion of the permit amendment or renewal process, as applicable; or,
 - 2. Final settlement or adjudication on the matter of whether the change to permit requires a permit amendment.
- (b) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Rule 8.9 without penalty, unless Subsection (b) of that section applies to the applicant.
- (c) The District may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the District's rules. If the District initiates

an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment process, as applicable.

Rule 8.9 Operating Permit Renewal

- (a) Except as provided by Subsection (b), the District shall, without a hearing, renew or approve an application to renew an operating permit before the date on which the permit expires, provided that:
 - 1. The application, if required by the District, is submitted in a timely manner and accompanied by any required fees in accordance with District rules; and,
 - 2. The permit holder is not requesting a change related to the renewal that would require a permit amendment under District rules.

- (b) The District is not required to renew a permit under this section if the applicant:
 - 1. Is delinquent in paying a fee required by the District;
 - 2. Is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; or,
 - 3. Has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or rule.

- (c) If the District is not required to renew a permit under Subsection (b)(2) above, the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

SECTION 9. PERMITS FOR TRANSFER OF GROUNDWATER OUT OF THE DISTRICT

Rule 9.1 Permit Required

Groundwater produced from within the District may not be transferred outside the District's boundaries unless the Board has issued the well owner/operator a transfer permit. The requirements of this rule are applicable without regard to the manner in which the water is transferred out of the District and specifically includes discharges into watercourses to convey water, as well as pipelines and aqueducts.

Rule 9.2 Applicability

A groundwater transfer permit is not required for transportation of groundwater that is part of a manufactured product, or if the groundwater is to be used on contiguous property with the same property ownership, that straddles the District boundary line or within the City of Corpus Christi.

Rule 9.3 Application

- (a) An application for a transfer permit must be filed in the District office, be in writing and sworn, and include the following information:

1. The name and mailing address of the applicant and the name and address of the owner of the land from which the transfer is to be made, if different from the applicant, on which the well is to be located;
2. If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed transfer;
3. A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose and the period of time each purpose is expected to continue;
4. Availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
5. Availability of feasible and practicable alternative supplies to the applicant, municipality or entity;
6. The amount and purposes of use for which water is needed in the proposed receiving area for which water is needed;
7. The projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District as determined by a licensed professional engineer or a licensed professional geoscientist in the State of Texas;
8. The indirect costs and economic and social impacts associated with the proposed transfer of water from the District;
9. The approved regional and state water plan, if one has been approved, and the approved District Groundwater Management Plan;
10. Other facts and considerations deemed necessary by the District's Board or General Manager for protection of the public health and welfare and conservation and management of natural resources in the District;
11. The applicant's water conservation plan and, if any subsequent user of the water is a municipality or entity providing retail water services, the water conservation plan of that municipality or entity shall also be provided;
12. The location of the well; and,
13. The period of time for which the permit is sought.

(b) The Board, at its discretion, may combine permit applications.

Rule 9.4 Hearing and Permit Issuance

- (a) Applications for transfer permits are subject to the hearing procedures provided by these rules.
- (b) In determining whether to issue a permit to transfer groundwater out of the District, the Board shall consider the information provided in Rule 9.3, the Texas Water Code, the District's Groundwater Management Plan, the District's mission statement and such other information the Board deems relevant.

Rule 9.5 Transfer Permit Amendments

Amendment to a Transfer Permit: It is a violation of these rules to transfer any amount of water in excess of the amount, withdrawal rate, or by any means or route not authorized by a transfer permit. A written, sworn application for an amendment to a transfer permit must be filed and the amendment granted before any deviation in the transfer permit occurs. The applicant must demonstrate that the originally authorized terms and conditions in the transfer permit have proven inadequate and why there is a need to change the authorization.

- (1) Submission of application: The applicant for an amendment to modify the transfer permit shall provide sufficient documentation that the original authorizations have proven inadequate and the reasons for the need to make the change(s).
- (2) Action on Amendment: The General Manager shall prepare a notice to be given of the amendment, which shall be given as in the original application, and a public hearing conducted in the manner prescribed for permit issuance.

Rule 9.6 Duration of Transfer Permit

The period for which water may be transferred under a transfer permit shall be at least three (3) years if construction of a conveyance system has not been initiated within the period specified in the permit or at least thirty years if construction of a conveyance system has been initiated prior to the issuance of the permit. Initiation of construction means letting of contracts for construction of facilities from the point of the well to at least the District boundary and the commencement of actual construction under the contract.

Rule 9.7 Transfer Permit Assessments

The fees for the transfer of water out of the District will be set forth by resolution of the Board.

SECTION 10. REWORKING AND REPLACING A WELL

Rule 10.1 Procedures

- (a) An existing, permitted or exempt well may not be reworked or re-equipped in a manner that will change the authorizations contained in the operating permit or registration without a written, sworn application for an amendment that is approved by the Board in the case of an operating permit, or the General Manager in the case of a registration. Re-drilling a well requires a new permit.
- (b) An operating permit must be applied for, if a party wishes to increase the rate of production of an exempt well to the point of increasing the size of the column pipe and gallon per minute rate by reworking or re-equipping the well such that the well is no longer exempt.
- (c) A drilling permit or a drilling registration must be applied for and granted if a party wishes to replace an existing well with a new, replacement well.

- (d) A replacement well, in order to be considered such, must be drilled within 30 feet of the existing well and shall not be drilled nearer the property line, provided the original well was not "grandfathered," if it meets distance requirements (Rule 5), production (Rule 6), when production rules are adopted, and completion (Rule 11) requirements. The Board may grant such application without further notice and/or variances to this rule on a case by case basis.
- (e) After the effective date of these rules, upon commencing reworking or replacing permitted wells drilled and equipped to produce more than 200 acre-feet of water per year, the reworked or replacement well also shall be equipped to allow measurement of water levels in the well, and such water levels shall be measured on as frequent a basis as reasonably possible, preferably on a daily, but no greater than weekly, basis between the time the water level in the well first can be measured after the pump fails or is turned off to just before the pump is restarted for production. Reporting of water levels measured in accordance with this rule shall be coincident with payment of regulatory fees.

Rule 10.2 Emergency Reworking or Replacing of a Well

An emergency replacement or reworking of a well under the auspices of the Railroad Commission of Texas may be performed with notice to the District so long as there is no change to the rate or amount of withdrawal. New driller's logs and completion logs must be filed with the District within the same period of time as the logs are required to be filed with the Texas Water Development Board.

SECTION 11. WELL LOCATION AND COMPLETION

Rule 11.1 Responsibility

After an application for a well drilling permit or drilling registration has been granted, the well, if drilled, must be drilled within 30 feet of the location specified in the permit or registration application, and not elsewhere; however, the well shall not be drilled within 50 feet of the property line of the adjoining landowner, except as provided in Rule 5.3 or within an aquifer storage demarcated area. If the well should be commenced or drilled at a different location, the drilling or operation of such well is contrary to the authorizations contained in the permit and may be enjoined by the Board pursuant to Chapter 36, Texas Water Code and these rules. As described in the Rules of Texas Department of Licensing and Regulation, all well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of the rule prescribing the location of wells and proper completion and these rules.

Rule 11.2 Location of Domestic, Industrial, Injection, and Irrigation Wells

- (a) A new well must be located a minimum horizontal distance of 50 feet from any water-tight sewage facility and liquid-waste collection facility.
- (b) A new well may not be located closer than a minimum horizontal distance of 150 feet from any potential source of contamination, such as existing or proposed livestock or poultry yards, privies, and septic systems, including tanks, piping, any evapo-transpiration pits, and pressure-dose distribution systems.

- (c) A new well must not be located at a site generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it must be completed with a watertight sanitary well seal and steel casing extending a minimum of 24 inches above the known flood level, unless the well is approved by the Texas Commission on Environmental Quality.
- (d) No new well may be located within five-hundred (500) feet of a sewage treatment plant, solid waste disposal site, or land irrigated by sewage plant effluent, or within three hundred (300) feet of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.

Rule 11.3 Standards of Completion for Domestic, Industrial, Injection, and Irrigation Wells

Water well drillers must indicate the method of completion on the Well Report filed through the Texas Water Development Board's Texas Well Report Submission and Retrieval System. Domestic, industrial, Class V injection, and irrigation wells must be completed in accordance with the stricter of the following specifications or Texas Department of Licensing and Regulation rules set forth at 16 Texas Administrative Code, Chapter 76, local county or incorporated city ordinances:

- (a) The annular space between the borehole and the casing shall be filled with cement slurry from the ground level to a depth of not less than 10 feet below the land surface or well head.
- (b) All wells shall have a concrete slab or sealing block above the cement slurry around the well at the ground surface.
- (c) The slab or block shall extend at least two (2) feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.
- (d) The surface of the slab shall be sloped to drain away from the well.
- (e) In all wells:
 - 1. the casing shall extend a minimum of one foot above the original ground surface; and
 - 2. A slab or block as described in Rule 11.3(b) is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells provided that:
 - a. Pitless adapter is welded to the casing or fitted with another suitably effective seal; and,
 - b. The annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.
- (f) All wells, especially those that are gravel packed, shall be completed so aquifers or zones containing waters that differ are not allowed to commingle through the borehole-casing annulus or the gravel pack so as to result in pollution as defined in these rules.
- (g) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.
- (h) The mix of cement shall conform to the definition contained in these rules.
- (i) In addition, all new wells permitted after the effective date of these rules that are drilled and equipped to produce more than 200 acre-feet of water per year also shall be equipped to allow measurement of water levels in the well.

Rule 11.4. Re-Completions

- (a) The landowner shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the wellbore to other porous strata.
- (b) If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.
- (c) The Board may direct the landowner to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.
- (d) In an aquifer storage unit, some commingling of undesirable water and fresh water will occur and is authorized by an injection permit.

SECTION 12. WASTE AND BENEFICIAL USE

Rule 12.1 Waste Defined

Waste has the meaning as defined in Rule 1.1.

Rule 12.2 Waste Prevention

- (a) Groundwater shall not be produced in or used within or without the District, in such a manner as to constitute waste as defined in Rule 1.1.
- (b) No person shall cause pollution of the groundwater reservoir or aquifer in the District as defined in Rule 1.1.
- (c) No person shall allow, cause, suffer, or permit waste as that term is defined herein.
- (d) No person shall allow the continued existence of a deteriorated well.

Rule 12.3 Use for a Beneficial Purpose

Groundwater produced in the District shall be used for a beneficial purpose as defined in Rule 1.1.

SECTION 13. HEARINGS

Rule 13.1 Types of Hearings

The District conducts two general types of public hearings: (1) Permit hearings involving permit matters,

in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing, and (2) Rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. Any matter designated for hearing before the Board may be referred by the Board for hearing before a hearing examiner. The general list of public hearings includes:

- (a) Permit Hearings.
 - 1. Permit Applications, Amendments, and Revocations: The District will hold hearings on water well drilling permits, operating permits, transfer permits or amendments and permit revocations or suspensions. Hearings involving permit matters may be scheduled before a hearing examiner. A permit application or an amendment to a permit is considered contested when a person with a personal justiciable interest files a protest and seeks a contested case hearing, unless the Board determines otherwise.
 - 2. Hearings on Motions for Rehearing: Motions for rehearing will be heard by the Board pursuant to Rule 13.8(b).
- (b) Rule-making Hearings.
- (c) District Groundwater Management Plan: At its discretion, when authorized by law, after giving notice, the Board shall hold a public hearing to adopt or revise the Groundwater Management Plan.
- (d) District Rules: The District shall hold a public hearing in accordance with these rules to adopt or revise these rules.
- (e) Other Matters: A public hearing may be held on any matter within the jurisdiction of the duties and responsibilities of the Board, if the Board deems a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the Board.

RULE 13.2 Notice and Scheduling of Public Hearings

- (a) Notices of all public hearings of the District shall be prepared by the General Manager.
 - 1. For all applications, except drilling registrations and registrations, the notice will be provided to the applicant, who has the responsibility for giving the notice. At a minimum, the notice shall state the following information:
 - a. The name and address of the applicant;
 - b. The name or names of the owner or owners of the land, if different from the applicant;
 - c. The date the application was filed and the number assigned to it;
 - d. The time and date when and place where the hearing will be held;
 - e. The address or approximate location of the proposed well;
 - f. A brief summary of the information included in the application;
 - g. A brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use and any change in use;

- h. The time, date and location of the hearing; and,
 - i. Any other information requested by the Board.
 - 2. For rule-making hearings, the General Manager is responsible for giving the notice. The notice shall be given not less than 20 days before the rule-making hearing. The notice shall be posted in a place readily accessible to the public at the District office, be provided to the county clerks of Nueces, San Patricio, Aransas, and Kleberg Counties, published in one or more newspapers of general circulation in each county, provide notice by mail, facsimile, or electronic mail to any person who has requested notice, and a copy of the proposed rule shall be made available at the District office. The notice shall include the time, date and place of the rule-making hearing, a brief explanation of the subject of the rule-making hearing, and a location or internet site at which a copy of the proposed rule(s) may be reviewed or copied.
- (b) The applicant shall give the notification to adjacent property owners and landowners as shown in the county tax rolls as of the date the application is filed and, in addition, to all existing registered and permitted well owners within 3,000 feet of the proposed well as shown in the records of the District on the day the application is filed not less than 10 days before the public hearing and provide the District with proof of service. The applicant shall also publish the notice once in a newspaper(s) in general circulation in each county in the District not be less than 10 calendar days before the date set for the hearing. A publisher's affidavit and tear sheet of the notice shall be provided to the District. Proof of service and the publisher's affidavit and tear sheet of the notice shall be filed with the District prior to the commencement of the hearing. In considering whether notice has been given, the Board may evaluate the good faith effort of the applicant to give the notice. The General Manager shall also post notice in a publicly accessible place at the District's office, provide notice to the county clerk of the county in which the proposed well is located, give regular mail, facsimile, or electronic mail notice to any person who has requested notice and regular mail notice to any other person entitled to receive notice under these rules. An officer or employee of the District shall make an affidavit establishing attempted service of the notice by first class mail, facsimile or electronic mail in accordance with the information provided by the person as proof that the notice was provided. However, the failure to provide the notice to persons requesting the notice does not invalidate an action taken by the District.
- (c) Notice will be given to each person who requests in writing copies of public hearing notices pursuant to the procedures set forth in this rule, and any other person the Board deems appropriate. The date of delivery or mailing of notice may not be less than 10 calendar days before the date set for the hearing.
- (d) Requests for notices:
 - 1. Any person having an interest in the subject matter of a permit application or amendment hearing or hearings may receive written notice of such hearing or hearings by submitting a request in writing. The request must identify with as much specificity as possible the hearing or hearings for which written notice is

requested. 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. Failure to provide written notice under this subsection does not invalidate any action taken by the Board.

2. Any person may submit a written request for notice of a rule-making hearing. The request is effective for the remainder of the calendar year in which the request is received. The request for a rule-making notice must be renewed by making a new request each year. An affidavit of an officer or employee establishing the attempted service of notice by first class mail, facsimile, or electronic mail is proof that notice was provided by the District. However, the failure to provide the notice shall not invalidate an action taken by the District at a rule-making hearing.

- (e) Public hearings may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. All permit hearings will be held at the District office, unless the Board directs otherwise. However, the Board may from time to time change or schedule additional dates, times, and places for permit hearings. Other hearings will be scheduled at the dates, times and locations set at a regular Board meeting, unless an emergency meeting becomes necessary, which shall be publicized and held as required by law. The District may schedule as many applications for consideration at one hearing as deemed desirable. Hearings may be continued from time to time and date to date without additional mailed or published notice.

Rule 13.3 Board Action, Contested Case Hearing Requests, and Preliminary Hearing

- (a) The Board may take action on any 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 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 Board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted under Texas Water Code Section 36.415. 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.
- (c) Following a preliminary hearing, the Board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the Board determines that no person who

requested a contested case hearing had standing or that no justiciable issues were raised, the Board may take any action authorized in Subsection (a) above.

- (d) 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:
1. Includes special conditions that were not part of the application as finally submitted; or,
 2. Grants a maximum amount of groundwater production that is less than the amount requested in the application.

Rule 13.4 General Procedures

- (a) Authority of the Presiding Officer: The presiding officer may conduct the hearing or other proceeding in the manner the presiding officer deems most appropriate for the particular proceeding. In permit or amendment application hearings, the presiding officer shall designate parties to the proceedings. The applicant shall always be designated a party.
- (b) The presiding officer has the authority to:
1. Set hearing dates, other than the initial hearing date for permit matters in accordance with Rule 13.2;
 2. Convene the hearing at the time and place specified in the notice for public hearing;
 3. Set any necessary additional hearing dates;
 4. Establish the jurisdiction of the District concerning the subject matter under consideration;
 5. Rule on motions and on the admissibility of evidence and amendments to pleadings;
 6. Designate and align parties and establish the order for presentation of evidence;
 7. Administer oaths to all persons presenting testimony;
 8. Examine witnesses;
 9. Issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
 10. Require the taking of depositions and compel other forms of discovery under these rules;
 11. Ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 12. Conduct public hearings in an orderly manner in accordance with these rules;
 13. Recess any hearing from time to time and place to place;
 14. Reopen the record of a hearing for additional evidence when necessary to make the record more complete;
 15. Exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of presiding officer; and,
 16. Determine how to apportion among the parties the costs related to:
 - a. Contract for the services of a presiding officer; and,

- b. The preparation of the official hearing record.
- (c) Hearing Registration Forms: Each individual who participates in a hearing or other proceeding of the District must submit a form providing the following information: name; address; whether the person plans to testify; who the person represents if the person is not there in the person's individual capacity; and any other information relevant to the hearing or other proceeding.
- (d) Appearance and Representative Capacity: Any interested person may appear in person or may be represented by counsel, engineer, or other representative provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, Limited Liability Company, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for 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.
- (e) Alignment of Parties and 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 participants of an aligned class to select one or more persons to represent them 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 of an aligned class to be heard in the proceeding or on any particular matter or ruling.
- (f) Appearance by Applicant or Movant: The applicant, movant or party requesting the hearing or other proceeding or their representative should be present at the hearing or other proceeding. Failure to so 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 deems it necessary in order to fully develop the record.
- (g) Reporting: Public hearings and other proceedings will be recorded on audio cassette tape or, at the discretion of the presiding officer, may be recorded by a certified shorthand reporter. The District does not prepare transcripts for the public of hearings or other proceedings recorded on audio cassette tape on District equipment, but the District will arrange access to the recording. Subject to availability of space, any party may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 13.5(b). In all District matters, if a proceeding is recorded by a reporter, and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original transcript filed with the papers of the proceeding at the expense

of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.

- (h) **Continuance:** The presiding officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a public hearing or other proceeding is continued and a time and place (other than the District office) for the public hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the presiding officer before it is recessed, the presiding officer must provide a notice giving the time, date, and location of the continued public hearing by regular mail to the parties. It is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.
- (i) **Filing of Documents and Time Limit:** Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these rules or by law must be received in hand at the District's 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.
- (j) **Computing Time:** In computing any period of time specified by these rules, by a presiding officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday as determined by the Board, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.
- (k) **Affidavit:** Whenever the making of an affidavit by a party to a public hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.
- (l) **Broadening the Issues:** No person will be allowed to appear in any public 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 public hearing or other proceeding.
- (m) **Conduct and Decorum:** Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must 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 first 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 deems necessary.

Rule 13.5 Uncontested Permit Hearing Procedures

- (a) **Written Notice of Intent to Contest:** Any person who intends to contest a permit application must provide written notice of that intent to the District office and the applicant at least five calendar days prior to the date of the public hearing. If the General Manager intends to contest a permit application, the General Manager must provide the applicant written notice of that intent at least five calendar days prior to the date of the public hearing. If no notice of intent to contest is received five calendar days prior to the public hearing, the General Manager, as instructed by the Board of Directors, will cancel the public hearing and the Board will consider the permit at the next regular Board meeting.
- (b) **Informal Hearings:** Permit hearings may be conducted informally when, in the judgment of the hearing body, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- (c) **Agreement of Parties:** If, during an informal proceeding, all parties reach a negotiated or agreed settlement which, in the judgment of the hearing body, settles the facts or issues in controversy, the proceeding will be considered an uncontested case. The hearing body will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.
- (d) **Decision to Proceed as Uncontested or Contested Case:** If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the hearing body determines these issues will require extensive discovery proceedings, the hearing body will declare the case to be contested and convene a prehearing conference as set forth in Rule 13.5. The hearing body may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions the hearing body deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the hearing body will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.
- (e) **Recordation of the Hearing:** In an uncontested case, the presiding officer may substitute minutes or the report required under Texas Water Code 36.410 for the method of recording the hearing.

Rule 13.6 Contested Permit Hearing Procedures

- (a) **Pre-Hearing Conference:** A pre-hearing conference shall be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process.
 - 1. **Matters Considered:** Matters which may be considered at a preheating conference include, but are not limited to;
 - a. The designation of parties;
 - b. The formulation and simplification of issues;
 - c. The necessity or desirability of amending applications or other pleadings;

- d. The possibility of making admissions or stipulations;
 - e. The scheduling of discovery;
 - f. The identification of and specification of the number of witnesses;
 - g. The filing and exchange of prepared testimony and exhibits; and,
 - h. The procedure at the hearing.
 - 2. Notice: A prehearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 13.2, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the presiding officer.
 - 3. Conference Action: Action taken at a prehearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.
- (b) Assessing Reporting and Transcription Costs: Upon the timely request of any party, or at the discretion of the hearing body, the hearing body may make a recommendation to the Board regarding the assessment of reporting and transcription costs to one or more of the parties. If the Board is the hearing body, a hearing report with recommendations need not be filed. The hearing examiner must consider the following factors in assessing reporting and transcription costs:
- 1. The party who requested the transcript;
 - 2. The financial ability of the party to pay the costs;
 - 3. The extent to which the party participated in the hearing;
 - 4. The relative benefits to the various parties of having a transcript;
 - 5. The budgetary constraints of a governmental entity participating in the proceeding; and,
 - 6. Any other factor that is relevant to a just and reasonable assessment of costs.
- (c) In any proceeding where the assessment of reporting or transcription costs is an issue, the hearing body must provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs must be included in the hearing body's report to the Board.
- (d) Designation of Parties: Parties to a hearing will be designated on the first day of hearing or at such other time as the hearing body determines. The General Manager and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. To be designated as a party, the person must be an affected person as defined in Rule 1.1. After parties are designated, no other person may be admitted as a party unless, in the judgment of the hearing body, there exists good cause and the hearing will not be unreasonably delayed.
- (e) Rights of Designated Parties: Subject to the direction and orders of the hearing body, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive

copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.

- (f) **Persons Not Designated Parties:** At the discretion of the hearing body, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the hearing body as evidence.
- (g) **Furnishing Copies of Pleadings:** After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or the party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.
- (h) **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.
- (i) **Agreements to be in Writing:** No agreement between parties or their representatives affecting any pending matter will be considered by the hearing examiner unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered into the record.
- (j) **Discovery:** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the hearing body. Unless specifically modified by these rules or by order of the hearing body, discovery will be governed by, and subject to the limitations set forth in, the Texas Administrative Procedures Act. In addition to the forms of discovery authorized under the Texas Administrative Procedures Act, the parties may exchange informal requests for information by agreement.
- (k) **Discovery Sanctions:** If the hearing body finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the hearing body may:
 - 1. Suspend processing of the application for a permit if the applicant is the offending party;
 - 2. Disallow any further discovery of any kind or a particular kind by the offending party;
 - 3. Rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
 - 4. Limit the offending party's participation in the proceeding;
 - 5. Disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and/or,

6. Recommend to the Board that the hearing be dismissed with or without prejudice.

- (l) **Compelling Testimony, Swearing Witnesses, and Subpoena Power:** The hearing body may compel the testimony of any person which is necessary, helpful, or appropriate to the hearing. The hearing body will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The hearing body may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.
- (m) **Evidence:** Except as modified by these rules, the Texas Administrative Procedures Act govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Administrative Procedures Act may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
- (n) **Written Testimony:** When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- (o) **Requirements for Exhibits:** Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
- (p) **Abstracts of Documents:** When documents are numerous, the hearing body may receive in evidence only those that are representative and the hearing body may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which abstracts are made.
- (q) **Introduction and Copies of Exhibits:** Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the hearing body and to each of the parties, unless the hearing body rules otherwise.
- (r) **Excluding Exhibits:** In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.

- (s) Official Notice: The hearing body may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- (t) Documents in District Files: Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.
- (u) Oral Argument: At the discretion of the hearing body, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The hearing body may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, further oral arguments may be heard by the Board, if the Board is not the hearing body.
- (v) If a hearing is uncontested, or becomes uncontested during the course of the hearing, the presiding officer may substitute minutes or the report required by law for a method of recording the hearing.

Rule 13.7 Conclusion of the Public Hearing and Report

- (a) Closing the Record and Proposal for Decision: At the conclusion of the presentation of evidence and any oral argument, the hearing body may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the hearing body. After the record is closed, the hearing body will prepare a proposal for decision to the Board, and submit the proposal for decision to the Board not later than the 30th day after the date the evidentiary hearing is concluded, if the Board is not the hearing body. The proposal for decision must include a summary of the subject matter of the hearing and evidence, together with the hearing body's findings and conclusions and recommendations for action. Upon completion and issuance of the hearing body's proposal for decision, a copy must be submitted to the Board, delivered to each party to the proceeding and to each party who provided comments. In a contested case, delivery to the parties must be by certified mail.
- (b) Exceptions to the Hearing Body's Proposal for Decision and Reopening the Record: Prior to Board action, any party in a contested case or a party who provided comments may file written exceptions to the hearing body's proposal for decision, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board. Upon review of the proposal for decisions and exceptions, the hearing body may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the proposal for decision and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the hearing body for further proceedings.
- (c) Time for Board Action on Certain Permit Matters: In the case of hearings involving new permit applications, original applications for existing wells, or applications for permit renewals or

amendments, the hearing body's proposal for decision should be submitted, and the Board shall act, within 60 calendar days after the close of the hearing record.

- (d) The Board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Rule 13.3 (h).
- (e) 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 judge, only if the Board determines:
 - 1. That the administrative law judge did not properly apply or interpret applicable law, District rules, written policies provided under Texas Water Code Section 36.416(e), or prior administrative decisions;
 - 2. That a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or,
 - 3. That a technical error in finding of fact should be changed.
- (f) The Board may take action on 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 hearing may be held in conjunction with a regularly scheduled or special called Board meeting. The Board action may occur at the same Board meeting as the public meeting. The Board may issue a written order to grant an application, grant an application with special conditions, or deny the application.
- (g) Following an uncontested hearing, an applicant may, no later than the 20th day after the date the Board issues an order granting the application, demand in writing a contested case hearing if the order:
 - 1. Includes special conditions that were not a part of the application as finally submitted; or,
 - 2. Grants a maximum amount of groundwater production that is less than the amount requested in the application.

Rule 13.8 Rule-Making Public Hearing Procedures

- (a) General Procedures: The presiding officer will conduct the rule-making public hearing in the manner the presiding officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The presiding officer may follow the guidelines of Robert's Rules of Order, Newly Revised.
- (b) Submission of Documents: Any interested Person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 13.2; provided,

however, that the presiding officer may grant additional time for the submission of documents.

- (c) Oral Presentations: Any person desiring to speak on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- (d) Conclusion of the Hearing, Closing the Record, and Hearing Body's Report: At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the presiding officer is a hearing examiner or chairman of a committee, the presiding officer must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject of the hearing and the public comments received, together with the hearing body's recommendations for action. Upon completion and issuance of the hearing body's report, a copy must be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.
- (e) Exceptions to the Hearing Body's Report and Reopening the Record: Any interested person may make exceptions to the hearing body's report, and the Board may reopen the record, in the manner prescribed in Rule 13.6(b).

Rule 13.9 Final Decision and Appeals

- (a) Board action: After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action but the Board shall act on an application for any type of permit or permit amendment not less than 60 days after the date the final hearing is concluded. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.
- (b) Requests for Rehearing or Findings and Conclusions: Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within 20 calendar days of the date of the Board's decision, in the case of a contested or uncontested hearing on an application, the applicant, or a party to a contested hearing, may administratively appeal. Such a rehearing request must be filed at the District office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within 45 calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the

Board to grant or deny the request for rehearing within 90 calendar days of submission will be deemed to be a denial of the request.

Rule 13.10 Appeal of Desired Future Conditions and Judicial Appeal of Desired Future Conditions

- (a) An affected person may file a petition with the District requiring that the District contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing appealing the reasonableness of the desired future condition. The petition must be filed not later than the 120th day after the date on which the District adopts a desired future condition under Texas Water Code Section 36.108(d-4). The petition must provide evidence that the District did not establish a reasonable desired future condition of the groundwater resources in the management area.
- (b) In this Rule, “Affected person” means:
 - 1. An owner of land in Groundwater Management Areas 15 and 16;
 - 2. A groundwater conservation District or subsidence District in or adjacent to Groundwater Management Areas 15 and 16;
 - 3. A regional water planning group with a water management strategy in Groundwater Management Areas 15 and 16;
 - 4. A person who holds or is applying for a permit from a District in Groundwater Management Areas 15 and 16;
 - 5. A person with legally defined interest in groundwater in Groundwater Management Areas 15 and 16; or,
 - 6. Any other person defined as affected by the Texas Commission on Environmental Quality rule.
- (c) Not later than the 10th day after receiving a petition, the District shall submit a copy of the petition to the Texas Water Development Board. The Texas Water Development Board shall conduct an administrative review and study required by Texas Water Code Section 36.1083(e), which must be completed and delivered to SOAH not later than 120 days after the Texas Water Development Board receives the petition. SOAH shall consider the study described and the desired future conditions explanatory report submitted to the development Board under Texas Water Code Section 36.108(dd)(3) to be part of the administrative record in the SOAH hearing. The Texas Water Development Board shall make available relevant staff as expert witnesses if requested by SOAH or a party to the hearing.
- (d) Not later than 60 days after receiving a petition appealing the reasonableness of the desired future conditions filed under Texas Water Code Section 36.1083(b), the District shall submit to SOAH a copy of the petition and contract with SOAF to conduct a contested case hearing.
- (e) The petitioner shall pay the costs associated with the contract with SOAH and shall deposit with the District an amount determined by the District, after consultation with SOAH, that is sufficient to pay the contract amount. The deposit must be received within 15 days of written notification by the District to the petitioner specifying the amount of the deposit. Failure to

timely pay the deposit may result in dismissal of the petition. After the hearing is completed and all costs paid to SOAH, the District shall refund any excess money to the petitioner.

- (f) Unless provided by SOAH, the District shall provide notice of a hearing appealing the reasonableness of the desired future conditions. Not later than the 10th day before the date of a hearing, the General Manager or Board shall provide notice as follows (unless notice provided by SOAH):
 - 1. General Notice:
 - a. Post notice in a place readily accessible to the public at the District office; and,
 - b. Provide notice to the county clerk of each county in the District.
 - 2. Individual Notice by Regular Mail, Facsimile, or Electronic Mail to:
 - a. The petitioner;
 - b. Any person who has requested notice;
 - c. Each nonparty District and regional water planning group located in Groundwater Management Areas 15 and 16;
 - d. The Texas Water Development Board; and,
 - e. The Texas Commission on Environmental Quality.

- (g) After the hearing and within 60 days of the receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter 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 Texas Government Code Section 2001.058(e).

- (h) 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

- (i) If the District in its final order finds that a desired future condition is unreasonable, not later than the 60th day after the date of the final order, the District shall reconvene in a joint planning meeting with the other Districts in Groundwater Management Areas 15 and 16 for the purpose of revising the desired future condition. The District and other Districts in Groundwater Management Areas 15 and 16 shall follow the procedures in Texas Water Code Section 36.108 to adopt new desired future conditions applicable to the District.

- (j) A final order by the District finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a District that did not participate as a party in the hearing conducted under this Rule.

- (k) A final District order issued under this Rule may be appealed to a District court with jurisdiction over any part of the territory of the District that issued the order. An appeal under this subsection must be filed with the District court not later than the 45th day after the date the District issued the final order. The case shall be decided under the substantial evidence standard of review as provided by Texas Government Code Section 2001.174. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the Districts in Groundwater Management Areas 15 and 16 to reconvene not later than the 60th day after the date of the court order in a joint planning meeting for the purpose of revising the desired future condition. The District and other Districts in the management area shall follow the procedures in Texas Water Code Section 36.108 to adopt new desired future conditions applicable to the District. A court's finding under this Rule does not apply to a desired future condition that is not a matter before the court.

SECTION 14. INVESTIGATIONS AND ENFORCEMENT

Rule 14.1 Notice and Access to Property

Board members and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board member or District agents or employees who are attempting to conduct an investigation under the District rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code, Section 36.102, 36.122, or 36.205.

Rule 14.2 Conduction of Investigation

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

Rule 14.3 Rule Enforcement

If it appears that a person has violated, is violating, or is threatening to violate any provision of the District rules the Board of Directors may institute and conduct a suit in the name of the District for enforcement of rules through the provisions of Section 36.102, Texas Water Code.

Rule 14.4 Penalty for Violating Rules, Permit Condition, or Board Orders

The penalty for violating a rule, permit term or condition, or order of the Board is up to \$5,000 per violation per day for each day the violation continues.

Rule 14.5 Sealing of Wells

- (a) Following due process, the District may, upon orders from a court of competent jurisdiction, seal wells that are prohibited from withdrawing groundwater within the District by the District rules to ensure that a well is not operated in violation of the District rules. A well may be sealed when:
 - 1. No application has been made for a permit to drill or to register a new well;
 - 2. No application has been made for an operating permit to withdraw groundwater from an existing or new well that is not registered, excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or,
 - 3. The Board has denied, canceled or revoked a drilling permit or an operating permit.
- (b) The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District, and other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.
- (c) Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a well that has been sealed constitutes a violation of these rules and subjects the person performing that action, as well as any well owner or primary operator who authorizes or allows that action, to such penalties as provided by the District rules.

SECTION 15. AQUIFER STORAGE AND RECOVERY PROJECTS

Rule 15.1 Definitions

In this Rule, “aquifer storage and recovery project”, “ASR injection well”, and “ASR recovery well” have the meanings previously identified.

Rule 15.2 Registration and Reporting of Wells

- (a) A project operator shall:
 - 1. Register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with the District;
 - 2. Each calendar month by deadline established by the Texas Commission on Environmental Quality (TCEQ) for reporting to the TCEQ, provide the District with a copy of the written or electronic report required to be provided to the TCEQ under Texas Water Code Section 27.155; and,
 - 3. Annually by deadline established by the TCEQ for reporting to the TCEQ, provide the District with a copy of the written or electronic report required to be provided to the TCEQ under Section 27.156.
- (b) If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by the TCEQ to be recovered under the project, the project operator shall

report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required above in Rule 15.2(a)2.

Rule 15.3 Permitting, Spacing, and Production Requirements

- (a) Except as provided by Subsection(b) below, the District may not require a permit for the drilling, equipping, operation, or completion of an ASR injection well or an ASR recovery well that is authorized by the TCEQ.
- (b) The ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by TCEQ to be recovered.
- (c) A project operator may not recover groundwater by an aquifer storage and recovery project in an amount that exceeds the volume authorized by the TCEQ to be recovered under the project unless the project operator complies with the applicable requirements of the District as described by this section.

Rule 15.4 Fees and Surcharges

- (a) The District may not assess a production fee, transportation or export fee, or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by the commission to be recovered.
- (b) The District may assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that the District assesses such a fee for other wells registered with the District.

Rule 15.5 Consideration of Desired Future Conditions

The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an aquifer storage and recovery project in the planning for and monitoring of the achievement of a desired future condition for the aquifer in which the wells associated with the projects are located.