

RULES OF MESA UNDERGROUND WATER CONSERVATION DISTRICT

ADOPTED: May 1, 1991

EFFECTIVE: July 11, 2006

The rules of the Mesa Underground Water Conservation District were published on the 1st day of May 1991. The original rules were amended and hereby republished on the 1st day of May, 1997. The rules were again amended and hereby republished on the 1st day of May, 1999. The rules were again amended and hereby republished on the 11th day of May 2004. The rules were again amended and hereby republished on the 11th day of July 2006.

In accordance with Section 59 of Article XVI of the Texas Constitution and Acts of the 71st Legislature (1989), Ch. 669, S.B. 1727 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. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended.

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.

These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case will they or any part therein, be construed as a limitation or restriction upon the exercise of powers, duties and jurisdiction conferred by law. These rules will not limit or restrict the amount and accuracy of data or information which may be required for the proper administration of the law.

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SECTION 1 DEFINITIONS AND CONCEPTS

RULE 1.1 Definitions Of Terms

The District follows the definitions of terms set forth in The District Act, Chapter 36 of the Texas Water Code, and other definitions as follow:

- A. **“Acre”** means the "unit measure" used to calculate total land surface area under which the ownership of water rights beneath the surface is identical.
- B. **“Acre-foot”** means 12" of water over one (1) acre or 325,800 gallons of water that may be produced for each acre of groundwater rights belonging to said owner.
- C. **“Agricultural crop”** means food or fiber commodities grown for resale or commercial purposes that provide food, clothing, or animal feed.
- D. **“Board”** means the Board of Directors of the District.
- E. **“De-watering well”** means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.
- F. **“District”** means the Mesa Underground Water Conservation District and those given the responsibility for the execution and performance of District functions and activities. This may include a hearing examiner, the presiding officer and/or designee that has been duly appointed by the Board President or the Board of Directors to conduct a permit hearing or a contested case permit hearing.
- G. **“District Act”** means Acts of May 25, 1989, 71st Leg., R.S., ch. 669, 1989 Tex. Gen. Laws 2209 (Vernon) and the non-conflicting provisions of Chapter 36, Water Code.
- H. **“District office”** means the office of the District as established by resolution of the Board.
- I. **“Drilling Permit”** means a permit for a water well issued or to be issued by the District allowing a water well to be drilled.
- J. **“Groundwater”** means water located beneath the earth's surface within the District but does not include water produced with oil in the production of oil and gas.
- K. **“Hearing body”** means the Board, any committee of the Board, or a Hearing Examiner at any hearing held under the authority of the District Act.

- L. **“Hearing Examiner”** means a person appointed by the Board of Directors to conduct a hearing or other proceeding.
- M. **“Injection well”** include:
- An air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;
 - A cooling water return flow well used to inject water previously used for cooling;
 - A drainage well used to drain surface fluid into a subsurface formation;
 - A recharge well used to replenish the water in an aquifer;
 - A saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;
 - A sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
 - A subsidence control well used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and
 - A closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.
- N. **“Landowner”** means the person to whom bears ownership of the land surface area and water rights there under, unless groundwater rights have been previously sold.
- O. **“Leachate well”** means a well used to remove contamination from soil or groundwater.
- P. **“Monitoring well”** means a well installed to measure some property of the groundwater or aquifer it penetrates, and does not produce more than 5,000 gallons per year. Not to be confused with a District water level measurement well.
- Q. **“New well application”** means an application for a permit for a water well that has not been drilled.
- R. **“Open meeting law”** means Chapter 551, Texas Government Code.

- S. **“Operating Permit”** means a permit issued within a ***Production Use Measurement Area*** by the District for a water well, allowing groundwater to be withdrawn from a water well for a designated period.
- T. **“Public Information Act”** means Chapter 552, Texas Government Code.
- U. **“Person”** includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- V. **“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.
- W. **“Rules”** means the rules of the District compiled in this document and as may be supplemented or amended from time to time.
- X. **“Section”** means the number section of a survey or block as shown in “Dawson County Farm Flats,” 2003 Edition, (Smith Publishing Co.).
- Y. **“Texas Rule of Civil Procedure” and “Texas Rules of Civil Evidence”** mean the civil procedure and evidence rules as amended and in effect at the time of the action or proceeding. Except as modified by the rules of the District, the rights, duties, and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure or the Texas Rules of Evidence are the same as a court acting under those rules.
- Z. **“Transport Permit”** means a permit to transfer groundwater out of district which shall be known as a Transport/Operating Permit. A Transport/Operating Permit will assume all requirements and function as an Operating Permit.
- AA. **“Waste”** means Chapter 36.001 (8) Definitions and Section 13 herein.
- BB. **“Water Level Measurement Well”** means a well used by the District to measure the static water level of groundwater in the aquifer as a part of the annual water level monitoring program.
- CC. **“Water meter”** means a water flow measuring device that can accurately record the amount of groundwater produced during a measured time.
- DD. **“Water Rights Holder”** means the person other than the landowner who has ownership of the water rights beneath the land surface.
- EE. **“Well”** means any facility, device, or method used to withdraw groundwater from the groundwater supply within the District.

- FF. **“Well owner” or “well operator”** means the person who owns the land and/or water rights beneath the land upon which a well is located or the person who operates a well or a water distribution system supplied by said well.
- GG. **“Well system”** means a well or group of wells tied to the same distribution system.
- HH. **“Withdraw”** means extracting groundwater by pumping or by another method.
- II. **“Windmill”** means a wind-driven or hand-driven device that uses a piston pump to remove groundwater.

RULE 1.2 Purpose Of Rules:

These rules are adopted to achieve the provisions necessary to accomplish the purposes of the District Act and to implement the Management Plan which is approved and adopted by the Board of Directors and approved by the Texas Water Development Board.

RULE 1.3 Use And Effect Of Rules:

The District will use these rules as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They may not be construed as a limitation or restriction on the exercise of any discretion; nor be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law; nor be construed to limit or restrict the amount and character of data or information which may be required to be collected for the proper administration of the District Act.

RULE 1.4 Amending Of Rules:

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

RULE 1.5 Headings And Captions:

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

RULE 1.6 Construction:

A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the Water Code. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Government Code.

RULE 1.7 Methods Of Service Under The Rules:

Except as otherwise expressly provided in these rules, any notice or documents 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 mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number. 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 is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on 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 time after service, three days will be added to the prescribed period. Where service by one of more methods has been attempted and failed, the service is complete upon notice publication in a general circulated newspaper in the District.

RULE 1.8 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.

SECTION 2 BOARD

RULE 2.1 Purpose Of Board:

The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District for 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 2.2 Board Structure, Officers:

The Board consists of the members elected and qualified as required by the District Act. The Board will elect one of its members to serve as President, each even numbered year at its regular June meeting, (If there is no June meeting, at its next regular meeting) to preside over Board meetings and proceedings; one to serve as Vice-President to preside in the absence of the President; and one to serve as Secretary to keep a complete account of all meetings and proceedings of the Board. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these rules.

RULE 2.3 Meetings

The Board will hold a regular meeting once each month as the Board may establish from time to time by resolution. At the request of the President, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held according to the Texas Open Meetings Law.

RULE 2.4 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 2.5 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, 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 3 DISTRICT STAFF

RULE 3.1 General Manager:

The Board may employ a person to manage the District and title this person General Manager. The General Manager will have no power, duty, or responsibility other than gathering information and performing District functions as determined by the Board. The Board will determine the salary and review the position of General Manager each year at the beginning of the third quarter of every 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. Their salaries will also be set by the Board with recommendations from the General Manager.

SECTION 4 DISTRICT

RULE 4.1 Minutes And Records Of The District

All documents, reports, records, and minutes of the District are available for public inspection and copying following 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. A list of the charges for copies will be furnished by the District.

RULE 4.2 Certified Copies:

Requests for certified copies must be in writing. Certified copies will be made under the direction of the Board. A certification charge and copying charge may be assessed, pursuant to policies established by the Board.

SECTION 5 SPACING REQUIREMENTS

RULE 5.1 Required Spacing:

A new permitted well may not be drilled within 100 yards (300 feet) from the property line of an adjoining landowner(s).

RULE 5.2 Exceptions To Spacing Requirements

A. Approved Waiver:

Providing the applicant presents to the District staff waiver(s) signed by the adjoining landowner(s) stating that they have no objection to the proposed location of the new well site, the District spacing requirements will be waived to the new proposed well location.

B. Denied Waiver:

If the applicant is denied a waiver(s) by an adjoining landowner(s) and 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 100 yards (300 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 which does not meet the spacing requirements, the Board may limit the production of the well in an attempt to ensure no injury is done to adjoining landowners or the aquifer. The Board may require a well drilled under provisions of Rule 5.2 (b) to operate the well as if it were located within a Production Use Measurement Area (Rule 7.3).

SECTION 6 PRODUCTION LIMITATIONS

RULE 6.1 Maximum Allowable Production

A. 5-Gallons Per Minute:

A well or well system may only be permitted to be drilled and equipped for the production of a cumulative total of five (5) gallons per minute (g.p.m.) per

contiguous acre under which the identical ownership of land and water rights are owned, operated, or controlled.

B. Not to exceed 4 Acre Feet:

In no event may a well or well system be operated such that the total annual production exceeds four (4) acre feet of water per acre owned, operated, or controlled within the same Section upon which the ownership of the land surface area and the ownership of said water rights are identical for the acres owned or operated.

SECTION 7 OTHER DISTRICT ACTIONS AND DUTIES

RULE 7.1 District Management Plan:

The District Management Plan specifies the acts, procedures, performance and avoidance necessary to prevent waste and the extreme decline of the water table. The District shall use the Rules of the District to implement the Approved Management Plan. The District must review and readopt the plans with or without revisions at least once every five (5) years. The District shall submit the readopted plan to the executive administrator no later than the 60th day after the date on which the plan was readopted. A plan, once approved by the Texas Water Development Board, remains in effect until the adoption of a new plan. Approval of the management plan remains in effect until (1) the District fails to readopt a management plan, (2) the District fails to timely submit the readopted management plan to the executive administrator, or (3) the executive administrator determines that the readopted management plan does not meet the requirements for approval by the Texas Water Development Board and the District has exhausted all appeals to the Texas Water Development Board or appropriate court.

RULE 7.2 Extreme Decline Study Area:

An Extreme Decline Study Area (EDSA) is naming (designation) and drawing on a map (delineation) of a square, nine (9) section area. The purpose for designating an EDSA is to collect hydrological information on all wells in that area. An EDSA may not be any other size or configuration. This size will be large enough to be nondiscriminating and small enough to minimize the number of landowners, well owners/operators, or known water right holders.

A. Board Consideration of an EDSA

The District will review and study all data obtained from the Annual Water Level Monitoring Reports. If evidence of extreme decline exists, comparable to other monitor wells, the Board shall consider the need for an EDSA.

The only evidence considered by the Board will be the data obtained from the Annual Water Level Monitoring Reports reflecting extreme groundwater level declines. This data along with the testimony received from a public hearing may influence the Board to consider creation of an EDSA.

Under no circumstances would the District consider hearsay, rumors, or verbal reports, other than sworn testimony from a public hearing, as a source of evidence to consider designation of an EDSA.

B. Board Procedure Prior to Establishment of an EDSA

1. Notification of Designation:

All known landowners, well owners/operators, and water right holders within the proposed square, nine (9) Sections must be notified of the potential designation.

- a. The Board will provide notification at least 60 days before the date of public hearing.
- b. A summary of all available, data from the Annual Water Level Monitoring Report, concerning the proposed area, will be included in the notification.

C. Public Hearing for Designation:

The Board shall call a public hearing to consider creation of an EDSA.

1. The District will present data from the Annual Water Level Monitoring Report, concerning the proposed area.
2. The Board will receive testimony from the landowners, well owners/operators, and water right holders within the proposed area.
3. The Board will receive testimony from the general public.

D. Evaluation of Proceedings:

The Board will evaluate the proceedings from the public hearing and may consider a resolution to establish an EDSA.

E. Procedure following Establishment of an EDSA

1. Extensive data will be collected
 - a. The District will measure all available wells to determine the

water level for each well to establish a baseline.

- b. The District will measure the wells at the same time in the following year. The District will compare water level changes with results from the previous year.
- c. The District will collect data on well depths for all available wells.

2. Data will be reviewed and studied:

- a. The District will compare subsequent changes in water levels on an annual/historical basis for monitor wells with historical data.
- b. The District will evaluate climate and environmental events which occurred during the year.
- c. The District will consider changes in water-use practices.
- d. The District will consider available information on the use of new technology and/or procedures.
- e. The District will consider relevant information reflecting extreme declines in the aquifer within the EDSA.

3. Program determinations:

Each succeeding year after the EDSA has been designated, the District will continue to gather data and evaluate the information. The Board will then make one of the following determinations:

- a. Continue monitoring and evaluating data of the area.
- b. Determine the discontinuation of the EDSA and cancel the program.
- c. Determine convincing data (from evidence gathered in the study area) and the public hearing is indicating that over mining of the aquifer is occurring within the EDSA.
- d. Begin the process of designating and delineating a Production Use Measurement Area.

RULE 7.3 Production Use Measurement Area:

The Production Use Measurement Area (PUMA) is the succeeding processes of protecting and conserving the aquifer. The results obtained from the EDSA shows clear and convincing evidence of possible over mining of the aquifer. Further actions by the District may be necessary to protect and conserve the groundwater. The Board will designate and delineate an area, to accurately measure the use of water. The area must be located inside the EDSA, and the size cannot be larger than four (4) contiguous Sections. The designated area will be large enough to be nondiscriminating and will include no less than three (3) different landowners, well owners/operators, or water right holders.

A. Board Consideration of PUMA

Clear and convincing information, obtained from the EDSA, indicate the possible and probable excessive mining of the aquifer.

Only the statistical data revealed from the EDSA will cause the Board to consider creation of a PUMA.

Under no circumstances will the Board consider hearsay, rumors, or verbal reports as a source of evidence to consider designation of a PUMA.

B. Board Procedure prior to Establishment of PUMA

1. All known landowners, well owners/operators, and water right holders of the EDSA will be notified of the proposed plan.
 - a. The Board will provide notification at least 60 days before the public hearing date.
 - b. The Board shall include in the notice a summary of the factual data obtained from EDSA.
2. The Board shall call a public hearing to consider establishing a PUMA.
 - a. The Board will present a summary of the statistical data obtained from the EDSA.
 - b. The Board will receive testimony from landowners, well owners/operators, and water right holders within the proposed area.
 - c. The Board will receive testimony from landowners, well owners/operators, and water right holders within the EDSA.

- d. The Board will receive testimony from the general public.
- 3. The Board will evaluate the entire proceedings, testimony and evidence and may by resolution create a PUMA.
- 4. Upon creation of the PUMA by the Board, the District will notify the known landowners, well owners/operators, and water right holders of the Board resolution.
 - a. The Board will provide written notice of the PUMA by registered/certified mail.
 - b. Within 14 days after the Board has designated a PUMA, all the well owners/operators must apply for an operating permit.
 - c. The notice will indicate the last date an operating permit may be applied for to await approval by the Board.
 - d. The Board will include copies of operating permit applications in the notice.
 - e. The Board will include sample copies of completed application forms.
 - f. The Board will include a copy of the Rules of Mesa Underground Water Conservation District.
- 5. The well owner, well operator, or any other person acting on behalf of the well owner must file a completed operating permit application prior to operating a well/well system inside a PUMA. After a completed operating permit has been filed with the District, the applicant may then proceed at their own risk to operate such a well/well system.
- 6. The Board will post notice and follow Rule 10.2(d), 14 days after establishment of PUMA.

C. Procedure following Establishment of PUMA

- 1. All well / well systems shall require an operating permit.
 - a. The District will provide and install a water measuring device to accurately measure the water used in each operating permit.
 - b. The District will amend the operating permit to reflect the date of

water device installation as the official date on the operating permit.

- c. The District will amend the operating permit to show the beginning numbers recorded on the measuring device.
- d. The District must provide a copy of the amended operating permit to the permit holder by registered mail.
- e. The permit holder will then note and initial the amendments and return to the District office as the official operating permit.

2. Operating permit calculations

- a. The Board will approve operating permits for four (4) acre feet for each acre owned or controlled, not to exceed 2,560 acre feet per numbered Section.
- b. Operating permits will indicate the number of acres for the permit multiplied by the four (4) acre feet to establish the total acre feet for the permit.
- c. Operating permits will indicate the total acre feet allowed by the permit multiplied by 325,800 gallons to establish the total gallons for the permit.

3. District Operations

- a. The District will read and record the meter readings every other month.
- b. The District will be responsible for maintenance and upkeep to the measuring device for correct calculations.
- c. The District will compare the measuring device readings with the operating permit terms quarterly during the period and at the end of the operating permit period.
- d. The District will prepare renewal permits at the end of the existing operating permit. The renewals will be mailed to the operators for the well owner's signature and returned to the District office.
- e. The Board will post notice and approve the renewal applications.

4. Enforcement of Rules

- a. It is a violation of Rule 6.1 (b) to exceed the operating permit.
- b. It is a violation of Rule 10.2(b) to operate a well/well system without an operating permit application filed with the District and the operating permit for the well/well system must be approved and remain permitted until an operating permit is no longer required for the well. District Rules will be enforced by Rule 15.3.

SECTION 8 WATER MEASUREMENT

RULE 8.1 Water Meter:

When located inside a Production Use Measurement Area, a water meter shall be installed on all wells or aggregate well systems which require an operating permit in the amount of four (4) acre feet. Unless otherwise required by these rules, the district will provide the metering device including installation and maintenance of the unit to determine the actual true and correct total gallons of water being produced.

SECTION 9 DEPOSITS FOR WELL REGISTRATION/WATER WELL DRILLING PERMITS

RULE 9.1 Deposits:

Each application for a well registration/water well drilling permit shall be accompanied by a \$100.00 deposit which shall be accepted and deposited by the District. Said deposit shall be returned to the applicant by the District if (1) the application is denied; (2) if the application is granted, upon the receipt of a correctly completed driller's log (TDLR Form 001WWD) of the well or the driller's log is posted electronically to the GWCD Online Database, or (3) if said permit location is abandoned without having been drilled or a "dry hole", upon return and surrender of said permit marked "abandoned" or "dry hole" by the applicant.

In the event either the driller's log, clearly written on TDLR Form 001WWD of the well or the driller's log is posted electronically to the GWCD Online Database, or permit marked "abandoned" or "dry hole" is returned to the District office within eight (8) months after the application date of the permit, said deposit shall become the property of the District.

SECTION 10 WELL REGISTRATION AND PERMITS

RULE 10.1 Registration Of New Wells:

A. Well Registration/Application to Drill:

It is a violation of these rules for a well owner, well operator, or water well driller to drill any well unless the well registration/application for water well permit form has been filed with the staff at the District office.

B. Well Registration:

All new wells, except leachate wells, monitoring wells, and de-watering wells, must be registered by the well owner, well operator, or water well driller before it is drilled. The District staff will review the registration and make a preliminary determination on whether the well meets the exclusions or exemptions provided in Rule 10.5. Providing the preliminary determination is ruled the well is excluded or exempt, the registrant may begin drilling immediately upon receiving the approved registration.

RULE 10.2 General Permitting Policies And Procedures:

A. Drilling Permit Requirement:

The well owner, well operator, or any other person acting on behalf of the well owner, must file a completed well registration/application for a water well permit before a well may be drilled. Providing the application for a drilling permit meets all the guidelines of these rules, the applicant may thereupon proceed at their own risk to drill such well. This application for a drilling permit shall not be; however, officially granted until the opportunity for a due process public hearing has been satisfied and the Board has approved the permit. A well registration/water well drilling permit authorizes the permit holder to drill the water well and operate the newly drilled well under the rules as promulgated by the District.

B. Operating Permit Requirement:

Within 14 days after a well has been designated inside a Production Use Measurement Area the well owner or well operator must file a completed operating permit application prior to operating the well. The operating permit must be approved by the Board of Directors and remain permitted until an operating permit is no longer required for the well/well system.

C. Permit Applications:

Each original application for a well registration/water well drilling permit, operating permit, "Transfer/Operating Permit", and permit renewal requires a separate application. Application forms will be provided by the District and furnished to the applicant upon request.

D. Notice of Permit Hearing:

Upon receipt of a completed original application for a well registration/water well drilling permit, operating permit, "Transfer/Operating Permit" or permit renewal, the general manager or District Staff will issue written notice indicating a date and time for a hearing on all permit applications received prior to date of notice in accordance with these rules. The District may schedule as many applications at one hearing as deemed necessary. All permit applications, excluding the water well drilling permits/well registrations exempt by these rules and Chapter 36.117 exemptions that the Board, by this rule authorizes to be approved by district staff without the required public hearing process, shall be subject to a public hearing prior to the Board of Directors considering the permit for approval.

E. Decision on Issuance of Permit:

In deciding whether or not to issue a permit, and in setting the terms of the permit, the Board shall consider the adopted and approved Management Plan, District Rules and any pertinent information received during the due process permit hearing procedure. The District upholds the private property right of the owner to utilize that part of the aquifer which the landowner obtained at the time of purchase of the land surface as written in Chapter 36.002 *Ownership of Groundwater*, except as those rights may be limited or altered by rules promulgated by the District is to assure that all owners of water rights are entitled to an equal opportunity to develop the groundwater beneath their land and the landowner is not prohibited from seeking and acquiring their private property regardless of the aquifer conditions at other specific sites within the boundaries of the District as well as other specific sites within the boundaries of the Groundwater Management Area #2 (GMA), whereby other possible sites in the aquifer may be different (1) due to different water uses or conditions, (2) a substantial difference in geographic area, (3) a subdivision of the aquifer, (4) a geographic strata, (5) a geographic area overlying the aquifer, (6) or any other hydrological conditions which may be noted within other portions of the aquifer. Any of the provisions listed in this subchapter must be in compliance with District Rules.

F. Permit Term and Renewal:

1. Drilling Permits:

Unless specified otherwise by the Board or these rules, a well registration/water well drilling permit is effective for a term ending 180 calendar days after the date the permit was applied for.

2. Operating Permits:

Unless specified otherwise by the Board or these rules, operating permits are effective for a term ending one year from the date of issuance. The permit term will be shown on the permit. Operating permits may be renewed by the Board following application and hearing.

3. No Vested Right in Permit:

Operating permits do not become vested rights in the permit holder, and there is no automatic right of renewal. All operating permits will be renewed under the provisions of Rule 6.1.

G. Permit Provisions:

The permit will contain the standard provisions listed in Rule 10.3. The permit may also contain provisions relating to the means and methods of transportation of water outside the district as cited in Section 16.

H. Aggregation of Withdrawal:

In issuing an operating permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District. District Rule 5 & 6, will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production. This will allow a well owner, with a number of water wells in the same section which supply a single well system, to apply for an operating permit for the well system; consequently, the applicant will not be required to apply for a separate operating permit for each individual well. In contrast, this provision shall require a well owner to apply for an operating permit for each individual well, in the event the wells are located on more than one single numbered Section, which may be used to supply a single well system.

I. Effect of Acceptance of Permit:

Acceptance of the permit by the person to whom it is issued constitutes acknowledgment of and agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions.

RULE 10.3 Standard Operating Permit Provisions:

All permits are granted subject to these rules, orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit, each permit issued must contain the following standard permit provisions:

A. Agreement of Compliance:

This permit is granted in accordance with the provisions of the Rules of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permit holder will comply with the Rules of the District.

B. Right of Operation by Owner:

This permit confers no vested rights in the holder other than the right to operate the permit under the provisions of Rule 6. 1, its terms may be modified or amended pursuant to the provisions of said District Rule. To protect the permit holder from the illegal use by the new landowner, within 10 days after the date of sale, the operating permit holder must notify the District in writing the name of the new owner. Any person who becomes the owner of a currently permitted well must, within 20 calendar days from the date of the change in ownership, file an application for a permit amendment to affect a transfer of the permit.

C. Non-Wasteful Withdrawal:

The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.

D. Water Meter:

At the time a water meter is required in a PUMA, it shall be installed by the District to accurately record gallons during a specified period of time.

E. District Well Inspection:

The well site must be accessible to District representatives for inspection, and the permit holder agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.

F. True and Correct Information:

The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application. A finding that false information has been supplied is grounds for immediate revocation of the permit.

G. Violations:

Violation of this permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawal, is punishable by civil penalties as provided by the District Rule 15.3.

RULE 10.4 Operating Permit Limitations:

A. Maximum Authorized Withdrawal:

It is a violation of these rules to pump any amount of water in excess of authorized gallons indicated on the permit.

B. Operating Permit Required:

It is violation of these rules to pump a well inside a PUMA prior to a completed operating permit application being filed with the District awaiting approval/and approved by the Board of Directors.

RULE 10.5 Exclusions And Exemptions:

A. Single-Family Small Wells Excluded:

A well with a casing diameter of five inches nominal or less that is used solely for the domestic needs of a single-family dwelling is excluded from the permit requirements in Section 10 of these rules.

B. Single Commercial Wells:

The permit requirements in Section 10 do not apply to persons owning only one commercial well, that is used solely for the needs of that particular business, within the District with an inside casing diameter of five inches nominal or less.

C. Exemptions:

The permit requirements in Section 10 do not apply to: (1) windmills serving a well with a casing diameter of five inches nominal or less, (2) monitoring wells, (3) leachate wells, or (4) dewatering wells.

C. Wells Exempt by Texas Water Code Chapter 36.117:

Wells must meet all requirements of Chapter 36.117 and District Rules.

SECTION 11 REWORKING AND REPLACING A WELL

RULE 11.1 Procedures

A. No Change to Existing Well Status:

An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well status.

B. Change to Well Status:

A permit must be applied for and the board will consider approving the permit, if a party wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe and g.p.m. rate by reworking, re-equipping, or re-drilling such well.

C. Replacement Well:

A permit must be applied for and granted by the board if a party wishes to replace an existing well with a replacement well.

D. Replacement Well Spacing:

A replacement well, in order to be considered such, must be drilled within then (10) yards (30 feet) of the existing well and shall not be drilled nearer the property line provided the original well was "grandfathered" inside the spacing requirements of Rule 5.1.

D. Granting of Application:

In the event the application meets spacing (Rule 5) and production (Rule 6) requirements, the board may grant such application without further notice.

SECTION 12 WELL LOCATION AND COMPLETION

RULE 12.1 Responsibility

After an application for a well permit has been granted, the well, if drilled, must be drilled within ten **(10) yards (30 feet)** of the location specified in the permit, and not elsewhere. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36.102 Texas Water Code.

As described in Chapter 76 of the Well Drillers and Water Well Pump Installers Rules, all well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of the rule prescribing the location of wells and proper completion.

RULE 12.2 Location Of Domestic, Industrial, Injection And Irrigation Wells

A. Sewage and Liquid Waste Facility:

A well shall be located a minimum horizontal distance of **50 feet** from any water-tight sewage facility and liquid-waste collection facility.

B. Other Contamination Sites:

A well shall be located a minimum horizontal distance of **150 feet** from any contamination, such as existing or proposed livestock or poultry yards, privies, and septic system absorption fields.

C. Flood Areas:

A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal and steel casing extending a minimum of **24 inches** above the known flood level.

RULE 12.3 Method of Completion for Domestic, Industrial, Injection & Irrigation Wells

Water well drillers shall indicate on the Well Report (TDLR 001WWD) Section 10 Surface Completion, the method of completion performed. Domestic, industrial, injection, and irrigation wells shall be completed in accordance with the following specifications and in compliance with local county and/or incorporated city ordinances:

A. Annular Spacing:

The annular space between the borehole and the casing shall be filled from the ground level to a depth or not less than **10 feet** below the land surface or well head with cement slurry.

B. Concrete Slabs:

All wells shall have a concrete slab or sealing block 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 inches** and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.
2. The surface of the slab shall be sloped to drain away from the well.

C. In all wells:

1. The casing shall extend a minimum of one foot above the original ground surface; and
2. A slab or block as described in Paragraph (2)(a) is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells provided that:
 - a. Pitless adapter is welded to the casing or fitted with another suitably effective seal; and
 - b. The annular space between the borehole and the casing is filled with cement to a depth not less than **15 feet** below the adapter connection.
 - d. All wells, especially those that are gravel packed, shall be completed 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 quality degradation of any aquifer or zone.
 - e. The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

RULE 12.4 Re-Completions

A. Commingling of Undesirable Water and Fresh Water:

The landowner shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the well bore to other porous strata.

B. Preventing Commingling of Undesirable Water and Fresh Water:

If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

C. Further steps to Prevention:

The Board may direct the landowner to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

SECTION 13 WASTE AND BENEFICIAL USE

RULE 13.1 Waste Means Any One Or More Of The Following:

A. Intrusion of Water:

Withdrawal of groundwater from a groundwater reservoir at a rate in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic or stock watering purposes;

B. Non-Beneficial Use:

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

C. Escape of Groundwater to another Reservoir:

Escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that do not contain groundwater;

D. Pollution:

Pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

E. Willful Negligence:

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 ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;

F. Tailwater:

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. Artesian Water Waste:

For water produced from an artesian well, "waste" has the meaning assigned by Section 11.205 Texas Water Code.

RULE 13.2 Waste Prevention

A. No Waste of Groundwater:

Groundwater shall not be produced or used within or used outside the District, in such a manner as to constitute waste as defined in Rule 1, Section (z) hereof.

B. No Pollution or Harmful Alteration of Groundwater:

No person shall pollute or harmfully alter the character of the groundwater reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata from the surface of the ground.

C. Waste as Defined in Section 13:

No person shall commit waste as that term is defined in Section 13.

D. Violation:

To commit waste is a violation of District Rule and punishable by civil penalties as provided by District Rule 15.3.

RULE 13.3 Uses For A Beneficial Purpose

- A. agricultural, gardening, domestic, livestock, municipal, mining, manufacturing, industrial, commercial, recreational or pleasure purposes;
- B. exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
- C. any other purpose that is useful and beneficial to the user.

SECTION 14 HEARINGS

RULE 14.1 Types Of Hearings

The District conducts two general types of hearings: hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing; and rule-making hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or which describe the procedure or practice requirements of the District. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner.

A. Permit Hearings:

- 1. Permit Applications, Amendments and Revocations: The District will hold hearings on well registration/water well drilling permits, operating permits, "Transfer/Operating Permits, permit renewals or amendments and permit revocations or suspensions. Hearings involving permit matters may be scheduled before a Hearing Examiner.
- 2. Hearings on Motions for Rehearing: Motions for Rehearing will be heard by the Board pursuant to Rule 14.8(b).

B. Rule-Making Hearings:

- 1. District Rules: The District shall hold hearings for the rulemaking process. An exception to this rule may be minor clerical changes to the Rules of Mesa Underground Water Conservation District which may be made only with Board approval at a regular board meeting. Procedures

described in 14.7 of this section will be followed for rulemaking hearings.

2. District Management Plan: At its discretion, the Board may hold a hearing to consider adoption of a new District Management plan.
3. Extreme Decline Study Area: The Board must hold a public hearing before designation an area as an Extreme Decline Study Area. The hearing shall show the results of annual water level monitoring wells and compare the changes in the aquifer before the Board makes a declaration of the management area.
4. Production Use Measurement Area: The Board must hold a public hearing before designating an area as a Production Use Measurement Area. The hearing shall consider the results of the studies in the Extreme Decline Study Area, and any other facts relevant to protection of the aquifer in the study area.
5. Other Matters: A public hearing may be held on any matter within the jurisdiction of the Board, provided 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 14.2 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 has filed a written “request for notice form”

Notice will be given to each person who has filed a written “request for notice form” and requests copies of hearing notices pursuant to the procedures set forth in this subsection, and any other person the Board of Directors deems appropriate. The request must identify with as much specificity as possible the type hearings whether they be the permit hearings posed by the District or rulemaking hearings posted by the District of which a written “request for notice form” is requested. A copy of the notice will be provided by mail, facsimile, or electronic mail to a person who has a current “request for notice form.” The date of posting for a permit hearing may not be less than ten (10) calendar days before the date of the hearing. The date of posting for a rulemaking hearing may not be less than twenty (20) days before the date of the hearing.

Any person may receive written notice by mail, facsimile, or electronic mail of such hearing or hearings by submitting a request in writing, addressed to Mesa UWCD. The “request for notice form” 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. To receive notice of a hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile or email to the person in accordance with the information provided by the person in proof that notice was provided by the District. Failure to provide written notice under this section does not invalidate any action taken by the District at a permit hearing or a rulemaking hearing.

B. Notice of Hearing will be published at least once in a Newspaper of general circulation in the District.

The date of publication for a permit hearing may not be less than ten (10) calendar days before the date set for the hearing. The date of publication for a rulemaking hearing may not be less than twenty (20) calendar days before the date set for the hearing.

C. Notice of Hearing will be posted at the County Courthouse in the place where notices are usually posted.

The date of posting for a permit hearing may not be less than ten (10) calendar days before the date of the hearing. The date of posting for a rulemaking hearing may not be less than twenty (20) calendar days before the date of the hearing.

D. Notice of Hearing will be posted at the District Office in a place readily accessible to the public.

The date of posting for a permit hearing may not be less than ten (10) calendar days before the date of the hearing. The date of posting for a rulemaking hearing may not be less than twenty (20) calendar days before the date of the hearing.

E. Notice of Hearing to Permit Applicant.

When a hearing involves a well registration/water well drilling permit, operating permit or “Transfer/Operating Permit,” notice of the date, time, and location of the hearing will be sent by first class mail to the permit applicant at least ten (10) calendar days before the day of the hearing.

When a hearing involves designation of an Extreme Decline Study Area and Production Use Measurement Area, a copy of the notice must be provided by

first class mail to each known landowner, well owner, well operator and groundwater right holder in the proposed area.

F. Notice for Permit hearing must include

1. The time, date and location of the permit hearing
2. The name of applicant
3. The address or approximate location of the well
4. A brief explanation of permit application
5. Any other information deemed relevant or appropriate

G. Notice for Rulemaking Hearing Must Include

1. The time, date and location of the rulemaking hearing
2. A brief explanation of the subject of the rulemaking hearing
3. The location and/or internet site at which a copy of proposed rules may be reviewed or copied.

H. Consolidated Hearing on Applications

1. Except as provided by subsection (2), the District shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the District requires a separate permit or permit amendment application for:
 - a. Drilling, equipping, operating or completing a well or substantially altering the size of a well or well pump under TWC Section 36.113, District Rule Section 10.
 - b. The spacing of wells or the production of groundwater under TWC Section 36.116, District Rule Section 5.
 - c. Transferring groundwater out of the District under TWC Section 36.122, District Rule Section 16.
2. The District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.

I. Scheduling

Hearings may be scheduled during the District's regular business hours, Monday through Friday of any week, except District holidays. All permit hearings will be held at the District office at 8:00 a.m. prior to the regular monthly Board Meeting. However, the Board may adopt at a regular Board Meeting from time to time to change or schedule additional dates, times, and places for hearings. The District Staff will then be instructed by the Board to reschedule hearings. Other hearings will be scheduled at the dates, times and locations set at a regular Board meeting.

RULE 14.3 General Procedures:

A. Board Authority and the Selection and Authority of a Hearing Examiner/Presiding Officer: A hearing must be conducted by:

1. A quorum of the Board of Directors or
2. An individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner/presiding officer over the hearing or matters relating to the hearing.

The Board President or person delegated by the Board to serve as hearing examiner, shall be the presiding officer; however, if the hearing is to be conducted by a quorum of the Board and the Board President is not present, the Board members conducting the hearing shall select a director to serve as the presiding officer. The presiding officer may conduct the hearing or other proceedings in the manner most appropriate. 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 14.2(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, align parties and establish the order for presentation of evidence;
6. Administer oaths to all persons presenting testimony; and may require sworn written testimony. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing or other reasonable means.
7. Examine persons presenting testimony;
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;
14. Exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of the presiding officer.
15. Allow a person who testifies at the hearing (provided the board has not acted on the application) to supplement the testimony given at the hearing by filing additional written materials with the presiding officer and to any person who provided comments on an uncontested application or to any party to a contested hearing, no later than the 10th day after the date of the hearing. A person who receives additional written materials under this subsection may file a response with the presiding officer no later than the 10th day after the date the material is received.
16. Define a contested case permit application as follows: Provided 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 extensive discovery proceedings, the presiding officer will declare the case to be contested and convene a pre-hearing conference as set forth in Rule 14.5. 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. Any case not declared a contested case under this provision is an uncontested case and the presiding officer will summarize the evidence, collect facts and make a conclusion as determined by the Rules of the District. The presiding officer will make appropriate recommendations to the Board.
17. Limit participation in a hearing on a contested application to persons who have a personal justifiable interest related to a legal right, duty, privilege, power or economic interest that is within the regulatory authority and affected by a permit or permit amendment application,

not including persons who have an interest common to members of the public.

18. Issue an order at anytime before Board action under Section 36.411 that:
 - a. Refers the parties of a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing,
 - b. Determines how the costs of the procedures shall be apportioned among the parties, and
 - c. Appoints an impartial third party as provided by Section 2009.053, Government Code to facilitate that procedure.
19. Utilize alternative dispute resolution procedures in the manner provided by governmental bodies under Chapter 2009, Government Code.
20. Utilize procedures for contested case hearings to be consistent with Subchapters C, D and F, Chapter 2001, Government Code, including the authority for the presiding officer to issue a subpoena, require a deposition or order other discovery. Except as provided by this section and Section 36.416, Chapter 2001, Government Code. Administrative Procedure Act, does not apply to the District under this subchapter.

B. Hearing Registration Forms:

Each person who participates in a permit hearing or a rulemaking hearing of the District must submit a registration form providing the following information: name; address; whom the person represents, if the person is not at the hearing in the person's individual capacity, whether the person plans to testify at the hearing; and any other information the District determines 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 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.

E. 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.

F. Reporting:

Hearings and other proceedings will be recorded on a video or an audio cassette tape or, at the discretion of the presiding officer, may be recorded by a 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. Subject to availability of space, any party may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 14.5(b). If a proceeding other than a permit 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 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 or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District Office) for the hearing or 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 will be delivered at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Rule 14.2(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 law must be received in hand at the District's office within the time limit, if any, set by these rules or by the presiding officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.

I. Computing Time:

In computing any period of time specified by these rules, by a presiding officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday as determined by the Board, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

J. 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 or counsel. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.

K. 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.

L. Conduct and Decorum:

Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If in the judgment of the presiding officer, a person is acting in violation of this provision, the presiding officer will first warn the person to

refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.

RULE 14.4 Permit Hearing Procedures:

A. Intent to Contest:

Any person who intends to contest a permit application must attend the permit hearing and present their intent at the public hearing scheduled for that specific well application. Permit hearings will be conducted prior to the beginning of the Board of Directors' regularly scheduled meeting. The hearing will be held at the District Office located at 212 North Avenue G, Lamesa, Texas unless the Board has provided for the hearing to be held at a different location and proper notice has been given. The President of the Board of the Board President's designee shall serve as the presiding officer at permit hearings. Providing the District intends to contest a permit application, the District must provide the applicant written notice of that intent at least five calendar days prior to the date of the hearing.

B. Informal Hearings:

Permit hearings may be conducted informally when, in the judgment of the Hearing Examiner, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.

C. Agreement of Parties:

If, during an informal proceeding, all parties reach a negotiated or agreed settlement which, in the judgment of the Hearing Examiner, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.

D. Decision to Proceed as Uncontested or Contested Case:

If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Hearing Examiner determines these issues will require extensive discovery proceedings, the Hearing Examiner will declare the case to be contested and convene a prehearing conference as set forth in Rule 14.5. The Hearing Examiner may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions the Hearing Examiner

deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.

RULE 14.5 Contested Permit Hearings Procedures

A. Prehearing Conference may be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process.

1. Matters which may be considered at a prehearing conference include, but are not limited to:
 - a. The designation of parties;
 - b. The formulation and simplification of issues;
 - c. The necessity or desirability of amending applications or other pleadings;
 - d. The possibility of making admissions or stipulations;
 - e. The scheduling of discovery;
 - f. The identification of and specification of the number of witnesses;
 - g. The filing and exchange of prepared testimony and exhibits; and
 - h. The procedure at the hearing.
2. Notice: A prehearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 14.2, 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 Hearing Examiner.
3. Conference Action: Action taken at a prehearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.

B. Assessing Reporting and Transcription Costs:

Upon the timely request of any party, or at the discretion of the Hearing Examiner, the Hearing Examiner may assess reporting and transcription

costs to one or more of the parties. The Hearing Examiner must consider the following factors in assessing reporting and transcription costs:

1. The party who requested the transcript;
2. The financial ability of the party to pay the costs;
3. The extent to which the party participated in the hearing;
4. The relative benefits to the various parties of having a transcript;
5. The budgetary constraints of a governmental entity participating in the proceeding;
6. Any other factor that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of reporting or transcription costs is an issue, the Hearing Examiner 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 Examiner's report to the Board.

C. Designation of Parties:

Parties to a hearing will be designated on the first day of hearing or at such other time as the Hearing Examiner determines. The Board of Directors and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Hearing Examiner, good cause exists and the hearing will not be unreasonably delayed.

D. Rights of Designated Parties:

Subject to the direction and orders of the Hearing Examiner, 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.

E. Persons Not Designated as Parties:

At the discretion of the Hearing Examiner, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing.

Comments or statements submitted by nonparties may be included in the record, but may not be considered by the Hearing Examiner as evidence.

F. 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.

G. Interpreters for Deaf Parties and Witnesses:

If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment that inhibits the person's comprehension of the proceedings or communication with others.

H. Agreements to be in Writing:

No agreement between parties or their representatives affecting any pending matter will be considered by the Hearing Examiner unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered as record.

I. Discovery:

Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Hearing Examiner. Unless specifically modified by these rules or by order of the Hearing Examiner, 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 Hearing Examiner.

J. Discovery Sanctions:

If the Hearing Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Hearing Examiner may:

1. Suspend processing of the application for a permit if the applicant is the offending party;

2. Disallow any further discovery of any kind or a particular kind by the offending party;
3. Rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
4. Limit the offending party's participation in the proceeding;
5. Disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
6. Recommend to the board that the hearing be dismissed with or without prejudice.

K. Ex-Parte Communications:

The Hearing Examiner 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 to utilize the special skills and knowledge of the agency in evaluating the evidence.

L. Compelling Testimony:

Swearing Witnesses and Subpoena Power: The Hearing Examiner may compel the testimony of any person which is necessary, helpful, or appropriate to the hearing. The Hearing Examiner will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The Hearing Examiner may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.

M. Evidence:

Except as modified by these rules, the Texas 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 reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.

N. Written Testimony:

When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.

O. Requirements for Exhibits:

Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.

P. Abstracts of Documents:

When documents are numerous, the Hearing Examiner 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.

Q. Introduction and Copies of Exhibits:

Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Hearing Examiner and to each of the parties, unless the Hearing Examiner rules otherwise.

R. Excluding Exhibits:

In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.

S. Official Notice:

The Hearing Examiner may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.

T. Documents in District Files:

Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.

U. Oral Argument:

At the discretion of the Hearing Examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Hearing Examiner 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.

RULE 14.6 Conclusion Of The Hearing; Report:

A. Closing the Record; Final Report:

At the conclusion of the presentation of evidence and any oral argument, the Hearing Examiner may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Hearing Examiner. After the record is closed, the Hearing Examiner will prepare a report to the Board no later than the 30th day after the hearing is concluded. The report must include a summary of the evidence, together with the Hearing Examiner's findings and conclusions and recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy must be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties must be by certified mail.

B. Exceptions to the Hearing Examiner's Report; Reopening the Record:

Prior to Board action any party in a contested case may file written exceptions to the Hearing Examiner'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 Hearing Examiner 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 Hearing Examiner for further proceedings.

C. Time for Board Action on Certain Permit Matters:

In the case of hearings involving new permit applications, original applications for existing wells, or applications for permit renewals or amendments, the Hearing Examiner's report should be submitted, and the Board should act, within 60 calendar days after the close of the hearing record.

RULE 14.7 Rule-Making Hearings Procedures:

A. General Procedures:

The presiding officer will conduct the rule-making hearing in the manner the presiding officer determines to be most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. Comments may be submitted orally or in writing. The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription. The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons or public representatives to advise the District about contemplated rules. 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 14.2; provided, however, that the presiding officer may grant additional time for the submission of documents.

C. Oral Presentations:

Any person who participates in a rulemaking hearing must submit a registration form which includes the name of the person, the address of the person, the name of whom the person represents if the person is not at the hearing in the person's individual capacity and if the person wishes to testify. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

D. Conclusion of the Hearing:

Closing the Record; Hearing Examiner's Report: At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the presiding officer is a Hearing Examiner, the Hearing Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject of the hearing and the public comments received, together with the Hearing Examiner's recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy must be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.

E. Exceptions to the Hearing Examiner's Report; Reopening the Record:

Any interested person may make exceptions to the Hearing Examiner's report, and the Board may reopen the record, as prescribed in Rule 14.6(b).

RULE 14.8 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 written findings and conclusions or 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. Provided the hearing was a contested hearing, the person requesting the rehearing must provide copies of the request to all parties of the hearing. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought. Upon receipt of a timely written request, the District shall make written findings and conclusions regarding the decision of the Board. The District 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, no later than the 35th day after the date the District receives the request. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a

decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within 45 calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within 90 calendar days of submission will be deemed to be a denial of the request.

C. Final Decision:

A decision by the Board on a permit or permit amendment application is final if the request for rehearing is not filed on time and the time has expired for filing a request for rehearing. Provided the request for rehearing was filed on time, the Board can deny a request for rehearing and/or render a written decision after a rehearing. An applicant or a party to a contested hearing may not file suit against the District under Section 36.251 if a request for hearing was not filed on time. Provided the applicant or party to a contested case hearing filed on time, said applicant or party may file a suit against the District under Section 36.251 to appeal a decision on a permit or permit amendment application no later than the 60th day after the date on which the decision becomes final.

SECTION 15. INVESTIGATIONS AND ENFORCEMENT

RULE 15.1 Notice And Access To Property:

Board Members and 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 property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District representative or employees who are attempting to conduct an investigation under the District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code Chapter 36. 102.

RULE 15.2 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 15.3 Rule Enforcement:

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

RULE 15.4 Sealing Of Wells:

Following due-process, the District may, upon orders from the judge of the 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 PUMA; or (3) the Board has denied, canceled or revoked a well registration/water well drilling permit, an operating permit, or a "Transfer/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.

SECTION 16. TRANSFER OF GROUNDWATER OUT OF DISTRICT

RULE 16.1 Requirements:

A permit to drill a new well which will be used to transport groundwater out of the District, or a permit to transfer groundwater out of the District from existing wells shall adhere to the Rules of Mesa Underground Water Conservation District. The District Management Plan states "The District is aware of the needs for municipal water use throughout Texas. Likewise, the District is mindful of the rights of groundwater owners to market their resource. As a result, the District will do everything possible to protect all water users under our permitting process with strict requirements that promote fair and equitable spacing and production limitations. The District supports the beneficial use of groundwater inside or outside the District providing all conditions are consistent with District Rules. District Rule 6.1 Maximum

Allowable Production, as it applies to in-district use, shall apply equally to a “Transport/Operating Permit”.

RULE 16.2 Administrative Fee:

Each application for a permit to transfer groundwater out of the District shall be accompanied by a \$500 application processing fee. The processing fee is to offset the additional cost for studies necessary to meet the requirements in Texas Water Code Chapter 36.122(f).

RULE 16.3 “Transfer/Operating Permit”:

A permit to transfer groundwater out of the District shall be known as a “Transfer/Operating Permit”. The person, as defined in Rule 1.1(u), responsible for exporting the groundwater out of the district through any conveyance system is required to obtain the “Transfer/Operating Permit” and shall be known as the applicant/holder of such permit. A “Transfer/Operating Permit” will assume all the requirements and function under the provisions of District Rule Section 10 Well Registration and Permits as an “Operating Permit” except as otherwise indicated in this section. As provided by District Rule 10.3 and 10.4, any new well drilled or existing well(s) operated under Section 16 must obtain an “Operating Permit” and shall install and maintain a water meter on the well/well system and operate the well/well system under the requirements described in Rule 7.3 *Procedure Following Establishment of PUMA* as if it were located within a Production Use Measurement Area (PUMA).

RULE 16.4 Decision And Issuance Of Permit:

In reviewing a proposed transfer of groundwater out of the District (“Transfer/Operating Permit”), and in setting the terms of the permit, the Board shall consider the District Rules, District Management Plan, Regional Management Plan, and provisions in Texas Water Code Chapter 36.122 *Transfer of Groundwater Out of District (f) (1)* “the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested; (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders of other groundwater users within the district”.

A. The “Transfer/Operating Permit” shall specify:

1. The amount of water that may be transferred out of the District
 - a. The amount of water for a “Transfer/Operating Permit” will be calculated by using the formula described in Rule 7.3 (2) *Procedure Following Establishment of PUMA* (Operating permit calculation)

- b. The Board will approve operating permits for four (4) acre feet for each acre owned or operated, not to exceed 2,560 acre feet per numbered Section.
 - c. Operating permits will indicate the number of acres for the permit multiplied by the four (4) acre feet to establish the total acre feet for the operating permit.
 - d. Operating permits will indicate the total acre feet allowed by the permit multiplied by 325,800 gallons to establish the total gallons for the permit.
 - e. The amount of water transported out of District on an Operating permit must always be consistent with District Rule Section 6. Production Limitations.
2. The period for which groundwater may be transferred out of the District shall be in compliance with Texas Water Code Chapter 36.122(i).
- a. At least three (3) years if construction of a conveyance system has not been initiated prior to the issuance of the "Transfer/Operating Permit."
 - b. At least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit
 - c. The three (3) year term shall automatically be extended to a 30 year term provided the construction of a conveyance system is begun before the expiration of the original term.

B. The "Transfer/Operating Permit" is required to operate under the requirements of Rule 7.3 Procedure Following Establishment of PUMA (4) Enforcement of Rules.

- 1. It is violation of Rule 6.1 (b) and Rule 16.4 (A)(1)(a) to exceed the operating permit
- 2. It is violation of Rule 10.2 (b) to operate a well/well system without an operating permit application filed with the District and the operating permit for the well/well system must be approved and remain permitted until an operating permit is no longer required for the well/well system or the 30 year term of the permit has expired.
- 3. District Rules will be enforced by Rule 15.3.

C. Nondiscriminatory:

As defined in Texas Water Code Chapter 36.122 (q), Mesa UWCD shall be fair, impartial, and nondiscriminatory by implementing the same Operating permit provisions to all water users. In implementing Texas Water Code Chapter 36.122 (c) the District is imposing the same (not more restrictive) permit conditions on transporters that it does on existing in-district users.

RULE 16.5 Exceptions:

A. Grandfathered Transfers:

A "Transfer/Operating Permit" will not be required for groundwater transferred out of District under a continuing agreement which was in effect prior to March 2, 1997.

B. Increase of Transfer Amount:

A "Transfer/Operating Permit" shall be required for any increase in the amount of groundwater to be transferred under the continuing agreement or the establishment of a new agreement.

C. Section 16 applies only to the transfer of groundwater which is initiated or increased after the effective date of this section (May 1, 1999).

D. Section 16.6 applies only to the transfer of groundwater which is initiated or increased after the effective date of this section (May 11, 2004).

RULE 16.6 Export Fee:

A. Reason for Fee:

The District shall impose a fee to the applicant/holder of a "Transfer/Operating Permit" for groundwater that will be transferred out of the District. Revenue obtained from this fee will not be used to prohibit the transfer of groundwater outside the District as mandated in Texas Water Code 36.122(l). The revenue received will be utilized to increase the monitoring of groundwater quantity and quality and other projects necessary to protect and conserve the groundwater.

B. Annual Fee Accessed:

The applicant/holder of a "Transfer/Operating Permit" shall remit to the District prior to obtaining the approved annual "Transfer/Operating Permit" one-half (½) of the projected annual export fee. The remaining one-half (½) projected

annual export fee shall be adjusted after the first six (6) months of operation of the "Transfer/Operating Permit" to more closely coincide with the actual measurement of groundwater pumped for export. The amount of the adjusted export fee shall be paid to the District within 20 days after the mid year export fee adjustments have been calculated and presented to the permit holder. Any adjustments that may have arisen to the export fee in the last six (6) months of operation of the "Transfer/Operating Permit" shall be calculated and settled in the initial payment of the export fee for the beginning of the newly approved "Transfer/Operating Permit."

C. How Rate is Assessed:

The export fee shall be assessed at the rate equivalent to Texas Water Code Chapter 36.122 (e) (2) which provides that "a rate not to exceed the equivalent of the district's tax rate per hundred dollars of valuation for each thousand gallons of water transferred out of the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate less than 2.5 cents per hundred dollars of valuation".

D. Alternate Method of Imposing Export Fee:

The Board may also choose an alternate method of imposing an export fee that would assess a fee negotiated between the District and the transporter, provided the circumstances concerning the transport of groundwater outside the District are such that the measurement of the groundwater being transported cannot be accurately calculated with a metering device because the water well is producing groundwater for multiple uses that may not be included in the transport of groundwater outside the District. The negotiated transport fee applies only when groundwater is being transported out of the District on a truckload basis. This negotiated fee shall be paid by the applicant/holder of the "Transfer/Operating Permit" as described in Rule 16.6(a).

E. No Fee if Moved Within District:

The District shall not impose an export fee on groundwater that is pumped within the District and then moved outside the District if the water is to be utilized within the same numbered Section upon which the ownership of the land surface and the ownership of said water rights are identical for the acres owned, operated or controlled.

F. The District shall not impose an export fee if for Domestic or Livestock:

On groundwater that is pumped within the District and then moved outside the District if the water is to be utilized for domestic and livestock and the ownership of the land surface and the ownership of said water rights are

identical for the acres owned, operated or controlled.

G. The District shall not impose an export fee if used within the same lease or field.

On groundwater that is pumped within the District and then moved outside the District if the water is to be utilized within the same lease or field from which it was pumped.

I. Violation:

It is a violation of the rules of subsection 16.6 for failure to pay the export fee as prescribed and punishable by civil penalties as provided by the District Rule 15.3.

I. Void Permits:

A violation of Rule 16 causes the "Transfer/Operating Permit" to become null and void.