

RULES OF THE HUDSPETH COUNTY UNDERGROUND WATER CONSERVATION DISTRICT NO. 1

The original rules (formerly sometimes referred to as “by-laws”) of the Hudspeth County Underground Water Conservation District No. 1 were published on December 7, 1990. Those original rules are hereby repealed and replaced by the adoption of these rules on the 31st day of May, 2002, as amended: on the 16th of November, 2005; after the final decisions in the *Guitar* Litigation, on the 8th of March, 2011; on the 12th of April, 2016; and (as to Chapter 10) on the 10th of May, 2016.

In accordance with Section 59 of Article XVI of the Texas Constitution and Chapter 36 of the Texas Water Code, the following rules are hereby ratified and adopted as the rules of this District by its Board.

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

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CHAPTER 1. DEFINITIONS AND CONCEPTS

Sec. 1.1 DEFINITIONS OF TERMS

In the administration of its duties, the District follows the definitions of terms in Chapter 36 of the Texas Water Code and other definitions as follow; provided that, if the definitions differ, the definitions in these rules prevail over the definitions in Chapter 36 but only to the extent that there is no irreconcilable conflict:

- (a) “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.
- (b) “Affected Person” means, for any application, a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (c) “Agricultural Crop” means food or fiber commodities grown for harvest or commercial purposes that provide food, clothing, animal feed, or other commercially recognized products.
- (d) “Average Annual Consumptive Irrigation Requirement” means 2.80 acre-feet of groundwater withdrawals per acre per year.
- (e) “Average Water Elevation” means the determination made under the first sentence of Section 3.5(a) of these Rules.
- (f) “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.
- (g) “Beneficial Use” or “Beneficial Purpose” means use of groundwater for:
 - (1) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes;
 - (2) exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals; or
 - (3) any other purpose that is useful and beneficial to the users that does not commit or result in waste as that term is defined in these rules.
- (h) “Board” means the Board of Directors of the District.
- (i) “Bone Spring-Victorio Peak Aquifer” means the portion of the aquifer within the District defined by Texas Water Development Board Report 364: The Hydrogeology of Hudspeth County, Texas (August 2005) at Section 6.1.1 pp. 19 and 20.
- (j) “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 groundwaters to their zones of origin and to prevent the entrance of surface pollutants.

- (k) “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.
- (l) “Consumptive Irrigation Requirement” means the quantity of irrigation water, exclusive of precipitation and stored soil moisture, that is required for Consumptive Use by an Agricultural Crop and all water lost to evaporation during the process of irrigation of an Agricultural Crop.
- (m) “Consumptive Use” means evapotranspiration, which is the quantity of water used by an Agricultural Crop in transpiration and evaporation of water from the soil surface adjacent to the crop.
- (n) “Deteriorated Well” means a well, the condition of which will cause, or is likely to cause, pollution of any groundwater in the District.
- (o) “District” means the Hudspeth County Underground Water Conservation District No. 1 created in accordance with Section 59 of Article XVI of the Texas Constitution and provisions of Chapter 36 of the Texas Water Code.
- (p) “District Office” means the office of the District, the location of which may be changed from time to time by resolution of the Board.
- (q) “Effective Date” has the meaning stated in Section 1.2 of these Rules.
- (r) “Existing and Historic Use Period” means the period of time from January 1, 1992, through the May 31, 2002, for all land within the boundaries of the District as such boundaries existed on May 31, 2002, and means the period of time from January 1, 1992, through November 16, 2005, for all other land within the boundaries of the District.
- (s) “Existing and Historic Irrigated Land” has the meaning stated in Section 6.12(i) of these Rules.
- (t) “GPM” means gallons per minute.
- (u) “Groundwater” means water, other than underflow of surface water, below the surface of the earth within the District.
- (v) “Groundwater Reservoir” means a specific subsurface water-bearing stratum.
- (w) “*Guitar Litigation*” refers to *Guitar Holding Co. v. Hudspeth County Underground Water Conservation District No. 1*, 209 S.W.3d 172 (Tex. App.—El Paso 2006), *rev’d in part, remanded in part*, 263 S.W.3d 910 (Tex. 2008); and Final Judgment on Remand, paragraphs 1-4 & 9, March 19, 2009, Cause No. 3703-205 (Consol.), 205th Jud. Dist., Hudspeth County, Texas.
- (x) “Hearing Body” means the Board.
- (y) “Hearing Examiner” means the person appointed by the Board to conduct a hearing or other proceeding, but does not include a state administrative law judge.

(z) “High Production Zone” means the portion of the Bone Spring–Victorio Peak Aquifer located under the surface of the land within the boundaries defined in Exhibit B of these rules.

(aa) “House Bill 3442” means the Act of June 1, 2003, the 78th Regular Session of the Texas Legislature, Chapter 200, 2003 Texas General Laws, pages 784 and 808-811.

(bb) “Landowner” means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on such land surface.

(cc) “Leaching Fraction” means the fraction of infiltrated irrigation water that passes through the crop root zone and leaches sufficient salt from the root zone to maintain viable crop root zone. Based upon information available to the District, the Leaching Fraction for irrigation land in the District is determined by the Board to be equal to 0.30.

(dd) “Meter or Measuring Device” means a water flow measuring device required under these rules or a permit of the District that can within +/- 5% of accuracy measure the instantaneous rate of flow and record the amount of groundwater produced from a Well System during a measure of time.

(ee) “Open Meetings Act” means Chapter 551, Texas Government Code, as it may be amended from time to time.

(ff) “Public Information Act” means Chapter 552, Texas Government Code, as it may be amended from time to time.

(gg) “Other Land” means all land located within the boundaries of the District that is not classified by the District as Existing and Historic Irrigated Land.

(hh) “Party” means a person who is an automatic participant in a proceeding before the District as provided under Section 10.5(c) of these rules, or a person who is an “affected person” as defined under these rules and who files a written notice of intent to contest pursuant to Section 10.4(b) of these rules.

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

(jj) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any groundwater in the District, that renders the groundwater 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.

(kk) “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.

(ll) “Qualified Land” means land owned or controlled for the right to produce groundwater under an Operating Permit issued by the District.

(mm) “Qualifying Circle” means a circle described by a horizontal radius (in feet) from the center of a well, or a geometric center (centroid) of aggregated wells, of 117.783 (feet per gpm^{1/2}) multiplied by the square root of the capacity of the well(s) in gallons per minute.

(nn) “Quorum” means a majority of the members of the Board.

(oo) “Registration” means a certificate issued by the District for a well that is exempt from an Operating or Validation Permit.

(pp) “Rule” means the rules and regulations of the District.

(qq) “State administrative law judge” means an attorney employed by the Texas State Office of Administrative Hearings and designated to preside over administrative legal proceedings involving the District.

(rr) “Suspended Lands” means Existing and Historic Lands which are voluntarily placed into suspended status by a Validation Permit holder, thereby relinquishing the right to produce groundwater under the Validation Permit, to the extent of the amount placed into suspended status for the duration of the term of suspension.

(ss) “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 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.

(tt) “Transition Period” means the time period from January 1, 2002, through December 31, 2002.

(uu) Types of Permits:

(1) “Drilling Permit” means a permit required by the District for a new well to be drilled, including test wells, or an existing well that is to be re-drilled, except as provided under Section 6.14 of these rules.

(2) “Operating Permit” means a permit required by the District for the operation of any non-exempt Well System, for which there is no Validation Permit, including such Well System, and which authorizes the quantity of groundwater that may be withdrawn from such Well System for use within the District’s boundaries as determined in Chapter 3 of these rules. “Operating permit,” as used in these rules, is to be distinguished from an “operating permit” as defined in Section 36.001(31) of the Texas Water Code, which defines a different category of official permission or authorization.

(3) “Transfer Permit” means a permit required by the District which authorizes the transfer of groundwater produced by a Well System for which the Well Owner

possesses an Operating Permit from the District to a place of use outside of the boundaries of the District.

(4) “Validation Permit” means a permit required by the District for the operation of any non-exempt existing Well System and authorizing the quantity of groundwater that may be withdrawn from such Well System for use within the District’s boundaries as determined in Chapter 3 of these rules.

(vv) Types of Wells:

(1) “Exempt Well” means a well, which may be either a new or an existing well that is exempt under Chapter 7 of these rules, and is not required to have an operating or validation permit, but shall be registered with the District.

(2) “Existing Well” means a well which, prior to the Effective Date of these rules, was in existence and from which water was capable of being withdrawn.

(3) “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 under permits issued by the Railroad Commission of Texas.

(4) “Index Well Network” means a monitoring well or series of monitoring wells from which the Water Allocation shall be determined pursuant to Chapter 3 of these rules. The District shall ensure that each well in the Index Well Network is equipped with a continuous water level recorder and the recorded water level data is periodically verified by field measurements by District staff.

(5) “Injection well” means a well into which fluids are injected.

(6) “Monitoring well” means a well installed to measure some property of the groundwater or the aquifer that it penetrates.

(7) “New Well” means a well for which drilling commenced on or after the Effective Date of these rules.

(8) “Non-exempt Well” means either an existing or a new well which does not meet the criteria of an Exempt Well pursuant to Chapter 7 of these rules.

(ww) “Waste” means any one or more of the following:

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

(2) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

- (3) unintentional escape of groundwater from a groundwater reservoir for non-beneficial use to any other reservoir or geologic stratum that does not contain groundwater;
- (4) pollution or harmful alteration of groundwater in a groundwater reservoir above the background groundwater quality by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
- (5) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or other order issued by the Texas Commission on Environmental Quality under Chapters 11 or 26 of the Texas Water Code;
- (6) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well, unless permission has been granted by the occupant of the land receiving the discharge;
- (7) for water produced from an artesian well, “waste” has the meaning stated in Section 11.205, Texas Water Code; or
- (8) operating a deteriorated well.

(xx) “Water Allocation” means the quantity of groundwater which may be withdrawn each year, averaged over only the two year period beginning with the first year of the effective date of the allocation, from the portion of the Bone Spring-Victorio Peak Aquifer within the boundaries of the District pursuant to a Validation or Operating Permit issued by the District.

(yy) “Well” means any facility, device or method used to withdraw groundwater from a groundwater reservoir in the District.

(zz) “Well Operator” means the person who operates a Well System.

(aaa) “Well Owner” means the person who owns a possessory interest in the land upon which a Well System is located or is to be located, the Well System, or the groundwater withdrawn from such Well System.

(bbb) “Well System” means a well or group of wells where the sum total of annual water authorized by the District to be withdrawn from such Well System is limited to the applicable Water Allocation as determined by these rules.

(ccc) “Withdraw” means the act of extracting or producing groundwater by pumping or any other method.

Sec. 1.2 EFFECTIVE DATE OF RULES

The Effective Date of these rules is the date on which such rules were adopted by the Board. Amendments to rules are effective on the date on which the amendments were adopted by the Board, except when Chapter 36 of the Texas Water Code provides

otherwise. For land within the District that was added to the District after May 31, 2002, the Effective Date is the date on which such land was added to the District or the date on which a rule was adopted, whichever date is later. For all other land within the District, the effective date is May 31, 2002, or the date on which a rule or rule amendment was adopted, whichever date is later.

Sec. 1.3 AUTHORITY OF DISTRICT

The Hudspeth County Underground Water Conservation District No. 1 is a political subdivision of the State of Texas organized and existing under and by virtue of Article XVI, Section 59, of the Texas Constitution. The District was created pursuant to Vernon’s Texas Civil Statutes Article 7880-1, *et. seq.*, by a petition presented on December 31, 1956, to the Hudspeth County Commissioners Court and confirmed by an election held on February 16, 1957.

Sec. 1.4 DISTRICT BOUNDARIES

The boundaries of the District are those defined on the 15th day of August, 1955, by the Board of Water Engineers of the State of Texas as “Subdivision Number One, of the Underground Water Reservoir in Hudspeth County, Texas,” as amended by Section 20 of House Bill 3442 of the 78th Regular Session of the Texas Legislature (see Exhibit A attached to these Rules).

Sec. 1.5 PURPOSE OF RULES

These rules are adopted pursuant to the authority of Section 36.101, Texas Water Code, for the purpose of conserving, preserving, protecting, and recharging groundwater in the District, and these rules are adopted under the District’s statutory authority to prevent waste and to protect the rights of owners of interests in groundwater.

Sec. 1.6 USE AND EFFECT OF RULES

These rules are used by the District in the exercise of the powers conferred by law and in the accomplishment of the purposes of the law creating the District.

Sec. 1.7 AMENDING OF RULES

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

Sec. 1.8 PURPOSE OF DISTRICT

The purpose of the District is to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution.

Sec. 1.9 OWNERSHIP OF GROUNDWATER

The ownership and rights of the owners of the lands within the District and their lessees and assigns in groundwater are hereby recognized, and nothing in Chapter 36 of the Texas Water Code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by these Rules or by Section 36.002(b-1) of the Texas Water Code.

Sec. 1.10 HEADINGS AND CAPTIONS

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

Sec. 1.11 CONSTRUCTION

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. Whenever a time period for an event or action is stated in terms of days, the days are to be counted as calendar days.

Sec. 1.12 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 telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 o'clock p.m. (local time in Dell City, Texas) 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 telephonic document transfer or electronic delivery is complete upon transfer or electronic delivery, except that any transfer or electronic delivery completed after 5:00 o'clock p.m. Mountain Time (local time in Dell City, Texas) 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 Hudspeth County, Texas or by such method as the Hearing Body may provide. Service by electronic mail may be substituted as the method of service if the General Manager publicly authorizes in writing such method of service.

Sec. 1.13 SEVERABILITY

If any one or more of the provisions contained in these rules are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other rules or provisions of these rules, and these

rules must be construed as if such invalid, illegal, or unenforceable rules or provision had never been contained in these rules.

CHAPTER 2. DISTRICT ORGANIZATION

Sec. 2.1 BOARD OF DIRECTORS

- (a) The governing body of the District is the Board of Directors, which shall consist of five directors elected for four-year terms.
- (b) Vacancies in the office of director shall be filled by appointment of the Board. If the vacant office is not scheduled for election for longer than two years at the time of the appointment, the Board shall order an election for the unexpired term to be held as part of the next regularly scheduled director's election. The appointed director's term shall end on qualification of the director elected at that election.
- (c) The Board is created to determine policy and to regulate the withdrawal of groundwater within the boundaries of the District, and to exercise its rights, powers and duties in a manner that will effectively and expeditiously accomplish the purposes of the law creating the District and Chapter 36 of the Texas Water Code. The Board's responsibilities include, but are not limited to, adoption and enforcement of reasonable rules, policies, permits, and orders.

Sec. 2.2 QUORUM

A majority of the membership of the Board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the Board is sufficient for transacting any business of the District.

Sec. 2.3 OFFICERS

- (a) After each directors' election, the Board shall meet and elect officers.
- (b) Members and officers serve until their successors are elected or appointed and sworn in accordance with the Chapter 36 of the Texas Water Code and these rules. The Board shall elect a president, vice president, secretary, and any other officers or assistant officers as the Board may deem necessary.
- (b) The president is the chief executive officer of the District, presides at all meetings of the Board, and shall execute all documents on behalf of the District. The vice president shall act as president in case of the absence or disability of the president. The secretary is responsible for seeing that all records and books of the District are properly kept and shall attest the president's signature on all documents.
- (d) The Board may appoint another director, the General Manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the District, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the District.

- (e) After any election or appointment of a director, the District shall notify the executive director of the Texas Commission on Environmental Quality within 30 days after the date of the election or appointment of the name and mailing address of the director chosen and the date that director's term of office expires. The executive director shall provide forms to the District for such purpose.
- (f) In the absence of a General Manager, the president shall exercise all of the duties delegated to the General Manager under these rules.

Sec. 2.4 SWORN STATEMENT, BOND, AND OATH OF OFFICE

- (a) As soon as practicable after a director is elected or appointed, that director shall make the sworn statement prescribed by the constitution for public office.
- (b) As soon as practicable after a director has made the sworn statement, and before beginning to perform the duties of office, that director shall take the oath of office prescribed by the constitution for public officers.
- (c) Before beginning to perform the duties of office, each director shall execute a bond for \$10,000 payable to the District and conditioned on the faithful performance of that director's duties. All bonds of the directors shall be approved by the Board and paid for by the District.
- (d) The sworn statement shall be filed as prescribed by the Texas Constitution. The bond and oath shall be filed with the District and retained in its records.

Sec. 2.5 GENERAL MANAGER

- (a) The Board may employ or contract with a person to perform such services as General Manager for the District as the Board may from time to time specify. The Board may delegate to the General Manager full authority to manage and operate the affairs of the District subject only to orders of the Board.
- (b) The Board may delegate to the General Manager the authority to employ all persons necessary for the proper handling of the business and operation of the District and to determine the compensation to be paid all employees other than the General Manager.
- (c) A director may be employed as General Manager of the District. The compensation of a General Manager who also serves as a director shall be established by the other directors.
- (d) The General Manager is chief administrative officer of the District and General Manager shall have authority to manage and to operate the affairs of the District, subject only to the direction given by the Board through policies and resolutions adopted by it. At least annually, the Board shall determine the compensation to be paid to the general manger and review the actions and performance of the General Manager to determine how the General Manager has fulfilled his responsibilities and whether additional responsibilities should be delegated to him. The General Manager, with the

approval of the Board, may employ all persons necessary for the proper handling of the business and operation of the District.

Sec. 2.6 MANAGEMENT OF DISTRICT

- (a) The Board shall be responsible for the management of all the affairs of the District. The District shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the Board for the conduct of the affairs of the District, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff.
- (b) The Board shall set the compensation and terms for consultants.
- (c) In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, the District shall follow the procedures provided in the Professional Services Procurement Act, Subchapter A, Chapter 2254, Texas Government Code.
- (d) The Board shall require an officer, employee, or consultant who collects, pays, or handles any funds of the District to furnish good and sufficient bond, payable to the District, in an amount determined by the Board to be sufficient to safeguard the District. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the District. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.
- (e) The Board may pay the premium on surety bonds required of officials, employees, or consultants of the District out of any available funds of the District, including proceeds from the sale of bonds.
- (f) The Board may adopt by-laws to govern the affairs of the District to perform its purposes. The Board may, by resolution, authorize its General Manager or other employee to execute documents on behalf of the District.
- (g) The Board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the District to perform its purposes.

Sec. 2.7 CONFLICTS OF INTEREST

A director of the District is subject to the provisions of Chapters 171 and 176, Texas Local Government Code, relating to the regulation of conflicts and relationships of officers of local governments.

Sec. 2.8 GENERAL ELECTIONS

- (a) All elections shall be generally conducted in accordance with the Election Code except as otherwise provided in Chapter 36 of the Texas Water Code. Write-in candidacies for any District office shall be governed by Subchapter C, Chapter 146, of the Texas Election Code.
- (b) The directors of the District shall be elected according to the precinct method as defined by Chapter 12, page 1105, Special Laws, Acts of the 46th Legislature of

Texas, Regular Session, 1939. To be qualified to be elected as a director, a person must be a registered voter in the precinct that the person represents.

(c) Elections shall be held on the second Saturday of May of each odd-numbered year.

Sec. 2.9 FEES OF OFFICE; REIMBURSEMENT

(a) A director is entitled to receive fees of office of not more than \$150 a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$9,000 a year.

(b) Each director is also entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the District.

(c) In order to receive fees of office and to receive reimbursement for expenses, each director shall file with the District a verified statement showing the number of days actually spent in the service of the District and a general description of the duties performed for each day of service.

Sec. 2.10 POLICIES

(a) Subject to the law governing the District, the Board shall adopt the following in writing:

(1) a code of ethics for District directors, officers, employees, and persons who are engaged in handling investments for the District;

(2) a policy relating to travel expenditures;

(3) a policy relating to District investments that ensures that:

(A) purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and

(B) periodic review is made of District investments to evaluate investment performance and security;

(4) policies and procedures for selection, monitoring, or review and evaluation of professional services;

(5) policies that ensure a better use of management information, including:

(A) budgets for use in planning and controlling cost;

(B) an audit or finance committee of the Board; and

(C) uniform reporting requirements that use "Audits of State and Local Governmental Units" as a guide on audit working papers and that uses "Governmental Accounting and Financial Reporting Standards."

(b) The state auditor may audit the financial transactions of the District if the state auditor determines that the audit is necessary.

Sec. 2.11 NOTICE OF MEETINGS

Notice of meetings of the Board shall be given as set forth in the Open Meetings Act.

Sec. 2.12 MEETINGS

- (a) The Board shall hold regular meetings at least monthly. It may hold meetings at other times as required for the business of the District.
- (b) Meetings shall be conducted and notice of meetings shall be posted in accordance with the Open Meetings Act, Chapter 36 of the Texas Water Code, and these Rules. A meeting of a committee of the Board, where less than a quorum is present, is not subject to the provisions of the Open Meetings Act.
- (c) The Board may hold special meetings at the request of the President or by written request of at least two Board members.

Sec. 2.13 RECORDS

- (a) The Board shall keep a complete account of all its meetings and proceedings and shall preserve its minutes, contracts, records, notices, accounts, receipts, and other records in a safe place.
- (b) The records of each District are the property of the District and are subject to the Public Information Act, as applicable.
- (c) The preservation, storage, destruction, or other disposition of the records of each District is subject to the requirements of Chapter 201 of the Texas Local Government Code and rules and schedules adopted thereunder.

Sec. 2.14 CONTRACTS

- (a) The District shall contract, and be contracted with, in the name of the District.
- (b) The District may purchase property from any other governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.

Sec. 2.15 EXECUTIVE COMMITTEES

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

CHAPTER 3. REGULATION OF SPACING AND PRODUCTION

Sec. 3.1 REQUIRED WELL SPACING

A new well may not be drilled within 50 feet from the property line of any adjoining landowner.

Sec. 3.2 EXCEPTIONS TO SPACING REQUIREMENTS

- (a) If the applicant presents waivers signed by the adjoining landowner(s) stating that they have no objection to the proposed location of the well site, the spacing

requirements will not apply to the new proposed well location, except as provided by Chapter 28 of the Texas Water Code.

- (b) Providing an applicant can show, by clear and convincing evidence, good cause why a new well should be allowed to be drilled closer than the required spacing of 50 feet, the issue of spacing requirements will be considered during the contested case process. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board must limit the production of the well to ensure no injury is done to adjoining landowners or the Bone Spring-Victorio Peak Aquifer.

Sec. 3.3 PRODUCTION LIMITATIONS DURING TRANSITION PERIOD

- (a) During the Transition Period, the maximum annual quantity of groundwater that may be withdrawn or produced by an owner of a non-exempt existing Well System that has produced and beneficially used groundwater for irrigation purposes in accordance with the determination of Existing and Historic Irrigated Lands under Section 6.12 of these Rules shall not be greater than 5.0 acre-feet per acre for application on irrigable land.
- (b) During the Transition Period, the maximum annual quantity of groundwater that may be withdrawn by an owner of a non-exempt existing Well System that has produced and beneficially used groundwater for non-exempt purposes other than irrigation shall be no greater than the maximum annual amount of water that the Well Owner withdrew and beneficially used in any one year during the Existing and Historic Use Period.
- (c) During the Transition Period, for an owner of an existing non-exempt Well System other than those described in Subsections (a) and (b) of this Section, or for an owner of any new Well System, the maximum annual quantity of groundwater that may be withdrawn by such Well Owner shall be in accordance with a new Operating Permit applied for and issued by the District under these Rules. Any new Operating Permits issued during the Transition Period shall be subject to further reductions, conditions or limitations based upon the District's Certified Management Plan and the final issuance of Validations Permits as set forth under Section 6 of these rules.
- (d) Subsections (a) through (c) of this Section are not applicable to land added to the District after May 31, 2002, and there is no transition period for such lands.

Sec. 3.4 PRODUCTION LIMITATIONS AFTER TRANSITION PERIOD

- (a) This Section pertains to production limitations after the Transition Period.
- (b) Pursuant to Chapter 36 of the Texas Water Code and to achieve the goals of the District's Management Plan, including managing the sustainability of the Bone Spring-Victorio Peak Aquifer, this Section establishes production limitations for all Operating and Validation Permits after the Transition Period based upon the allocation of groundwater withdrawals that are determined by the level of the aquifer, as set forth under Sections 3.5 through 3.10, below.

- (c) The maximum annual quantity of groundwater that may be withdrawn from an existing Well System under a Validation Permit issued by the District for irrigation use shall be no greater than the product of the applicable Water Allocation per acre, as quantified in Section 3.5 of these rules multiplied by the number of acres of land determined by the District to be Existing and Historic Irrigated Land (see Section 6.13 of these rules) that is owned or controlled by the Well Owner.
- (d) The maximum annual quantity of groundwater that may be withdrawn under a Validation Permit issued by the District for a non-exempt existing Well System that has produced and beneficially used groundwater for non-exempt purposes other than irrigation shall be no greater than the maximum annual amount of water that the Well Owner withdrew and beneficially used in any one calendar year during the Existing and Historic Use Period subject to the limitations set forth in Sections 3.5 through 3.10, below.
- (e) The maximum annual quantity of groundwater that may be withdrawn from a Well System under any Operating Permit issued by the District for Other Land use shall be no greater than the product of the applicable Water Allocation per acre, as quantified in Section 3.6 of these rules, multiplied by the number of acres of land determined by the District to be Qualified Land.
- (f) To the extent not otherwise provided for in any Validation or Operating Permit, the maximum daily average flow rate that any single non-exempt well shall be pumped is limited to the maximum flow rate in gallons per minute, as stated in such permit.
- (g) No production limits are established for Exempt Wells under this Section. However, production limitations exist for Exempt Wells as inherent to their ability to obtain exempt status under Chapter 7 of these rules.

Sec. 3.5 WATER ALLOCATION DETERMINATIONS FOR VALIDATION PERMITS

- (a) The 2 year monthly moving average of the water surface elevation measured in feet above mean sea level (U.S. Dept. of Commerce, National Geodetic Vertical Datum of 1929) as measured in the monitoring well identified by the Texas Water Development Board as Well No. 48-07-516 and located within the District (the “Average Water Elevation”) shall be determined by the Board by March 31st of each odd year using the 24-month period ending on the previous December 31st; provided that the effective date of the Water Allocation based on such Average Water Elevation determination shall be the first day of the first January following such determination. The Average Water Elevation shall be calculated according to the procedures of Section 3.10 of these rules. The initial Average Water Elevation shall be determined by the Board by January 31, 2003.
- (b) The Water Allocations for irrigation use in Subsection (c) of this Section 3.5 are equal to the Average Annual Consumptive Irrigation Requirement divided by the sum of one minus the Leaching Fraction and based upon the Average Water Elevation.

(c) The Water Allocation shall be determined based on the following factors:

(1) The Water Allocation for Validation Permits (WAVP) for Existing and Historic Uses for in-District irrigation shall be 4.000 acre-feet per year per acre of Existing and Historic Irrigated Land for the two-year period following a Board determination that the Average Water Elevation is greater than 3,570.0 feet.

(2) In the event that the Average Water Elevation is equal to or less than 3,570.0 feet but greater than or equal to 3,560.0 feet, the District by resolution may establish a Water Allocation on a pro-rata basis between 4.0 and 3.0 acre-feet per acre for all Validation Permits of Existing and Historic Use for in-District irrigation of an Agricultural Crop. For uses other than in-District irrigation, the Water Allocation shall be a pro-rata reduction of the amount of groundwater authorized for production or withdrawal by Validation Permits of Existing and Historic Use for other than irrigation use by the same percentage amount the Validation Permits of Existing and Historic Use for irrigation of an Agricultural Crop are reduced below the amount stated in Section 3.5(c)(1) of these rules.

(3) In the event that the Average Water Elevation is less than 3,560.0 feet, the District by resolution shall establish the following Water Allocation for all Validation Permits of Existing and Historic Use:

(A) For in-District irrigation of an Agricultural Crop, the Water Allocation shall be 3.00 acre-feet per acre per year;

(B) For in-District uses other than irrigation, the Water Allocation shall be a pro-rata reduction of the amount recognized in Validation Permits of Existing and Historic Use for use other than irrigation by the same percentage amount that the Validation Permits of Existing and Historic Use for irrigation of an Agricultural Crop are reduced below the amount stated in Section 3.5(c)(1) of these rules.

Sec. 3.6 WATER ALLOCATION DETERMINATIONS FOR OPERATING PERMITS WHEN NO ACREAGE IS IN SUSPENDED LANDS STATUS

For any year in which no acreage is in suspended lands status, the Water Allocation for Operating Permits shall be:

(a) zero acre-feet per year per acre of Qualified Land authorized for production under such Operating Permits for the two-year period following a Board determination that the Average Water Elevation is equal to or less than 3,580.0 feet.

(b) 0.5 acre-foot per year per acre of Qualified Land authorized for production under such Operating Permits for the two-year period following a Board determination that the Average Water Elevation is greater than 3,580.0 feet.

Sec. 3.7 WATER ALLOCATION DETERMINATIONS FOR OPERATING PERMITS WHEN ACREAGE IS IN SUSPENDED LANDS STATUS

(a) For any year in which acreage is in suspended lands status, the Water Allocation for Operating Permits (WAOP) shall be determined pro rata, based on the following equation:

$$\text{WAOP} = \frac{\text{Suspended Land (acres)}}{\text{Qualified Land (acres)}} \times \text{WAVP (acre-feet per year per acre)} \times (1 - \text{Leaching Fraction})$$

(b) In no event, however, shall the Water Allocation under Operating Permits be greater than 0.5 acre-foot per year per acre of Qualified Land.

(c) When the Average Water Elevation is less than 3,560.0 feet, the Water Allocation for Operating Permits shall be the amount determined under Subsections (a) and (b) of this Section multiplied by 0.85.

(d) For Operating Permits issued by the District for in-District irrigation use, the District shall divide the Water Allocation for Operating Permits by the sum of one minus the Leaching Fraction.

Sec. 3.8 WATER ALLOCATION DETERMINATIONS FOR OPERATING PERMITS WHEN ACREAGE IS IN SUSPENDED LANDS STATUS AND AVERAGE WATER ELEVATION IS GREATER THAN 3,580.0 FEET

For any year in which acreage is in suspended lands status and the Average Water Elevation is greater than 3,580.0, the Water Allocation for Operating Permits shall be the greater of that determined under Section 3.6 or Section 3.7.

Sec. 3.9 WATER ALLOCATION DETERMINATIONS FOR TRANSFER PERMITS

The Water Allocation for a Transfer Permit shall be limited to the amount of groundwater production authorized by the District under the Operating Permit associated with the Transfer Permit.

Sec. 3.10 CALCULATION OF TWO YEAR MOVING AVERAGE OF MONTHLY WATER SURFACE ELEVATIONS

(a) The 2-year moving average of monthly water surface elevation measured in feet above mean sea level (U.S. Dept. of Commerce, National Geodetic Vertical Datum of 1929) measured in Texas Water Development Board (TWDB) Well No. 48-07-516 (Average Water Elevation) shall be calculated according to the following formula:

$$A_{j+n} = \frac{\sum_{i=j}^{j+n} E_i}{n}$$

Where A_{j+n} equals the 2 year moving average of monthly water surface elevation above mean sea level (U.S. Dept. of Commerce, National Geodetic Vertical Datum of 1929) measured in TWDB Well No. 48-07-516 for the year ending in the month $j+n$, n equals 24 (2 years), j equals the monthly index number ($j= 1$ for January of 1900, $j = 1200$ for December of 1999), and E_i equals the average water elevation in TWDB Well No. 48-07-516 for month i .

(b) The table shown below lists the Average Water Elevations for January 1999 through December 2000. The Average Water Elevation at the end of the year 2000 equals 3,573.27 feet, which is the arithmetic average of the monthly water elevation for the months of January 1999 through December 2000.

(c) The monthly water elevation shall be determined as the arithmetic average of the daily water elevation measurements made in TWDB Well No. 48-07-516.

Table of TWDB Well No. 48-07-516 Water Elevations (2 Year Moving Average) for Years 1997 through 2000

Month	Water Surface Elevation	Average Water Elevations (ft)	Month	Water Surface Elevation	Average Water Elevations (ft)
Jan-97	3,586.295	--	Jan-99	3,584.30	3,575.87
Feb-97	3,588.686	--	Feb-99	3,586.00	3,575.29
Mar-97	3,587.251	--	Mar-99	3,584.25	3,574.72
Apr-97	3,579.167	--	Apr-99	3,579.30	3,574.50
May-97	3,575.924	--	May-99	3,574.85	3,574.42
Jun-97	3,571.424	--	Jun-99	3,569.27	3,574.59
Jul-97	3,568.901	--	Jul-99	3,566.90	3,574.92
Aug-97	3,569.175	--	Aug-99	3,565.41	3,575.28
Sep-97	3,569.000	--	Sep-99	3,565.50	3,575.70
Oct-97	3,572.193	--	Oct-99	3,569.00	3,575.95
Nov-97	3,578.904	--	Nov-99	3,574.54	3,575.73
Dec-97	3,583.216	--	Dec-99	3,579.22	3,575.10
Jan-98	3,586.295	--	Jan-00	3,582.65	3,574.09
Feb-98	3,588.686	--	Feb-00	3,584.69	3,572.63
Mar-98	3,587.417	--	Mar-00	3,582.14	3,570.98
Apr-98	3,580.73	--	Apr-00	3,578.11	3,569.76
May-98	3,574.46	--	May-00	3,572.99	3,569.09
Jun-98	3,569.27	--	Jun-00	3,565.72	3,569.06
Jul-98	3,565.45	--	Jul-00	3,563.39	3,569.78
Aug-98	3,565.00	--	Aug-00	3,559.35	3,570.98
Sep-98	3,563.38	--	Sep-00	3,559.69	3,573.51
Oct-98	3,565.79	--	Oct-00	3,563.65	3,577.38
Nov-98	3,574.54	--	Nov-00	3,570.45	3,580.22
Dec-98	3,580.22	--	Dec-00	3,577.25	3,573.27

Sec. 3.11 APPLICABILITY TO OTHER AQUIFERS

Notwithstanding anything to the contrary in these rules, Sections 3.3 through 3.10 do not apply to any Well System that the Board finds is not hydrologically connected to the High Production Zone or will not impair Existing and Historic Use and holders of Operating or Validation Permits for withdrawal of groundwater from the High Production Zone. However, the burden shall be on the person applying for a Validation, Drilling, or Operating Permit under these rules to demonstrate to the Board, and the Board must find, that a particular Well System is or will be drilled into an aquifer that is hydrologically disconnected from the High Production Zone or that the amount of groundwater sought by the applicant for withdrawal does not impair either Existing and Historic Use or holders of Operating or Validation Permits. It shall be the Board's privilege to exempt such a Well System from any requirement of these rules to the extent that the Board finds that it is necessary and prudent to do so.

Sec. 3.12 PRODUCTION FROM EXEMPT WELLS

As provided in Chapter 7, nothing in Chapter 3 limits or otherwise restricts any landowner's right to produce groundwater from an Exempt Well for purposes that are exempt from the permitting requirements of these rules.

CHAPTER 4. DISTRICT GROUNDWATER MANAGEMENT PLAN

Sec. 4.1 ADOPTION OF MANAGEMENT PLAN REQUIRED

(a) In due course and following notice and hearing, the District shall adopt a revised comprehensive management plan that meets the requirements of Chapter 36, including Section 36.071(b) and (e), of the Texas Water Code and other relevant laws and that addresses the following management goals, as applicable:

- (1) providing the most efficient use of groundwater;
- (2) controlling and preventing waste of groundwater;
- (3) controlling and preventing subsidence;
- (4) addressing conjunctive surface water management issues;
- (5) addressing natural resource issues;
- (6) addressing drought conditions;
- (7) addressing conservation, and
- (8) controlling groundwater withdrawals within the District to maintain sustainability of the Bone Spring-Victorio Peak Aquifer.

Sec. 4.2 BASIC REQUIREMENTS FOR MANAGEMENT PLAN

(a) The District management plan, or any amendments to the District management plan, shall be developed by the District using the District's best available data and such plan

shall be forwarded to the regional water planning group for consideration in their planning process.

(b) In the management plan described, the District shall:

- (1) identify the performance standards and management objectives under which the District will operate to achieve the management goals;
- (2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to implement the plan, including specifications and proposed rules;
- (3) include estimates of the following:
 - (A) the existing total usable amount of groundwater in the District;
 - (B) the amount of groundwater being used within the District on an annual basis;
 - (C) the annual amount of recharge, if any, to the groundwater resources within the District and how natural or artificial recharge may be increased; and
 - (D) the projected water supply and demand for water within the District; and
- (4) address water supply needs in a manner that is not in conflict with the appropriate approved regional water plan if a regional water plan has been approved under Section 16.053 of the Texas Water Code.

Sec. 4.3 RULES TO IMPLEMENT MANAGEMENT PLAN

The District shall adopt rules necessary to implement the management plan.

Sec. 4.4 AMENDMENTS TO MANAGEMENT PLAN

The Board shall adopt amendments to the management plan as necessary. Amendments to the management plan shall be adopted after notice and hearing and shall otherwise comply with the requirements of this Chapter 4.

Sec. 4.5 MANAGEMENT PLAN REVIEW BY TEXAS WATER DEVELOPMENT BOARD

The Board shall submit the adopted management plan, including an amended one, to the Texas Water Development Board for review and approval, as provided in Section 36.1072 of the Texas Water Code.

CHAPTER 5. FLOW MEASUREMENT

Sec. 5.1 GENERAL PROVISIONS

(a) All owners of Non-exempt Wells or Well Systems located within the District shall equip such wells with flow metering device(s) meeting the specifications of these rules and shall operate the meters on such wells to measure the instantaneous flow rate and cumulative amount of groundwater withdrawn from the well.

- (b) A meter shall be installed by the owner or operator of any existing operational non-exempt Well System no later than four months after the Effective Date of these rules.
- (c) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's standards, instructions, or recommendations, and shall ensure an error of not greater than plus or minus five percent.
- (d) The owner of a Well System shall be responsible for the installation, operation, maintenance, and repair of the meter associated with that Well System.

Sec. 5.2 TYPES OF METERS

- (a) The types of meters approved for installation are:
 - (1) Internal Impeller Meter;
 - (2) Magnetic;
 - (3) Time-Delay Ultrasonic, and
 - (4) Any flow measurement method approved in writing by the General Manager of the District.
- (b) All meters must be equipped with a non-resettable mechanical or electronic flow volume accumulator that reads in acre-feet.
- (c) Types of flow meters prohibited by the District are:
 - (1) Doppler Ultrasonic Flow Meters;
 - (2) Pitot Tube; and
 - (3) Open Discharge.
- (d) No metering method may be installed or modified prior to written approval given by the General Manager of an application filed with the District.
- (e) The General Manager shall approve an application to install a meter using a metering method if the General Manager finds the application shows the following:
 - (1) the meter has a certified error of not greater than plus or minus five percent;
 - (2) for a meter, it meets the American Water Works Association Standard C704-92 for design, materials, and accuracy;
 - (3) the meter has a non-resettable totalizer, or lock box with resettable digital readout;
 - (4) the totalizing register of the meter has the capacity to record the total quantity of groundwater withdrawn for at least one full year; and
 - (5) the meter if used for the distribution of potable water, shall be American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 certified.

- (f) The Well Owner or operator shall give written notice to the District 30 days prior to the installation or modification and the intended start date so the District may inspect and approve the meter installation or modification.

Sec. 5.3 PRE-EXISTING METERS AND ALTERNATIVE MEASURING METHODS

- (a) Within 4 months of the Effective Date of these rules, the Well Owner or operator shall register any existing meter or alternative measurement(s) method with the District
- (b) All meters existing on the Effective Date of these rules and registered in accordance with Subsection (a) of this Section, shall be inspected by the District for compliance with the meter specifications set forth in this Section 5. If the meter complies with these specifications, the General Manager shall approve the meter in writing and advise the owner or operator of the approval. If the meter does not comply with these specifications, the General Manager will issue a notice of deficiency and direct the owner of the meter to install a new meter or modify the existing meter in compliance with this Chapter 5 within 45 days.
- (c) If at any time the Well Owner or operator has reason to believe that a condition, of any kind whatsoever, may exist that affects the accuracy of a meter, then the Well Owner or operator shall, within seven days of learning of the fact(s), notify the General Manager that the accuracy of the meter may be in question. Such notification shall be in writing.
- (d) The General Manager may conduct an investigation and, if facts warrant, direct the Well Owner or operator, at the Well Owner's cost, to evaluate and test the accuracy of the meter and take appropriate corrective action, including replacement, to restore the accuracy and proper working condition of the meter in conformance with the requirements of these rules.

Sec. 5.4 REMOVAL AND DISABLING OF METERS

- (a) A meter may not be removed or otherwise disabled including for routine maintenance, unless the Well Owner or operator gives the District notice, in writing, of the intent to remove or disable the meter. Except in cases of routine maintenance, such notice must be approved in writing by the General Manager before the meter is removed or disabled.
- (b) A meter may be removed or otherwise disabled, only by the Well Owner or operator or his or her authorized representative.
- (c) During a period that a meter is removed or otherwise disabled, groundwater may not be withdrawn from the well, unless the General Manager has approved an alternative measuring method.

Sec. 5.5 METER READING AND GROUNDWATER USE REPORTING

- (a) Every holder of a Validation, Operating, or Transfer Permit shall accurately read the meter on a quarterly basis and shall file the results with the District no later than 30 days after the end of each quarter (30 days after March 31, June 30, September 30, and December 31).
- (b) The District shall furnish quarterly groundwater use report forms. In completing the report, a permit holder shall fill in the blanks to the best of their knowledge and ability in accordance with the instructions that accompany each form.
- (c) No groundwater use report is required to be filed by persons owning an Exempt Well.

Sec. 5.6 PROHIBITION AND ENFORCEMENT

- (a) No person may take any action that disables or impairs a meter from accurately measuring and recording the instantaneous flow rate and cumulative amount of groundwater withdrawn from a well.
- (b) If the groundwater withdrawals are not being metered in accordance with this Chapter 5 of these rules, the Board may:
 - (1) issue an order suspending the right to make withdrawals from such Well System not being metered in accordance with this Chapter 5; or
 - (2) issue an order requiring corrective action to bring the operation of the Well System into compliance with this Chapter 5.

CHAPTER 6. PERMITS, RECORDS, REPORTS, AND LOGS

Sec. 6.1 GENERAL PROVISIONS APPLICABLE TO PERMITS AND WELL REGISTRATIONS

- (a) An Operating Permit, a Validation Permit, or an amendment to either such type of permit is required to withdraw or produce water from a Non-exempt Well or for the substantial altering of the size or capacity of a Non-exempt Well or for the altering of an Exempt Well if such alteration would render the well non-exempt, or for using the water withdrawn from an Exempt Well for purposes other than the use authorized by the exemption.
- (b) A permit confers only the right to use the permit under these rules. The permit's terms may be modified or amended pursuant to these rules.
- (c) Withdrawal or production of groundwater from all non-exempt Well Systems must be measured by the owner or operator and reported to the District according to the requirements of Chapter 5 of these rules.
- (d) Well sites must be accessible to District representatives for inspection, and the permit holder agrees to cooperate fully, including coordination with the surface estate owner in the event that estate has been severed from the groundwater estate, in any reasonable inspection of the well and well site by the District representatives.

- (e) The application pursuant to which an Operating Permit or Validation Permit or amendment of a permit is issued will be incorporated in the permit, and the permit will be granted on the basis of and contingent upon the accuracy of the information supplied in that application. The application for a permit or permit amendment shall be in writing and sworn to by the applicant. A finding that false information has been supplied may be grounds for immediate amendment or revocation of the permit.
- (f) Within 30 days after the date of change in ownership of a Well System, a permit or registration holder must notify the District in writing of the name of the new owner. Any person who becomes the owner of a currently permitted or registered well must, within 30 days from the date of the change in ownership, file an application for an amendment to effect a transfer of the permit or registration.
- (g) Violation of a permit's terms, conditions, requirements, or special provisions, including pumping, withdrawing, or producing amount of groundwater in excess of the maximum quantities authorized by a permit issued by the District, is a violation of these rules and is punishable by penalties as provided by these Rules.
- (h) Any applications submitted to the District and for which the applicant has requested that such applications be processed concurrently, the District will process, and the Board will consider, such applications concurrently according to the standards and rules applicable to each.
- (i) Any change in the withdrawal or use of groundwater during the term of a permit issued by the District may not be made unless the Board has first approved a permit amendment authorizing the change.
- (j) A permit or a permit amendment is not required for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate.
- (k) The District may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations:
 - (1) apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;
 - (2) bear a reasonable relationship to the existing District management plan; and
 - (3) are reasonably necessary to protect existing use.

Sec. 6.2 RECORDS AND REPORTS

The driller of any water well within the District shall file a report with the District detailing the drilling, equipping, and completing of the wells within 30 days after such well is completed. Such report shall include any and all information submitted by the driller to any agency of the State of Texas.

Sec. 6.3 DRILLERS' LOGS

The driller of any water well within the District shall keep accurate drillers' logs and that copies of drillers' logs and electric logs shall be filed with the District within 30 days after such drilling is complete.

Sec. 6.4 APPLICATION REQUIREMENTS FOR ALL PERMITS

- (a) All permits are granted in accordance with the provisions of these Rules, and acceptance of a permit constitutes an acknowledgment and agreement that the permit holder will comply with these Rules.
- (b) The application for a permit shall be in writing and sworn to.
- (c) The following shall be included in the permit application:
 - (1) the name and mailing address of the applicant and the owner of the land on which the well will 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 for the proposed use;
 - (3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
 - (4) a water conservation plan or a declaration that the applicant will comply with the District's management plan;
 - (5) the location of each well, the estimated rate at which water will be withdrawn, and, to the extent applicable, information required under Section 6.11(b);
 - (6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
 - (7) a drought contingency plan;
 - (8) a statement of the purpose for which the well is to be used;
 - (9) a requirement that the water withdrawn under the permit be put to beneficial use at all times;
 - (10) the location of the use of the water from the well; and
 - (11) any other information deemed necessary by the Board.
- (d) A finding by the Board that substantive information contained in a permit application is false or incorrect is sufficient grounds for the application to not be accepted as administratively complete.
- (e) The determination as to when an application for a permit is administratively complete shall be made by the Board.

Sec. 6.5 PERMITS ISSUED BY DISTRICT

- (a) All permits issued by the District shall state the following:

- (1) the name of the person or entity to whom the permit is issued;
 - (2) the date the permit is issued;
 - (3) the date the permit is to expire;
 - (4) the conditions and restrictions, if any, placed on the rate and amount of withdrawal of groundwater; and
 - (5) any other information, conditions, or restrictions the District prescribes.
- (b) The applicant shall record a permit or permit amendment with the County Clerk of Hudspeth County, Texas, no later than thirty days after issuance.

Sec. 6.6 WELL REGISTRATION

- (a) An owner of an Exempt Well or an owner of a Non-Exempt Well shall register such well with the District no later than six months after the Effective Date of these rules and provide the District with the following information:
- (1) the name and mailing address of the registrant and the owner of the land on which the well is or will be located;
 - (2) if the registrant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
 - (3) a statement of the nature and purpose of the existing or proposed use and the amount of water used or to be used for each purpose;
 - (4) the location of each well and the estimated rate at which water is or will be withdrawn;
 - (5) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
 - (6) a requirement that the water withdrawn under the registration be put to beneficial use at all times;
 - (7) the location of the use of the water from the well; and
 - (8) any other information deemed necessary by the Board.
- (b) The District shall issue a certificate of registration to an owner that applies for registration and such application for registration meets the requires set forth in these Rules for the following types of wells:
- (1) a new Exempt Well;
 - (2) an Exempt Well existing before the Effective Date of these rules; or
 - (3) a Non-exempt Well existing before the Effective Date of these rules and for which a Validation or Operating Permit has not been issued by the District.

- (c) The owner of a well described under Subsection (b)(2) or (b)(3) of this Section 6.6 shall provide the District with affidavit stating that a well existed before the Effective Date of these rules.
- (d) A registration certificate shall provide the owner of a well described under Subsection (b)(3) of this Section 6.6 with evidence that a well existed before the Effective Date of these Rules for purposes of grandfathering the well from the requirement to obtain a Drilling Permit from the District or meeting the well spacing requirements of these Rules.
- (e) A well that is issued a registration under Subsection (b)(3) of this Section 6.6 shall not be operated without obtaining an approved Operating Permit or amendment to a Validation Permit issued by the District that includes the well.
- (f) Failure of the owner of a well described under Subsection (b) of this Section 6.6 to file for a registration from the District under this Section may subject the Well Owner to enforcement and penalty as provided by Chapter 11 of these rules.
- (g) All Well Validation Certificates issued pursuant to Section 3.023 of the District's rules that were in effect prior to the Effective Date of these rules, as amended, shall be sufficient for fulfilling the requirements to register a well under this Section 6.6, upon proper presentation of the Well Validation Certificate to the District. The holder of such a Well Validation Certificate shall not operate a Non-exempt Well after January 1, 2003, without an Operating Permit or Validation Permit issued under these rules.

Sec. 6.7 AMENDMENT OF PERMIT

- (a) No substantial changes in a permit shall be made without amendment of the permit by the District.
- (b) No substantial change to a permit shall be made without prior notice and an opportunity for a hearing.
- (c) Substantial changes to a permit include, but are not limited to, increases in the annual quantity of groundwater authorized to be withdrawn and the location of groundwater withdrawal, and any changes in Board determinations made under Section 6.16.
- (d) Any non-substantial changes to the permit, including but not limited to, changes in ownership of the land the Well System is located on, ownership of the surface or groundwater estate associated with a permit (which must be reported to the District within the 30-day time period set in Section 6.1(f) for Well System ownership changes), or well replacement, may be made by Board resolution.
- (e) Validation Permits may not be amended to change the purpose of use, including a change in the location of use to a location outside the District's boundaries.
- (f) Placing acreage in Suspended Lands status under Sections 6.14 or 6.15 does not constitute a change, either substantial or non-substantial, to a permit for purposes of this Section.

Sec. 6.8 ADMINISTRATIVELY COMPLETE APPLICATION FOR A PERMIT

The Board shall consider each application for a permit as to whether such application is administratively complete. The Board shall promptly consider and act on each administratively complete application for a permit. An application for a permit will expire if the information requested in the application is not provided to the District within 60 days of such request.

Sec. 6.9 DRILLING PERMITS

- (a) A landowner, or any other person acting on behalf of the landowner, must obtain a Drilling Permit before a Non-exempt Well may be drilled, equipped, or completed after the Effective Date of these rules, including test wells, or before re-drilling an existing well, except as set forth under Section 6.17 of these rules.
- (b) An application for a Drilling Permit shall contain all information requested in Section 6.4 of these rules.
- (c) An application for a Drilling Permit submitted under this Section shall not be unreasonably denied by the District for such a well, as long as:
 - (1) the application describes a well that meets the District's well completion standards under Chapter 13 of these rules and complies with the District's spacing regulations under Chapter 3 of these rules; and
 - (2) the application is submitted in conjunction with an application for an Operating Permit or an application to amend a Validation Permit to include the proposed well.
- (d) A Drilling Permit issued in accordance with this Section 6.9 shall only be valid for a term not to exceed six months from the date of issuance.
- (e) No water shall be withdrawn or produced from well that is issued a Drilling Permit by the District, except for the purposes of drilling or testing the well during the time the Drilling Permit is valid, and the well shall not be placed into operation without the owner of such well first receiving an Operating Permit or amendment to a Validation Permit from the District that includes such well.

Sec. 6.10 OPERATING PERMITS

- (a) An Operating Permit is required by the District for the operation, production, or withdrawal of groundwater from any Non-exempt Well or Well System:
 - (1) for which there is no Validation Permit associated with such Well or Well System;or
 - (2) from which production is a consequence of acreage under a Validation Permit having been placed into Suspended Lands status under Section 6.14.

Any such Operating Permit shall bear a reasonable relationship to the District's certified management plan and shall reasonably protect Existing and Historic Use.

- (b) Regardless of the type of beneficial use for the groundwater to be produced, an Operating Permit shall be granted by the District based upon the acres of Qualified Land owned or controlled by the applicant, as determined in accordance with these rules.
- (c) An application for an Operating Permit shall, in addition to the information required in Section 6.4 of these rules, include the following:
 - (1) year in which the well was or will be drilled;
 - (2) deed and legal description of the land on which the well was or will be drilled;
 - (3) purpose for which the water produced or withdrawn from the well will be used, including the deed and legal description of any land for which any water produced or withdrawn from the well will be used to irrigate an Agricultural Crop;
 - (4) the number of any Validation Permit that is held by the applicant;
 - (5) for each well that the applicant requests to be included in the Operating Permit, a specific designation and description of the acreage of Qualified Land that the applicant seeks to associate with each well for the right to produce groundwater under the Water Allocation for Operating Permits, such designated acres for each well being limited to acres that the well is able to qualify under Section 6.11 individually by its Qualifying Circle or as part of aggregated wells with overlapping Qualifying Circles; and
 - (6) any other information determined necessary by the Board.
- (d) The holder of an Operating Permit shall be entitled to produce or withdraw groundwater in accordance with the terms of the permit and these rules in an amount not to exceed the applicable quantity of groundwater allowed to be produced or withdrawn pursuant to this Section 6.10 and Chapter 3 of these rules.
- (e) No Operating Permit shall be issued until applications for Validation Permits meeting the conditions of Section 6.13 of these rules have been issued or denied by the District or December 31, 2002, whichever comes first.
- (f) If an Operating Permit authorizes production from more than one well:
 - (1) any water produced under the Operating Permit may only be produced from a well listed in the Operating Permit; and
 - (2) the production from any single well listed in the Operating Permit shall not exceed the allocation amount attributable to such well, as determined under Section 6.11(k).

Sec. 6.11 DETERMINING THE AMOUNT OF QUALIFIED LAND FOR AN OPERATING PERMIT

- (a) The amount of Qualified Land authorized by the District in an Operating Permit shall be based on the total amount of land owned or controlled for the right to produce groundwater by the applicant and the capacity of any well owned or controlled by the applicant on such land.

- (b) The capacity of any well used to qualify land shall be determined by the District as follows:
- (1) For all existing wells listed in a Validation Permit, the capacity shall be the well capacity stated in the Validation Permit issued for an existing well for which the owner has submitted an Operating Permit application; however, at specific written option of the well owner, the capacity of such well shall be determined as provided in Section 6.11(b)(2).
 - (2) For a new well, a well not listed in a Validation Permit, or a well listed in a Validation Permit that is associated with acreage in Suspended Lands status under Sections 6.14 or 6.15, the capacity shall be based on the results of a constant rate well capacity test with a minimum duration of 24 hours of pumping.
- (c) To conduct the test in Section 6.11(b)(2), the applicant shall use a Professional Geoscientist or Professional Engineer, licensed by the State of Texas, and submit a written report to the District of the results, sealed by the Geoscientist or Engineer.
- (d) Prior to conducting the well capacity test, the applicant shall pay the District the administrative fee, adopted under Section 8.1 of these rules, for the review and witnessing of the well capacity test.
- (e) The District may decline recognition of the results of any well capacity test that was not coordinated with the District or that does not meet the specifications and requirements for well capacity testing that are attached to these rules.
- (f) The acres of Qualified Land determined for each well shall be equal to the acres of land owned or controlled by the applicant that are within a Qualifying Circle.
- (g) To the extent that the horizontal radius determined in Section 6.11(f) extends into a Section of Land, any land within the Section of Land which is owned or controlled by the applicant for the purposes of groundwater production within the Section of Land shall be Qualified Land. A "Section of Land" for purposes of calculating Qualified Acres is a section of land officially delineated and recorded in the Original Texas Land Survey grid system, unless the District determines that information provided by a permit applicant is a more accurate description of a particular Section of Land.
- (h) The owner of multiple wells may elect to qualify land based on the aggregate capacities of individual wells; provided, however, that only individual wells with overlapping Qualifying Circles may be aggregated. The aggregate capacity shall equal the sum of the capacities of the individual wells. For purposes of applying this Subsection of Section 6.11, the location of any aggregate well shall be deemed to be at the geometric center (centroid) of the Qualifying Circles, as determined in Section 6.11(f), of the individual well.
- (i) Land that is qualified by a well for classification as Qualified Land may not be qualified by any other well.

- (j) The maximum number of acres that are qualified by a well shall not exceed the annual capacity of the well in acre-feet per year divided by the maximum WAOP of 0.5 acre-feet per acre per year, which equates to 3.2260 acres of Qualified Land per one gallon per minute of well capacity.
- (k) The applicant shall designate in the Operating Permit application the specific acreage that the applicant seeks to qualify if:
 - (1) more than one well is used to qualify land; or
 - (2) a portion of the land owned or controlled by the Applicant is determined not to be Qualified Land, and such unqualified land is within a Section of Land impinged by a Qualifying Circle.
- (l) If more than one well is used to qualify land, the amount of Operating Permit Allocation attributable to each well shall be prorated based on each well's capacity, as determined in Section 6.11(b).

Sec. 6.12 CONSIDERATIONS IN GRANTING OR DENYING AN OPERATING PERMIT

- (a) Before granting or denying an Operating Permit, the District shall consider whether:
 - (1) the application conforms to the requirements prescribed by Chapter 36 of the Texas Water Code and the District's rules, and is accompanied by the prescribed fees;
 - (2) the proposed 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 certified management plan;
 - (5) the applicant has agreed to avoid waste and achieve water conservation; and
 - (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.

Sec. 6.13 VALIDATION PERMITS FOR EXISTING AND HISTORIC USE OF GROUNDWATER

- (a) Except as provided in Subsections (e) through (h) of this Section, the Validation Permits issued by the District for Existing and Historic Use shall bear a reasonable relationship to the District's certified management plan and shall reasonably protect Existing and Historic use.
- (b) Except as provided in Subsections (e) through (h) of this Section, all owners of existing non-exempt Well Systems that were completed and operational prior to the Effective Date of these rules, and that produced and used groundwater in any year

during the Existing and Historic Use Period shall apply to the District for a Validation Permit no later than August 1, 2002.

- (c) Except as provided in Subsections (e) through (h) of this Section, a Validation Permit is required from the District by December 31, 2002, for all existing non-exempt Well Systems that were drilled and completed prior to the Effective Date of these rules, and that wish to claim beneficial use of water during the Existing and Historic Use Period.
- (d) Except as provided in Subsections (e) through (h) of this Section, failure of an owner of such a Well System to file an application for a Validation Permit by August 1, 2002, shall preclude the owner from making any future claim or application to the District for Existing and Historic Use under these rules or otherwise and shall preclude the owner's ability to operate the Well System under Chapter 3 of these rules, unless such owner obtains an Operating Permit and holders of Operating Permits are allocated groundwater production in a given biennium. (*see* Sections 3.4 through 3.10 of these Rules).
- (e) All owners of existing non-exempt Well Systems located on land brought into the District by Section 20 of House Bill 3442 of the 78th Regular Session of the Texas Legislature that were completed and operational prior to November 16, 2005, and that produced and used groundwater in any year during the Existing and Historic Use Period shall apply to the District for a Validation Permit no later than May 1, 2006.
- (f) A Validation Permit is required from the District by December 31, 2006, for all existing non-exempt Well Systems located on land brought into the District by Section 20 of House Bill 3442 of the 78th Regular Session of the Texas Legislature and that were drilled and completed prior to November 16, 2005, and that wish to claim beneficial use of water during the Existing and Historic Use Period.
- (g) Owners of any land that was enrolled in the United States Department of Agriculture, Farm Services Agency, Conservation Reserve Program, 7 CFR Part 1410, during the Existing and Historic Use Period, shall apply to the District for an amended Validation Permit no later than April 30, 2011, but only if, and to the extent that, such land:
 - (1) was included in an application for a Validation Permit submitted to the District no later than August 1, 2002; and
 - (2) was not included in the calculation of acreage county as Existing and Historic Irrigated Land in any permit issued based on such application for a Validation Permit.
- (h) Failure of an owner of such a Well System to file an application for a Validation permit by May 1, 2006, shall preclude the owner from making any future claim or application to the District for Existing and Historic Use under these rules or otherwise and shall preclude the owner's ability to operate the Well System under Section 3 of these Rules, unless such owner obtains an Operating Permit and holders of Operating Permits are allocated groundwater production in a given biennium (*see* Sections 3.4 through 3.10 of these rules).

- (i) the Existing and Historic Use Period for Sections 6.13(e) through 6.13(h) shall be January 1, 1992, to November 16, 2005.
- (j) All applications for a Validation Permit shall, in addition to the information required in Section 6.4 of these Rules, include the following information:
 - (1) the year in which each well in the Well System was drilled;
 - (2) the purpose for which each well in the Well System was drilled and types of subsequent use of the water produced or withdrawn from such Well System;
 - (3) annual water production history of the Well System for at least one year during the Existing and Historic Use Period;
 - (4) for irrigation wells, crop type and acreage of crop irrigated by the Well System for at least one year during the Existing and Historic Use Period;
 - (5) for irrigation wells, deed and legal description of irrigable land previously irrigated by the Well System, including the year irrigated and the deed and legal description for land the Well System is located on, during the Existing and Historic Use Period;
 - (6) for non-irrigation wells, the deed and legal description for the tract of land on which the Well System is located;
 - (7) documentation regarding enrollment of each tract of land in the United States Department of Agriculture, Farm Service Agency, Conservation Reserve Program, 7 CFR 1410, for which a Validation Permit is sought pursuant to Section 6.13(k)(3), below; and
 - (8) any other information determined necessary by the Board.
- (k) Validation Permits are a recognition by the District of Existing and Historic Use under this Section and shall entitle their owners to produce or withdraw groundwater in accordance with the production regulations set forth under Chapter 3 of these rules.
- (l) The Board shall not issue Validation Permits for wells or lands for which the Board determines the Well Owner or operator did not beneficially use groundwater during the Existing and Historic Use Period as set forth under this Section 6.13, except as set forth under Section 6.13(m)(3), below.
- (m) The Board shall determine Existing and Historic Use of groundwater for the issuance of Validation Permits as follows:
 - (1) for irrigation purposes, it shall be the acres of Existing and Historic Irrigated Land determined to have been irrigated during the Existing and Historic Use Period under Section 6.13(p) of these Rules multiplied by the Water Allocation per acre as determined by Chapter 3 of these rules;
 - (2) for all other non-exempt uses, it shall be the maximum amount of water beneficially used in any one calendar year during the Existing and Historic Use Period; and

(3) for any land that was enrolled in the United States Department of Agriculture, Farm Service Agency, Conservation Reserve Program, 7 CFR Part 1410, during the Existing and Historic Use Period, it shall be the acres of Existing and Historic Irrigated Land determined by the Board under Section 6.13(p) below to have been land that was both irrigated for production prior to enrollment in the Conservation Reserve program, and enrolled or participating in the Conservation Reserve Program during the Historic and Existing Use Period, multiplied by the Water Allocation per acre as determined by Chapter 3 of these rules.

(n) Existing and Historic Irrigated Land shall be determined by the District as the acres of land classified by the District as irrigable under Section 6.13(o) below and which were irrigated to produce an agricultural crop one or more years during the Existing and Historic Use Period under Section 6.13(p) below, except as provided under Section 6.13(m)(3), above.

(o) The following measures shall be used by the District to determine if land within the District's boundaries is irrigable:

(1) the land is classified by the United States Department of Agriculture Farm Services Agency as "cropland" that is land that is capable of being farmed with normal farming equipment and any other requirements of the Farm Services Agency;

(2) the land is classified by the United States Department of Agriculture Natural Resources Conservation Services as "Additional Farmland of Statewide Importance" according to the procedures of Section 657.5 Identification of Important Farmlands (7 CFR Part 657); or

(3) any other method or methods determined by the Board to reasonably determine if land is irrigable.

(p) One or more of the following measures shall be used by the District to determine if land classified by the District as irrigable has been irrigated to produce an agricultural crop during the Existing and Historic User Period:

(1) crop production reports from a governmental agency and are determined by the District to contain sufficient information to identify:

(A) the geographic location of the land on which the agricultural crop was produced;

(B) that an agricultural crop was produced on such land;

(C) that such land was irrigated to produce the agricultural crop; and

(D) the year or years that the agricultural crop was produced.

(2) aerial photographs or imagery that were produced by or obtained from an agency of the United States or the State of Texas and are determined by the District to be:

(A) of sufficient quality to accurately determine the geographic location of the irrigated field;

(B) properly documented as to source and date when the photograph was taken; and
(C) of sufficient quality that the irrigated land shown in the photograph can be correlated by the District to a legal description of the land and the Hudspeth Central Appraisal District property identification number associated with such land.

(3) reports from the Hudspeth Central Appraisal District, Hudspeth County, Texas, indicating that the irrigated land was appraised as irrigated cropland, and the information for such cropland as listed in Section 6.13(o)(3)(A) or in 6.13(o)(3)(B) below:

(A) crop production reports from any reasonable source and are determined by the District to contain sufficient information to identify:

- (i) the geographic location of the land on which the agricultural crop was produced;
- (ii) that an agricultural crop was produced on such land;
- (iii) that such land was irrigated to produce the agricultural crop; and
- (iv) the year or years that the agricultural crop was produced.

(B) aerial photographs or imagery that were produced by or obtained from any source and are determined by the District to be:

- (i) of sufficient quality to accurately determine the geographic location of the irrigated field;
- (ii) properly documented as to source and date when the photograph was taken; and
- (iii) of sufficient quality that the irrigated land shown in the photograph can be correlated by the District to a legal description of the land and the Hudspeth Central Appraisal District property identification number associated with such land.

(4) any other method or methods determined by the Board to reasonably determine if irrigable land has been irrigated.

Sec. 6.14 SUSPENSION OF LANDS DESIGNATED UNDER A VALIDATION PERMIT

- (a) A Validation Permit holder may suspend production in whole or in part from Existing and Historic Irrigated Land designated under a Validation Permit to the extent provided in this Section.
- (b) Suspension of production shall occur by the Validation Permit holder placing acreage associated with a Validation Permit in Suspended Lands status. No such suspension is effective unless the Validation Permit holder certifies to the District by no later than January 15th of the first year of suspension, on a form provided by the District, the

acreage of land placed into Suspended Lands status and the term in years that such land is to be in suspended lands status.

- (c) To place lands in Suspended Lands status, a Validation Permit holder shall certify to the District in writing the total number of acres determined in the Validation Permit to be Existing and Historic Irrigated Land, or as specified in Section 6.14(f), that the permit holder intends to place in Suspended Lands status and the term of years that the acreage shall be suspended by January 15th of the calendar year in which the Validation Permit holder intends for the acreage to be suspended. Changes to the designation or term of years for Suspended Lands must be made to the District in writing by January 15th in order for the change to Suspended Lands to take effect during the same calendar year. Any changes to the designation or term of years for Suspended Lands made after January 15th shall become effective beginning January 1st of the following calendar year.
- (d) Suspended Lands must be classified by the District as Existing and Historic Irrigated Land, or as specified in Section 6.14(f), and permitted as such under a Validation Permit issued by the District. Suspended lands shall be:
 - (1) lands for which the permit holder holds a possessory right to the land surface or to the withdrawal of groundwater from wells located on such land surface; and
 - (2) lands for which the permit holder has been issued a Validation Permit by the District.
- (e) No later than March 1st of each calendar year, the District shall publish the total number of acres placed in Suspended Lands status and the total number of acres of Qualified Land by posting the information in a place readily accessible to the public at the District's office.
- (f) For any Validation Permit for which there has not been a determination by the District that the acreage associated with the Validation Permit is Existing and Historic Irrigated Land, the amount of groundwater allocated to Operating Permits for production shall be the amount of production suspended by the Validation Permit holder and shall not exceed the total amount of production authorized in the Validation Permit.

Sec. 6.15 RELINQUISHED LANDS SUBSTITUTE

- (a) This Section 6.15 is effective if, and only if, a court has made a final adjudication, not subject to further appeal, that Section 6.14 is invalid under Chapter 36 of the Texas Water Code. In such event, Section 6.14 is severed from these Rules, as provided under Section 1.13, and this Section 6.15 is automatically substituted in its place.
- (b) A Validation Permit holder may voluntarily relinquish production in whole or in part from Existing and Historic Irrigated Land designated under a Validation Permit.
- (c) Relinquishment of production of such land (termed here "Relinquished Lands") shall take place under the same time deadlines, and using the same procedures, as provided

for Suspended Lands in Section 6.14; provided, however, that Relinquished Lands can only be relinquished permanently and not for any term of years.

- (d) Relinquished Lands must be classified by the District in the same manner as provided for Suspended Lands in Section 6.14.
- (e) No later than March 1st of each calendar year, the District shall publish the total number of acres in Relinquished Lands status and the total number of acres of Qualified Land by posting the information in a place readily accessible to the public at the District's office.
- (f) Relinquished Lands shall be subject to the water allocation rules and formulas set forth in Chapter 3 for Suspended Lands.

Sec. 6.16 PERMIT TO TRANSFER GROUNDWATER OUT OF THE DISTRICT

- (a) A Transfer Permit is required from the District to transfer any groundwater produced or withdrawn from a Well System authorized for production of groundwater under an Operating Permit issued by the District for use outside the District's boundaries. If a Transfer Permit or amendment thereto is required, the District may also consider the provisions of this Section 6.16 in determining whether to grant or deny the Transfer Permit or an amendment to a Transfer Permit.
- (b) The District may impose a reasonable fee for processing an application under this Section. An application filed to comply with this Section shall be considered and processed under the same procedures as other applications for other permits and shall be combined with applications filed to obtain a permit for in-District water use from the same applicant, if any.
- (c) The application for a Transfer Permit shall identify which Operating Permit(s) issued by the District the applicant wishes the District to include in the Transfer Permit and for which the maximum quantity of water available for transfer outside of the boundaries of the District shall be determined according to Section 6.16(e), below.
- (d) The application for a Transfer Permit shall provide the information listed in Section 36.113(c) of the Texas Water Code.
- (e) The District shall not deny a permit under this Section based on the fact that the applicant seeks to transfer groundwater outside of the boundaries of the District but shall restrict a Transfer Permit by limiting the annual production of groundwater for transfer outside of the boundaries of the District to the quantity of water allocated under Section 3.6 or 3.7 of these rules for production under Operating Permits issued by the District in accordance with the provisions of Section 6.10 and the Transfer Permit.
- (f) In addition to conditions provided by Section 6.4 of these rules, the Transfer Permit shall specify:

- (1) the amount of water that may be transferred out of the District; and
 - (2) the period for which the water may be transferred.
- (g) The period specified by Subsection (e)(2) above shall be:
- (1) three (3) years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or
 - (2) thirty (30) years if construction of a conveyance system has been initiated prior to the issuance of the permit; or
 - (3) such longer period, consistent with the Management Plan, as the Board within its discretion may determine on application and for good cause shown by the applicant.
- (h) The three (3) year period specified under Subsection (f)(1) shall automatically be extended to thirty (30) years if construction of a conveyance system is begun before the expiration of such three (3) year period.
- (i) For the purposes of this Section, construction of a conveyance system has been initiated when the permittee has completed construction of at least 10% of the portion of the conveyance facilities located within the District that will be used to convey the maximum annual quantity of groundwater permitted for transfer outside of the boundaries of the District.
- (j) Groundwater produced from within the District may not be transferred outside the District's boundaries unless the Board has issued the Well Owner a Transfer Permit.
- (k) The District shall not issue a Transfer Permit, unless the Transfer Permit applicant has obtained an underlying Operating Permit, or amendment thereto, that authorizes the Transfer Permit applicant to produce or withdraw the quantity of groundwater allowed under Section 3.9 of these rules to be transferred outside of the boundaries of the District.
- (l) An application for a Transfer Permit may be submitted and considered concurrently with an application for an Operating Permit, or amendment thereto.

Sec. 6.17 DRILLING OR ALTERING WELL WITHOUT PERMIT

- (a) No person may drill a new Exempt Well without first registering such well within the District.
- (b) No person may drill a new Non-exempt Well without first obtaining a Drilling Permit from the District.
- (c) No person may alter the size of a an existing Exempt Well such that it would cause the well to lose exempt status without first obtaining an Operating Permit from the District.
- (d) No person may make withdrawals from a Non-exempt Well without first obtaining a Validation Permit or Operating Permit from the District.

- (e) A violation occurs on the first day the drilling, alteration, or operation begins in the absence of the required permit and continues each day thereafter until the appropriate permit or permits are approved.
- (f) Except as provided by Subsection (g) below, no person may alter the size of an existing Non-exempt Well without first obtaining a permit amendment from the District.
- (g) A Well Owner may rework, re-equip, re-drill, or replace an existing permitted or registered well by the filing of an application to amend such permit or registration, and providing such information as may be required by the General Manager, without notice and hearing under the following conditions:
 - (1) The replacement well must be drilled within 50 feet of the original permitted location;
 - (2) The replacement well shall not be located any closer to any other permitted well or authorized well site than the well being replaced, unless the new location complies with the minimum spacing requirements set out in Section 3 of these Rules;
 - (3) The replacement well or pump shall not be changed to a larger size or capacity so as to substantially increase the rate of production authorized in such permit; and
 - (4) If a replacement well is drilled, the Well Owner ceases production from the existing permitted or registered well and begins pursuit of compliance with the well closure requirements of the District for the existing permitted or registered well.

CHAPTER 7. EXEMPTIONS, EXCEPTIONS, AND LIMITATIONS TO PERMITTING

Sec. 7.1 EXEMPTIONS FROM PERMITTING

The District may not require a permit for:

- (a) a well on a tract of land larger than 10 acres if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day and if the water produced or to be produced from the well is used or to be used for domestic purposes or to provide water for livestock or poultry;
- (b) the drilling of a well to supply water solely for a drilling rig that is actively engaged in drilling or exploration operations permitted by the Railroad Commission of Texas if:
 - (1) the person holding the permit is responsible for the water well; and
 - (2) the water well is located:
 - (A) on the lease on which the drilling rig is located;
 - (B) within the boundaries of the field in which the drilling rig is located; or
 - (C) in close proximity to the drilling rig; or

(c) the drilling of a well or to restrict the production of a well if the water produced or to be produced is necessary or will be necessary for mining purposes permitted by the Railroad Commission of Texas under Chapter 134, Texas Natural Resources Code.

(d) Nothing in this section shall be construed to modify the reporting requirements set forth in Section 36.117(e) of the Texas Water Code.

Sec. 7.2 REMOVING EXEMPTIONS

The District may require an Exempted Well to obtain a Operating Permit and comply with these Rules if:

(a) a well exempted under Section 7.1(b), above, is no longer used to supply water for a drilling rig that is actively engaged in drilling or exploration operations permitted by the Railroad Commission of Texas; or

(b) withdrawals from an exempted well are:

(1) no longer necessary for mining purposes permitted by the Railroad Commission of Texas under Chapter 134 of the Texas Natural Resources Code; or

(2) greater than the amount necessary for mining purposes permitted by the Railroad Commission of Texas under Chapter 134, Texas Natural Resources Code.

Sec. 7.3 REPORTING REQUIREMENT FOR CHAPTER 134-EXEMPTED WELL

A person holding a permit issued by the Railroad Commission of Texas under Chapter 134 of the Texas Natural Resource Code that authorizes the drilling of a well shall report quarterly to the District the total amount of water withdrawn from the well, the quantity of water necessary for mining purposes, and the quantity of water withdrawn for other purposes.

Sec. 7.4 REGISTRATION OF EXEMPT WELLS

The District shall require water wells exempted under this Section 7 to be registered in accordance these Rules. All Exempt Wells shall be equipped and maintained so as to conform to the District's Rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir. A driller of an Exempt Well shall file the well's drilling log with the District.

Sec. 7.5 NON-EXEMPTION FOR CERTAIN WELLS SUPPLYING SUBDIVISIONS

A well to supply water for a subdivision of land for which a plat approval is required under Chapter 232, Texas Local Government Code, is not exempted under this Section 7.

Sec. 7.6 CERTAIN DISTRICT FEES UNAFFECTED BY EXEMPTIONS

An exemption under this Section does not affect the District's authority to impose fees under Section 36.122 or Subchapter G of Chapter 36 of the Texas Water Code.

Sec. 7.7 EXPORT OF EXEMPTED PRODUCTION SUBJECT TO FEES

Groundwater withdrawn from a well exempt from permitting or regulation under this Chapter and subsequently transferred outside the boundaries of the District shall be subject to any applicable production and transfer fees.

Sec. 7.8 INAPPLICABILITY TO CERTAIN RAILROAD COMMISSION PERMITTED ACTIVITIES

This Chapter 7 applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This Chapter 7 does not apply to production or injection wells drilled for oil, gas, sulfur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids under permits issued by the Railroad Commission of Texas.

CHAPTER 8. DISTRICT FEES

Sec. 8.1 ADMINISTRATIVE FEES

The Board shall by resolution set reasonable fees for the administrative acts of the District (administrative fees) and in accordance with this Chapter 8 and Section 12.14 of these rules, including but not limited to the cost of reviewing and processing permits and the cost of hearings for permits. Such administrative fees shall not unreasonably exceed the cost to the District for such administrative acts.

Sec. 8.2 TRANSFER FEE

- (a) The District shall impose a reasonable fee or surcharge for a Transfer Fee by using one of the following methods:
 - (1) an annual fee negotiated between the District and the owner of the Transfer Permit; or
 - (2) an annual rate negotiated between the District and the owner of the Transfer Permit that does not exceed 0.0125 dollars per thousand gallons of the maximum annual amount of groundwater permitted for transfer outside of the District; or
 - (3) an annual rate not to exceed the equivalent of the District's tax rate per hundred dollars of valuation for each thousand gallons of groundwater transferred outside of the District or 0.025 dollars per thousand gallons of water transferred outside of the District, if the District assesses a tax rate of less than 0.025 dollars per hundred dollars of valuation.

Sec. 8.3 FEES FOR SERVICE PROVIDED OUTSIDE OF THE DISTRICT

The District shall set and collect fees for all services provided outside the boundaries of the District. The fees may not unreasonably exceed the cost to the District of providing the services outside the District.

Sec. 8.4 PERMIT HEARING FEE

As an additional fee for administrative acts of the District, after an application for a Validation, Operational, or Transfer permit has been determined to be administratively complete by the Board, the applicant for such permit shall deposit with the District an amount determined by the Board to cover the cost associated with an uncontested or contested hearing regarding the permit. This amount of the deposit shall be sufficient to pay for the cost for public notices, legal fees, expert fees, hearing facility rental fees, and other expenses. The remaining deposit balance, if any, is refundable following approval of the permit. 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 action on the permit.

CHAPTER 9. WASTE AND BENEFICIAL USE

Sec. 9.1 WASTE DEFINED

Waste has the meaning as defined in Section 1.1(vv) herein.

Sec. 9.2 WASTE PREVENTION

- (a) Groundwater shall not be produced within, or used within or without the District, in such a manner as to constitute waste as defined herein.
- (b) No person shall commit waste as that term is defined in herein.

Sec. 9.3 USE FOR A BENEFICIAL PURPOSE

Groundwater produced in the District shall be used for a Beneficial Purpose.

CHAPTER 10. PROCEDURES BEFORE THE DISTRICT

Sec. 10.1 Subchapter A. General

10.1.1 Purpose

The purpose of this chapter is to provide for the procedures to be followed in the processing of applications and registrations, and other types of approvals or actions that may be taken by the District. These rules should be interpreted to simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of the District's rules, policies, and objectives.

10.1.2 Applicability

This chapter applies to the processing of all applications or registrations filed with the District, and to the adoption of rules and management plans by the District.

10.1.3 Service of Documents

(a) Except as otherwise provided in these rules, all documents filed, served, or delivered under this chapter or these rules, must be served as follows:

(1) by delivering a copy to the person to be served, or the person's duly authorized agent or attorney of record, either in person or by agent or by carrier-receipted delivery or by United States mail, to the person's last known address;

(2) by facsimile to the recipient's current facsimile number; or

(3) by email to the recipient's email address.

(b) Service by mail shall be complete upon deposit of the document, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by facsimile or email is complete upon transfer and shall be accomplished by 5:00 p.m. (as shown by the clock of the local time of the recipient) of the date on which it is due. Any transfer after such time shall be deemed served on the following day. Service by facsimile or email must be followed by serving the original document in person, by mail or by carrier-receipted delivery within three days; provided, however, that this service requirement is inapplicable if the General Manager has provided written authorization for electronic service under the last sentence of Section 1.12 of these rules. Where service by the methods listed in Subsection (a) has proved unsuccessful, the service shall be complete upon publication of notice in a newspaper.

(c) Whenever a person has the right or is required to do some act within a prescribed period after the service of a document upon the person, and the document is served by mail or by facsimile, three days shall be added to the prescribed period. This subsection does not apply when documents are filed for consideration at a board meeting.

(d) A document served under this rule must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The person or the person's attorney of record shall certify compliance with this rule in writing by signature on the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of service.

(e) Nothing herein shall preclude any person from offering proof that the notice or instrument was not received or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the District may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions herein relating to the method of service of notice are in addition to all other methods of service prescribed by these rules.

(f) In contested case hearings, copies of all documents filed with the presiding officer shall be served on all parties, including the District, no later than the day of filing.

Sec. 10.2 Subchapter B. Requirements for Applications and Registrations

10.2.1 Purpose

The purpose of this subchapter is to provide for the procedures to be followed for applications and registrations that are filed with the District.

10.2.2 Applicability

This subchapter applies to any application or registration filed with the District.

10.2.3 Proper Applicant or Registrant

If a well or a proposed well has one owner or operator, that owner or operator shall file the application or registration required to be filed by the District. If there is more than one owner or operator, a joint application or registration shall be filed by those owners or operators. In such an instance, the owners or operators shall select one among them to act for and represent the others in filing the application or registration. Written documentation of such a selection satisfactory to the District shall be filed with the application or registration.

10.2.4 Contents of and Requirements for All Applications and Registrations

All applications and registrations filed with the District shall be typewritten or printed legibly in ink and shall include:

(a) The full name, physical and mailing addresses, and telephone number of the applicant or registrant. If the applicant or registrant is a partnership, the name of the partnership shall be followed by the words "a partnership." If the applicant or registrant is acting as trustee for another, the trustee's name shall be followed by the word "trustee." If one other than the named applicant or registrant executes the application or registration, the person executing the application or registration shall provide their name, position, physical address, mailing address and telephone number.

(b) The application or registration shall be signed as follows:

(1) If the applicant or registrant is an individual, the application or registration shall be signed by the applicant, registrant or a duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant or registrant. If the applicant or registrant is an individual doing business under an assumed name, the applicant or registrant shall attach to the application or registration an assumed name certificate filed with the county clerk of the county in which the principal place of business is located or the Secretary of State.

(2) Joint applications and registrations. A joint application or registration shall be signed by each applicant or registrant or each applicant's or registrant's duly authorized agent with

written evidence of such agency submitted with the application or registration. If a well or proposed well is owned by both husband and wife, each person shall sign the application or registration. Joint applicants or registrants shall select one among them to act for and represent the others in pursuing the application or registration with the District with written evidence of such representation to be submitted with the application or registration.

(3) If the application or registration is by a partnership, the application or registration shall be signed by at least one of the general partners. If the applicant or registrant is a partnership doing business under an assumed name, the applicant or registrant shall attach to the application or registration an assumed name certificate filed with the county clerk of the county in which the principal place of business is located or with the Secretary of State.

(4) If the applicant or registrant is an estate or guardianship, the application or registration shall be signed by the duly appointed guardian or representative of the estate and a current copy of the letters testamentary issued or order appointing guardian by the court shall be attached to the application or registration.

(5) If the applicant or registrant is a corporation, public district, county, municipality, or other corporate entity, the application or registration shall be signed by a duly authorized official. Written evidence specifying the authority of the official to take such action shall be submitted along with the application or registration, including in the form of bylaws, charters, or resolutions. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(6) If the applicant or registrant is acting as trustee for another, the applicant or registrant shall sign as trustee and in the application or registration shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary.

(c) Each applicant or registrant shall subscribe and swear or affirm under oath that the facts set out in the application or registration are accurate before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the application, registration, or notice.

Sec. 10.3 Subchapter C. Application and Registration Processing by the District

10.3.1 Purpose

The purpose of this subchapter is to provide the procedures to be followed in the processing of applications and registrations filed with the District.

10.3.2 Applicability

This subchapter applies to the processing of all applications or registrations filed with the District.

10.3.3 Initial Action on Applications and Registrations

All applications and registrations received by the District shall be stamped or marked “received” with the date of receipt clearly indicated.

10.3.4 Review for Administrative Completeness

(a) The District General Manager will conduct an initial review of each application or registration for administrative completeness and advise the applicant of the results of the review.

(b) In reviewing an application or registration for administrative completeness, the Board will assess whether the application or registration contains the necessary information in legible form to allow:

- (1) the District staff to conduct a technical review, if appropriate; and
- (2) the District to take action on the application or registration, as appropriate.

(c) Upon a Board determination that an application or registration is administratively complete, the District will notify the applicant or registrant in writing.

10.3.5 Return of Applications and Registrations Deemed Not Administratively Complete

(a) If, under Section 10.3.4(c) of these rules, the Board determines that an application or registration is not administratively complete, the District will notify the applicant or registrant of any such deficiencies in writing. Illegible applications or registrations will be returned to the filer.

(b) The applicant or registrant may submit any additional necessary information in response to a letter sent by the District pursuant to Subsection (a) of this Section, within 30 days of receipt of written notification of the deficiencies.

(c) If the additional necessary information is not forthcoming within 30 days of the date of receipt of the written notification of the deficiencies, the District will return the incomplete application or registration to the applicant or registrant.

10.3.6 Technical Review

(a) After an application or registration is determined by the District to be administratively complete, District staff will commence a technical review of the application or registration as necessary and appropriate.

(b) The applicant or registrant shall be notified in writing of any additional material necessary for a complete technical review. If the applicant or registrant provides the information within 30 days of the date it is requested, District staff will complete the technical review of the application or registration. If the necessary additional information is not received by the District within 30 days of the date the information is requested and the information is considered essential by the District, the District may return the application to the applicant or registration to the registrant.

Decisions to return an application to the applicant or registration to the registrant during the technical review will be made on a case-by-case basis.

(c) The General Manager or his or her designee is entitled to enter public or private property at any reasonable time and upon reasonable notice for the purpose of inspecting, investigating, or verifying conditions or information submitted in connection with an application or a registration.

10.3.7 General Manager's Proposed Action on Applications and Technical Summary

(a) Following completion of technical review, the General Manager will determine whether to recommend granting or denying the application and will prepare a written statement summarizing the recommendation and the reasons for that recommendation. If the General Manager recommends full or partial granting of a permit or permit amendment application, the General Manager shall also prepare a draft permit. The General Manager's recommendation and any draft permits are subject to change by the General Manager or board during the course of the proceedings on the application. The statement and proposed permit shall be provided to the applicant or registrant and available for public review and inspection.

(b) In conjunction with the proposed permit or denial, the General Manager will prepare a technical summary that will include the following, as appropriate:

- (1) the applicant's name and address;
- (2) a summary of the application;
- (3) the location of each point of withdrawal;
- (4) the reasons and technical basis for the recommended action;
- (5) if applicable, a summary of the proposed permit;
- (6) the proposed purpose(s) of use;
- (7) notice that the General Manager may modify his or her recommendation, or seek additional information from the applicant, in the course of the District's proceeding on the application;
- (8) as may be authorized by this chapter, a statement that the applicant or other affected persons may file a request for a contested case hearing on the application on or before the deadline set forth in Section 10.4.4; and
- (9) any other information that the General Manager determines to be appropriate.

(c) The General Manager will provide the applicant with a copy of the General Manager's statement, any proposed permit (or denial) and the technical summary.

10.3.8 Action by Board on Applications or Registrations Where There is No Right to a Contested Case Hearing

(a) Applicability. This Section applies to:

- (1) all registrations and applications other than applications for validation permits, operating permits, and transfer permits, as well as applications to amend such permits, and applications for a variance from well spacing limitations; and
- (2) any changes to a permit that the Board determines are non-substantial and subject to approval by resolution under Section 6.7(d) of these rules.

(b) Scheduling the Board Meeting. Following technical review and the referral of the proposed action to the board, the General Manager will schedule the presentation of the application or registration and the proposed permit, approval, authorization, or denial to the board. The board may reschedule the presentation of the application or registration and the proposed permit, approval, authorization, or denial.

(c) Notice of Board Meeting. At least 20 days prior to the board meeting, the District will notify the applicant or registrant of the date of the board meeting referred to above. If rescheduled by the board, the District will send written notice of the rescheduled meeting date to the applicant or registrant no later than ten days before the rescheduled meeting. In addition, the District will provide public notice that the application or registration and the permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Open Meetings Act. Except to the extent that such items contain information excepted from public disclosure under the Public Information Act, copies of the application or registration and the proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the offices of the District during regular business hours.

(d) Consolidation or Severance of Matters. Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) Oral Presentation Before the Board. The applicant or registrant and the General Manager or his or her designee may make an oral presentation at the board meeting at which the application or registration and the proposed permit, approval, authorization or denial are presented to the board. Oral presentations before the board will be limited to 15 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions will be directed to the board.

(f) Public Comment. In addition, public comment on the application or registration and the proposed permit, approval, authorization, or denial will be accepted.

(g) Upon consideration of the application or registration and the proposed permit, approval, authorization, or denial at its meeting, the board may issue an order granting or denying an application or registration in whole or in part, dismissing proceedings, amending or modifying a permit, or taking any other appropriate action.

10.3.9 Action by Board on Applications Where There is a Right to a Contested Case Hearing But None Was Requested or Requests Were Withdrawn

(a) Applicability. This section applies only to applications for validation permits, operating permits, and transfer permits, as well as applications to amend such permits, and applications for a variance from well spacing limitations where, after the time for the filing of a hearing request provided in Section 10.4.4:

- (1) no timely hearing request has been received;
- (2) all timely hearing requests have been withdrawn; or
- (3) the court of law has remanded a matter concerning the application for implementation of a settlement.

(b) Scheduling the Board Meeting. Following the expiration of the time to file a hearing request pursuant to Section 10.4.4 of this chapter, and if any condition stated in Subsection (a)(1)-(3) of this section has been met, the District will schedule the presentation of the application and the proposed permit, approval, authorization, or denial to the board. The board may reschedule the presentation of the application and the proposed permit, approval, authorization, or denial.

(c) Notice of Board Meeting. At least 20 days prior to the board meeting, the District will notify the applicant in writing of the date of the board meeting referred to above. If rescheduled by the board, the District will send written notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting. In addition, the District will provide public notice that the application and the proposed permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Open Meetings Act. Copies of the application and the proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the offices of the District during regular business hours.

(d) Consolidation or Severance of Matters. Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) Oral Presentation Before the Board. The applicant and the General Manager or his or her designee may make an oral presentation at the board meeting in which the application and the proposed permit, approval, authorization, or denial are presented to the board. Oral presentations before the board will be limited to 15 minutes each, excluding time for answering questions,

unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions will be directed to the board.

(f) Public Comment. In addition, public comment on the application and the proposed permit, approval, authorization, or denial will be accepted.

(g) Upon consideration of the application and the proposed permit, approval, authorization, or denial at its meeting, the board may issue an order granting or denying an application in whole or in part, dismissing proceedings, amending or modifying a permit, or taking any other appropriate action.

10.3.10 Notice of Permit Hearing Where There is a Right to a Contested Case Hearing

(a) Applicability. This section applies only to applications for validation permits, operating permits, and transfer permits, as well as applications to amend such permits, and applications for a variance from well spacing limitations.

A notice of hearing on an application for a permit shall be prepared by the District. At a minimum, the notice shall state the following information:

- (1) the name and address of the applicant;
- (2) the name or names of the owner or owners of the land or well, if different from the applicant;
- (3) the name or names of the operator or operators of the land or well, if different from the applicant;
- (4) the date the application was filed and the number assigned to it;
- (5) the time, date and location of the hearing;
- (6) the address or approximate location of the well or proposed well;
- (7) a brief explanation of the permit or permit amendment sought, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
- (8) a summary of the action on the application recommended by the General Manager pursuant to Section 10.3.4 of these rules;
- (9) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (10) a brief description of the technical summary;
- (11) a statement that a copy of the proposed action, technical summary, and application are available for inspection by the public at the offices of the District;

(12) a statement that the application will be presented to the board for action at the hearing unless a request for a contested case hearing is submitted at least five days prior to the date of the hearing pursuant to Section 10.4.4; and

(13) a statement that the applicant or another affected person may request a contested case hearing on the application by filing a request with the District, at least five days before the date of the hearing, in accordance with Section 10.4.4.

(14) any other information the board or General Manager considers relevant and appropriate.

(c) The District shall, not less than 20 days before the date of the hearing:

(1) Post the notice in a place readily accessible to the public at the District's office;

(2) Provide the notice for posting at the county courthouse to the county clerk of each county in which the District is located;

(3) Provide the notice:

(A) By regular mail to the applicant; and

(B) By regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d) below; and

(4) Publish the notice at least once in a newspaper of general circulation in the District.

(d) Any person may request to receive written notice of permit hearings by submitting a request to the District in writing. The request must identify with as much specificity as reasonably possible the types of permit hearings for which written notice is requested. The request remains valid for the remainder of the calendar year in which the request is received by the District, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service of notice by first class mail, facsimile, or email to a person required pursuant to Subsection (c)(3)(B), above, in accordance with the information provided by that person is proof that notice was provided by the District. Failure to provide notice under Subsection (c)(3)(B) does not invalidate an action taken by the District at the hearing.

(e) The applicant, at the applicant's expense, shall give the notification by first class mail to the owner of any land contiguous to the land identified by the applicant in the application, or to the extent not already provided, to an owner of an operating water well within one thousand (1,320) feet of the proposed well, not less than ten (10) days before the hearing. The applicant will provide the District with proof of service including a list of names and addresses of the landowners and/or well owners that were notified.

10.3.11 Scheduling of Permit Hearings Where There is a Right to a Contested Case Hearing

(a) Applicability. This section applies only to applications for validation permits, operating permits, and transfer permits, as well as applications to amend such permits, and applications for variance from well spacing limitations.

(b) Hearings on applications for permits may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays, and may be held in conjunction with a regularly scheduled board meeting. All permit hearings will be held at the District Office, unless the board directs otherwise. The district may from time to time schedule additional dates, times, and places for permit hearings by resolution adopted at a regular board meeting. The District may schedule as many applications for consideration at one hearing it deems desirable and feasible.

Sec. 10.4 Subchapter D. Contested Case Hearing Procedures

10.4.1 Purpose

The purpose of this subchapter is to provide for the procedures to be applied to contested case hearings before the District.

10.4.2 Applicability

This subchapter applies to matters subject to a contested case hearing under Section 10.3.10 for which a timely request for contested case hearing is pending before the District and the request has not been withdrawn because of settlement or for some other reason.

10.4.3 Persons Entitled to Request a Contested Case Hearing

The following persons may request a contested case hearing on an application subject to this subchapter:

- (a) the applicant; and
- (b) any other affected person.

10.4.4 Timing, Form, and Contents of Requests for Contested Case Hearing

(a) A request for a contested case hearing may only be made for applications for validation permits, operating permits, and transfer permits, as well as applications to amend such permits, and applications for a variance from well spacing limitations.

(b) A request for a contested case hearing must be in writing and be filed by United States mail, facsimile, or hand delivery to the District by no later than five days before the date of the hearing specified in the notice made pursuant to Section 10.3.10.

(c) A hearing request must substantially include the following:

(1) the name, address, daytime telephone number, fax number, and email address of the person filing the request. If the request is made by a corporation, partnership, or other business entity, the request must identify the entity and one person by name, physical and mailing address, daytime telephone number, fax number, and email address, who shall be responsible for receiving all documents on behalf of the entity;

(2) the basis for the contention that the person will be injured and has a personal justiciable interest in the matter such that a contested case hearing is appropriate;

(3) request a contested case hearing;

(4) provide any other information requested in the notice of hearing; and

(5) the person filing the request shall subscribe and swear or affirm under oath that the facts set out in the request are true and correct before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the request.

(d) Where a request for a contested case hearing is filed by a person other than the applicant, a copy of that request must be served on the applicant at or before the time that the request is filed with the District. The request shall include a certificate indicating the date and manner of service and the name and address of all persons served.

(e) If a person is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

10.4.5 Processing of Hearing Requests

(a) Except as provided in Subsection (d), the General Manager shall schedule any timely filed contested case hearing request for board consideration. No less than three days prior to the board hearing, the General Manager shall provide notice to the applicant and other persons making a timely hearing request of the hearing. The board may receive relevant oral testimony or documentary evidence at a board hearing during which the contested case hearing request is evaluated.

(b) The hearing request will be the initial matter considered at the hearing on the permit application.

(c) Persons may submit a written response to the hearing request. Responses shall be filed with the District, the applicant, and any persons filing a hearing request in connection with that matter. The response should address the question of whether the person requesting the contested case hearing has a personal justiciable interest related to the application at issue.

(d) The board shall evaluate the hearing request and any written responses thereto at the scheduled board hearing and shall determine that the person requesting the hearing:

(1) does not have a personal justiciable interest related to the application and deny the hearing request and not admit the person as a party to the hearing; or

(2) has a personal justiciable interest relating to the application, refer the application to a contested case hearing, and admit the person as a party to the hearing.

(e) The board may delegate to a presiding officer the processing of requests for contested case hearing.

(f) The determination of whether a hearing request should be granted is not itself a contested case hearing.

10.4.6 General Hearing Procedures in Contested Cases

(a) The procedures provided in this subchapter apply to contested case hearings, except for a hearing referred to the State Office of Administrative Hearings (“SOAH”). If the Board refers a contested case hearing to SOAH, then the hearing shall be conducted as provided by Sections 36.416(b) and (c) and 36.4165, Texas Water Code, Subchapters C, D, and F, Chapter 2001, Texas Government Code, and the applicable rules of practice and procedure of SOAH (Title 1, Chapter 155, Tex. Admin. Code) govern any contested case hearing of the District conducted by SOAH, as supplemented by this subchapter.

(b) At the Board’s determination, a contested case hearing of the District must be conducted by:

(1) a quorum of the board;

(2) an individual to whom the board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or

(3) a SOAH administrative law judge.

(c) Except as provided by Subsection (d), the board president or the hearing examiner shall serve as the presiding officer at the hearing.

(d) If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select another director to serve as the presiding officer.

(e) Authority of presiding officer: The presiding officer may conduct the hearing in the manner the presiding officer deems most appropriate for the particular proceeding. The presiding officer has the authority to:

(1) convene the hearing at the time and place specified in the notice for public hearing;

(2) set hearing dates;

(3) designate the parties;

(4) establish the order for presentation of evidence;

(5) administer oaths to all persons presenting testimony;

(6) examine persons presenting testimony or comments;

- (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- (8) prescribe reasonable time limits for testimony and the presentation of evidence;
- (9) exercise the procedural rules of the District;
- (10) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
- (11) require the taking of depositions and compel other forms of discovery under these rules;
- (12) reopen the record of a hearing for additional evidence when necessary to make the record more complete;
- (13) establish the jurisdiction of the District concerning the subject matter under consideration;
- (14) rule on motions and on the admissibility of evidence and amendments to pleadings;
- (15) conduct public hearings in an orderly manner in accordance with these rules;
- (16) recess any hearing from time to time and place to place; and
- (17) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of the presiding officer.

(f) Alignment of Parties in a Contested Case Hearing; Number of Representatives Heard: Parties in a contested case hearing may be aligned according to the nature of the hearing 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 hearing 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.

(g) Appearance by Applicant or Movant: The applicant, movant, or party requesting the hearing or other proceeding or a 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.

(h) Reporting: Contested case hearings will be recorded by audio or video recording or, at the discretion of the presiding officer, may be recorded by a certified court reporter transcription. The District does not prepare transcripts of hearings or other proceedings recorded on audio cassette tape on District equipment for the public, but the District will arrange access to the recording. On the request of a party to a contested case hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from

further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party. If a proceeding other than a contested case hearing 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 of any transcript will be filed with the District and placed in 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.

(i) Continuance: The presiding officer may continue hearings in a contested case hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice under Section 10.3.10. If the presiding officer continues a contested case hearing without announcing at the hearing the time, date and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to all parties.

(j) Any request under Section 36.416(b), Texas Water Code, to have a contested case hearing conducted by SOAH shall be filed with the District no later than the 10th day after the matter becomes a contested case. A matter becomes a contested case hearing when the Board determines that the requirements of Section 10.4.4 have been met.

10.4.7 Conduct and Decorum

Every person participating in or observing a contested case hearing, or other associated proceeding, must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants or observers. 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 shall 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.

10.4.8 Hearing Registration Forms

Each individual attending who provides comments or testimony in a contested case hearing shall submit a hearing registration form providing the following information: name, address, who the person represents, if the person is not there in person's individual capacity, whether the person plans to testify or provide comments, and any other information relevant to the hearing.

10.4.9 Opportunity for Hearing and Participation; Notice of Hearing

In a contested case, each party is entitled to an opportunity:

(a) for hearing; and

(b) to respond and to present evidence and argument on each issue involved in the case.

10.4.10 Pre-Hearing Conferences

(a) The presiding officer may hold one or more pre-hearing conferences at which the presiding officer may consider any matter which may expedite the hearing or otherwise facilitate the hearing process.

(b) Matters Considered. Matters which may be considered at a pre-hearing conference include, but are not limited to:

- (1) the withdrawal of protest;
- (2) the designation of parties;
- (3) the formulation and simplification of issues;
- (4) the necessity or desirability of amending applications or other pleadings;
- (5) the possibility of making admissions or stipulations;
- (6) the scheduling of discovery;
- (7) the identification of and specification of the number of witnesses;
- (8) the filing and exchange of prepared testimony and exhibits; and
- (9) the procedure at the hearing.

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

10.4.11 Designation of Parties

The following persons shall be designated as parties in a contested case hearing:

- (a) The General Manager of the District is a party in all contested case hearings;
- (b) The applicant is a party in a contested case hearing on its application; and
- (c) Any person who timely requested a contested case hearing pursuant to Section 10.4.4, and who has been determined by the presiding officer to be a person entitled to a contested case hearing under the standard set forth in Section 10.4.5.

10.4.12 Right to Counsel

- (a) Each party to a contested case hearing may have the assistance of legal counsel before the District.
- (b) A party to a contested case hearing may choose not to have the assistance of legal counsel.

10.4.13 Interpreters for Deaf or Hearing Impaired Parties and Witnesses

(a) In a contested case hearing, the District shall provide an interpreter whose qualifications are approved by the Texas Office for Deaf and Hard of Hearing Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(b) In this section, “deaf or hearing impaired” means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

10.4.14 Informal Disposition of Contested Case Hearing

An informal disposition may be made of a contested case hearing by:

- (a) stipulation;
- (b) agreed settlement;
- (c) consent order; or
- (d) default.

10.4.15 Hearing Conducted by Hearing examiner

(a) This section applies only to contested case hearings presided over by a hearing examiner.

(b) A hearing examiner who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing.

(c) The District shall provide the hearing examiner with the District rules or policies applicable to the matter under consideration in the hearing.

(d) The District may not attempt to influence the findings of fact or the hearing examiner’s application of law in a contested case hearing except by proper evidence and legal argument.

(e) The Board may change a finding of fact or conclusion of law made by the hearing examiner, or may vacate or modify an order issued by the hearing examiner, only if the Board determines:

- (1) that the hearing examiner did not properly apply or interpret applicable law, District rules or policies provided under Subsection (c), or prior administrative decisions;
 - (2) that a prior administrative decision on which the hearing examiner relied is incorrect or should be changed; or
 - (3) that a technical error in a finding of fact should be changed.
- (4) The Board shall state in writing the specific reason and legal basis for a change made under this subsection.

10.4.16 Certified Questions

(a) At any time during a contested case hearing presided over by a hearing examiner, on a motion by a party or on the hearing examiner's own motion, the hearing examiner may certify a question to the Board.

(b) Issues regarding District policy, jurisdiction, or the imposition of any sanction by the hearing examiner that would substantially impair a party's ability to present its case are among the types of issues appropriate for certification. Policy questions for certification purposes include, but are not limited to:

- (1) the Board's interpretation of its rules and applicable statutes;
- (2) which rules or statutes are applicable to a proceeding; and
- (3) whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(c) If a question is certified, the hearing examiner shall submit the certified issue to the General Manager. The General Manager will place the certified issue on the agenda of the earliest possible meeting of the Board, in compliance with the Open Meetings Act and other applicable law. The General Manager will give the hearing examiner and parties notice of the meeting at which the certified question will be considered. The parties to the proceeding may file with the District briefs on the certified question. Briefs shall be served on the parties, with a copy served on the hearing examiner. The General Manager will provide copies of the certified question and any briefs to the Board. The hearing examiner may abate the hearing until the Board answers the certified question, or continue with the hearing if the hearing examiner determines that no party will be substantially harmed.

(d) The Board will issue a written decision on the certified issue within 30 days following the meeting at which the certified issue is considered. A decision on a certified issue is not subject to a motion for rehearing, appeal, or judicial review prior to the issuance of the Board's final decision in the proceeding.

10.4.17 Service of Documents filed in a Contested Case Hearing

(a) Service of all Documents Required. For any document filed with the District or the judge in a contested case hearing, the person filing that document must serve a copy on all parties to the contested case including the General Manager at or before the time that the request is filed.

(b) Certificate of Service. A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The General Manager may permit a document to be filed without a certificate of service but will require the certificate to be filed promptly thereafter.

10.4.18 Privilege

In a contested case hearing, the District shall give effect to the rules of privilege recognized by law.

10.4.19 Objections to Evidence

An objection to an evidentiary offer in a contested hearing may be made and shall be noted in the record.

10.4.20 Burden of Proof

The burden of proof is on the applicant to establish, by a preponderance of the evidence, that the applicant is entitled to have the application granted.

10.4.21 Assessing Costs

Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may make a recommendation to the board regarding the assessment of the costs incurred by the District for the hearing, including the District's expenditures for attorney's fees and technical experts, and any reporting and transcription costs to one or more of the parties. If the hearing is conducted by the board, a hearing report with recommendations need not be filed, and the board may directly assess the District's hearing costs and reporting and transcription costs to one or more of the parties. The presiding officer must consider the following factors in assessing the District's hearing costs and the reporting and transcription costs:

- (a) the party who requested the transcript;
- (b) the financial ability of the party to pay the costs;
- (c) the extent to which the party participated in the hearing;
- (d) the relative benefits to the various parties of having a transcript;
- (e) the budgetary constraints of a governmental entity participating in the proceeding; and
- (f) any other factor that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of the District's hearing costs and reporting or transcription costs is an issue, the presiding officer 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 presiding officer's report to the board.

10.4.22 Rights of Designated Parties

Subject to the direction and orders of the presiding officer, parties have the right to conduct discovery; present a direct case; cross-examine witnesses; make oral and written arguments; obtain copies of all documents filed in the proceeding; receive copies of all notices issued by the District concerning the proceeding; and otherwise fully participate in the proceeding.

10.4.23 Persons Not Designated Parties

At the discretion of the presiding officer, a person not designated as a party to a proceeding may submit a comment or statement, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the presiding officer.

10.4.24 *Ex Parte* Communications

Except as otherwise provided below, the presiding officer or a member of the board assigned to render a decision or to make findings of fact or conclusions of law on a contested permit application may not communicate, directly or indirectly, about any issue of fact or law during the pendency of the contested case with any representative of the District or other designated party to the contested case, except on notice and opportunity for all parties to participate. This rule does not apply to a board member who abstains from voting on any matter in which he or she engaged in *ex parte* communications. A member of the board may communicate *ex parte* with other members of the board consistent with the requirements of other law, such as the Open Meetings Act.

10.4.25 Evidence

The presiding officer shall admit evidence that is relevant to an issue at the hearing. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The Texas Rules of Evidence may be referred to in order to determine the admissibility and introduction of evidence in contested case hearings. However, evidence not admissible under the Texas Rules of Evidence may be admitted if the evidence is:

- (a) necessary to ascertain facts not reasonably susceptible of proof under those rules;
- (b) not precluded by statute; and
- (c) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

In addition, evidence may be stipulated to by agreement of all parties.

10.4.26 Written Testimony

(a) When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially thereby, the presiding officer may allow testimony in a contested case hearing to be received in written form.

(b) The written testimony of a witness, either in narrative or question and answer form, must be sworn to by the witness and 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 must be available, in person, by phone, or by other reasonable means, for clarifying questions and cross-examination, and the prepared testimony will be subject to objection. On the motion of a party, the presiding officer may exclude written testimony if the

person who submits the testimony is unavailable for cross-examination by phone, a deposition before the hearing, or other reasonable means.

10.4.27 Requirements for Exhibits

(a) 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.

(b) Abstracts of Documents. When documents are numerous, the presiding officer may receive in evidence only those which are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

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

(d) 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.

10.4.28 Official Notice; District Evaluation of Evidence

(a) In connection with a contested case hearing, the presiding officer may take official notice of:

- (1) all facts that are judicially cognizable; and
- (2) generally recognized facts within the area of the District's specialized knowledge.

(b) Each party shall be notified, either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information.

(c) Each party is entitled to be given an opportunity to object to material that is officially noticed.

10.4.29 Agreement of Parties; Remand to Board

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

(b) An agreed disposition of a contested case may be made by stipulation, settlement, consent order, or the withdrawal of all requests for a contested case hearing so that no facts or issues remain controverted. Upon settlement of a matter, the presiding officer shall remand the matter to the board. If the person requesting the contested case hearing defaults, then the presiding officer may also deem the request for a contested case hearing to have been withdrawn by the

person and remand the case to the board. Applications remanded under this section shall be considered to be uncontested and shall be considered under Section 10.208. The presiding officer shall summarize the evidence, including findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing. Any stipulations, settlements, consent orders, withdrawals of requests for contested case hearing, orders, findings of default, presiding officer summary of the proceedings, and other relevant documents shall be presented to the board for its consideration.

10.4.30 Discovery

Discovery may be conducted upon such terms and conditions, and at such times and places, as directed by the presiding officer. Unless specifically modified by this subchapter or by order of the presiding officer, discovery shall be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer.

10.4.31 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.

10.4.32 Oral Argument

At the discretion of the presiding officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The presiding officer may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the board for final decision, further oral arguments may be heard by the board if the board did not preside over the hearing.

10.4.33 Closing the Record

At the conclusion of the presentation of evidence and any oral argument, the presiding officer may close the record or, if the board has not taken final action on the application, keep it open and allow the submission of additional testimony by a person who testified at the hearing, or exhibits, briefs, or proposed findings and conclusions from one or more of the parties. Any supplementation of the record must be filed not later than the 10th day after the date of the final hearing. A person who files additional written material with the presiding officer under this section must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested case hearing. A person who receives additional written material under this section may file a response to the material with the presiding officer not later than the 10th day after the date the material was received. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer.

10.4.34 Proposal for Decision

Except for contested cases presided over by a quorum of the board, no later than 30 days following the completion of the contested case hearing, the presiding officer shall submit a proposal for decision to the Board and serve a copy on the applicant and each designated party to the contested case. A proposal for decision shall include a summary of the subject matter of the hearing, a summary of the evidence, and the presiding officer's recommendations for board action on the subject matter of the hearing. If the presiding officer has exercised discretion to allow the receipt of public comments by persons not designated as parties, the presiding officer shall include them with the proposal for decision but only with the notation that such comments may not be considered by the Board. The presiding officer, when submitting the proposal for decision, shall notify the parties of the deadlines for the filing of exceptions and replies.

10.4.35 Exceptions to the Proposal for Decision

Prior to board action, any party in a contested case may file written exceptions to the proposal for decision. Upon review of the exceptions, the hearing examiner 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 examiner for further proceedings.

10.4.36 Scheduling a Meeting of the Board

(a) After receiving the proposal for decision or proposed order, the General Manager shall schedule the presentation of the proposal for decision or proposed order to the board. The General Manager shall provide at least 10 days' prior notice to the parties of the date of the board meeting at which the proposal for decision or proposed order will be presented and considered. The board may reschedule the presentation of the proposal for decision or proposed order. The General Manager shall send notice of the rescheduled meeting date to the parties no later than 10 days before the rescheduled meeting.

(b) Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

10.4.37 Oral Presentation Before the Board

(a) Any party to the contested case hearing may make an oral presentation at the board meeting in which the proposal for decision in that case is presented to the board.

(b) Any party to the contested case hearing may make an oral presentation at the board meeting in which the proposed order in that case is considered by the board.

(c) Oral presentations before the board shall be limited to 5 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the board.

10.4.38 Reopening the Record

The board, on the motion of any party to a contested case or on its own motion, may order the presiding officer to reopen the record for further proceedings on specific issues in dispute. The order shall include instructions as to the subject matter of further proceedings and the presiding officer's duties in preparing supplemental materials or revised proposals based upon those proceedings for the board's adoption.

10.4.39 Decision

(a) No later than 60 days after the date of the final hearing, including any hearing pursuant to Sections 10.4.36 and 10.4.37, on the application is concluded, the board shall render its decision. The decision, if adverse to any party, must be in writing or stated in the record. If a written request is filed with the District not later than the 20th day after the date of the board's decision, then the board's decision must be in writing and shall include findings of fact and conclusions of law separately stated regarding the decision of the board. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the board received the request.

(b) The board's decision shall be rendered no later than 60 days after the date the final hearing on the application is concluded, unless the board determines that there is good cause for continuing the proceeding.

(c) The board may change a finding of fact or conclusion of law made by the presiding officer, or may vacate or modify an order issued by the presiding officer, only if the board determines:

(1) that the presiding officer did not properly apply or interpret applicable law, District rules, written policies provided to the presiding officer by the District, or prior administrative decisions:

(2) that a prior administrative decision on which the presiding officer relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

10.4.40 Notification of Decisions and Orders

(a) The District shall notify all parties in a contested case either personally or by certified mail, return-receipt requested, of any decision or order.

(b) The District shall send a copy of the decision or order in a contested case by first-class mail to attorneys of record and shall keep an appropriate record of the mailing. If a party is not

represented by an attorney, the District shall send a copy of the decision or order by first-class mail to the party and shall keep an appropriate record of the mailing.

(c) A party or attorney of record notified by mail under Subsection (b) is presumed to have been notified on the third day after the date on which the notice is mailed.

10.4.41 Motion for Rehearing

(a) Filing motion. Only a party to the contested case may file a motion for rehearing. The motion shall be filed with the General Manager within 20 days after the later of: (i) the date the party or his or her attorney of record is notified of the decision or order if there is no timely request for written findings of fact and conclusions of law; or (ii) the Board's issuance of findings of fact and conclusions of law under Section 36.412(b), Texas Water Code. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the District. The motion shall contain:

- (1) the name and representative capacity of the person filing the motion;
- (2) the style and official docket number assigned by the District;
- (3) the date of the decision or order; and
- (4) a concise statement of each allegation of error.

(b) Reply to motion for rehearing. Only a party to the contested case proceeding may reply to a motion for rehearing. A reply to a motion for rehearing must be filed with the General Manager within 20 days after the date the motion for rehearing is filed.

(c) Ruling on motion for rehearing.

(1) Upon the request of a board member, the motion for rehearing shall be scheduled for consideration during a board meeting. Unless the board rules on the motion for rehearing, the failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted constitutes a denial of the request by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The board may reopen the hearing to the extent it deems necessary. If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted. Thereafter, the board shall render a decision or order as required by this subchapter.

(d) Section 36.412, Texas Water Code, governs motions for rehearing to the extent there is any irreconcilable conflict between its requirements and the requirements of this section.

10.4.42 Decision Final and Appealable

In the absence of a timely filed motion for rehearing, a decision or order of the board is final and appealable on the expiration of the period for filing a motion for rehearing. If a party files a timely motion for rehearing, a decision or order of the board is final and appealable on the date:

(1) the board denies the motion for rehearing; (2) the motion is denied by operation of law; or (3) the board renders a written decision after rehearing.

10.4.43 Appeal of Final Decision

(a) A filing of a timely motion for rehearing is a prerequisite to appeal.

(b) Not later than the 60th day after the date on which the decision of the board becomes final, an applicant or a party to a contested case hearing may appeal the District's decision by filing suit under Section 36.251, Texas Water Code. An applicant or a party to a contested case hearing may not file suit against the District under Texas Water Code Section 36.251 if a request for rehearing was not filed on time.

(c) The record. The record in a contested case shall include the following:

- (1) all pleadings, motions and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings on them;
- (5) summaries of the results of any conferences held before or during the hearing;
- (6) proposed findings, exceptions and briefs;
- (7) any decision, opinion or report issued by the presiding officer;
- (8) pre-filed testimony;
- (9) all memoranda or data submitted to or considered by the presiding officer; and
- (10) the final order and all interlocutory orders.

10.4.44 Costs of Record on Appeal

A party who appeals a final decision in a contested case shall pay all costs of preparation of the record of the proceeding that is required to be transmitted to the reviewing court. A charge imposed as provided by this section is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Sec. 10.5 Subchapter E. Procedures for Adoption of Rules and Management Plan

10.5.1 Rulemaking and Management Plan Hearing Procedures

(a) The District shall adopt rules and its management plan following the notice and hearing procedures set forth in this subchapter.

(b) Not later than the 20th day before the date of a rulemaking or management plan hearing, the General Manager shall provide notice of the public hearing as follows:

- (1) post a notice in a place readily accessible to the public at the District office;
- (2) provide a copy of the notice to the county clerk of each county in which the District is located, to be posted at the County courthouse;
- (3) publish the notice in one or more newspapers of general circulation in the District;
- (4) provide the notice by mail, facsimile, or email to any person who has requested the notice pursuant to Subsection (g); and
- (5) make available a copy of the proposed rule or management plan at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on its website.

(c) The notice shall include the following information:

- (1) the time, date, and location of the rulemaking or management plan hearing;
- (2) a brief explanation of the subject of the rulemaking or management plan hearing; and
- (3) the procedures for submitting oral or written comments, and a location or internet site at which a copy of the proposed rules or management plan may be reviewed or copied, if any.

(d) The General Manager may designate a person to be the presiding officer to conduct the public hearing. The presiding officer shall conduct a rulemaking or management plan hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule or management plan as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments. The District shall allow at least 20 days for submission of written public comments on a proposed rule or management plan before adopting the proposed rule or plan.

(e) Any person participating in a rulemaking hearing must submit to the District a registration form indicating the person's name, address, and who the person represents, if not in attendance or his or her behalf.

(f) The presiding officer shall prepare and keep a record of each rulemaking or management plan hearing in the form of an audio or video recording or a court reporter transcription.

(g) A person may submit to the District a written request for notice of a rulemaking or management plan hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking or management plan hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(h) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about a contemplated rule or management plan provision and may appoint an advisory committee of experts, interested persons, or public representatives to advise the District about a contemplated rule or management plan provision.

(i) Failure to provide notice under Subsection (b)(4) does not invalidate an action taken by the District at a rulemaking or management plan hearing.

(j) Oral Presentations. Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer may establish 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.

(k) Adoption of Proposed Rules or Management Plan. After the conclusion of the hearing and the time period for submission of written comments, the board shall consider all timely written comments and shall, in the order adopting the rule or plan, state the District's responses to the written comments.

(l) A proposed rule becomes final and effective on the day it is adopted by the board, unless otherwise specified by the board.

10.5.2 Emergency Rulemaking

(a) The District may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

(1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its findings under Subsection (a).

(b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by the Open Meetings Act.

Subchapter F. Hearings on Desired Future Conditions

10.5.3 Procedures for Administrative “Reasonableness” Hearing on Desired Future Conditions

The District shall follow the procedures set forth in Section 36.1083 of the Texas Water Code in connection with any timely-filed petition by an affected person appealing the reasonableness of an adopted DFC.

10.5.4 Timeliness of appeal by affected person

For purposes of this subchapter, an affected person is a person as defined in Section 36.1082 of the Texas Water Code, and the timeliness of an appeal is as specified in Subsection (b) of Section 36.1082 of the Texas Water Code.

CHAPTER 11. INVESTIGATIONS AND ENFORCEMENT

Sec. 11.1 RIGHT TO ENTER LAND

- (a) Any employee, professional consultant, agent, or director of the District is entitled to enter any public or private property within the boundaries of the District at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality or quantity of groundwater or in regard to the compliance with any rule, regulation, permit, or other order of the District. Such persons acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit identification upon request.
- (b) Inhibiting or prohibiting any employee, professional consultants, agents, or director of the District to access any public or private property, pursuant to Section 11.1(a) above, constitutes a violation of these rules and subjects the person who is inhibiting or prohibiting such access to the penalties set forth in Section 11.3 of these rules.
- (c) If the surface estate associated with the right to produce under a permit is not owned by the permittee, the permittee still must own at least a surface easement right across the surface estate to the well field covered by the permit.

Sec. 11.2 CONDUCT OF INVESTIGATION

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

Sec. 11.3 RULE ENFORCEMENT

- (a) The District may enforce its rules by injunction or other appropriate remedy in a court of competent jurisdiction.

- (b) The Board by rule may assess reasonable civil penalties for breach of any rule of the District at an amount not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation.
- (c) A penalty under this Section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in Hudspeth County, Texas.
- (d) If the District prevails in any suit to enforce its rules, the District may seek and, consistent with Section 36.066(g) of the Texas Water Code, the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of the attorney's fees shall be fixed by the court.

Sec. 11.4 SEALING OF WELLS

- (a) A well may be sealed by the District when:
 - (1) no application has been made for a permit to drill a new water well which is not excluded or exempt; or
 - (2) no application has been made for an Operating Permit to withdraw groundwater from an existing well that is not excluded or exempt 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 these rules.

Sec. 11.5 OPEN OR UNCOVERED WELLS

- (a) The District may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.
- (b) As used in this Section, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required by this Section.
- (c) If the owner or lessee fails or refuses to close or cap the well in compliance with this Section in accordance with District rules, any person, firm, or corporation employed by the District may go on the land and close or cap the well safely and securely.

- (d) Reasonable expenses incurred by the District in closing or capping a well constitute a lien on the land on which the well is located.
- (e) The lien arises and attaches upon recordation in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:
 - (1) the existence of the well;
 - (2) the legal description of the property on which the well is located;
 - (3) the approximate location of the well on the property;
 - (4) the failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;
 - (5) the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
 - (6) the expense incurred by the District in closing the well.
- (f) Nothing in this Section affects the enforcement of Subchapter A, Chapter 756, Texas Health and Safety Code.

Sec. 11.6 PENALTIES

- (a) Pursuant to Section 11.3(b) above, the Board of Directors may assess a penalty of \$200 per violation against any District Permit holder, well owner, well operator, or lessee of land on which a well is located the following penalties for each day the well owner, well operator, or lessee violates a District rule:
- (b) Notwithstanding Section 11.6(a)'s penalty amount,
 - (1) if the penalty is being assessed for groundwater that escapes as irrigation tailwater onto land other than that of the well owner or well operator from which such groundwater was pumped unless permission has been granted by the occupant of the land receiving the discharge, the penalty shall be \$50 per violation;
 - (2) for each day after the 10th day after the District has given notice to the well owner, well operator, or lessee that he or she has failed to cover an open or uncovered well, the penalty shall be \$250 per violation;
 - (3) for each day after the 10th day after the District has given notice to District Permit holder for failure to provide the District any required report or information as set forth in Section 5.5 or elsewhere in these rules, the penalty shall be \$50 per violation.
- (c) For purposes of this Section 11.6, for each day in which the violation occurs shall be considered a separate violation.
- (d) The penalties authorized in Sections 11.6(a) and 11.6(b) are in addition to other remedies.

CHAPTER 12. DISTRICT FINANCES AND REVENUES

Sec. 12.1 EXPENDITURES

- (a) The District's money may be disbursed only by check, draft, order, or other instrument.
- (b) Disbursements shall be signed by at least two directors, except the Board may by resolution allow certain employees of the District, or a combination of employees and directors, to sign disbursements on behalf of the Board.
- (c) The Board may by resolution allow disbursements to be transferred by federal reserve wire system to accounts in the name of the District.

Sec. 12.2 FISCAL YEAR

- (a) The District shall be operated on the basis of a fiscal year established by the Board.
- (b) The fiscal year may not be changed during a period in which revenue bonds of the District are outstanding or more than once in a 24-month period.

Sec. 12.3 ANNUAL AUDIT

- (a) The Board shall have an annual audit made of the financial condition of the District.
- (b) The annual audit and other District records must be open to inspection during regular business hours at the principal office of the District.

Sec. 12.4 ANNUAL BUDGET

- (a) The Board shall prepare and approve an annual budget.
- (b) The budget shall contain a complete financial statement, including a statement of:
 - (1) the outstanding obligations of the District;
 - (2) the amount of cash on hand to the credit of each fund of the District;
 - (3) the amount of money received by the District from all sources during the previous year;
 - (4) the amount of money available to the District from all sources during the ensuing year;
 - (5) the amount of the balances expected at the end of the year in which the budget is being prepared;
 - (6) the estimated amount of revenues and balances available to cover the proposal budget; and
 - (7) the estimated tax rate or fee revenues that will be required.
- (c) The annual budget may be amended on the Board's approval.

Sec. 12.5 DEPOSITORY

- (a) The Board shall name one or more banks to serve as depository for the District funds.
- (b) District funds, other than those transmitted to a bank for payment of bonds issued by the District, shall be deposited as received with the depository bank and shall remain on deposit. This subsection does not limit the power of the Board to place a portion of the District's funds on time deposit or to purchase certificates of deposit.
- (c) To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds by the Public Funds Collateral Act, Chapter 2257, Texas Government Code.

Sec. 12.6 INVESTMENTS

- (a) Funds of the District may be invested and reinvested in accordance with the provisions of the Public Funds Investment Act, Chapter 2256, Texas Government Code.
- (b) The Board, by resolution, may provide that an authorized representative of the District may invest and reinvest the funds of the District and provide for money to be withdrawn from the appropriate accounts of the District for investments on such terms as the Board considers advisable.

Sec. 12.7 INVESTMENT OFFICER

- (a) Notwithstanding Section 2256.005(f), Texas Government Code, the Board may contract with a person to act as investment officer of the District.
- (b) The investment officer of the District shall:
 - (1) not later than the first anniversary of the date the officer takes office or assumes the officer's duties, attend a training session of at least six hours of instruction relating to investment responsibilities under Chapter 2256, Texas Government Code; and
 - (2) attend at least four hours of additional investment training within each two-year period after the first year.
- (c) Training under this Section must be from an independent source approved by:
 - (1) the Board; or
 - (2) a designated investment committee advising the investment officer.
- (d) Training under this Section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with Chapter 2256, Texas Government Code.
- (e) During January of each year, each individual, association, business, organization, governmental entity, or other person that provides training under this Section shall report to the comptroller a list of the Districts for which the person provided required

training under this Section during the previous calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

Sec. 12.8 REPAYMENT OF ORGANIZATIONAL EXPENSES

- (a) The District may pay all costs and expenses necessarily incurred in the creation and organization of the District, including legal fees and other incidental expenses, and may reimburse any person for money advanced for these purposes.
- (b) Payments may be made from money obtained from the sale of bonds first issued by the District or out of maintenance taxes or other revenues of the District.

Sec. 12.9 GRANTS

The District may make or accept grants, gratuities, advances, or loans in any form to or from any source approved by the Board, including any governmental entity, and may enter into contracts, agreements, and covenants in connection with grants, gratuities, advances, or loans that the Board considers appropriate.

Sec. 12.10 LEVY OF TAXES

- (a) The Board may annually levy taxes to pay the bonds issued by the District that are payable in whole or in part by taxes.
- (b) The Board may annually levy taxes to pay the maintenance and operating expenses of the District at a rate not to exceed 50 cents on each \$100 of assessed valuation.
- (c) The Board may not levy a tax to pay the maintenance and operating expenses of the District under this Section until the tax is approved by a majority of the electors voting at an election in the District held for that purpose. The District may:
 - (1) hold an election for approval of the tax at the same time and in conjunction with an election to authorize bonds, following the procedures applicable to a bond election; or
 - (2) hold a separate election for approval of the tax in accordance with Subsection (d) below.
- (d) An order calling a separate election for approval of a tax under this Section must be issued at least 15 days before the date of the election, and the election notice must be published at least twice in a newspaper of general circulation in Hudspeth County, Texas. The first publication of the notice must be at least 14 days before the date of the election.

Sec. 12.11 BOARD AUTHORITY TO LEVY TAXES

- (a) If territory is added to or annexed by the District, the Board shall levy taxes in the new territory for the entire year in which the territory is added or annexed.
- (b) The Board shall levy taxes on all property in the District subject to District taxation.

Sec. 12.12 TAX RATE

In setting the tax rate, the Board shall take into consideration the income of the District from sources other than taxation. On determination of the amount of tax required to be levied, the Board shall make the levy and certify it to the tax assessor-collector.

Sec. 12.13 TAX APPRAISAL, ASSESSMENT, AND COLLECTION

(a) The Texas Tax Code governs the appraisal, assessment, and collection of District taxes.

(b) The Board may provide for the appointment of a tax assessor-collector for the District or may contract for the assessment and collection of taxes as provided by the Texas Tax Code.

Sec. 12.14 AUTHORITY TO SET FEES

(a) The District may set fees by Board resolution for administrative acts of the District, such as, but not limited to, filing applications for permits, hearings, contested hearings, and inspection of meters. Fees set by the District for administrative acts may not unreasonably exceed the cost to the District of performing the administrative act for which the fee is charged.

(b) The District may assess a Transfer Fee as specified in Section 8.2 of these rules.

(c) The District may assess other fees as specified in Chapter 8 of these rules.

Sec. 12.15 USE OF PERMIT FEES AUTHORIZED BY SPECIAL LAW

The District may use funds obtained from permit fees for any purpose consistent with the District's certified water management plan including, without limitation, making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies.

CHAPTER 13. MINIMUM STANDARDS OF WELL COMPLETION

Sec. 13.1 Minimum Standards of Well Completion

(a) The annular space between the borehole and the casing shall be filled from ground level to a minimum depth of fifty (50) feet below the land surface or well head with cement; provided, however, that when a well is to produce from the unconfined portion of an aquifer, then the annular space between the borehole and the casing shall be filled with cement slurry from ground level to the static water level.

(b) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause pollution of any aquifer or zone.

(c) If a well penetrates any undesirable water zones, the undesirable water shall be sealed off and confined to its zone or origin.

- (1) When undesirable water is encountered in a zone overlying fresh water, the well shall be cased from the top of the fresh water zone to the land surface and the annular space between the casing and the wall of the borehole shall be cemented to the land surface; or
 - (2) When undesirable water is encountered in a zone underlying a fresh water zone, the part of the well bore opposite the undesirable water zone shall be filled with cement to a height that will prevent the entrance of the undesirable water into the pumping well.
- (d) For all wells, except when a steel sleeve is used, as described in Subsection (c) above, or pitless adapter is used, as described in this subsection below, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.
- (1) The slab or block shall extend at least two (2) feet from the well in all directions and have a minimum thickness of four (4) inches and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing;
 - (2) The surface of the slab shall be sloped to drain away from the well; and
 - (3) The top of the casing shall extend a minimum of one (1) foot above the top.
- (e) In all wells where steel sleeve is used, the steel sleeve shall be a minimum of three sixteenths (3/16) inches in thickness and eighteen (18) inches in length, and shall extend six (6) inches into the cement. The casing shall extend a minimum of one (1) foot above the original ground surface, and the steel sleeve shall be two (2) inches larger in diameter than the plastic casing being used.
- (f) Pitless adapters may be used provided that:
- (1) The adapter is welded to the casing or fitted with another suitably effective seal; and
 - (2) The annular space between the borehole and the casing is filled with cement to a depth not less than fifteen (15) feet below the adapter connection.
- (g) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well as provided for these rules.

EXHIBIT A

Description of District boundaries as copied from Section 20 of House Bill 3442 of the 78th Regular Session of the Texas Legislature.

- 1) BEGINNING at the northwest corner of Section 3, Block A, University, Hudspeth County, Texas, and being a point in the state line between Texas and New Mexico, for the northwest corner of the survey;
- 2) THENCE south with the west boundary line of Section 3, Block A, University, to its southwest corner;
- 3) THENCE east with the south boundary line of Section 3, Block A, University, to its southeast corner, which point is also the northeast corner of Section 10, Block A, University;
- 4) THENCE south with the west boundary line of Section 11, Block A, University, to its southwest corner;
- 5) THENCE east with the south boundary line of Section 11, Block A, University, and continuing east with the south boundary line of Section 12, Block A, University, to the southeast corner of Section 12, Block A, University;
- 6) THENCE south with the east boundary of Section 13, Block A, University, to the southeast corner of Section 13, Block A, University, which point is also the northeast corner of Section 24, Block A, University;
- 7) THENCE east with the north boundary line of Section 19, Block B, University, and continuing east with the north boundary line of Section 20, Block B, University, to the northeast corner of Section 20, Block B, University;
- 8) THENCE south with the east boundary line of Section 20, Block B, University, to the southeast corner of Section 20, Block B, University, which point is also the northeast corner of Section 29, Block B; University;
- 9) THENCE east with the north boundary line of Section 28, Block B, University, to the northeast corner of Section 28, Block B, University, which point is also the southeast corner of Section 21, Block B, University;
- 10) THENCE south with east boundary line of Section 28, Block B, University, to the southeast corner of Section 28,

Block B, University, which point is also the northeast corner of Section 33, Block B, University;

- 11) THENCE east with the north boundary line of Section 34, Block B, University, and continuing east with the north boundary line of Section 35, Block B, University, to the northeast corner of Section 35, Block B, University;
- 12) THENCE south with east boundary line of Section 35, Block B, University, to its southeast corner, which point is also the northeast corner of Section 38, Block B, University;
- 13) THENCE east with the north boundary line of Section 37, Block B, University, and continuing east with the north boundary line of Section 48, Block C, University, to its northeast corner, which point is also the northwest corner of Section 47, Block C, University;
- 14) THENCE south with the east boundary line of Section 48, Block C, University, to its southeast corner;
- 15) THENCE east with the north boundary line of Section 50, Block C, University, to its northeast corner;
- 16) THENCE south with the east boundary line of Section 50, Block C, University, to its southeast corner;
- 17) THENCE east with the north boundary line of Section 4, Block D, University, and continuing east along the north boundary line of Section 3, Block D, University, to the northeast corner of Section 3;
- 18) THENCE south with the east boundary line of Section 3, Block D, University, to its southeast corner;
- 19) THENCE east with the north boundary line of Section 11, Block D, University, and continuing east along the north boundary line of Section 12, Block D, University, to its northeast corner;
- 20) THENCE south with the east boundary line of Section 12, Block D, University, to its southeast corner;
- 21) THENCE east with the north boundary line of Section 18, Block 72, Township 2, T & P, to its northeast corner;
- 22) THENCE south with the east boundary line of Section 18, Block 72, Township 2, T & P, to its southeast corner;

- 23) THENCE east with the north boundary line of Section 20, Block 72, Township 2, T & P, and continuing east along the north boundary line of Section 21, Block 72, Township 2, T & P, to the northeast corner of Section 21;
- 24) THENCE south with the east boundary line of Section 21, Block 72, Township 2, T & P, to its southeast corner;
- 25) THENCE east with the north boundary line of Section 27, Block 72, Township 2, T & P, and continuing east with the north boundary lines of Sections 26 and 25, Block 72, Township 2, T & P, and Section 30, Block 71, Township 2, T & P, to the northeast corner of Section 30;
- 26) THENCE south with the east boundary line of Section 30, Block 71, Township 2, T & P, to its southeast corner;
- 27) THENCE east with the north boundary line of Section 32, Block 71, Township 2, T & P, and continuing east with the north boundary line of Section 33, Block 71, Township 2, T & P, to the northeast corner of Section 33;
- 28) THENCE south with the east boundary line of Section 33, Block 71, Township 2, T & P, to its southeast corner;
- 29) THENCE east with the north boundary line of Section 39, Block 71, Township 2, T & P, to the northeast corner of Section 39;
- 30) THENCE south with the east boundary line of Section 39, Block 71, Township 2, T & P, to its southeast corner;
- 31) THENCE east with the north boundary line of Section 47, Block 71, Township 2, T & P, to the northeast corner of Section 47;
- 32) THENCE south with the east boundary line of Section 47, Block 71, Township 2, T & P, to the southeast corner of Section 47;
- 33) THENCE east with the south boundary line of Section 48, Block 71, Township 2, T & P, and continuing east with the south boundary line of Section 43, Block 70, Township 2, T & P, to the southeast corner of Section 43;
- 34) THENCE south with the east boundary lines of Section 7, Block JKL, P.S.L., and Section 6, Block K, University, to the southeast corner of Section 6;

- 35) THENCE east with the north boundary line of Section 8, Block K, University, and continuing east with the north boundary line of Section 9, Block K, University, to the northeast corner of Section 9;
- 36) THENCE south with the east boundary line of Section 9, Block K, University, to its southeast corner;
- 37) THENCE east with the north boundary line of Section 15, Block K, University, to its northeast corner;
- 38) THENCE south with the east boundary line of Section 15, Block K, University, and continuing south with the east boundary line of Section 22, Block K, University, to the southeast corner of Section 22;
- 39) THENCE east with the north boundary line of Section 26, Block K, University, to its northeast corner;
- 40) THENCE south with the east boundary line of Section 26, Block K, University, to its southeast corner;
- 41) THENCE east with the north boundary line of Section 36, Block K, University, to its northeast corner;
- 42) THENCE south with the east boundary line of Section 36, Block K, University, to its southeast corner;
- 43) THENCE east with the north boundary line of Section 42, Block L, University, to its northeast corner;
- 44) THENCE south with the east boundary line of Section 42, Block L, University, and continuing south with the east boundary line of Section 43, Block L, University, to the southeast corner of Section 43;
- 45) THENCE east with the north boundary line of Section 5, Block N, University, and continuing east with the north boundary line of Section 4, Block N, University, to the northeast corner of Section 4;
- 46) THENCE south with the east boundary line of Section 4, Block N, University, to its southeast corner;
- 47) THENCE east with the north boundary line of Section 22, Block N, University, to its northeast corner;
- 48) THENCE south with the east boundary line of Section 22, Block N, University, to its southeast corner;

- 49) THENCE east with the north boundary line of Section 26, Block N, University, and continuing east with the north boundary line of Section 25, Block N, University, to the northeast corner of Section 25;
- 50) THENCE south with the east boundary line of Section 25, Block N, University, to its southeast corner;
- 51) THENCE east with the north boundary line of Section 19, Block 68, Township 4, T & P, to its northeast corner;
- 52) THENCE south with the east boundary line of Section 19, Block 68, Township 4, T & P, to its southeast corner;
- 53) THENCE east with the north boundary line of Section 29, Block 68, Township 4, T & P, and continuing east with the north boundary line of Section 28, Block 68, Township 4, T & P, to the northeast corner of Section 28;
- 54) THENCE south with the east boundary line of Section 28, Block 68, Township 4, T & P, to its southeast corner;
- 55) THENCE east with the south boundary line of Section 27, Block 68, Township 4, T & P, and continuing east with the south boundary lines of Sections 26 and 25, Block 68, Township 4, T & P, to the intersection of the south boundary line of Section 25, Block 68, Township 4, T & P, with the east boundary line of Section 3, Block 30, P.S.L.;
- 56) THENCE south with the east boundary line of Section 3, Block 30, P.S.L., to its southeast corner;
- 57) THENCE east with the south boundary line of Section 2, Block 30, P.S.L., and continuing east with the south boundary lines of Section 1, Block 30, P.S.L., and Sections 5, 4, 3, and 2, Block 31, P.S.L., to the southeast corner of Section 2;
- 58) THENCE north with the east boundary line of Section 2, Block 31, P.S.L., and continuing north with the east boundary lines of Sections 26, 23, 14, 11, 2, Block 67, Township 4, T & P, and Sections 46, 37, 34, 25, 22, 13, 10, 5, Block 67, Township 3, T & P;
- 59) THENCE continuing north with the east boundary lines of Sections 43, 34, 33, 24, 23, 14, 11, 2, Block 67, Township 2, T & P, and Sections 47, 38, 35, 26, 23, 14, 11, 2, Block 67, Township 1, T & P, to the northeast corner of

Section 2, being a point in the Texas-New Mexico State line forming the north boundary line of Hudspeth County, Texas;

60) THENCE west with the Texas-New Mexico State Line to the Point of Beginning.

EXHIBIT B

Description of the Boundaries of the High Production Zone of the Bone Spring-Victorio Peak Aquifer within Hudspeth County Underground Water Conservation District No. 1

- 1) Beginning at the northeast corner of Section 6, Block 69, Township 1, Hudspeth County, Texas, and being a point in the state line between Texas and New Mexico, for the northeast corner of the Survey;
- 2) THENCE south with the east boundary line as Section 6, Block 69, Township 1 to the southeast corner of Section 6;
- 3) THENCE west with the south boundary line of Section 6, Block 69, Township 1, to the southwest corner of Section 6, which point is also the southeast corner of Section 1, Block 70, Township 1, Hudspeth County, Texas;
- 4) THENCE continuing west with the south boundary line of Section 1, Block 70, Township 1, to the southwest corner of Section 1, this point being also being the northwest corner of Section 12, Block 70, Township 1;
- 5) THENCE south with the west boundary line of Section 12, and continuing south with the west boundary line of Section 13, 24, 25, 36, and 37, Block 70, Township 1, to the southwest corner of Section 37;
- 6) THENCE east with the south boundary line of Section 37 to its southeast corner, which point also the northeast corner of Section 48, Block 70, Township 1;
- 7) THENCE south with the east line of Section 48 to its southeast corner, which point is also the northeast corner of Section 6, Block 69, Township 2, Hudspeth County, Texas;
- 8) THENCE continuing south with the west line of Sections 6 and 7, Block 69, Township 2, to the southwest corner of Section 7;
- 9) THENCE east with the south line of Section 7, and continuing east with the south line of Section 8 to the southeast corner of Section 8, which point is also the northwest corner of Section 16, Block, 69, Township 2, Hudspeth County, Texas;
- 10) THENCE south with the west boundary line of Section 16 to its southwest corner;

- 11) THENCE east with the south boundary line of Sections 16, 22, 23 to the northwest corner of Section 24, Block 69, Township 2;
- 12) THENCE south with the west boundary line of Section 24 to the northwest corner of Section 25, Block 69, Township 2;
- 13) THENCE east with the north boundary line of Section 25 to the northwest corner of Section 30, Block 68, Township 2;
- 14) THENCE south with the west boundary line of Section 30 to the southwest corner of Section 30, Block 68, Township 2;
- 15) THENCE east with the south boundary line of Section 30, 29, 28, 27, and 26 to the southwest corner of Section 25, Block 68, Township 2;
- 16) THENCE north with the west boundary line of section 25, and continuing north with the west boundary line of Sections 24, 13, 12 and 1, Block 68, Township 2, to the southwest corner of Section 48, Block 68, Township 1;
- 17) THENCE north with the west boundary line of Section 48, and continuing north with the west boundary line of Sections 37, 36, 25, 24, 13, 12 and. 1, Block 68, Township 1, to a point in the Texas–New Mexico State Line;
- 18) THENCE west with the Texas–New Mexico State Line to the point of beginning containing 98,385 acres more or less.

EXHIBIT C

GUIDELINES FOR PERFORMANCE OF A WELL CAPACITY TEST

The following are guidelines for conducting a well capacity test as required under Section 6.11 of the District Rules.

- 1) The scheduling and location of a well capacity shall be coordinated with the District prior to the test being performed.
- 2) The equipment used for the test shall be capable of consistent and continuous production at the rate intended for the test and for the full duration of the test, the ability to accurately maintain and adjust the pumping rate through the use of engine speed or a gate or butterfly valve on the discharge to maintain a constant pumping rate, and to frequently measure the flow rate discharge from the well during the entire test period.
- 3) The pumping rate of the well shall be measured by any method approved under Section 5.2 (a) of the District's Rules.
- 4) Upon initiation of pumping the pumping rate shall be set as soon as possible and maintained at the target pumping rate throughout the test by adjusting the valve on the discharge piping or the engine speed, as necessary.
- 5) The target pumping rate (target rate) shall be defined as the pumping rate measured 60 minutes after the start of pumping.
- 6) If for any reason during the test and after the first one (1) hour of pumping the pumping rate cannot be maintained at a constant rate with a deviation of no more than +/- 5 percent from the target rate throughout the remainder of the test the applicant shall turn the pump off, let the well recovery for a period of no less than one hour and restart the test or:
 - a. In the case of the pumping rate declining for any reason by more than 5 percent from the target rate at any time after the first one hour of pumping the applicant may elect to reduce the pumping rate of the well and continue pumping for the duration of the test. This reduced pumping rate shall be the revised target rate for the purposes of this test. However, in no case shall the test end less than six hours after the revised target rate was established and the applicant has recorded a pumping rate for the previous six hours of pumping that does not deviate by more than +/- 5 percent from the revised target rate.
 - b. In the case of the pumping rate increasing by more than 5 percent from the target rate at any time after the first hour of pumping the applicant may elect to reduce the pumping rate of the well to the target rate or to a lower rate (revised target rate). However, in no case shall the test end less than six hours after the time the pumping rate was reduced to the target rate or revised target rate and the applicant has recorded a pumping rate for the previous six hours of pumping that does not deviate by more than +/- 5 percent from the target rate or revised target rate.

- c. In no instance during the test may the applicant revise the target rate to a rate higher than that previously established in accordance with these guidelines.
 - d. The pumping rate used for the determination required under District Rule 6.11(b)(1) shall be the average of the pump discharge flow measured and recorded during the last hour of the well capacity test.
 - e. In no case may the pump break suction during the last six hours of the test.
 - f. All pumping rate adjustments shall be recorded with respect to the time and amount the pumping rate was adjusted.
- 7) Minimum recommended time intervals for recording pumping rate measurements shall be every 15 minutes for the first six and last six hours of the test and 60 minutes for all other times.
- 8) The length of the pumping period for the test shall be the longer of: 1) 24 hours, or 2) six hours beyond the time the target rate or revised target rate was maintained within +/- 5 percent.
- 9) A draft report detailing the results of the well capacity test shall be submitted in accordance with Section 6.11(c) to the District no later than 60 days after the test was performed.