

**KIMBLE COUNTY
GROUNDWATER CONSERVATION
DISTRICT**

DISTRICT RULES

ADOPTED AUGUST 15, 2004

**DISTRICT OFFICE
P. O. Box 31
JUNCTION, TEXAS 76849-031**

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PREAMBLE

These Rules are adopted and ratified pursuant to Section 59 of Article XVI of the Texas constitution, and with Acts of the 77th Legislature under Senate Bill 2 and Chapters 35 and 36 of the Texas Water Code as the Rules of the Kimble County Groundwater Conservation District. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended. Nothing in these rules shall be construed as depriving or divesting the right of ownership as recognized by Section 36.002 of the Texas Water Code.

The rules, regulations and modes of procedure herein contained are and have been adopted for the purpose of simplifying procedure, avoiding delays, saving expense, and facilitating the administration of groundwater laws of the State and the rules of this District. To the end that these objectives be attained, these rules shall be so construed.

These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances, and in no particular case shall they, or any of them, be construed as a limitation or restriction upon the exercise of any discretion, where such exists; nor shall they in any event be construed to deprive the Board of an exercise of powers, duties, and jurisdiction conferred by law, not to limit or restrict the amount and character of data or information which may be required for the proper administration of the law.

DEFINITIONS

Unless the context hereof indicates a contrary meaning, the words hereinafter shall have the following meaning in these Rules:

“Abandoned well” shall mean a water well that has not been used for six consecutive months. A water well is considered to be in use in the following cases:

- a. a non-deteriorated well which contains the casing, pump, and pump column in good condition; or
- b. a non-deteriorated well which has been capped.

“Applicant” shall mean the owner of the land on which the well(s) or proposed well(s) are located, unless the landowner authorizes another person to act on his/her behalf with respect to obtaining drilling permits and registering the wells.

“Aquifer” shall mean a geologic formation that contains sufficient saturate material to be capable of storing water and transmitting water in usable quantities to a well.

“Artesian Well” shall mean an artificial water well in which the water, when properly cased, will rise by natural pressure above the first impervious stratum below the surface of the ground.

“Authorized Well Site” shall be:

- a. the location of the proposed water well on an application duly filed with the District until such application is denied; or
- b. the location of a proposed water well on a valid permit. (An authorized well site is not a permit to drill).

“Beneficial use” or “Beneficial purpose” shall mean use for:

- a. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes; or
- b. exploring for, producing, handling, or treating oil, gas, sulphur, or other mineral; or
- c. any other purpose that is useful and beneficial to the users.

“The Board” shall mean the Board of Directors of the Kimble County Groundwater Conservation District.

“Capped Well” shall mean a well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining a weight of at least four hundred (400) pounds, or, in the case of an artesian well, an artesian pressure of up to four hundred (400) pounds, as necessary to effectively prevent water from flowing out of the well and running over the surface of the ground above the well or wasting through the strata through which it passes.

“Casing” shall mean a tubular watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the groundwater to their zones or origin and prevent the entrance of surface pollutants.

“Cement” shall mean a neat Portland or construction cement mixture of not more than seven (7) gallons of water per 94 pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum, or other additives. All manufacturer’s recommendations regarding water content for the mix shall be strictly adhered to.

“Completion” shall mean sealing off access of undesirable water to the well bore by proper casing and/or cementing procedures.

“Conservation” shall mean:

- a. the development of water resources; and
- b. those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss of waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

“Deteriorated Well” shall mean a water well, the condition of which will cause, or is likely to cause, pollution of any water in the District.

“District” shall mean the Kimble County Groundwater Conservation District. When applications, reports, and other papers are required to be filed with or sent to “the District,” this means the District’s headquarters in Junction, Texas.

“Domestic Well” shall mean a well that will produce water to be used to supply the needs of a single household. This includes the use of water for home landscapes and home gardening.

“Driller’s Log” shall mean a log, accurately kept, on forms prescribed by the Texas Department of Licensing and Regulation, or any successor regulatory agency with jurisdiction there for, at the time of the drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the Texas Department of Licensing and Regulation or of this Board.

“Exempt Well” shall mean a grandfathered or properly registered well used solely for domestic and/or livestock use on a tract of land 10 acres or more and drilled, completed and equipped to produce less than 25,000 gallons of water a day.

“Fresh Water” shall mean having physical and chemical properties such that it is suitable and feasible for beneficial use.

“Groundwater” shall mean water suitable for agricultural, gardening, public supply, domestic, or stock raising uses, percolating below the earth’s surface, but shall not include water in a defined subterranean stream or in the underflow of a river.

“Licensed Water Well Driller” shall mean any person who holds a license issued by the State of Texas pursuant to the provisions of the Texas Water Well Drillers Act, as amended, and the substantive rules of the Water Well Drillers Board, or its successors.

“Open” or “Uncovered Well” shall mean any well not capped or covered as required by these rules, and which is at least ten feet (10’) deep and no more than six feet (6’) in diameter.

“Owner” shall mean and include any person, as defined herein, who has the right to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.

“Permitted Well” shall mean a well subject to the District’s drilling/operation permit requirements, which is not otherwise exempted from permitting by District Rules.

“Person” shall mean any individual, partnership, firm, governmental agency, political subdivision, corporation, or other legal entity.

“Plugging” shall mean an absolute sealing of the well bore.

“Power of Attorney” means a form signed by an owner of land granting authority to another person to act on his/her behalf with respect to transaction involving the District.

“Underground Water” shall mean water suitable for agricultural, gardening, domestic, or stock raising uses, percolating below the earth’s surface, but shall not include water in a defined subterranean stream or in the underflow of a river.

“Undesirable Water” shall mean water that is injurious to human health, vegetation, to land, or to fresh water, or water that can cause pollution.

“Waste” as used herein shall have the same meaning as defined by the Legislature, as follows:

- a. the withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
- b. the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
- c. the escape of underground water from a groundwater reservoir to any other reservoir that does not contain groundwater.
- d. the pollution or harmful alteration of groundwater in a groundwater reservoir by salt water, other deleterious matter admitted from another stratum, or from the surface of the ground;
- e. willfully or negligently causing, suffering, or permitting 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;
- f. groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge;
- g. for water produced from an artesian well; waste has the meaning assigned by Section 11.205 of the Texas Water Code.

“Water” shall mean groundwater.

“Well” or “Water Well” shall mean and include any artificial excavation constructed for the purpose of exploring for or producing groundwater.

“Well Location” shall mean District recording of exempt well information e.g. owner-address, location, type, use, log, yield, quality and any additional information owner/operator or District may feel pertinent.

SECTION 1. BOARD

- RULE 1.1 PURPOSE OF BOARD:** The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District; for the purpose of conserving, preserving, protecting and recharging the groundwater within the District; and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.
- RULE 1.2 BOARD STRUCTURE, OFFICERS:** The Board consists of the members elected and qualified as required by the District Act. On each odd numbered year at its regular May meeting (if there is no May meeting, at its next regular meeting), the Board will elect one of its members to serve as President; one to serve as Vice President; and one to serve as Secretary/Treasurer. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these rules.
- RULE 1.3 MEETINGS:** The Board will hold a regular meeting once each month and as the Board may establish from time to time by resolution. At the request of the President, or by written request of at least two members, the Board may hold special meetings. All Board meetings will be held according to the Texas Open Meetings Law.
- RULE 1.4 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.
- RULE 1.5 EX PARTE COMMUNICATIONS:** Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested case before the board, with any agency, any person, party or their representatives, except on notice and opportunity for all parties to participate. A Board member may communicate ex parte with other members of the Board. This rule does not apply to a Board member who abstains from voting on any matter in which ex parte communications have occurred.

SECTION 2. DISTRICT OPERATIONS

- RULE 2.1 MINUTES AND RECORDS OF THE DISTRICT:** Documents, reports, records and minutes of the District are available for public inspection and copying in accordance with the Texas Open Records Act. Upon written application of any person, the District will furnish copies of its public records. A copying charge may be assessed pursuant to policies established by the District.
- RULE 2.2 CERTIFIED COPIES:** Requests for certified copies must be in writing. Certified copies will be made under the direction of the Board of Directors. A certification charge and copying charge may be assessed, pursuant to policies established by the Board of Directors.
- RULE 2.3 DISTRICT MANAGEMENT PLAN:** The District Management Plan specifies the acts, procedures, performances and avoidance necessary to prevent waste and the severe depletion of the water table, and forms the basis of the District rules in regards to permitting decisions and other requirements imposed by the Board. If the Board considers a new plan necessary or desirable, based on evidence presented at hearing, a new plan will be adopted. A plan, once adopted, remains in effect until the adoption of a new plan.
- RULE 2.4 GENERAL MANAGER:** The Board may employ a person to manage the District, and designate this person general manager. The general manager will have no power, duty, or responsibility other than gathering information and performing Water District functions as determined by the Board. The Board will determine the salary and review the position of general manager each year during the last quarter of the fiscal year. The general manager, with approval of the Board, may employ all persons necessary for the proper handling of business and operation of the District and their salaries will be set by the Board.

SECTION 3. WELL REGISTRATION

- RULE 3.1 WELL REGISTRATION:** Well registration is required for all new wells, whether exempt or non-exempt in the District on a form and in the manner required by the District.
- RULE 3.2 PREREGISTRATION FOR ALL NEW WELLS:** Prior to the drilling of any new well, a completed application for the drilling of a well (pre-registration) must be filed with the District on its prescribed forms. The District may require a fee or deposit to accompany the application.
- RULE 3.3 WELL REGISTRATION INFORMATION:** Pre-registration (notice of intent to drill) forms for new wells and well registration forms for existing wells predating the adoption of these Rules shall include the following information:
- a. name and address of the well owner
 - b. location or proposed location of the well, including the county, section, block, survey number, abstract number, longitude and latitude, acreage or lot size, and the number of feet to the nearest non-parallel property lines
 - c. approximate distance in feet to nearest well
 - d. well use of proposed use
 - e. location of use of proposed use
 - f. the following information, to the extent known for an existing well, and within thirty days following completion for a new well:
 1. date drilled
 2. well depth
 3. casing type and size
 4. pump type
 5. gallons per minute (GPM) produced
 - g. signed statement by the applicant indicating whether the well is used, or proposed to be used, for domestic and livestock purposes on 10 acres or more of land or is otherwise exempt from permitting and that the applicant for a new well will furnish the District with a completed Well Registration form within 30 days after completion of the well.
 - h. such additional data as may be required by the Board.
 - i. the application to drill an exempt well shall be signed by the owner of the land or his duly appointed agent, including a partner, operator, driller, or any other person who has the authority to construct the well and/or operate the well for the proposed use

RULE 3.4 PRELIMINARY DETERMINATION OF EXEMPT STATUS: The District will review the pre-registration application filed and make a preliminary determination as to whether the well meets drilling and operating permit exclusions and exemptions provided in these Rules and Section 36.117 of the Texas Water Code. The District staff must inform the applicant of their determination within ten (10) business days. If the preliminary determination is that the well is exempt from the requirements for an operating or transport permit, the applicant may begin drilling immediately upon receiving of notification of the determination.

If the District determines the well is not exempt, the applicant may proceed in accordance with Rules on permitted wells.

SECTION 4. PERMITS

RULE 4.01 DRILLING PERMIT REQUIRED FOR NON-EXEMPT WELLS:

- a. No person shall hereafter begin to drill, re-work, or re-drill a well or increase the size or make other modifications to the well without having first applied to the District and been issued a permit to do so, unless the well after drilling or after other modifications will be exempt as defined in Rule 2(t) and Section 36.117 of the Texas Water Code.
- b. No permit shall be required for the drilling of water supply wells exempt under the provisions of Section 36.117, Texas Water Code, as amended (being generally wells used for the production of oil, gas or other minerals and water wells used in conjunction therewith).

However, water wells drilled after September 1, 1997, to supply water for hydrocarbon production activities must meet the spacing requirements of the district unless no space is available within 300 feet of the production well or central injection station. These wells must be registered with the District before drilling (Sect. 36.117 (e)).
- c. Drilling a well without a permit or operating a well at a higher rate of production than the rate approved for the well is declared to be illegal, wasteful per se, and a nuisance.
- d. Permits are required for wells:
 - 1. all wells except those used solely for domestic and livestock use on a tract of land 10 acres or more and are drilled, completed and equipped to produce less than 25,000 gallons a day;
 - 2. that produce or will produce water used for industrial and/or manufacturing purposes;
 - 3. that produce or will produce water used for commercial and/or municipal purposes;
 - 4. that produce or will produce water used for irrigation; or
 - 5. that produce or will produce water for all other non-exempt uses
- e. Permits shall include the following information, submitted on the application forms provided by the District.
 - 1. name and address of the well operator or authorized person whom the permit is issued;
 - 2. name and address of the fee owner of the land on which the well is to be drilled;
 - 3. location of the proposed well or including the county, section, block, survey, abstract, latitude and longitude coordinates, and the number of feet to the nearest property lines;
 - 4. location of all wells located within a mile radius of the proposed well, and the names and addresses of the owners of said wells;
 - 5. distance in feet to nearest well;
 - 6. nature or purpose of proposed well use;
 - 7. location of proposed use;
 - 8. well status-new, producing, abandoned, capped, or plugged
 - 9. existing well description including;
 - i. date drilled;
 - ii. well depth;
 - iii. casing type and size;
 - iv. surface completion;

- v. pump type;
 - vi. pump HP; and
 - vii. gallons per minute (GPM) being produced;
 - viii. maximum quantity of water proposed to be produced each month;
 - ix. a statement that the applicant will comply with the District's management plan and rules;
 - x. a statement that the applicant will comply with well plugging guidelines and report closure to the commission.
- f. All permits issued or well sites authorized under these Rules are conditional, and the Board may revoke its authorization if the person to whom the authorization was issued does not comply with the Rules of the District; does not comply with the terms and conditions stated in the drilling permit; or abandons the well. The District shall provide reasonable notice and opportunity for hearing before revoking the authorization.

RULE 4.02 PERMIT APPLICATION PROCEDURES:

- a. The Board shall issue or cause to be issued a drilling permit for a properly spaced well upon proper application executed, sworn to, and filed by the owner or his/her agent with the District, accompanied by the required deposits or fees, containing the information below, and approved at a hearing of the Board pursuant to Rule 4.03. A drilling permit is required for each new non-exempt well, or for alteration in size of pumping capacity of existing wells, except in the case of a dry hole where another well may be drilled, at the applicant's own risk, using the same permit subject to the requirements of Sections 4.02-4.06. All applications shall be in writing, on forms provided by the District and contain the information called for in the application form and shall be prepared in accordance with all instructions which may have been issued by the Board with respect to the filing of an application. An application shall be considered properly filed when completed, signed, sworn to and tendered to the District or to a person duly designated by the District to receive the same. Otherwise, the application will not be considered.
- b. Rules for entities filing applications:
 - 1. If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent. The agent shall be requested to present satisfactory evidence of his authority to represent the applicant, such as lease contract, power of attorney, etc.
 - 2. If the application is by a partnership, the applicant shall be designated by the firm followed by the words "a Partnership" and the application shall be signed by at least one of the general partners who is duly authorized to bind all of the partners.
 - 3. In the case of a corporation, public district, county or municipality, the application shall be signed by a duly authorized official. A copy of the resolution or other authorization to make the application may be required by the officer or agent receiving the application.
 - 4. In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.
- c. Such applications shall be submitted on forms supplied by the District and shall include the following:

1. all information required pursuant to Rule 4.01(e) above
2. the type of application – new well, re-work, re-drill, replacement or other
3. the proposed use of the well to be drilled, whether test well, irrigation, industrial, or municipal, or other.
4. Farm/Ranch data – total acreage.
5. each applicant requesting new or additional production in excess of 500 acre-feet per year shall provide the District with a study by a licensed hydrogeologist or hydrogeological engineer evaluating the impact of the proposed production on aquifer water levels within the District boundaries. The study shall employ a statistically valid trend analysis or computer model, or other method generally acceptable professional hydrologists and to the District.
6. An agreement by the applicant that the completed well registration form (furnished by the District) and well report will be furnished to the District by the applicant upon completion of this well and prior to the production of water therefrom (except for such production as may be necessary to the drilling and testing of such well).

RULE 4.03 NOTICE OF PERMIT HEARING:

Once the district receives an administratively complete original application for a permit, permit renewal, or permit amendment, the Manager shall, at least ten (10) days prior to the hearing date, issue a written notice indicating a date and time for a hearing by the Board on the application in accordance with these rules. Not less than ten (10) days before the hearing, notice of the hearing shall be mailed by certified mail to the applicant and shall be published in a newspaper of general circulation within the county. As many applications may be scheduled for one hearing as the manager deems necessary. Any person that wishes to be heard as a potential party to a hearing must, at least five (5) business days prior to the hearing date, provide the District with written notice of that person's intent to appear at the hearing. If the Manager decides to contest the application, he/she must, at least five (5) business days prior to the hearing date, provide the applicant with written notice of his/her intent to contest the application. Hearings may be held in conjunction with any regular or special meeting of the Board which are noticed and conducted pursuant to the Texas Open Meetings Law, Chapter 551 Texas Government Code.

RULE 4.04 FACTORS TO BE CONSIDERED BY THE BOARD IN ISSUING A PERMIT:

In determining whether to issue a permit, and in setting the terms of the permit, the Board will consider the purposes of the District Act, and other relevant factors, including but not limited to:

- a. the District management plan;
- b. whether the proposed use unreasonably affects existing groundwater and surface water resources;
- c. the quality, quantity, and availability of alternative water supplies;
- d. the impact of granting the permit on other landowners' historical usage and rights in groundwater;
- e. effect on granting the permit on draw down of the water table or reduction in artesian pressure or spring flow;

- f. the applicant has agreed to avoid waste and practice conservation;
- g. the applicant has agreed that reasonable diligence will be used to protect groundwater; quality and that the applicant will follow plugging guidelines at the time of well closure.

RULE 4.05 TIME LIMIT FOR WELL COMPLETION FOLLOWING ISSUANCE OF PERMIT:

- a. Any drilling permit granted hereunder shall remain valid if the work permitted shall have been completed within six (6) months from the filing date of the application. It shall thereafter be void. Provided, however, that the District, for good cause, may extend the life of such permit for an additional four (4) months if the application for such extension shall have been made to the District during the first six (6) month period. Provided, further, that when it is made known to the District that a proposed project will take more time to complete, the District, upon receiving written application may grant such time as is reasonably necessary to complete such project.
- b. If a newly drilled well is a dry hole or the production is marginal, the drilling permit may be used to drill another well, at the applicant's own risk, until a producing well is discovered and completed provided that:
 - 1. the dry hole or marginal well is properly plugged;
 - 2. the new location for another well meets all of the spacing requirements of the District;
 - 3. the driller furnishes to the District a properly completed well report and/or plugging report on each newly drilled well.

RULE 4.06 REQUIREMENT OF DRILLER'S WELL REPORT, CASING/PUMP DATA:

- a. Complete records shall be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled either by a licensed driller or an individual land owner. Such records shall include an accurate driller's log, any electric log which shall have been made, and such additional data concerning the description of the well, its potential, hereinafter referred to as "maximum rate of production" and its actual equipment as may be required by the District. Such records shall be filed with the District within 60 days after the completion of the well.
- b. Subject to the Water Well Drillers rules, every licensed well driller shall deliver either in person, by fax, e-mail, or send by first-class mail, a photocopy of the State Well Report to the District within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.
- c. No person shall produce water from any well hereafter drilled and equipped within the District, except that necessary to the drilling and testing of such well and equipment, unless or until the District has been furnished an accurate driller's log, any electric log which shall have been made, and a registration of the well correctly furnishing all available information required on the forms furnished by the District.

RULE 4.07 PERMIT TERM: A permit grants a permanent right to the well owner to produce water in the amount stated therein, and in accordance with the terms of the permit setting the rate, quantity, purpose and location of the production, until there is a change, or proposed change, in any of the following:

- a. amount of water produced
- b. location of the well
- c. purpose of use of the water
- d. location of use of the water

Upon the occurrence, or proposed occurrence of any of these events, a new application for a well permit must be filed with the District to be acted upon, in the same manner, and in accordance with the same procedures hereinabove set forth in Rules 4.02-4.06 as for an original permit application.

RULE 4.08 REVOCATION AND FORFEITURE:

- a. A permit may be revoked for non-compliance with District rules notice and a show cause hearing as set forth in Section 9.
 - 1. If the well should be commenced or drilled at a different location than the location given on the operation of such well may be enjoined by the District pursuant to Chapter 36, Texas Water Code, as amended and/or the District may initiate enforcement proceedings. The District shall have the right to confirm reported distances and inspect the wells or well locations.
 - 2. Failure to abide by the rules of the district concerning drilling permits, and by the terms and limitations of the permit itself, is a violation of the law and/or the rules of the District and subjects the land owner, the driller, and the pump installer to legal action by the District. A violation occurs on the first day the drilling, alteration, or operation of a well begins and continues each day thereafter until the appropriate permits are approved.
- b. A permit may be forfeited, in whole or in part, for non-production for four (4) years from a permitted well. A partial forfeiture may be made of that portion of a well's permitted production which has not been produced during four consecutive years.
- c. The District may maintain monitor wells within the District boundaries which shall be measured quarterly to establish baseline data for water level declines. Based on studies of no less than five (5) year's duration, if the District determines that pumping within the District is depleting the aquifer, the District may, upon notice and hearing, reduce the volume of production of a permitted well.

RULE 4.09 DENIAL OF PERMITS

In no event shall the Board approve a permit together with all wells permitted pursuant to Rule 4 above, could result in permitting withdrawal of a total number of acre-feet of water supply from the aquifer in excess of 26,734 acre-feet, which is the annual acre-feet of recharge to the Edwards-Trinity aquifer within the boundaries of Kimble County Groundwater Conservation District, as estimated by the Texas Water Development Board.

SECTION 5. WELL SPACING

RULE 5.01

MINIMUM SPACING OF WELLS:

a. PERMITTED WELLS (Non-Exempt Wells)

1. Distance Requirements

- i. wells shall be drilled at least 400 feet from the nearest existing well or authorized well site and at least 50 feet from the nearest property line; and
- ii. the Board, in order to prevent waste or confiscation of property, may grant exceptions to permit drilling within shorter distances than those described when the Board shall determine that such exceptions are necessary either to prevent waste or confiscation of property, except that no subdivision of property made subsequent to the adoption of the original spacing requirement will be considered in determining whether or not property is being confiscated within the terms of the spacing requirements;
- iii. a well must be located a minimum horizontal distance of 50 feet from a watertight sewage facility or a liquid waste collection facility;
- iv. a well must be located a minimum horizontal distance of 150 feet away from any contamination area such as existing or proposed livestock or poultry yard, privies, and septic system absorption fields;
- v. no well may be located within 500 feet of a sewage treatment plant, solid waste disposal site, land irrigated by sewage plant effluent, sewage wet well, sewage pumping station, or drainage structure or facilities containing industrial waste discharges or sewage treatment system water;
- vi. the Board reserves the right in particular subterranean water zones and/or reservoirs to enter special orders increasing or decreasing distances provided by this rule.

2. Well Density

- i. Subject to paragraph (a)(1) et seq. above, no more than a cumulative total of four (4) wells per survey section (one (1) well per 160 acres), whether drilled prior to or subsequent to enactment of this rule shall be permitted (hereinafter referred to as "drilled to density"). In the event the applicant owns less than a full section, then the number of wells permitted for said tract shall be proportionately reduced. For example, if an owner has 480 acres, $1/160 = x/480$. $3/480 = x/480$. The owner may drill three (3) wells on the property.
- ii. In determining the total number of permitted wells allowed per tract over 40 acres, if the calculation indicates a fraction of a well up to and including 0.500 of a well, the number shall be rounded down to the last full well: District personnel shall use the most current tax roll for obtaining the acreage involved. In the event the acreage is not listed in the tax roll, then the acreage listed on the ownership map or other legal documentation provided by applicant shall be used.

- b. **DOMESTIC/LIVESTOCK WELLS (Exempt Wells)**
 - 1. Distance requirements (State Water Well Drillers rules)
 - i. No exempt well shall be drilled nearer than 50 feet to any property line. However, this distance may be decreased to a minimum of five (5) feet to any property line provided the annular space between the casing and the borehole wall is cemented from the land surface to the top of the production layer.
 - ii. These distances for exempt wells are the State requirements and are listed here as a convenience. They are subject to change at any time by the State.

RULE 5.02 EXCEPTIONS TO SPACING RULE:

- a. In order to protect vested property rights, to prevent waste or to prevent confiscation of property, the Board may grant exceptions to the above spacing regulations. This rule shall not be construed so as to limit the power of the Board, and the powers stated are cumulative only of all other powers possessed by the Board.
- b. If the property is "drilled to density" and one of the properly spaced wells is incapable of producing in excess of 5 gpm, the District may issue an additional permit for that property.
- c. If an exception to such spacing regulations is desired, the application shall be submitted by the applicant in writing to the Board at its District Office on forms furnished by the District. The application shall explain the circumstances justifying an exception to the spacing provisions. The application shall be accompanied by a plat or sketch, drawn to scale of one (1) inch equaling 660 feet. The plat or sketch shall show thereon the property lines in the immediate area and shall show accurately to scale all wells within one (1) mile of the proposed well site. The application shall also contain the names and addresses of all property owners adjoining the tract on which the well is to be located and the ownership of the wells within one (1) mile of the proposed location. Such application and plat shall be certified by some person actually acquainted with the facts who shall state that all the facts therein are true and correct.
- d. Such exception may be granted ten (10) days after written notice has been given to the applicant, adjoining owners, and all well owners within one (1) mile of the proposed location and after a public hearing at which all interested parties may appear and be heard, and after the Board has decided that an exception should be granted. Provided, however, that if all such owners execute a waiver in writing stating that they do not object to the granting of such exception, the Board may thereupon proceed to decide upon the granting or refusing of such application without notice of hearing except to the applicant. The applicant may also waive notice of hearing on both.
- e. An application for an exception to the spacing rule is considered to be contested when a written notice of protest of opposition is filed with the Board on or before the date on which such application has been set for hearing and the protestant(s) or intervener(s) appear at the hearing held on the application. Where neither protestant(s) nor intervener(s) so appear and offer testimony or evidence in support of their contentions, or raise a question of law with reference to any pending application, the application may be considered as non-contested.

SECTION 6. TRANSPORTATION OF WATER FROM THE DISTRICT

- RULE 6.01 APPLICATION REQUIRED:** In order to conserve, preserve, protect, and prevent waste of, the groundwater in the District, all persons or entities desiring to transport groundwater outside of the boundaries of the District must make application and obtain permits from the District before installing and/or operating a transportation facility and/or pipeline and or equipment.
- RULE 6.02 EXCEPTION:** A permit is not required if the groundwater is to be used on the property of a landowner that straddles the District boundary. Water use for emergency purposes such as for fire fighting may be transported by truck out of the District on a per incident basis without need for a permit. Likewise occasional transport by truck out of the District of water for support of county or state construction or paving projects may be made without need for a permit.
- RULE 6.03 APPLICATION PROCEDURE:** Such applications for transport permits shall be on forms provided by the District and shall be in accordance with and contain the information called for in the form of application. Applications not submitted on District forms will not be considered.
- a. **Application Requirement:** The permit provided for herein must be applied for and filed with the District on the form or forms promulgated by the District hereunder and such permit must be obtained from the District prior to the proposed transporting of water, all in accordance with the provisions of this rule. The application shall be in writing and sworn to and executed by a party having knowledge of the facts called for on the form. Knowingly or unknowingly falsifying information on a permit application will render the application and the permit null and void. The following information shall be provided in or be submitted with an application:
1. the name, post office address and place of the principal office or residence of the applicant;
 2. the name and address of the property owner(s) and the legal description of the land upon which the well(s) are, or will be located to produce water to be transported;
 3. the coordinates (latitude and longitude) of the well or wells from which water is to be produced for transport outside the District;
 4. the names and addresses of the property owner(s) within one (1) mile of the location of the well(s) from which water is to be transported and the location of any wells on those properties;
 5. the nature and purposes of the proposed use and the amount of water to be used for each purpose;
 6. the number of acre-feet of water proposed to be used for each purpose;
 7. the time schedule for construction and/or operation of the facility;
 8. a complete construction and operations plan that includes, but not limited to, information as to:
 - i. a technical description of the proposed well(s) and production facility, including the depth of the well(s) the casing diameter, type and setting of the casing, the perforation interval of the casing, cementing information, and the size of the pump(s);

- ii. a technical description of the facilities to be used for the conveyance of the water;
- 9. the volume of water to be transported monthly;
- 10. a hydrogeologist's or hydraulic engineer's report on the effect on the aquifer of the proposed transportation of the quantity and quality of water available within the District;
- 11. Identification of any other possible sources which could be used for the stated purposes, including but not limited to treated water, reuse water and return flows, together with the quality and quantity of such alternate sources;
- 12. a water conservation plan and a drought management plan;
- 13. an economic study showing the impact on the District economy removing the water from the District;
- 14. a map or plot drawn on a scale not less than one inch equals 660 feet, showing substantially:
 - (i) the location of the existing or proposed well;
 - (ii) the location of the existing or proposed water transporting facilities; and
 - (iii) the location of the proposed or increased use or uses.
- 15. to establish baseline data static water levels of existing well(s) within a radius of one (1) mile shall be obtained either from original drillers reports or by measurement of District personnel;
- 16. additional information that may be required by the Board;
- 17. the District may impose a reasonable fee for processing an application for a permit to transfer water out of the District.

The District shall determine whether the application, maps and other materials comply with the requirements of the Act. The District may require amendment of the application, maps, or other materials to achieve necessary compliance.

RULE 6.04 NOTICE AND PUBLIC HEARING: Pursuant to Section 36.122 of the Texas Water Code, the District shall give notice of the application and hold a public hearing.

a. Notice

- 1. The District shall mail by first class mail, notice of such hearing on the application not less than 30 days before the date set for District consideration of the transportation permit application. Notice shall be mailed to:
 - i. the applicant, whose application has been filed with the District; and
 - ii. the property owners within one (1) mile of the location of the well(s) from which water is to be produced and transported.
- 2. Due to the potential impact to wells in areas outside a one (1) mile radius, notice of the hearing on the application shall be published by the District in a newspaper of general circulation in the District.

The notices under (a) and (b) above shall include:

- i. the name and address of the applicant;
- ii. the date the application was filed;
- iii. the location of the well from which the water to be transported is produced or to be produced;
- iv. the purpose for which the water is to be transported;

- v. the amount of water to be transported monthly;
- vi. a description of the transportation facility;
- vii. the time and place of the hearing; and
- viii. any additional information the District considers necessary.

b. **Hearing**

- 1. The District shall conduct a hearing on each application within 90 days of the filing of the complete application.
- 2. At the time and place stated in the notice, the District shall hold a hearing on the application. The hearing may be held in conjunction with any regular or special meeting of the District: or a special meeting may be called for the purpose of holding a hearing. Any person may appear at the hearing, in person or by attorney, or may enter appearance in writing. Any person who appears may present evidence, orally or by affidavit, in support or opposition to the issuance of the permit, and it may hear arguments.
- 3. After the hearing, the District shall make a written decision granting or denying the application. The application may be granted in whole or in part. Any decision to grant a permit, in whole or in part, shall require a majority vote of Directors present.

RULE 6.05 FACTORS TO BE CONSIDERED BY THE DISTRICT PRIOR TO APPROVING

A PERMIT: Pursuant to TAC Section 36.122, before approving any permit for transport of groundwater outside of the District boundaries, the District shall consider the following:

- 1. the availability of water within the District and in the proposed receiving area during the period for which the water supply is requested;
- 2. the availability of feasible and practical alternative supplies to the applicant;
- 3. the amount and purposes of use in the proposed receiving areas of the water supply;
- 4. the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
- 5. the approved regional water plan and certified district management plans.

Such application shall not be approved unless the Board of Directors finds and determines: (a) that the transporting of water for use outside the District applied for will not substantially affect the quantity and quality of water available to any person or property within the District; (b) that all other feasible sources of water, including treated or re-use water, available to the person or entity requesting a permit have been developed and used to the fullest; and (c) that the proposed use, or any part of the proposed use, will not constitute waste as defined under the laws of the State of Texas. In evaluating the application, the District shall consider the quantity of water proposed to be transported; the term for which the transporting is requested; the safety of the proposed transportation facilities with respect to the contamination of the aquifer; the nature of the proposed use; whether the withdrawal of the conservation and use of groundwater; whether the withdrawal is not otherwise detrimental to the public welfare; and such other factors as are consistent with the purposes of the District.

RULE 6.06 ISSUANCE OF PERMITS:

- a. Upon approval of an application, the District shall issue a permit to the applicant. The applicant's right to transport shall be limited to the extent and purposes stated in the permit.
- b. A permit shall not be transferable except with the approval of the Board. The transferee must meet all requirements set forth in Rule 6.
- c. The permit shall be in writing and signed by the Board President and attested by the Board Secretary and it shall contain substantially the following information:
 1. the name and address of the person to whom the permit is issued;
 2. the location of the well from which water is to be transported;
 3. the date the permit is issued;
 4. the expiration date of the permit, not to exceed five (5) years from the issue date;
 5. the location in which the transported water is to be used;
 6. the purpose for which the transported water is to be used;
 7. a requirement that the water withdrawn under the transport permit be put to beneficial use at all times;
 8. the maximum quantity of water to be transported out of the District monthly;
 9. any restrictions on the rate of withdrawal;
 10. the time within which construction of the well transportation facilities, including conveyance facilities and equipment, will be started and completed;
 11. a statement that the permittee will comply with all well closure and plugging guidelines of the District;
 12. a statement that the permittee will comply with any drought contingency plan prescribed by the District;
 13. any other information the District prescribes.

RULE 6.07 DENIAL OF PERMITS:

The district reserves the right to reduce the production limits of any, or several, transport wells in the District, when the water levels in the well(s) within one (1) mile distance of such well drop to 50% of their original Static water levels.

RULE 6.08 PERMIT EXTENSIONS, TRANSFERS AND REVOCATION:

- a. A permittee may apply for an extension of any permit granted under the subsection or for transfer of a permit to another person. The District shall consider and grant or deny such application for extension or transfer of a permit in the same manner as is provided herein for the application for a new permit.
- b. Any permit granted under this subsection shall be subject to revocation for non-use or waste by the permittee, or for substantial deviation from the purposes of other terms stated in the permit.

RULE 6.09 EXPIRATION OF PERMITS: A transportation permit shall be issued for maximum term of five (5) years. Upon expiration of a permit, the transferor must apply for a new permit. Permits will be automatically forfeited if construction of a transportation facility has not commenced within two (2) years of the issuance of the permit.

RULE 6.10 FEES: Fees may be assessed by the District for water use.

- RULE 6.11 SPACING OF WELLS:** Water wells to be used for the transportation of water out of the District shall be subject to spacing requirements as described in Rule 5 herein.
- RULE 6.12 “GRANDFATHERED” WELLS:** The provisions of Sections 4.02 through 4.03 of this subsection shall not apply to transfer operations which commenced prior to March 2, 1997.
- RULE 6.13 MONITORING AND REPORTING:**
- a. All transporting facilities for well subject to the requirements of this subsection shall be equipped with flow monitoring devices approved by the District and shall be available for District inspection at any time.
 - b. The operator of a transportation facility shall be required to keep records and make reports available to the District, during normal business hours, as to the operation of the transportation facility.
 - c. Permittees shall submit reports to the District on a monthly basis, beginning at the time a permit is issued to operate. Such reports shall include, but is not limited to, the volume of water transported during the preceding month.
- RULE 6.14 RESPONSIBILITY:** the owner of the transportation facility shall be charged with strict liability for the prevention of pollution and waste, by reason of the operations of said facility.

SECTION 7. ADMINISTRATION FEES

RULE 7.01 **FEES:** The District shall collect fees for all services provided outside of the District. The fees shall be established by the Board and be reviewed and revised as needed to cover the cost to the District.

SECTION 8. INVESTIGATIONS AND ENFORCEMENT OF RULES

- RULE 8.1 NOTICE AND ACCESS TO PROPERTY:** Upon probable cause, Board members, District representatives, and employees are entitled to access all property within the District to carry out technical and other routine investigations necessary to the implementation of the District Rules. Prior to entering upon the property for the purpose of conduction and investigation, the person seeking access must give notice in writing, in person, or by telephone to the owner, lessee, operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board member, District representative, or employees who are attempting to conduct an investigation under District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code.
- RULE 8.2 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.
- RULE 8.3 SHOW CAUSE ORDERS AND COMPLAINTS:** The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite any person operating within the District to appear before it in a public hearing and require him or her to show cause why his or her operating authority or permit should not be suspended, canceled or otherwise restricted and limited, for failure to comply with the Rules, orders or regulations of the Board or the relevant statutes of the State, or for failure to abide by the terms and provisions of the permit or operating authority itself. The matter of evidence and all other matters of procedure at any such hearing will be conducted in accordance with these rules of procedures and practice.
- INSTITUTION OF SUIT:** If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Rules, the District may institute and conduct a suit for enforcement of these rules pursuant to provisions of Chapter 36.102 of the Texas Water Code, as amended.
- a. the district may enforce these rules by injunction, mandatory injunction, or other appropriate remedy in court;
 - b. The Board may recover reasonable civil penalties pursuant to such suit, not to exceed \$5,000. per day per violation, and each day of continuous violation constitutes and separate violation;
 - c. Penalty under this rule is in addition to penalties which may be imposed pursuant to any other law of the State; and
 - d. If the District prevails in any suit to enforce its rules the District may seek and the Court shall grant, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the Court.

RULE 8.4 SEALING, CAPPING AND PLUGGING WELLS:

- a. **SEALING OF WELLS:** Following due process, the District may, upon orders from the judge of courts, seal wells that are prohibited from withdrawing groundwater within the District, to ensure that a well is not operated in violation of the District Rules. A well may be sealed when: (1) no application has been made for a permit to drill a new water well which is not excluded or exempted; or (2) no application form has been filed for an operating permit to withdraw groundwater from an existing well which is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater inside a KCGCD; or (3) the Board has denied, cancelled or revoked a drilling permit or an operating permit.

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.

Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a well that has been sealed constitutes a violation of these rules and subjects the person performing that action, as well as any well owner or primary operator who authorizes or allows that action to such penalties as provided by the District Rules.

- b. **CAPPING WELLS:** The District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must remain capped until such time as the conditions that led to the capping requirement are eliminated. If well pump equipment is removed from a well and the well will be re-equipped at a later date, the well must be capped, provided however that the casing is not in a deteriorated condition that would permit commingling of water strata in which case the well must be plugged. The cap must be capable of sustaining a weight of at least 400 pounds.
- c. **PLUGGING WELLS:** A deteriorated or abandoned well must be plugged in accordance with the Well Driller and Pump Installers Rules. It is the responsibility of the landowner to see that such a well is plugged to prevent pollution of groundwater and to prevent injury to persons.

SECTION 9. HEARINGS

RULE 9.1 TYPES OF HEARINGS: The District conducts three (3) general types of hearings: hearings involving permit matters, rulemaking hearings, and any other matter designated for hearing before the Board.

a. Permit Hearings:

1. **Permit Applications, Amendments and Revocations:** The District will hold hearings on well drilling permits, operating permits, permit renewals, out-of-District groundwater transportation permits or amendments and permit revocations or suspensions. Hearings involving permit matters may be scheduled before a Hearings Examiner.
2. **Hearings on Motions for Rehearing:** Motions for rehearing will be heard by the Board pursuant to rule 9.6(B).

b. Rule-making Hearings:

1. **District Rules:** The Board shall hold a public hearing for any changes considered for adoption on the District Rules.
2. **District Management Plan:** The Board shall hold a hearing to consider adoption of a new District Management Plan.
3. **Critical Groundwater Depletion Area:** The Board shall hold a public hearing before designating an area as a Critical Groundwater Depletion Area.

c. Other Matters:

A public hearing may be held on any matter within the jurisdiction of the board, if the Board deems a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District.

RULE 9.2 NOTICE AND SCHEDULING OF HEARINGS: The General Manager, as instructed by the Board, is responsible for giving notice of all hearings in the following manner.

- a.** Notice will be given to each person who requests copies of hearing notices pursuant to the procedures set forth in subsection b, and any other person the Board deems appropriate.

Notice of hearing must be published for all rule making or transportation permit hearings at least once in a newspaper of general circulation within the District prior to the meeting. Well permit hearings may be published in a newspaper of general circulation within the District when deemed appropriate or necessary by the Board.

A copy of the notice will be posted at the county courthouse in the place where notices are usually posted.

- b. Any person having an interest in the subject matter of a hearing or hearings may receive written notice of such hearing or hearings by submitting a request, in writing, addressed to the Kimble County Groundwater Conservation District. The request will identify with as much specificity as possible the hearing or hearings of which written notice is requested. The request remains valid for a period of one (1) year from the date of the request, after which time a new request must be submitted.
- c.. Hearings may be scheduled during the District's regular business hours. All permit hearings will be held at the District office. However, the Board may from time to time change or schedule additional dates, times, and places for permit hearings by resolution adopted at regular Board meetings. The General Manager is instructed by the Board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings. Other hearings will be scheduled at dates, times and locations set at a regular Board meeting.

RULE 9.3 GENERAL PROCEDURES:

- a. **Authority of Presiding Officer:** The Presiding Officer may conduct the hearing or other proceedings in the manner the Presiding Officer deems most appropriate for that particular proceeding. The Presiding Officer has the authority to:
 - 1. Set hearing dates, other than the initial hearing date for permit matters set by the General Manager in accordance with Rule 9.2 c;
 - 2. Convene the hearing at the time and place specified in the notice for public hearing;
 - 3. Establish the jurisdiction of the District concerning the subject matter under consideration;
 - 4. Rule on motions and on the admissibility of evidence and amendments to pleadings;
 - 5. Designate and align parties and establish the order for presentation of evidence;
 - 6. Administer oaths to all persons presenting testimony;
 - 7. Examine witnesses;
 - 8. Issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
 - 9. Require the taking of depositions and compel other forms of discovery under these Rules;
 - 10. Ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 - 11. Conduct public hearings in an orderly manner in accordance with these Rules;
 - 12. Recess any hearing from time to time and place to place;
 - 13. Reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
 - 14. Exercise the other appropriate powers necessary or convenient to effectively carry out the responsibilities of presiding officer.

- b. **Hearing Registration Forms:** Each individual attending a hearing or other proceeding of the District must submit a form providing the following information: name; address; whether the person plans to testify; and any other information relevant to the hearing or other proceeding.
- c. **Appearance; Representative Capacity:** Any interested person may appear in person or may be represented by counsel, engineer, or other representative, provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.
- d. **Alignment of Parties; Number of Representatives Heard:** Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The Presiding Officer may require the participants of an aligned class to select one or more persons to represent them in the proceeding or on any particular matter of 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.
- e. **Appearance by Applicant :** The applicant 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.
- f. **Reporting:** Hearings and other proceedings will be recorded on audio cassette tape or, at the discretion of the presiding officer, may be recorded by a certified shorthand reporter. The District does not prepare transcriptions for the public of hearing or other proceedings recorded on audio cassette tape on District equipment, but will arrange for a party of interest to have access to the recording. Subject to availability of space, any party at interest may, at its own expense, arrange for a reporter to report the hearing or other proceeding, or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 9.4(B). If a proceeding other than a permit hearing is recorded by a reporter, and a copy of the transcript filed with the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.
- g. **Continuance:** The presiding officer may continue hearings of other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing

or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District Office) for the hearing of other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the presiding officer before it is recessed, a notice of any further setting of the hearing or other proceeding must be delivered at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Rule 9.2(B), and any other person the presiding officer deems appropriate, but it is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.

- h. **Filing of Documents; Time Limit:** Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these Rules or by laws must be received in hand at the District's Office within the time limit, if any, set by the Presiding Officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.
- i. **Affidavit:** Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative of counsel. This Rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.
- j. **Broadening the Issues:** No person will be allowed to appear in any hearing or other proceeding that in the opinion of the presiding officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
- k. **Conduct and Decorum:** Every person, party, representative, witness, and other participant in a proceeding must conform to the ethical standards of conduct and will exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If in the judgment of the presiding officer, a person is acting in violation of the provision, the presiding officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.

Rule 9.4 PERMIT HEARINGS:

- a. **Uncontested Permit Hearings Procedures:**
 - 1. **Written Notice of Intent to Contest:** Any person who intends to contest a permit application must provide written notice of that intent to the District office located at Junction, Texas at least five (5) calendar days prior to the date of the hearing. If the Board of Directors intend to contest a permit application, the District must provide the applicant written notice of that intent at least five (5) calendar days prior to the date of the hearing. If no notice of intent to contest is received five (5) calendar days prior to the hearing, the General Manager, as instructed by the Board,

will cancel the hearing and the Directors will consider the permit at the next regular Board meeting.

2. **Informal Hearings:** Permit hearings may be conducted informally when, in the judgment of the Presiding Officer, the conduct of the proceeding under informal procedures will result in a savings of time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
3. **Agreement of Parties:** If, during an informal proceeding, all parties reach a negotiated or agreed settlement which, in the judgment of the Presiding Officer, settles the facts of issues in controversy, the proceeding will be considered an uncontested case and the Presiding Officer will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.
 - i. **Decision to Proceed as Uncontested or Contested Case:** If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Presiding Officer determines these issues will require discovery proceedings, the Presiding Officer will declare the case to be contested and convene a pre-hearing conference as set forth in Rule 9.4(B). The Presiding Officer may also recommend issuance of a temporary permit for a period not to exceed four (4) months, with any special provisions the Presiding Officer deems necessary, for the purpose of completing the contested case process.

b. **Contested Permit Hearing Procedures:**

1. **Prehearing Conference:** A prehearing conference may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process.
 - i. **Matters Considered:** Matters that may be considered at a prehearing conference include, but are not limited to, (1) designation of parties; (2) formulation and simplification of issues; (3) necessity or desirability of amending application or other pleadings; (4) possibility of making admissions or stipulations; (5) scheduling discovery; (6) identification of and specification of the number of witnesses; (7) filing and exchange of prepared testimony and exhibits; and (8) procedure at the hearing.
 - ii. **Notice:** A pre-hearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 9.2, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the Presiding Officer.
 - iii. **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.

2. **Assessing Reporting and Transcription Costs:** Upon the timely request of any party, or at the discretion of the Presiding Officer, the Presiding Officer may assess reporting and transcription costs to one or more of the parties. In any proceeding where the assessment of reporting or transcription costs is an issue, the Presiding Officer will provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs will be included in the Presiding Officer's report to the board.
3. **Designation of Parties:** Parties to a hearing may be designated on the first day of hearing or at such other time as the Presiding Officer determines. The General Manager and any person specifically named in a matter are automatically designated parties. Persons other than the General Manager or a person specifically named must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Presiding Officer, there exists good cause and the hearing will not be unreasonably delayed.
4. **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.
5. **Persons Not Designated Parties:** At the discretion of the Presiding Officer, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Presiding Officer as evidence.
6. **Furnishing Copies of Pleadings:** After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or the party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.
7. **Interpreters for deaf parties and witnesses:** If a party or subpoenaed witness in a contested case is deaf, the District will provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.
8. **Agreements to be in Writing:** No agreement between parties or their representatives affecting any pending matter will be considered by the Presiding Officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered of record.

9. **Discovery:** Discovery will be conducted upon such terms and conditions, and at such times and places as directed by the Presiding Officer. Unless specifically modified by these Rules or by order of the Presiding Officer, discovery will be governed by, and subject to the limitations set forth in, the 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 Office.
10. **Discovery Sanctions:** If the Presiding Officer finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Presiding Officer may:
- i. suspend processing of the application for a permit if the applicant is the offending party;
 - ii. disallow any further discovery of any kind or a particular kind by the offending party;
 - iii. rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
 - iv. limit the offending party's participation in the proceeding;
 - v. disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
 - vi. recommend to the board that the hearing be dismissed with or without prejudice.
11. **Ex Parte Communications:** The Presiding Officer may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing in order to utilize the special skills and knowledge of the District in evaluating the evidence.
12. **Compelling Testimony; and Swearing Witnesses:** The Presiding Officer may compel any person to testify who is necessary, helpful or appropriate to the hearing. The Presiding Officer shall administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth.
13. **Evidence:** Except as modified by these Rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonable prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
14. **Written Testimony:** When a proceeding will be expedited and the interests of the parties not substantially prejudiced, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.

15. **Requirements for Exhibits:** Exhibits of a documentary character must be of a size that will not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
16. **Abstracts of Documents:** When documents are numerous, the Presiding Officer may receive in evidence only those that are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.
17. **Introduction of Copies of Exhibits:** Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the Presiding Officer and to each of the parties, unless the Presiding Officer rules otherwise.
18. **Excluding Exhibits:** In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to excluding the exhibit.
19. **Official Notice:** The Presiding Officer may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
20. **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.
21. **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.

c. **CONCLUSION OF THE HEARING; REPORT:**

1. **Closing the Record; Final Report:** At the conclusion of the presentation of evidence and any oral argument, the Presiding Officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Presiding Officer. After the record is closed, the Presiding Officer shall prepare a report to the Board. The report will include a summary of the evidence, together with the Presiding Officer's findings and conclusions and recommendations for action. Upon completion and issuance of the Presiding Officer's report, a copy will be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties will be by certified mail.

2. **Exceptions to the Presiding Officer's Report:** Reopening the Record: Prior to Board action any party in a contested case may file written exceptions to the Presiding Officer's report, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board. Upon review of the report and exceptions, the Presiding Officer may reopen the record for the purpose of developing additional evidence, or may deny the exceptions

and submit the report and exceptions to the Board. The Board may, at any time and in any case. Remand the matter to the Presiding Officer for further proceedings.

3. **Time for Board Action on Certain Permit Matters:** In the case of hearing involving original permit application, or applications for permit renewals or amendments, the Presiding Officer's report should be submitted, and the Board should act, within 60 calendar days after the close of the hearing record.

RULE 9.5 RULEMAKING HEARINGS PROCEDURES:

- a. **General Procedures:** The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The Presiding Officer may follow the guidelines of "Parliamentary Procedure at a Glance," New Edition, O. Garfield Jones, 1971 revised edition, or as amended.
- b. **Submission of Documents:** Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 9.2: provided, however, that the Presiding Officer may grant additional time for the submission of documents.
- c. **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 will establish the order of testimony and may limit the number of time a person may speak, the time period for oral presentations, and the time period for asking questions. In addition, the Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- d. **Conclusion of the Hearing:** Closing the Record; Presiding Officer's Report: At the conclusion of testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the Presiding Officer is a Hearing Examiner, the Hearing Examiner will, after the record is closed, prepare a report to the Board. The report will include a summary of the subject of the hearing and the public comments received, together with the Hearings

Examiner's recommendations for action. Upon completion and issuance of the Hearings Examiner's report, a copy will be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.

- e. **Exceptions to the Presiding Officer's Report; Reopening the Record:** Any Interested person may make exceptions to the Hearings Examiner's report, and the Board may reopen the record, in the manner prescribed in rule 9.4(C).

RULE 9.6 FINAL DECISION; APPEAL:

- a. **Board Action:** After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.
- b. **Requests for Rehearing:** Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within 20 calendar days of the Board's decision. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal to State District Court. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within 45 calendar days thereafter, unless otherwise agreed to the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within 90 calendar days of submission will be deemed to be a denial of the request.