WINTERGARDEN GROUNDWATER CONSERVATION DISTRICT

Official District Rules and Regulations

Adopted March 29, 2007

2881 Hwy. 277 West
P. O. Box 1433
Carrizo Springs, Texas 78834

830-876-3801
Fax 830-876-3782
email wgcd.swtrea@sbcglobal.net
www.swtrea.org

TABLE OF CONTENTS

Page

SECTION 1. DEFINITIONS AND MATTERS OF GENERAL APPLICABILITY 5
Rule 1.1 — Definitions 5
Rule 1.2 — Purpose of Rules 12
Rule 1.3 — Use and Effect of Rules 12
Rule 1.4 — Amendment of Rules 12
Rule 1.5 — Headings and Captions 12
Rule 1.6 — Construction 12
Rule 1.7 — Methods of Service Under the Rules 12
Rule 1.8 — Severability 13
SECTION 2. BOARD 13
Rule 2.1 — Role of Board 13
Rule 2.2 — Board Structure, Officers 13
Rule 2.3 — Meetings 13
Rule 2.4 — Committees 13
Rule 2.5 — Board Compensation 13
Rule 2.6 — Ex Parte Communications 14
Rule 2.7 — Nominations and Election of Seven (7) Candidates to Serve on the Southwest Texas Rain Enhancement Association (SWTREA) Board of Directors 14
SECTION 3. GENERAL MANAGE 15
Rule 3.1 — General Manager 15
Rule 3.2 — Delegation of Authority 15
SECTION 4. DISTRICT ADMINISTRATION 15
Rule 4.1 — Minutes and Records of the District 15
Rule 4.2 — Certified Copies 15
Rule 4.3 — Office Hours 15
SECTION 5. DISTRICT WATER MANAGEMENT PLAN 15
Rule 5.1 — District Management Plan 15
Rule 5.2 — District's Management Goals 16
Rule 5.3 — Joint Planning 16
SECTION 6. STANDARDS AND REQUIREMENTS APPLICABLE TO ALL WELLS. 16
Rule 6.1 — Waste Not Permitted 16
Rule 6.2 — Use for a Beneficial Purpose 16
Rule 6.3 — Groundwater Quality 16
Rule 6.4 — Water Meters or Monitoring Devices 17
Rule 6.5 — Groundwater Production Reporting Requirements 17
Rule 6.6 — Location of Wells 18
Rule 6.7 — Minimum Standards of Well Completion 19
Rule 6.8 — Time to Complete a Test Well 22
Rule 6.9 — Disinfecting a Well Used for Human Consumption 22
Rule 6.10 — Persons Authorized to Drill 23
Rule 6.11 — Driller's Log, Casing, and Pump Data 23
Rule 6.12 — Aquifer Storage and Recovery (ASR 23
Rule 6.13 — Replacement Wells 23
RULE 6.14 — Variances and Allowable Exceptions. 24

SECTION 7. WELL SPACING AND PRODUCTION LIMITS 24
Rule 7.1 — Well Spacing 24
Rule 7.2 — Well Production Limits 25
Rule 7.3 — Exceptions to Spacing and Production Rules 26
SECTION 8. REGISTRATION OF EXISTING (GRANDFATHERED) WELLS 27
Rule 8.1 — Existing Wells 27
Rule 8.2 — Deadline for Registration of Existing Wells 27
Rule 8.4 — Contents of Registration 27
Rule 8.5 — Historic Use Authorization 28
Rule 8.6 — No Fee for Registering Existing Wells 28
Rule 8.7 — Reporting Requirements for Existing Wells 28
SECTION 9. EXEMPT WELLS 29
Rule 9.1 — Exempt from Permitting 29
Rule 9.2 — Registration of Exempt Wells 30
Rule 9.3 — Compliance with Well Design Criteria 30
Rule 9.4 — Registration Fee 30
Rule 9.5 — Water Well Driller 30
Rule 9.6 — Change in Use 30
Rule 9.7 — Reporting Requirements for Exempt Wells 30
SECTION 10. WELL PERMITS 31
Rule 10.1 — Requirement for a Well Permit or Well Permit Amendment 31
Rule 10.2 — Application for a Well Permit or Well Permit Amendment 32
Rule 10.3 — Compliance with Well Completion Criteria 33
Rule 10.4 — Well Permit Application Fee 34
Rule 10.5 — Water Well Driller 34
Rule 10.6 — Standard Well Permit Conditions 34
Rule 10.7 — Groundwater Allocation 35
Rule 10.8 — Well Spacing and Well Location Requirements 35
Rule 10.9 — Reporting Requirements for Production of Groundwater 35
Rule 10.10 — Well Meters or Monitoring Devices 35
Rule 10.11 — Elements of a Well Permit 35
Rule 10.12 — Permit Terms and Limitations 36
Rule 10.13 — Transfer of Ownership of a Permit 36
Rule 10.14 — Temporary or Emergency Permits 37
SECTION 11. TRANSFER OF GROUNDWATER OUT OF THE DISTRICT 37
Rule 11.1 — Permit Required 37
Rule 11.2 — Applicability 38
Rule 11.3 — Application for a Transportation Permit 38
Rule 11.4 — Registration of Transportation Wells 40
Rule 11.5 — Notice and Hearing Provisions 41
Rule 11.6 — Factors to be Considered in Issuance of Transportation Permits 41
Rule 11.7 — Term of Transportation Permit 42
Rule 11.8 — Review of Transportation Permit 42
Rule 11.9 — Production and Spacing Rules 42
Rule 11.10 — Monitoring and Reporting Requirements 43
Rule 11.11 — Amendments and Transfers of Transportation Permits 43
Rule 11.12 — Application Fee 43

Rule 11.13 — Transportation Fee 43
SECTION 12. RECHARGE FACILITIES 44
Rule 12.1 — Recharge Facilities 44
SECTION 13. APPLICATION REVIEW PROCEDURES 45
Rule 13.1 — Scope of Applicability 45
Rule 13.2 — Notice of Application 45
Rule 13.3 — General Manager's Determination of Administratively Complete 46
Rule 13.4 — General Manager's Technical Review of Application 46
Rule 13.5 — General Manager's Recommendation on the Application 46
Rule 13.6 — Decision on Uncontested Application 47
Rule 13.7 — Factors to Consider in Issuing a Permit 47
SECTION 14. HEARINGS 48
Rule 14.1 — Applicability 48
Rule 14.2 — Hearing Applications for Permits 48
Rule 14.3 — Contested Permits 48
Rule 14.4 — Scheduling of Hearing 49
Rule 14.5 — Notice 49
Rule 14.6 — Prehearing Conference 50
Rule 14.7 — Designation of Parties 50
Rule 14.8 — Hearing Registration 51
Rule 14.9 — Hearing Procedures 51
Rule 14.10 — Evidence 52
Rule 14.11 — Testimony 53
Rule 14.12 — Recording 53
Rule 14.13 — Continuance 54
Rule 14.14 — Report 54
Rule 14.15 — Board Action 54
Rule 14.16 — Request for Rehearing or Findings and Conclusions 55
Rule 14.17 — Decision; When Final 55
Rule 14.18 — Consolidated Hearing on Applications 56
Rule 14.19 — Alternative Dispute Resolution 56
SECTION 15. RULEMAKING 56
Rule 15.1 — General Procedures for Amending District Rules 56
Rule 15.2 — Notice of Proposed Rules 56
Rule 15.3 — Notice of Proposed Rules and Rulemaking Hearing 56
Rule 15.4 — Rulemaking Hearing Procedure 57
Rule 15.5 — Close of Rulemaking Hearing and Consideration of Public Comment 58
Rule 15.6 — Appeal of District Rules 58
Rule 15.7 — Emergency Rules 59
SECTION 16. INVESTIGATIONS AND ENFORCEMENT 59
Rule 16.1 — Notice and Access to Property 59
Rule 16.2 — Limitations of District Employee Activities 59
Rule 16.3 — Conduct of Investigation 60
Rule 16.4 — Request for Injunctive Relief and Assessment of Penalties 60
Rule 16.5 — Sealing, Capping, and Plugging of Wells 60
SECTION 17. FEES 62

Rule 17.1 — Application and Hearing Fees 62
Rule 17.2 — Groundwater Transportation Fees 62
Rule 17.3 — Other Fees 62
RESOLUTION ADOPTING RULES 63

WINTERGARDEN GROUNDWATER CONSERVATION DISTRICT

DISTRICT RULES

SECTION 1. DEFINITIONS AND MATTERS OF GENERAL APPLICABILITY

Rule 1.1 — Definitions. Unless the context in these rules indicates a contrary meaning, the terms hereinafter defined have the following meaning in these rules:

(1) "Acre foot" means the amount of water necessary to cover one acre of land to the depth of one foot, or 325,851 U.S. gallons of water.

(2) "Affected person" means, for any matter before the District, a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by the matter before the District, not including a person who has an interest common to members of the public.

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

(4) "Agriculture" means any of the following activities:

(a) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(b) the practice of floriculture, viticulture, silviculture and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(c) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(d) planting cover crops, including cover crops cultivated for transportation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(e) wildlife management; and

(f) raising or keeping equine animals.

(5) "Applicant" means a person who submits the required forms to the District and pays the required fees for authorization to drill and operate a groundwater well, either by registration or permit.

(6) "Aquifer" means a geologic formation, group of formations, or part of a formation

that is capable of yielding a significant amount of water to a well or spring, and also includes subdivision(s) of an aquifer.

(7) "Aquifer Storage and Retrieval Project" or "ASR" means a project with two phases that proposes the use of a Class V aquifer storage well for injection of appropriated surface water or groundwater withdrawn from a point of withdrawal different from the point of injection into a geologic formation, group of formations, or part of a formation that is capable of underground storage of water for subsequent retrieval and beneficial use.

(8) "Aquifer Storage Well" means a Class V injection well as defined in 30 Texas Administrative Code, Section 331.11, designed and used expressly for the injection of water into a geologic formation, group of formations, or part of a formation that is capable of underground storage of water for later retrieval and beneficial use.

(9) "Artesian Well" means a water well completed in the confined portion of an aquifer such that, when properly cased, water will rise in the well, by natural pressure, above an overlying impermeable stratum.

(10) "Beneficial Use" or "Beneficial Purpose" means the use of the amount of groundwater which does not constitute waste, as defined in these rules, and is economically necessary for a purpose authorized by law when reasonable intelligence and reasonable diligence are used in applying the water to one or more of the following purposes:

(a) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;

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

(c) any other lawful purpose that is useful and beneficial to the user.

(11) "Board" means the Board of Directors of the Wintergarden Groundwater Conservation District.

(12) "Casing" means a tubular, watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the groundwaters to their zones of origin and prevent the entrance of surface pollutants.

(13) "Cement" means a neat Portland or construction cement mixture of not more than seven (7) gallons of water per ninety-four (94) pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum, or other additives. All manufacturers' recommendations regarding water content for the mix must be strictly adhered to.

(14) "Conservation" means:

(a) the development of water resources; and

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

(15) "Contiguous acreage" means the amount of adjoining land (i.e. land which touches at a point or along a boundary or is separated only by a road or highway) in which the fee simple title is owned by a single person.

(16) "Desired future condition" means the desired, quantified condition of groundwater resources (such as water levels, water quality, spring flows, or volumes) at a specified time or times in the future or in perpetuity, as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process. Desired future conditions have to be physically possible, individually and collectively, if different desired future conditions are stated for different geographic areas overlying an aquifer or subdivision of an aquifer.

(17) "Deteriorated Well" means a well, the condition of which will cause, or is likely to cause, pollution of any water in the District.

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

(19) "District" means the Wintergarden Groundwater Conservation District.

(20) "District Management Plan" or "Plan" means the comprehensive water management plan adopted by the District, pursuant to Section 36.1071 of the Texas Water Code.

(21) "District Act" means the Wintergarden Groundwater Conservation District Act, Acts 1997, 75th Legislature, R.S., Chapter 1149, HB 3602.

(22) "District office" means the office of the District. The District office may be changed from time to time by resolution of the Board.

(23) "Domestic or livestock use" means the use of groundwater by an individual or a household for drinking, washing, or culinary purposes; irrigation of a family garden or orchard, the produce of which is for household consumption only; or watering of livestock.

(24) "Existing well" or "grandfathered well" means a well that was in existence on the date the District first adopted its rules, which was February 23, 1999; located within the boundaries of the District; and used to withdraw groundwater prior to

that date.

(25) "Federal Conservation Program" means the Conservation Reserve Program of the United States Department of Agriculture.

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

(27) "Hearing body" means the Board, any committee of the Board, or a Hearings Examiner at any hearing held by the District.

(28) "Hearings Examiner" means a person appointed by the Board to conduct a hearing or other proceeding on behalf of the Board.

(29) "Historical Use" means the maximum amount of water withdrawn from an existing well and beneficially used without waste in any one calendar year prior to February 23, 1999, at the historic rate of withdrawal and for the historic use.

(30) "Inflows" means the amount of water that flows into an aquifer from another formation.

(31) "Landowner" means the person who owns fee simple title to the land.

(32) "Managed Available Groundwater" means the amount of water that may be permitted by the District for beneficial use in accordance with the desired future condition of the aquifer as determined under Texas Water Code Section 36.108.

(33) "Municipal use" means the use of groundwater through public water systems authorized by the State of Texas.

(34) "New well application" means an application for a permit for a well that has not been drilled.

(35) "Open Meetings law" means Chapter 551, Texas Government Code, as it may be amended from time to time.

(36) "Open Records law" means Chapter 552, Texas Government Code, as it may be amended from time to time.

(37) "Party" means the applicant, the General Manager or any other person who is an affected person as defined under these rules and who has been admitted as a participant in a proceeding before the District.

(38) "Person" includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(39) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the District, that renders the water

harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose.

(40) "Presiding officer" means the Chair, Vice-Chair, Secretary, or other Board member presiding at any hearing, meeting or other proceeding of the Board, or a Hearings Examiner who has been designated to conduct a hearing or other proceeding on behalf of the Board.

(41) "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water in 30 Texas Administrative Code, Section 290.38. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year, or utilize 9,125,000 or more gallons of water per year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having the potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals serve by the combined systems total 25 or greater at least 60 days out of the year, or utilize 9,125,000 or more gallons of water per year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(42) "Quorum" means a majority of the members of the Board of Directors.

(43) "Recharge" means the amount of water that infiltrates into the water table of an aquifer.

(44) "Recharge facility" means any system for recharge, injection, storage, pressure maintenance, cycling or recycling of water, which includes one or more wells, spreading dams, or percolation basins, or any other surface or subsurface system engineered and designed for the purpose of recharging water into a groundwater reservoir.

(45) "Registration" means the act of registering a well that is exempt from permitting under the District's rules and includes the issuance and recordation of a certificate issued by the District.

(46) "Rule(s)" means the rules of the District compiled in this document as they may be supplemented, modified or amended from time to time.

(47) "Sustainability" means the development and use of groundwater in a manner that allows water levels and water quality of the aquifer to be maintained in perpetuity without degradation.

(48) "Texas Rules of Civil Procedure" and "Texas Rules of Evidence" mean the civil procedure and evidence rules, as adopted by The Supreme Court of Texas, as amended, and in effect at the time of the action or proceeding. Except as modified by 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 that of a court acting under those rules.

(49) "Total Aquifer Storage" means the total calculated volume of groundwater that an aquifer is capable of producing.

(50) "Transportation of Groundwater" means pumping, transferring, or moving groundwater out of the district from a withdrawal point of origin within the District.

(51) "Transportation Permit" means a permit issued by the District authorizing the transfer or transporting of a specific amount of groundwater out of the District for a designated period of time and for a designated beneficial use without waste.

(52) "Transportation Facility" means transporting groundwater by pump stations, pipelines, storage tanks, water trucks or other water transportation systems.

(53) "Waste" as used herein shall mean any one or more of the following:

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

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

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

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

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

(f) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the land or well unless permission has been granted by the occupant of the land receiving the discharge;

(g) groundwater pumped in excess of (2.5) acre-feet per year for agricultural use will be considered waste unless prior approval is received from the District;

(h) groundwater that is discharged into a watercourse for transit to another location when the losses in transit exceed 20%;

(i) operating a deteriorated well;

(j) for an artesian well, waste has the meaning assigned by Section 11.205, Texas Water Code; or

(k) groundwater produced from a well that exceeds the production limits of Rule 7.2.

(54) "Water meter" or "water monitoring device" means a water flow measuring device that measures the amount of groundwater produced during a measured time within +/- 10% accuracy.

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

(56) "Well operator" means the person who operates a well or a water distribution system supplied by a well.

(57) "Well owner" means either the landowner or a person who owns the possessory interest in a groundwater well or a proposed groundwater well, if that person is not the landowner.

(58) "Well permit" means a permit that authorizes the drilling and withdrawal of groundwater from a new well, or an existing or exempt well that is to be reworked, re-drilled, or re-equipped in such a manner that a well permit is required to operate the well under Rule 10.1.

(59) "Well permit amendment" means an amendment to a well permit that is triggered by reworking, re-drilling, or re-equipping the well to increase the well's production levels or to change the place or purpose in use of groundwater as required in Rule 10.1.

(60) "Well system" means a well or group of wells tied to the same water distribution system.

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

Rule 1.2 — Purpose of Rules. These Rules are adopted pursuant to the authority of Section 36.101, Texas Water Code for the purpose of conserving, preserving, protecting and recharging the groundwater in the District, and these rules are adopted under the District's statutory authority to prevent waste and protect rights of owners' interest in groundwater.

Rule 1.3 — Use and Effect of Rules. These Rules are used by the District as a guide 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 may they be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law, nor may they be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act.

Rule 1.4 — Amendment of Rules. The Board may, following the notice and hearing provisions of Rule 15, amend these Rules or adopt new Rules from time to time.

Rule 1.5 — Headings and Captions. The section and other headings and captions contained in these Rules are for reference purposes only and do not affect in any way the meaning or interpretation of these Rules.

Rule 1.6 — Construction. A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the Texas Water Code. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code.

Rule 1.7 — Methods of Service Under the Rules. Except as otherwise expressly provided in these Rules, any notice or document required by these Rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 p.m. of the date on which it is due. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. shall be deemed complete the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed period of time after service, three days will be added to the prescribed period. Where service by other methods has proved impossible, the service may be complete upon publication of the notice in a newspaper with general circulation in the District.

Rule 1.8 — Severability. If any one or more of the provisions contained in these Rules is 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 will be construed as if such invalid, illegal of unenforceable rule or provision had never been contained in these Rules.

SECTION 2. BOARD

Rule 2.1 — Role of Board. The Board's role is to determine the policy of the District in the regulation of groundwater in the District, regulate the withdrawal of groundwater within the boundaries of the District, develop water management plans, coordinate and work with other groundwater districts on a regional basis, and to exercise its rights, powers, and duties in a manner that will effectively and expeditiously accomplish the purposes of the District Act and Chapter 36, Texas Water Code, as amended. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules, policy, permits, and orders.

Rule 2.2 — Board Structure, Officers. The Board consists of the members elected, or appointed, and qualified as required by the District Act and Chapter 36, Texas Water Code. Each year at its regular May meeting, and if there is no May meeting, at its next regular meeting, the Board will select one of its members to serve as President to preside over Board meetings and proceedings, one of its members to serve as Vice-President to preside over Board meetings in the absence of the Chair, one of its members to serve as Secretary to keep a true and complete account of all meetings and proceedings of the Board and one of its members to serve as Treasurer to keep a true and accurate account of financial records. Members and officers serve until their successors are elected and sworn in to office in accordance with the District Act, Chapter 36, Texas Water Code, and these Rules.

Rule 2.3 — Meetings. The Board will hold a regular meeting at least quarterly on a day the Board may establish from time to time by resolution. At the request of the Chair, or by request of at least two (2) members, the Board may hold special meetings. All Board meetings will be held in accordance with the Texas Open Meetings Law.

Rule 2.4 — Committees. The President may establish committees for formation of policy recommendations to the Board, and appoint the chair and membership of the committees. Committee membership may be composed of Board members or persons outside of the Board, provided that a majority of the committee members are members of the Board. All committee meetings will be held in accordance with the Texas Open Meetings Law.

Rule 2.5 — Board Compensation. It shall be the policy of the District that there is no compensation for services rendered by the Board of Directors. Rule 2.5 is to be changed only by a unanimous vote.

Rule 2.6 — Ex Parte Communications.

(a) Board members may not communicate directly or indirectly, about any issue of fact or law regarding any pending application 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 if a quorum is not present.

(b) The hearing body may not communicate, directly or indirectly, in connection with any issue of fact or law with respect to the matter that is the subject of the hearing with any district employee, person, party, or their representatives, except on notice and opportunity for all parties to participate.

Rule 2.7 — Nominations and Election of Seven (7) Candidates to Serve on the Southwest Texas Rain Enhancement Association (SWTREA) Board of Directors. Every two years, the Board shall elect the District representatives to serve on the SWTREA Board by the following procedures:

(a) An election will be held at the regular Board of Directors' meeting following the installation of Directors after the District's May General Election in even numbered years.

(b) Each of the seven (7) District directors, if he/she so chooses, may nominate one (1) candidate for the member-at-large position to serve on the SWTREA Board of Directors, who may or may not be a member of the District's Board.

(c) The two (2) directors representing each of the three (3) counties in the District shall jointly nominate two (2) or more individuals, at least one (1) of which is a member of the District's Board, to serve on the SWTREA Board of Directors for a period of two (2) years.

(d) All nominees will be elected via majority vote of the District's Board of Directors with the member-at-large being elected first.

(e) Voting Procedures:

(1) Member-at-large Nominees: Each director will have one (1) vote.

(2) Director nominees from each county: All county nominees will be voted on by all directors. Each director may cast only one (1) vote per nominee.

(3) Tied votes: In the case of a tie, there will be a run-off between the nominees receiving tied votes.

(f) If a vacancy occurs, for any reason, of a District representative serving on the SWTREA Board, such vacancy will be filled in the same manner in which that representative was placed on the SWTREA Board (i.e., county representative or member-at-large). An election for the replacement representative shall be held

at the next regularly scheduled District meeting.

SECTION 3. GENERAL MANAGER

Rule 3.1 — General Manager. The Board may employ a person to be the general manager, who is the chief administrative officer of the District, pursuant to the District Act, and shall have full authority to manage and operate the affairs of the District, subject only to the direction given by the Board through policies and orders adopted by it. After consultation with and authorization by the Board, the General Manager is responsible for employing all persons necessary for the proper handling of the business and operation of the District and determining their compensation.

Rule 3.2 — Delegation of Authority. The Board may delegate to the General Manger, by resolution or by these Rules, specific duties and obligations identified in the resolution or Rule. The General Manager may also delegate duties to his employees as may be necessary to effectively and expeditiously accomplish those duties, provided, that no such delegation may ever relieve the General Manager from ultimate responsibility for such acts.

SECTION 4. DISTRICT ADMINISTRATION

Rule 4.1 — Minutes and Records of the District. All documents, reports, records, and minutes of the District will be available for public inspection and copying in accordance with the Texas Open Records Act. Upon written application of any person, the District will furnish copies of its public records within a reasonable time. Persons who are furnished copies may be assessed a copying charge, pursuant to policies established by the Board. The District will furnish a list of the charges for copies to the requestor.

Rule 4.2 — Certified Copies. Requests for certified copies of official records of the District must be in writing. Certified copies will be made under the direction of the General Manager, who is the custodian of records for the District, and will be affixed with the seal of the District. Persons furnished certified copies may be assessed a certification charge, in addition to the copying charge, pursuant to policies established by the Board.

Rule 4.3 — Office Hours. The District will maintain regular business hours.

SECTION 5. DISTRICT WATER MANAGEMENT PLAN.

Rule 5.1 — District Management Plan. The District shall develop a water management plan in accordance with Section 36.1071, Texas Water Code. Prior to the adoption or amendment of any such management plan the District shall provide public notice of twenty (20) days and hold a public hearing, during which members of the public will be afforded an opportunity to comment on the plan. The policies and provisions of the management plan are enforceable once adopted and the District Rules serve as one method of enforcing and implementing the management plan. The Board may review the management plan annually and must review and readopt the

management plan with or without revisions at least every five (5) years. The District shall submit, within 60 days of adoption, the revised or readopted management plan to the Texas Water Development Board for review and approval, in accordance with Section 36.1072, Texas Water Code. The management plan takes effect on the date approved by the Texas Water Development Board and remains in effect until the adoption of a new plan or the readoption of the existing plan, with or without revisions, in accordance with Section 36.1072(e).

Rule 5.2 — District's Management Goals. In fulfilling the stated purpose of its approved management plan, the Board will manage withdrawals of groundwater from aquifers in the District so as to maintain the aquifers in the District on a sustainable basis. To the extent that any other district manages groundwater within its boundaries that result in a degradation of the groundwater levels or quality in the District's aquifers, the District will demand that the other district construct a recharge feature to compensate for the loss. The Board shall also strive to achieve the desired future conditions established as the result of joint planning as well as to reduce the mining of groundwater resources within the District.

Rule 5.3 — Joint Planning. The District will participate in joint planning with any other districts located in its groundwater management area and forward copies of its approved management plan to those districts, in accordance with Section 36.108, Texas Water Code. The Chairman of the Board, or his or her designee, shall meet at least annually to conduct joint planning with the other districts in the management area. Beginning in 2010 and every five (5) years thereafter, the districts shall establish desired future conditions for the relevant aquifers within the management area in accordance with Section 36.108, Texas Water Code.

SECTION 6. PROVISIONS APPLICABLE TO ALL WELLS

Rule 6.1 — Waste Not Permitted.

(a) Groundwater shall not be produced within, or used within or outside the District, in such a manner as to constitute waste as defined in Rule 1.1(53).

(b) No person shall cause pollution of the groundwater reservoir or aquifer in the District.

(c) No person shall cause, suffer, allow, or permit waste as that term is defined in Rule 1.1(53).

(d) No person shall allow the continued existence of a deteriorated well.

Rule 6.2 — Use for a Beneficial Purpose. Groundwater that originates or is produced in the District shall be used for a beneficial purpose.

Rule 6.3 — Groundwater Quality. All persons generating, transporting, disposing, applying, or otherwise managing substances defined under state or federal law as solid, hazardous, or radioactive waste, or as sludge, must follow any and all applicable

federal, state, and local environmental statues, requirements, and regulations, including, but not limited to those imposed under the Solid Waste Disposal Act (RCRA), the Public Health Service Act (the Safe Drinking Water Act), the Federal Water Pollution Control Act (the Clean Water Act), the National Environmental Policy Act, the Atomic Energy Act and the Low-Level Radioactive Waste Policy Act, as those statues, requirements or regulations are administered by the appropriate agency, including but not limited to the Texas Railroad Commission, the Texas Commission on Environmental Quality, the Texas Department of Health, or their successors, and the Environmental Protection Agency. In the event that applicable statutes, requirements, or regulations require that the person generating, transporting, applying, disposing or otherwise managing a waste or a sludge obtain a permit from an agency, and where those activities occur within the boundaries of the District, notice of the application must be provided to the District by the applicant within ten days of the date of application. In no event may waste or sludge be permitted to be applied in any manner in any outcrop area of any aquifer within the District.

Rule 6.4 — Water Meters or Monitoring Devices. All wells or production facilities subject to the requirement to obtain a well permit under Rule 10, shall be equipped with a flow meter or at a minimum, a production monitoring device approved by the District, and available for District inspection at any time during normal business hours. An hour meter may be considered as a production-monitoring device on a well, if the well output (expressed in gallons per minute) can be accurately determined.

Rule 6.5 — Groundwater Production Reporting Requirements.

(a) **Agricultural or Livestock Use.** The owner of a well permit authorized to produce groundwater in excess of 25,000 gallons per day for an agricultural or livestock use, shall file with the District annual reports describing the amount of water produced and used for the permitted purpose. Such reports shall:

(1) be filed on forms approved by the District;

(2) be due on or before the 30th day (or January 30) following the close of the calendar year in which groundwater production commenced and annually thereafter; and

(3) provide the amount of groundwater produced, expressed in acre feet, and describe the use of the groundwater for the preceding calendar year.

(b) **Other Beneficial Uses.** The owner of a well permit authorized to produce groundwater for any other purpose, shall file with the District quarterly reports describing the amount of water produced, expressed in terms of acre feet, and used for the permitted purpose. Such reports shall:

(1) be filed on forms approved by the District; and

(2) be due 30 days after the close of each calendar quarter on March 31, June 30, September 30 and December 31 following the close of the first

quarter in which groundwater production commenced and each quarter thereafter; and

(3) provide the amount of groundwater produced and the use of the groundwater for the preceding quarter.

(c) **Additional Reports by a Public Water System.** Each December 31st, a public water system that withdraws groundwater within the District shall file a report with the District regarding the number of new connections served during the preceding 12 month period and the number of new connections it anticipates that it will add in the next calendar year. If the number of new connections it anticipates that it will need to serve in the next calendar year exceeds the amount of groundwater for which it is already permitted, the public water system shall file an application for an amendment to its well permit.

(d) **Mining.** A person required to obtain a permit for a well when the exempt well produces more than is needed for mining purposes (as described in Rule 9.1(b)), shall report monthly to the District the total amount of water withdrawn from the well, the quantity of water necessary for mining purposes, and the quantity of water withdrawn for other purposes.

Rule 6.6 — Location of Wells.

(a) After an application for a well permit has been granted, the well, if drilled, must be drilled within five percent (5%) of the distance used to determine the location of the well in the permit application or thirty (30) feet of the location specified in the permit, whichever is greater.

(b) A well shall be located a minimum horizontal distance of fifty (50) feet from any watertight sewage or liquid-waste collection facility.

(c) A well shall be located a minimum horizontal distance of one hundred and fifty (150) feet from any concentrated sources of potential or existing contamination, including, but not limited to, existing or proposed livestock or poultry yards, privies, underground storage tanks, septic system absorption fields, cemeteries, and pesticide mixing/loading facilities. If, however, this distance can not be accommodated within the limits of a person's property, this distance may be decreased provided the total depth of cement slurry is increased by twice the horizontal reduction. In no case shall a well be located less than fifty (50) feet from any concentrated sources of contamination.

(d) 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 twenty-four (24) inches above known flood level.

(e) No well shall be located within five-hundred (500) feet of a sewage treatment plant, solid waste disposal site or land irrigated by sewage plant effluent, or

within three-hundred (300) feet of a sewage wet well, sewage pumping station or a drainage ditch which contains industrial waste discharges or wastes from sewage treatment systems.

(f) The distances given for separation of wells from sources of potential contamination in subsection (c) of this section may be decreased to a minimum of fifty (50) feet provided the well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressured filled to the depth of one (100) feet to the surface provided the annular space is three (3) inches larger than the casing. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata. Wells subject to the completion standards of the Texas Commission on Environmental Quality, under 30 Tex. Admin. Code, Chapter 331, related to Class V injection wells, are exempt from this section.

(g) A well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressured filled to the depth of one hundred (100) feet to the surface provided the annular space is three (3) inches larger than the casing may encroach up to five (5) feet of the property line. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the static level. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata.

(h) The standards set forth in subparagraphs (b) through (g) of this section do not apply to wells used solely for monitoring, dewatering, piezometer, or recovery. These wells may be located where necessity dictates.

Rule 6.7 — Minimum Standards of Well Completion. All wells shall be equipped and maintained so as to prevent the escape of groundwater from a groundwater reservoir to a formation not containing groundwater and to prevent the harmful alteration of the character of groundwater in any groundwater reservoir. At a minimum, all wells in the district shall be equipped as follows:

(a) Wells shall be completed in compliance with the District rules as follows:

(1) The annular space of the well shall be to a minimum of ten (10) feet deep and shall be three (3) inches larger in diameter than the outside wall of the casing.

(2). The annular spacing shall be filled from ground level to a depth of not less than ten (10) feet below the land surface or well head with a cement slurry, bentonite grout, or an eight (8) foot solid column of granular sodium bentonite topped with a two (2) foot cement atmospheric barrier.

(3) Except in the case of a monitoring, dewatering, piezometer, or recovery well where the water to be monitored, recovered, or dewatered is located at a depth shallower than ten feet, the cement slurry or bentonite column shall extend down to the level immediately above the monitoring, recovery, or dewatering level.

(b) In all wells where plastic casing is used, except when a steel or polyvinyl chloride (PVC) sleeve or pitless adapter is used, as described in paragraph (c) of this section, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface. The concrete slab or sealing block and casing shall the meet the following standards:

(1) the slab or block shall extend laterally at least two (2) feet from the well in all directions, have a minimum thickness of four (4) inches, and shall be separated from the well casing by a plastic or mosaic coating or sleeve to prevent bonding of the slab to the casing;

(2) the surface of the slab shall be sloped to drain away from the well; and

(3) the top of the casing shall extend a minimum of twelve (12) inches above the land surface except in the case of monitoring wells when it is impractical or unreasonable to extend the casing above the ground.

(c) In wells where a steel sleeve or PVC sleeve is used:

(1) The steel sleeve shall be a minimum of 3/16 inches in thickness. The plastic sleeve shall be a minimum of Schedule 80 sun resistant or SDR 17 in the 6" and 8" sun resistant. Both shall be twenty-four (24) inches in length, and shall extend twelve (12) inches into the cement, except when steel casing or a pitless adapter as described in paragraph (2) of this subsection is issued. The casing shall extend a minimum of twelve (12) inches above the land surface, and the steel/plastic sleeve shall be two (2) inches larger in diameter than the plastic casing being used and filled entirely with cement. A slab or block as described in paragraph (b)(1) and (2) of this subsection is required above the cement slurry except when a pitless adapter is used.

(2) Pitless adapters may be used in a well provided that:

(i) the adapter is welded to the casing or fitted with another suitably effective seal;

(ii) the annular space between the borehole and the casing is filled

with cement to a depth not less than twenty (20) feet below the adapter connection; and

(iii) in lieu of cement, the annular space may be filled with a solid column of granular sodium bentonite to a depth of not less than twenty (20) feet below the adapter connection.

(d) In addition to the requirements set forth in this section, monitor wells shall be completed to meet the following standards:

(1) monitor wells shall be placed in a waterproof vault the rim of which extends two (2) inches above the ground surface;

(2) a sloping cement slurry shall be placed a minimum twelve (12) inches from the edge of the vault between the casing and the wall of the borehole so as to prevent surface pollutants from entering the monitoring well;

(3) the well casing shall have a locking cap that will prevent pollutants from entering the well; and

(4) the annular space of the monitoring well shall be sealed with an impervious bentonite or similar material from the top of the interval to be tested to the cement slurry below the vault of the monitoring well.

(e) In addition to the requirements set forth in this section, the well casing of a temporary monitor well shall have a locking cap and the annular space shall be sealed from zero (0) to one (1) foot below ground level with an impervious bentonite or similar material, within 48 hours of cessation of drilling activity, the well must be completed or plugged in accordance with Texas Department Licensing Regulations § 76.1004 relating to Technical Requirements – Standards for Capping and Plugging of Wells that Penetrate Undesirable Water or Constituent Zones.

(f) In addition to the requirements set forth in this section, the annular space of a closed loop injection well used to circulate water or other fluids for heat exchange shall be backfilled to the total depth with impervious bentonite or similar material. In a closed loop injection well where there is no water or only one (1) zone of water is encountered sand, gravel or drill cuttings to back fill up to thirty (30) feet from the surface may be used. The top thirty (30) feet shall be filled with impervious bentonite or similar materials that meet the standards pursuant to Texas Natural Resource Conservation Commission 30 TAC, Chapter 331.

(g) All wells shall be completed so that aquifers or zones containing waters that differ 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.

(h) The licensed water well driller shall complete the well casing in a manner that will prevent pollutants from entering the well.

(i) Each licensed well driller who drills, deepens, or alters a well shall keep any drilling fluids, tailings, cuttings, or spoils contained in such a manner so as to prevent spillage onto adjacent property not under the jurisdiction or control of the well owner without the adjacent property owners' written consent.

(j) Each licensed well driller who drills, deepens, or alters a well shall prevent the spillage of any drilling fluids, tailings, cuttings, or spoils into any body of surface water.

(k) Water wells located within public water systems' sanitary easements must be constructed to public well standards pursuant to 30 TAC Chapter 290.

Rule 6.8 — Time to Complete a Test Well. A test well that is drilled to explore for groundwater must be completed or plugged within thirty (30) calendar days from the date drilling is begun on the well.

Rule 6.9 — Disinfecting a Well Used for Human Consumption.

(a) Unless waived in writing by the landowner, after performing an installation or repair on a well used to supply water for human consumption, the licensed water well driller shall disinfect the well by:

(1) treating the water in the well casing to provide an average disinfectant residual to the entire volume of water in the well casing of fifty (50) mg/l. This may be accomplished by the addition of calcium hypochlorite tablets or sodium hypochlorite solution in the prescribed amounts;

(2) circulating, to the extent possible, the disinfected water in the well casing and pump column; and

(3) pumping the well to remove disinfected water for a minimum of fifteen (15) minutes.

(b) If calcium hypochlorite (granules or tablets) is used, the driller should dribble the tablets of approximately five-gram (g) size down the casing vent and wait at least thirty (30) minutes for the tablets to fall through the water and dissolve. If sodium hypochlorite (liquid solution) is used, care should be taken that this solution reaches all parts of the well. The driller should use a tube to pipe the solution through the well-casing vent so that it reaches the bottom of the well. After the disinfectant has been applied, the installer should surge the well at least three (3) times to improve the mixing and to induce contact of disinfected water with the adjacent aquifer. The installer should then allow the disinfected water to rest in the casing for at least twelve (12) hours, but not for more than twenty-four (24) hours. Where possible, the installer should pump the well for a minimum of fifteen (15) minutes after completing the disinfection procedures set forth above until a residual is obtained. In wells where bacteriological contamination is suspected, the installer shall inform the well or property owner that bacteriological testing may be necessary or desirable.

Rule 6.10 — Persons Authorized to Drill. Only persons who are licensed water well drillers, in good standing with the Texas Water Well Drillers Board, may drill water wells within the District, except as follows:

(a) A person who drills, bores, cores, or constructs a water well on his or her own land for his or her own personal use, provided minimum standards for well completion, as stated in Rule 6.7 herein, are met.

(b) A person who assists in the construction of a well under direct supervision of a licensed well driller and is not primarily responsible for the drilling operation.

Rule 6.11 — Driller's Log, Casing, and Pump Data. The District shall keep complete records of all reports made to the District concerning the drilling of groundwater wells, maximum production capacity, and equipping and completion of all wells drilled in the District. Such records shall include the driller's log, any mechanical log that may have been made, and a registration certificate or permit for the well, as applicable. The water well driller shall file a copy of the State Well Report and other records mentioned above with the District within sixty (60) calendar days after completion of the well, and the information provided on such forms or records shall be complete and accurate.

Rule 6.12 — Aquifer Storage and Recovery (ASR). Any person storing appropriated water in aquifers within the District for subsequent retrieval and beneficial use must demonstrate to the District that the project complies with the provisions of §§ 11.153 and 11.154, Texas Water Code, and such person shall:

(a) Register the injection and recovery well(s) with the District in accordance with Rule 8.4; and

(b) By the 10th day of each calendar month, provide the District with a written report showing for the previous calendar month:

(1) the amount of water injected for storage; and

(2) the amount of water recaptured for use.

Rule 6.13 — Replacement Wells.

(a) A well owner may apply to re-equip, re-drill, or replace a currently permitted or registered well by filing an application to amend such permit and/or registration, and providing such information as may be required by the General Manager to demonstrate the following conditions:

(1) the replacement well must be drilled within fifty (50) feet of the location of the well being replaced;

(2) the replacement well shall not be located any closer to any other permitted well or authorized well site than the well being replaced, unless the new

location complies with the minimum spacing and location requirements of these Rules;

(3) the replacement well or pump shall not be larger in size or capacity than the well or pump being replaced so as to substantially alter the size or capacity of the well; and

(4) if a replacement well is drilled, the well owner ceases production from the well being replaced and begins pursuit of compliance with the well closure requirements of the District.

(b) Applications submitted under subsection (a) may be granted without notice or hearing. Applications not meeting the criteria of subsection (a) are subject to notice and an opportunity for a hearing.

RULE 6.14 — Variances and Allowable Exceptions. In order to protect vested property rights, to prevent waste, or confiscation of property, the Board may exercise its discretion to grant variances or allowable exceptions to any provision of these rules for good cause. This rule shall not be construed so as to limit the power of the Board and the powers stated are cumulative only of all other powers possessed by the Board.

SECTION 7. WELL SPACING AND PRODUCTION LIMITS

Rule 7.1 — Well Spacing.

(a) No non-exempt well shall be drilled such that said well shall be located closer than one hundred (100) feet to the property line, or spaced closer than a distance that is equivalent to one (1) foot per gallon per minute of the combined production rate of the proposed well and the nearest existing well drilled into the same formation.

(b) The Board may grant exceptions to the well spacing requirements of this Rule and allow the drilling of wells within closer distances when the Board shall determine that such exceptions are necessary either to prevent waste or to prevent confiscation of property.

(c) For the purpose of preventing waste or confiscation of property, the Board reserves the right in particular subterranean water zones and/or reservoirs to enter special orders increasing or decreasing distances provided by this requirement.

(d) In applying this requirement, no subdivision of land made subsequent to the application of the original spacing requirement to the land will be considered in determining whether or not any property is being confiscated within the terms of such spacing requirement.

(e) Any well that is exempt from permitting under Sections 8 and 9 is exempt from the spacing requirements of this section.

Rule 7.2 — Well Production Limits. In the review of applications for well permits or well permit amendments, the District shall authorize annual withdrawals of groundwater subject to the production limits for the following uses, provided that the applicant satisfies all the requirements and conditions of the District Rules or Chapter 36, Texas Water Code, applicable to that application:

(a) **Historic Uses (Grandfathered Uses).** After registration in accordance with Section 8, an existing well is authorized to produce the maximum amount of water withdrawn from the well used for a beneficial purpose without waste during any one calendar year prior to February 23, 1999, at that historic rate and for the historic use.

(b) **Agricultural Use.** A well or well system for agricultural use may be permitted to withdraw groundwater in an amount not to exceed a cumulative maximum of 2½ acre feet per contiguous acre per year owned or operated by the applicant at the time the application is filed. A tract of land otherwise contiguously owned and operated may be divided by a road or highway.

(c) **Surface Reservoir or Tank.** A well or well system used to supply a surface reservoir, stock tank, lake, or other confinement used for agricultural or any other beneficial use may be permitted to withdraw groundwater in an amount that is economically necessary, when reasonable intelligence and reasonable diligence are used for that purpose, not to exceed 2-½ acre feet per acre per year allocation provided for in subsection (b)(1) of this section.

(d) **Public Water System Use.**

(1) A well or well system for public water system use shall be drilled and equipped to meet the Minimum Water System Capacity Requirements for public drinking water systems as set forth in the rules of the Texas Commission on Environmental Quality, or its successor agency, at 30 Tex. Admin. Code Section 290.49, and be permitted to withdraw groundwater in an amount not to exceed the amount that the public water system can demonstrate it needs to meet its current demands within its certificated service area or the municipal city limits served by that public water system that are not already met by an alternate existing water supply and a reasonable amount for future growth.

(2) In considering whether to grant an application for a well permit filed by a public water system, the District shall review the public water system's water conservation plan, drought management plan and any other information that is required to be submitted by District Rules and Chapter 36, Texas Water Code, in support of an application for a well permit. As a condition for issuance of the permit the District may require the public water system to designate a well or wells as monitoring wells of the District and to periodically report aquifer levels to the District as required as a condition in the permit.

(3) Unless demonstrated otherwise by the public water system, the District shall allocate 350 gallons per day per connection for which the public water system has demonstrated a need as provided for in subsection (d)(1) of this Rule.

(e) **Transportation Outside the District.** In order to reduce the economic impact that the transport of groundwater outside the District will have upon agricultural production and other activities in the District, no more than 50% of any well's production allocation may be transported outside the District. Groundwater may not be transported outside the District for irrigation use.

(f) **Industrial Use and Other Uses.** For industrial, commercial or any other use not described in this rule, a well or well system may be permitted for an amount of groundwater not to exceed the amount of water that is economically necessary, when reasonable intelligence and reasonable diligence are used to apply the groundwater to a lawful purpose.

(g) Any well that is exempt from permitting under Sections 8 and 9 is exempt from the production limits of this section.

(h) Any well that has a change in use is subject to the production limits applicable to the new use.

(i) The production of groundwater from a well that exceeds the amounts provided for in this section constitutes waste.

Rule 7.3 — Exceptions to Spacing and Production Rules.

(a) In order to protect vested property rights, to prevent waste, or confiscation of property, the Board may grant exceptions to the spacing and production provisions contained in these rules. This rule shall not be construed so as to limit the power of the Board, and the powers stated are cumulative only of all other powers possessed by the Board.

(b) If an exception to the spacing or production rule is desired, the owner of the well or proposed well shall submit an application in writing to the District office on forms furnished by the District. The application shall be accompanied by:

(1) a plat or sketch, drawn to a scale of one (1) inch equaling two thousand (2,000) feet, showing the applicant's property lines in the immediate area and showing the location of the applicant's proposed well and the location of well or wells from which the applicant seeks an exception;

(2) the name of the formation into which the proposed well is to be drilled and the name of the formation into which the existing well(s) is drilled;

(3) the production rate of the proposed well and the existing well(s);

(4) the names and addresses of all property owners adjoining the tract on which the proposed well is to be located;

(5) the owners of the well(s) from which the applicant seeks an exception or the "affected well(s)";

(6) the reason why the exception to the spacing or production rules is sought and why no other alternative is possible;

(7) a demonstration that that the exception sought will not impair the groundwater rights of the owners of the affected wells; and

(8) the application and plat shall be sworn to by a person with personal knowledge of the facts stated therein and who states that all the facts therein are true and correct.

(c) If an exception is requested to the spacing and production rules, ten (10) days written notice shall be provided by the applicant to the owner(s) of the well(s) affected by the spacing or production exception. Following, the expiration of 10 days after notice is provided to these affected well owners, the Board may consider an exception to the well spacing and production rules at a public hearing at which all interested parties may appear and be heard. Provided, however, that if the owner(s) of the well(s) affected by the exception indicate to the District in writing that they have no objection to the proposed well, then the District may proceed to decide such matter without notice of a public hearing, except to the applicant.

(d) Hearing notices shall state that the application does not meet the spacing or production requirements of the District, and describe the exception requested by the applicant.

SECTION 8. REGISTRATION OF EXISTING (GRANDFATHERED) WELLS

Rule 8.1 — Existing Wells. Unless otherwise registered or permitted by the District, an existing well, as defined in Rule 1.1(24) must be registered with the District.

Rule 8.2 — Registration of Existing Wells after Transfer of Surface Ownership. Ninety (90) days after the close of a real estate transaction transferring the ownership of property, the new owner shall register all existing, operable wells with the District on a form approved by the District.

Rule 8.3 — Contents of Registration. An owner of an existing well shall submit a registration for the well on a form approved by the Board and shall submit the following information:

(a) the name of the owner of the well and the owner's mailing address;

(b) the exact location of the existing well, including the county, the survey name and number, the state abstract number for such survey, and the exact number of feet to the two nearest non-parallel property lines or other adequate legal description;

(c) the depth of the well or water-bearing formation from which the owner produces water from such well;

(d) a copy of the driller's log;

(e) the date the well was drilled;

(f) the period of time over which water has been historically withdrawn from the well;

(g) the historic use of water from the well, such as, domestic, irrigation, municipal, or industrial;

(h) if the well is an exempt well, the conditions that satisfy a determination that the well is exempt;

(i) the current and historic rate of withdrawal from the well;

(j) the volume of water on an annual basis withdrawn from the well;

(k) the size of the pump(s) used to produce water from the well;

(l) a well completion record showing the depth of the well, the casing diameter, type and setting, and the perforated interval; and

(m) any other information the Board requests.

Rule 8.4 — Historic Use Authorization. An owner of an existing well that timely registers the well is authorized to withdraw and use the maximum amount of groundwater beneficially used without waste in any one calendar year prior to February 23, 1999, at the historic rate of withdrawal and for the historic use. If, however, the owner of an existing well alters, reworks or re-equips the well to increase production, increase the rate or annual amount of groundwater withdrawals, or change the use of groundwater withdrawn from the well, the owner must apply for a well permit in advance of such alteration or change as provided in Rule 10.1.

Rule 8.5 — No Fee for Registering Existing Wells. There shall be no fee assessed by the District for the registration of existing wells.

Rule 8.6 — Reporting Requirements for Existing Wells. Owners and operators of existing wells are subject to the groundwater production reporting requirements of Rule 6.5.

SECTION 9. EXEMPT WELLS

Rule 9.1 — Exempt from Permitting. The following wells are exempt from permitting by the District:

(a) a well on a tract of land larger than ten (10) acres if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day and if the water produced or to be produced from the well is used or to be used for domestic uses or to provide water for livestock or poultry;

(b) a well used to supply water necessary for mining as authorized by the Railroad Commission of Texas under Chapter 134, Natural Resources Code; or

(c) a well used to supply water solely for a drilling rig that is actively engaged in drilling or exploration operations as authorized by the Railroad Commission of Texas if:

(1) the person holding the permit issued by the Railroad Commission of Texas is responsible for the water well; and

(2) the water well is located:

(i) on the lease on which the drilling rig is located;

(ii) within the boundaries of the field in which the drilling rig is located; or

(iii) in close proximity to the drilling rig.

Rule 9.2 — Registration of Exempt Wells. Notwithstanding the exemption from permitting, an exempt well must be registered with the District before it is drilled. A registration must contain the following information and be accompanied by a fee as provided in Section 17 of the Rules:

(a) the proposed location of the exempt well, including the county, the survey name and number, the state abstract number for such survey, and the exact number of feet to the two nearest non-parallel property lines or other adequate legal description;

(b) the depth of the well or water-bearing formation from which the owner proposes to produce water from such well;

(c) the conditions that satisfy a determination that the proposed well is exempt;

(d) a well completion record showing the depth of the well, the casing diameter, type and setting, and the perforated interval; and

(e) any other information the Board requests.

Rule 9.3 — Compliance with Well Design Criteria. All exempt wells shall be equipped and maintained in accordance with Rule 6.7, minimum standards of well completion.

Rule 9.4 — Registration Fee. A registration fee in the amount of $10.00 for each proposed exempt well shall be submitted along with the registration form and prior to the drilling of the exempt well. After the general manager has reviewed the registration form and related information, the general manger shall issue the certificate of registration and the well may be drilled.

Rule 9.5 — Water Well Driller. The water well driller shall have a copy of the Well Registration certificate on hand during all drilling activities for the exempt well. The water well driller of an exempt well shall file a copy of the well's drilling log with the District after the well is drilled.

Rule 9.6 — Change in Use. The District may require a well previously exempted from permitting under Rule 9.1 of these rules to obtain a permit and comply with District rules if the groundwater withdrawn from the well ceases to be used for the exempt use, including the following circumstances:

(a) a well previously used to supply water for a drilling rig that is actively engaged in drilling or exploration operations permitted by the Railroad Commission of Texas is no longer used for that purpose;

(b) withdrawals from a well used for mining purposes permitted by the Railroad Commission of Texas are:

  (1) no longer necessary for mining purposes; or

  (2) greater than the amount of water necessary for mining purposes;

(c) an owner of an exempt well used for domestic use modifies it so that it becomes capable of producing more than 25,000 gallons per day or changes the use of the water so that it is no longer used for domestic use or watering livestock; or

(d) withdrawals of water from a previously exempt well are subsequently transported outside the District's boundaries, in which case, not only would the owner of the well have to obtain a permit to authorize such change in use and transportation, but the groundwater would also be subject to any applicable production or export fee of the District.

Rule 9.7 — Reporting Requirements for Exempt Wells. Owners and operators of exempt wells are not subject to the groundwater production reporting requirements of Rule 6.5.

SECTION 10. WELL PERMITS

Rule 10.1 — Requirement for a Well Permit or Well Permit Amendment.

(a) **New Well.** No person may commence to drill or operate a new non-exempt well without first applying for and obtaining a well permit from the District.

(b) **Reworked, Re-drilled, or Re-equipped Wells or Change in Place or Use of Groundwater.** No person shall re-work, re-drill, or re-equip a well in a manner that would increase the well's maximum rate of production of groundwater above the well's previous annual groundwater production level, the well's previous rate of withdrawal, or change the purpose or place of use of groundwater without first applying for and obtaining a well permit or well permit amendment from the District. If the well proposed to be altered is sufficiently spaced to comply with the existing spacing and production rules for new wells of the desired capacity or use, the District may proceed to grant such application without notice or an opportunity for a hearing under Sections 13 and 14. If the well is not sufficiently spaced to comply with existing spacing and production rules for new wells of the desired capacity or use, such permit may be granted only after notice and an opportunity for hearing as provided for in Sections 13 and 14.

(c) **Modified Exempt Well.** No person shall modify an exempt well in a manner so that it no longer qualifies as an exempt well or change the use of groundwater produced from the well so that it is no longer for an exempt purpose without first applying for and obtaining a well permit from the District.

(d) **Transportation Well.** No person shall drill or operate a well or water transportation system that proposes to transport water outside the district without first applying for and obtaining a well permit or well permit amendment from the District. In addition to obtaining a well permit or well permit amendment, a person who proposes to transport groundwater outside the District must also obtain a transportation permit from the District pursuant to Section 11 of these Rules.

(e) **Notice and Hearing.** Except as otherwise provided in this Rule, an application for a new well permit or well permit amendment for irrigation or agricultural use that meets all criteria for the issuance of that permit and that complies with the well spacing and production rules is not subject to public notice and an opportunity for a hearing in accordance with Sections 13 and 14. All other applications for a permit are subject to public notice and an opportunity for a hearing in accordance with Sections 13 and 14.

(f) All well permits and well permit amendments are granted subject to the District Act, these Rules, the District Management Plan, Orders of the Board and the laws of the State of Texas.

Rule 10.2 — Application for a Well Permit or Well Permit Amendment. An application for a well permit or an amendment to a well permit shall be filed by the owner or operator of the proposed well or the owner or operator of the currently operating well which is proposed to be altered. The application shall be in writing, sworn to by the applicant and be on a form approved by the Board. The application shall contain the following information:

(a) the name and mailing address, place of residence or principal office of the applicant and the owner of the land on which the well will be or is located;

(b) if the applicant is other than the owner of the land, documentation establishing the applicable authority to construct and operate a well for the proposed use;

(c) the county in which the proposed well is to be located, the latitude and longitude of the proposed well, and the approximate number of feet to the two nearest non-parallel property lines;

(d) the depths of the water-bearing formation, which the applicant proposes to drill, complete, and produce groundwater from the well;

(e) identify the actual or anticipated location, pump size, and production capacity of the well from which the water is to be produced;

(f) state the nature and purpose of the proposed use and the anticipated rate of withdrawal expressed in terms of gallons per minute (gpm) and amount of water to be used on an annual basis;

(g) state the anticipated time within which the proposed construction or alteration is to begin;

(h) state the presently anticipated duration required for the proposed use of the water;

(i) provide information showing the anticipated effect of the proposed production on the quantity and quality of water available for future use both inside and outside the District;

(j) identify any other presently owned sources of water, the availability of which is both technically feasible and economically reasonable for the applicant, that could be reasonably used for the stated purpose(s), including quality and quantity of such alternate sources;

(k) identify any other liquids, the availability of which is both technically and economically reasonable for the applicant, that could be reasonably substituted for the fresh groundwater and possible sources of such liquid including quantity and quality;

(l) attach a water conservation plan developed or adopted by the applicant, any

established water conservation goals, and what measures and time frames are necessary to achieve the applicant's established water conservation goals;

(m) if the applicant is a public utility and the groundwater is to be distributed and sold to wholesale or retail customers, the applicant shall provide a description of the applicant's service area, the applicant's metering and leak detection repair program, its water storage, delivery and distribution system, the applicant's drought or emergency water management plan, information concerning the population served and customer data, water use data, water supply system data, wastewater data, water conservation measures and goals, and the applicant's means for implementation and enforcement of the conservation measure and goals;

(n) if the applicant proposes to use the groundwater for agricultural use, the applicant must state the total number of contiguous acres the applicant owns where the well is located;

(o) if the applicant proposed to transport the water outside the boundaries of the District, the applicant must provide information demonstrating compliance with Section 11 of these Rules;

(p) identify all well(s) and the owners of said well(s) producing from the same formation that will be located closer than the spacing limitations set forth in Rule 7.1 of the proposed well, if any, including well(s) within one-half (1/2) mile of the perimeter boundary of the contiguous acreage owned by the applicant where the well is to be located;

(q) information demonstrating compliance with the District's well spacing rules and production limit requirements as set forth in Rules 7.1 and 7.2;

(r) provide a map or plat drawn on a scale that adequately details the proposed well project, showing:

(1) the location of the existing or proposed well(s);

(2) the location of the existing or proposed production monitoring or meter device(s) to demonstrate compliance with Rule 7.2;

(3) the location of the existing or proposed water use facilities; and

(4) the location of the proposed or increased use or uses; and

(s) any other information the General Manager or the Board deems necessary.

Rule 10.3 — Compliance with Well Completion Criteria. All wells subject to the requirement to obtain a well permit, shall be equipped and maintained to meet the minimum standards of well completion in accordance with Rule 6.7.

Rule 10.4 — Well Permit Application Fee. An application fee in the amount of $175.00 for each proposed well for which a well permit application is filed shall be submitted along with the application and prior to the drilling of the non-exempt well. The fee shall be used by the District to cover the cost of reviewing and processing the application. Upon filing of the driller's log in accordance with Rule 6.11, a portion of the application fee in the amount of $75.00, shall be refunded to the applicant.

Rule 10.5 — Water Well Driller. The water well driller shall have a copy of the well permit on hand during all drilling activities for the permitted well(s). The water well driller shall file a copy of the permitted well's drilling log with the District within sixty (60) days after the well is drilled.

Rule 10.6 — Standard Well Permit Conditions. In addition to any special provisions or other requirements incorporated into the well permit, each well permit issued shall contain the following standard permit provisions:

(a) This permit is granted in accordance with the provisions of the District Act, Chapter 36, Texas Water Code, and the rules and orders of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with the Texas Water Code, the District Act, the District Rules, orders of the District Board, and all the terms, provisions, conditions, requirements, limitations and restrictions embodied in this permit.

(b) This permit confers no vested rights in the holder, and it may be revoked or suspended, or its terms may be modified or amended pursuant to the provisions of the District Act, after notice to the permittee and an opportunity for a hearing.

(c) The owner or operator of the well shall not operate the well or use the groundwater withdrawn from the well in any manner that constitutes waste. In the event that groundwater is to be transported a distance greater than one-half (1/2) mile from the well, it must be transported by a pipeline or other closed container to prevent waste caused by evaporation and/or seepage or percolation into soils.

(d) The permittee must keep records of the amount of groundwater produced and the use of the groundwater, and such records shall be available for inspection by District representatives upon request. The permittee must provide immediate written notice to the District in the event production exceeds the quantity authorized by this permit, or the groundwater produced from the well becomes polluted or contaminated or causes pollution of the aquifer from which it was produced or another aquifer.

(e) The well site must be accessible to District representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.

(f) The representations and information provided in the application pursuant to which this permit has been issued are 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 and in any amendments to the application. A finding that false information has been supplied is grounds for immediate revocation of the permit, after noticed and an opportunity for a hearing has been provided the permittee. In the event of a conflict between the provisions of this permit and the contents of the application, the provisions of this permit shall control.

(g) A violation of this permit's terms, conditions, requirements, or special provisions, is punishable by civil penalties as provided by the District Rules, Rule Request for Injunctive Relief and Assessment of Civil Penalties.

(h) Wherever special provisions are inconsistent with the standard or other provisions of this permit or District Rules, the special provisions shall prevail.

Rule 10.7 — Groundwater Allocation. A well permit may be issued to authorize the withdrawal of groundwater in the amount of water deemed beneficial and without waste for the proposed use and shall not exceed the production limits as established in Rule 7.2 for such proposed use, unless an exception is granted under Rule 7.3.

Rule 10.8 — Well Spacing and Well Location Requirements. All wells subject to the requirement to obtain a well permit, shall meet the well spacing requirements of Rule 7.1, unless an exception to the spacing requirements is granted under Rule 7.3, and the well location requirements of Rule 6.6.

Rule 10.9 — Reporting Requirements for Production of Groundwater. An owner or operator of a well subject to the requirement to obtain a well permit, shall comply with the groundwater production reporting requirements of Rule 6.5.

Rule 10.10 — Well Meters or Monitoring Devices. A permitted well (i.e., not a grandfathered well) or related groundwater production facilities subject to the requirement to obtain a well permit, shall equip the well or the production facility with a well meter or monitoring device in accordance with Rule 6.4.

Rule 10.11 — Elements of a Well Permit. All well permits shall be in writing and attested by the seal of the District and shall contain substantially the following information:

(a) the name and address of the person to whom the permit is issued;

(b) the date the permit is issued;

(c) the term for which the permit is issued;

(d) the date the original application was filed;

(e) the location of the well(s);

(f) a requirement that the water withdrawn under the permit be put to beneficial use

at all times;

(g) the actual or anticipated number, location, pump size and production capacity of the wells from which water is to be produced;

(h) the total number of acres of land owned contiguously by the applicant where the well is to be locate if the application is for irrigation use;

(i) the destination and use or purpose for which the water is to be produced;

(j) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the Texas Commission on Environmental Quality, or its successor agency;

(k) the conditions and restriction, if any, placed on the rate and amount of withdrawal;

(l) any conservation-oriented methods of drilling and operating prescribed by the District;

(m) a drought contingency plan prescribed by the District;

(n) the maximum quantity of water to be produced annually, which in unusual or emergency conditions may be expressed in a three-year rolling average. For the purposes of this subsection, "unusual or emergency conditions" shall be drought, forces of nature, acts of God, the temporary failure of equipment or machinery, or the failure or reduction of water sources;

(o) the permit is issued subject to the rules of the District and to the continuing right of the District to manage the depletion of the aquifer within the District's boundaries as authorized by Chapter 36, Texas Water Code, as amended; and

(p) any other information the District prescribes.

Rule 10.12 — Permit Terms and Limitations.

(a) A well permit shall be limited to the extent and for the purposes stated in the permit. Except as provided in subsection (b), a well permit shall be valid for a period not to exceed 5 years, at which time the well permit may be renewed.

(b) A well permit that authorizes the drilling of a well is no longer valid unless that well has been drilled within one calendar year of the permit's issuance. At the end of the one (1) year period following the date of issuance, the well permit may be renewed.

Rule 10.13 — Transfer of Ownership of a Permit. If a holder of a well permit sells or transfers the well permit to another person, an application to amend the well permit must be made within 90 calendar days of the change in ownership of the permitted well.

The General Manager may grant such an amendment without notice, hearing, or further action by the Board.

Rule 10.14 — Temporary or Emergency Authorizations.

(a) **Basis for Temporary or Emergency Authorization.** Upon application, the General Manager may grant a Temporary or Emergency Authorization for the temporary or emergency use of groundwater from a well that is currently in existence or permitted.

(1) An application for a Temporary Authorization must present sufficient evidence that: (i) no suitable alternative water supply is immediately available to the applicant; and (ii) the groundwater usage will not impair the rights of any other owner of interest in groundwater.

(2) An applicant for an Emergency Authorization must present sufficient evidence that: (i) no suitable alternative water supply is immediately available to the applicant; and (ii) an emergency need for the groundwater exists.

(b) **Term of Authorization.** In no event shall any Temporary or Emergency Authorization to use groundwater granted under this Section exceed a term of 30 days.

(c) **Action on Requests.** The General Manager may grant or deny any application for a Temporary or Emergency Authorization for such period of time as he deems necessary but in no event longer than 30 days. The General Manager must inform the Board of any actions he has taken on an application for a Temporary or Emergency Authorization. At the next Board Meeting, the Board may consider any such authorization and ratify or cancel the authorization from that date forward, if any time remains.

SECTION 11. TRANSFER OF GROUNDWATER OUT OF THE DISTRICT

Rule 11.1 — Permit Required. Groundwater produced from a well within the District may not be transported outside the District's boundaries, except as provided in Rule 11.2(b), unless the Board has issued to the well owner or operator a transportation permit and all other permits required to drill and produce water from such well, as provided in these Rules. An application for a transportation permit shall be on a form approved by the District and shall contain the information requested in the application, or any other information the General Manager or Board requests.

Rule 11.2 — Applicability.

(a) **General Rule.** A person proposing to transport groundwater out of the District must obtain a transportation permit, in addition to a well permit for a new well or a well permit amendment for an existing well, in advance of performing the following acts:

(1) to increase, on or after March 2, 1997, the amount of groundwater to be transported under a continuing arrangement in effect before that date; or

(2) to transport groundwater out of the District on or after March 2, 1997, under a new arrangement.

(b) **Exemptions.**

(1) A transportation permit shall not be required and the District shall not prohibit a water transportation project that began on or before June 1, 1997.

(2) A transportation permit shall not be required for the transportation of groundwater that is part of a manufactured product.

(c) **Registration Required.** Wells that are exempted from the requirement to obtain a transportation permit under subsection (b), must obtain a registration certificate in accordance with Section 7 of these Rules, and are subject to all reporting requirements and periodic Board review as any other well or transportation permit issued by the District.

Rule 11.3 — Application for a Transportation Permit. An owner or operator of a well subject to the requirement to obtain a transportation permit shall file an application for a transportation permit in the District Office on a form approved by the District and accompanied by an application fee as provided for in Section 17 of these Rules. Such form shall be accompanied by an application for a well permit or well permit amendment, as required in accordance with Rules 10.1 and 10.2, and shall be executed by a person having firsthand knowledge of the facts called for in the application. An application for a transportation permit must include the following information:

(a) the name and address of the owner or operator of the well(s) and the name of the applicant if it is a person other than the owner or operator of the well(s);

(b) the legal description of the exact location of the well(s) from which water to be transported is to be produced;

(c) the name and address of the fee owner(s) of the land on which the proposed well(s) is to be located;

(d) the time schedule for construction and/or operation of the well and the related transportation facilities that can be used to establish the term of the transportation permit under § 36.122(j), Texas Water Code;

(e) the complete construction and operating plans for the well(s) and related transportation facilities that include, but are not limited to:

(1) a technical description of the proposed well(s) and production facilities, including the depth of the well, the casing diameter, the casing type and setting, the perforated interval, the size of the pump, the capacity and rate of withdrawal;

(2) a technical description of the transportation facilities, such as, the kinds of facilities that will be used for transportation, their location, plans and specs, and a demonstration that a closed system will be used, *e.g.*, no open ditches or water courses will be used in the transportation of groundwater;

(f) the availability of water in the District and in the proposed receiving area during the period for which the transportation of the groundwater supply is requested, including the:

(1) location of the proposed receiving area where the proposed groundwater will be transported and used;

(2) information describing alternative sources of water supply that might be utilized by the applicant and the end-user of proposed groundwater supply, and the feasibility and practicability of utilizing such supplies; and

(3) a description of the proposed volume and use of groundwater in the proposed receiving area, including a demonstration that the proposed use of groundwater will be for a beneficial use without waste;

(g) the projected effect of the proposed transported groundwater on aquifer conditions, depletion, or subsidence, and the effects on existing well permit holders or other groundwater users within the District, including:

(1) a hydrogeologic report by a registered professional in hydrogeology assessing the impact of the proposed transportation of water on existing wells and the aquifer from which withdrawals are proposed;

(2) information describing the projected effect of the proposed transporting of water on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District;

(3) the names and addresses of the landowners, well permit holders, well registration holders and the location of their water wells, that are located within ½ mile of the proposed well from which produce groundwater is proposed to be transported to the proposed receiving area; and

(4) any proposed plan of the applicant to mitigate adverse hydrogeologic impacts of the proposed transport of water from the District;

(h) a description of how the proposed transportation of groundwater is addressed in any approved regional water plan(s) and the certified District Management Plan;

(i) scientific evidence that the proposed operation will not cause pollution, as defined in Rule 1.1(38), or cause waste, as defined in Rule 1.1(52);

(j) a water conservation and drought management plan;

(k) additional information that may be required by the General Manager or the Board.

Rule 11.4 — Registration of Transportation Wells. An owner of a well(s) that qualifies for the exception from the requirement to obtain a transportation permit under Rule 11.2(b) is required to register the well(s) by using a form approved by the District. The following information shall be submitted in the registration form:

(a) the name and address of the owner and operator of the well(s);

(b) the legal description of the exact location of the well(s) from which groundwater to be transported is to be produced;

(c) the name and address of the fee owner(s) of the land on which the well(s) is located;

(d) a technical description of the well(s) that is producing water for transportation including, but not limited to:

(1) a copy of the driller's log;

(2) a completion record showing the depth of the well, the casing diameter, type and setting, and the perforated interval;

(3) the size of the pump(s) used to produce water to be transported;

(4) the capacity and rate of withdrawal of the well(s);

(5) the date the well was drilled;

(6) the use of the transported water and a demonstration that it is being used for a beneficial use without waste;

(7) the volume of water transported in each of the four (4) previous years, if any;

(8) the volume of water to be transported from the District annually in the future;

(9) a water conservation plan and a drought management plan;

(10) a technical description of the facilities used to transport water;

(11) additional information that may be required by the General Manager or the Board.

Rule 11.5 — Notice and Hearing Provisions. Applications for transport permits are subject to the notice and hearing procedures as provided for in Sections 13 and 14.

Rule 11.6 — Factors to be Considered in Issuance of Transportation Permits.

(a) In determining whether to issue a permit to transport groundwater out of the District, the Board shall be fair, impartial, and nondiscriminatory and shall consider the following factors when deciding whether to issue or impose conditions on a transportation permit:

(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, and effects on existing well permit holders or other groundwater users within the District; and

(3) the approved Region L Water Plan and certified District Management Plan.

(b) The District may not deny a transportation permit based merely on the fact that the applicant seeks to transport groundwater outside of the District and may not impose more restrictive permit conditions on transporters than the District imposes on existing in-District users, unless:

(1) such limitations apply to all subsequent new well permit applications and permit amendment applications seeking to increase the quantity of groundwater used, regardless of type or location of use;

(2) such limitations bear a reasonable relationship to the existing District Management Plan; and

(3) such limitations are reasonably necessary to protect existing uses and to sustain the water supply of the aquifers within the District.

(c) In addition to conditions provided by Section 36.1131, Texas Water Code, the transportation permit shall specify:

(1) the amount of water that may be transported out of the District; and

(2) the period of time for which the water may be transported.

(d) The Board reserves the right to approve an application for a transportation permit at a reduced volume than that applied for.

Rule 11.7 — Term of Transportation Permit.

(a) The term of a transportation permit shall be:

(1) at least three (3) years if construction of a conveyance system has not been initiated prior to the issuance of the permit, and shall be automatically extended to a term of 30 years if construction of a conveyance system is begun before the expiration of the initial term; or

(2) at least thirty (30) years if construction of a conveyance system has been initiated prior to the issuance of the permit.

(b) An applicant for a transportation permit proceeds at his or her own risk if the construction of a transportation system or facility is commenced prior to the issuance of a transportation permit and bears full risk of loss of construction costs if the permit is never issued.

Rule 11.8 — Review of Transportation Permit. Upon a showing of new or additional studies concerning the impact of groundwater withdrawals by a transportation project or the operation of any well on the level of the aquifer or adverse impact on neighboring wells, the District shall review all such wells in the area and reduce, limit and/or amend the well or transportation permits, after notice and an opportunity for a hearing under Section 14, to a collective level of withdrawal that will no longer cause the harm. The District shall initiate this process by publishing thirty (30) day notice in a newspaper(s) of general circulation throughout each county in the District and by mailing thirty (30) day notice to each person who holds a permit for a well or owns a registered well that the District is initiating such a review. In such notice, the District shall also cite the new or additional study it is relying upon to initiate this review. The notice shall also state the date, time and location of the meeting of the Board of Directors of the District at which it will discuss this study and initiate this process.

Rule 11.9 — Production and Spacing Rules. Water wells used or to be used for the transportation of groundwater out of the District shall be subject to the well spacing and production requirements of Rules 7.1 and 7.2.

Rule 11.10 — Monitoring and Reporting Requirements.

(a) All wells permitted or registered for the transportation of groundwater shall be equipped with flow monitoring devices approved by the District and shall be available at all reasonable times for inspection by District personnel.

(b) The person in whose name a transportation permit or registration certificate is issued shall keep records and make reports to the District as to the operation of the transportation operations as follows:

(1) Registered transportation wells shall submit reports to the District on a monthly basis, beginning at the time of registration. Such reports shall include, but are not limited to, the volume of water transported during the preceding month.

(2) Permitted transportation wells shall submit reports to the District on a monthly basis, beginning at the time a transportation permit is issued. Such reports shall include, but are not limited to, the volume of water transported during the preceding month.

Rule 11.11 — Amendments and Transfers of Transportation Permits.

(a) The holder of a transportation permit shall be subject to the same well amendment provisions as a holder of a well permit. At the same time as a well permit amendment is triggered, an amendment to the transportation permit shall be sought which shall consider such issues as a change in beneficial use without waste, a change in point of withdrawal, a change in the transportation facilities, or other similar changes.

(b) A change in ownership of a well subject to a transportation permit shall be subject to the same rules and provisions as a change in ownership of a well permit.

Rule 11.12 — Application Fee. An application for a transportation permit must be accompanied by an application processing fee in the amount of $175.00, and such other fees as appropriate. Such fees must be paid before notice is published and mailed. Payment of all fees including water use fees remain the responsibility of the permit holder.

Rule 11.13 — Transportation Fee.

(a) The District shall assess a fee for the transportation of groundwater out of the District at 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 of less than 2.5 cents per hundred dollars of valuation.

(b) Such fee shall be due and payable each month and submitted along with the

monthly groundwater production report as provided for in Rule 11.10.

SECTION 12. RECHARGE FACILITIES

Rule 12.1 — Recharge Facilities. A permit must be obtained before installing or operating a recharge facility. The following information must be provided on, or submitted with, the application:

(a) the name and address of the applicant;

(b) the name and address of the fee owner(s) of the land upon which the recharge facility will be located;

(c) the legal description of the exact proposed location of the recharge facility;

(d) the time schedule for construction and/or operation of the facility;

(e) the names and addresses of the property owners within one-half (1/2) mile of the proposed recharge facility location, and the location of any wells on those properties;

(f) a complete construction and operations plans that include, but are not limited to:

  (1) a technical description of the facility to be used for recharge;

  (2) the source of the water to be recharged;

  (3) the quality of the water to be recharged;

  (4) the volume of water to be recharged;

  (5) the rate at which the water will be recharged; and

  (6) the formation into which waters will be recharged;

(g) scientific evidence showing that the proposed operation will not:

  (1) endanger the structural characteristics of the formation receiving the recharged water;

  (2) cause pollution, as defined in Rule 1.1(38), of underground water;

  (3) cause waste, as defined in Rule 1.1(52);

(h) any additional information that may be required by the Board.

SECTION 13. APPLICATION REVIEW PROCEDURES

Rule 13.1 — Scope of Applicability. The provisions of this section apply to applications for:

(a) a well permit and a well permit amendment that are not for irrigation or agricultural use;

(b) a well permit and a well permit amendment that are for irrigation or agricultural use but the applications do not meet all criteria for permitting as required in these rules;

(c) a permit to transport water outside the District; and

(d) a permit for a recharge facility.

Rule 13.2 — Notice of Application.

(a) An applicant for a permit described in Rule 13.1 shall provide notice to the general public of the application by publishing notice in a newspaper of general circulation in the county of the District where the proposed well is to be located or the well proposed to be altered is located, at applicant's expense.

(b) The notice shall contain the following information:

(1) the name and address of the Applicant;

(2) the date on which the application was filed with the District;

(3) the location of the well(s) to be drilled or altered, the well(s) from which water is to be transported, or the recharge facilities, as applicable;

(4) a statement that an affected person may contest the application by filing a notice of intent to protest or a request for a contested case hearing on the application with the District Office within 10 calendar days of the date of the notice;

(5) a brief description of the well, transportation facilities or recharge facilities, as applicable, the amount of groundwater sought to be produced on an annual basis, expressed in acre feet, the rate of withdrawal, expressed in gallons per minute, and the proposed place and purpose of use;

(6) a statement that the Board or the General Manager may proceed to decide the application if no contest is filed; and

(7) a description of the relief sought by the applicant.

(c) After publication of notice, the applicant must file a newspaper tear sheet and publisher's affidavit with the General Manager as proof of publication. If newspaper notice is mailed to adjoining landowners, copies of the certified letters and returned green cards shall also be filed with the General Manager.

Rule 13.3 — General Manager's Determination of Administratively Complete.

(a) After an application is filed and during the timeframe in which the applicant is providing notice of the application, the General Manager shall review the application to determine whether it is complete, that is, whether the application contains all the information necessary on which to make a determination.

(b) If additional information is needed in order for the application to be administratively complete, the General Manager will notify the applicant of the additional information required and specify a reasonable period of time for the applicant to furnish such information. Incomplete applications not timely supplemented in response to the General Manager's request will be returned to the applicant.

(c) Once the General Manager has satisfied himself that all applicable information needed to review the application has been submitted and after the applicant has filed proof of notice of the application in accordance with Rule 8.2, the General Manager will declare the application administratively complete and will so notify the applicant by mailing notice of such determination to the applicant by certified mail, return receipt requested. Such notice will also inform the applicant of any protests and/or requests for hearing timely filed on the application by an affected person and that within 60 days of the date of the letter, the General Manager will either proceed to make a decision on the application if it is not contested or is no longer contested, or the General Manager will set the date for a hearing.

Rule 13.4 — General Manager's Technical Review of Application. After the application has been deemed administratively complete under Rule 13.3, the General Manager shall undertake a technical review of the application, which is a review of the merits of the application. The General Manager may employ such persons as are necessary to assist him in performing his technical review. The General Manager shall complete his technical review of the application within 60 days of the application having been declared administratively complete.

Rule 13.5 — General Manager's Recommendation on the Application. After the General Manager has completed his technical review of the application, he shall develop a recommendation on the application. If no request for hearing has been filed or it has been withdrawn, the General Manager's recommendation may be either to grant or deny the application or to request a hearing on the application himself. If a hearing has been requested, the General Manager shall notify the applicant of the date of the hearing by mailing a letter to the applicant by certified mail return receipt requested. The General Manager will set the date for a hearing within 35 days of the date of the notice.

Rule 13.6 — Decision on Uncontested Application. If no request for hearing or protest has been filed on the application and the General Manager has not himself requested a hearing on the application, the application is uncontested and the General Manager may proceed with issuing the permit. At the discretion of the General Manager, he may elect to set the application for action at a meeting of the Board at which time the Board may issue or deny the permit, modify the proposed permit, or request a hearing on the application.

Rule 13.7 — Factors to Consider in Issuing a Permit.

(a) In deciding whether or not to issue a permit, the Board and the General Manager, where applicable, shall consider the purpose of the District Act and all other relevant factors, including, but not limited to:

(1) the District Water Management Plan;

(2) the quality, quantity, and availability of alternative water supplies;

(3) whether the alternative supplies are presently owned by the applicant and whether it is both technically feasible and economically reasonable to use such alternative supplies for the proposed use of fresh groundwater;

(4) the impact on other landowners' or permitted rights in groundwater by the grant or denial of the application;

(5) whether the proposed use of the groundwater constitutes beneficial use without waste or is otherwise inconsistent with the statutory purposes of the District;

(6) the quantity of proposed groundwater production;

(7) the term of production;

(8) the impact on the water quality of the aquifer from the proposed groundwater production;

(9) the actual or anticipated number, location, pump size and production capacity of the proposed wells;

(10) the nature of the proposed use;

(11) the effect of the proposed use of the water on municipal, agricultural, industrial, recreational and other categories of use;

(12) and such other factors as are consistent with the District's purposes.

(b) Except for temporary permits for temporary withdrawals, the Board will limit groundwater withdrawals, based upon the factors described above, to levels that do not exceed the sustainable yield of the aquifers within the District.

(c) The Board may grant or deny an application or refer the application to a Hearings Examiner for a contested case hearing before making a decision on the application.

SECTION 14. HEARINGS

Rule 14.1 — Applicability. Unless the District contracts with the State Office of Administrative Hearings to conduct a hearing on a permit or permit amendment, this section shall control the hearing and notice of hearing process used by the District for permit and permit amendment applications. A hearing conducted by SOAH shall be conducted as provided by subchapters C, D, and F, Chapter 2001, Texas Government Code.

Rule 14.2 — Hearing Applications for Permits. The District will hold hearings on applications for permits if an affected person timely files a request for hearing or protest on the application in response to the notice of application in Rule 13.2. If no affected person notifies the General Manager of their intent to contest the application, and if the General Manager does not contest the application, the application will be considered uncontested and presented directly to the General Manager for a final decision. The General Manager may either grant the uncontested application in whole or in part, or refer the application to a hearing. If an application is contested, the Board shall proceed under Rules 14.3 through 14.19.

Rule 14.3 — Contested Permits.

(a) Upon receipt of a timely written request for hearing, or on his own motion, the application shall be considered contested and the general manager will set the application for a hearing within 35 days of the date of the notice given pursuant to Rule 14.5. The hearing request shall concisely identify the person requesting the hearing, the basis for the request, the hearing requestor's interest that is affected by the pending application, and the relief sought by the requestor.

(b) The Board or Hearings Examiner may limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.

(c) Any case not declared a contested case under this provision is an uncontested case, and the general manager will present his recommendation directly to the Board.

Rule 14.4 — Scheduling of Hearing.

(a) The District shall promptly consider and act on each administratively complete application for a permit or permit amendment.

(b) The general manager or Board may schedule more than one application for consideration at a hearing.

(c) Unless the Board provides for hearing to be held at a different location, a hearing on a permit or permit amendment application must be held at the District office or regular meeting location of the Board.

(d) A hearing may be held in conjunction with a regularly scheduled Board meeting.

Rule 14.5 — Notice.

(a) If the general manager schedules a hearing on an application for a permit or permit amendment, the general manager shall give notice of the hearing as provided by this section.

(b) The notice must include:

(1) the name of the applicant;

(2) the address or approximate location of the well or proposed well;

(3) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;

(4) the time, date, and location of the hearing; and

(5) any other information the general manager considers relevant and appropriate.

(c) No later than the tenth day before the date of a hearing, the general manager shall:

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

(2) provide notice to the county clerk for each county in the District; and

(3) provide notice by:

(a) regular mail to the applicant;

(b) regular mail, facsimile, or electronic mail to any person who has

requested notice under subsection d;

(c) regular mail to any other person entitled to receive notice under the rules of the District.

(d) A person may request notice from the District of a hearing on a permit or permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. An affidavit of an officer or employee of the District attesting that notice was sent to such persons by either first class mail, facsimile, or electronic mail in accordance with information provided by such persons is proof that notice was provided by the District. Failure by the District to provide notice to such persons will not invalidate an action taken by the District at a hearing.

Rule 14.6 — Prehearing Conference.

(a) A pre-hearing conference may be held to consider any matter that may expedite the contested case hearing or otherwise facilitate the hearing process.

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

(1) the designation of parties;

(2) the formulation and simplification of issues;

(3) the necessity or desirability of amending applications or other pleadings;

(4) the possibility of making admissions or stipulations;

(5) the scheduling of discovery;

(6) the identification of and specification of the number of witnesses;

(7) the filing and exchange of prefiled testimony;

(8) the procedure at the Hearing.

Rule 14.7 — Designation of Parties.

(a) Parties to a hearing will be designated on the first day of the hearing, or at such other times as the Board or Hearings Examiner determines. The General Manager and any person specifically named in a matter are automatically designated parties.

(b) Subject to the discretion and orders of the Board or Hearings 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.

Rule 14.8 — Hearing Registration. The District may require each person who participates in a hearing to submit a hearing registration form stating:

(a) the person's name;

(b) the person's address; and

(c) whom the person represents, if the person is not there in the person's individual capacity.

Rule 14.9 — Hearing Procedures.

(a) A hearing must be conducted by:

(1) a quorum of the Board or

(2) an individual to whom the Board has delegated in writing the responsibility to preside as a Hearings Examiner over the hearing or matters related to the hearing.

(b) Except as provided by subsection (c), the Board president or the Hearings Examiner shall serve as the Presiding Officer at the hearing.

(c) If the hearing is conducted by a quorum of the Board and the Board president is not present, the directors conducting the hearing may select a director to serve as the Presiding Officer.

(d) The Presiding Officer may:

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

(2) set any necessary additional hearing dates;

(3) designate the parties to a contested application;

(4) establish the order for presentation of evidence;

(5) administer oaths to all persons presenting testimony;

(6) examine persons presenting testimony;

(7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;

(8) prescribe reasonable time limits for testimony and the presentation of evidence; and

(9) exercise the procedural rules adopted herein.

(e) The Presiding Officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. 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.

(f) If the Board has not acted on the application, the Presiding Officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the Presiding Officer no later than the 10th day after the date of the hearing. A person who files additional written materials with the Presiding Officer under this subsection must also provide the material, no later than the 10th day after the date of the hearing, to every person who provided comments on an uncontested application or every party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the Presiding Officer no later than the 10th day after the date the material was received.

(g) The District may authorize the Presiding Officer, at the Presiding Officer's discretion, to issue an order at any time before the Board takes final action on a permit application or permit amendment application that:

(1) refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;

(2) determines how the costs of the procedure shall be apportioned among the parties; and

(3) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

(h) Except as modified by these rules, the Texas Rules of Civil Procedure apply to hearings conducted under this Section.

Rule 14.10 — Evidence.

(a) The Presiding Officer shall admit evidence that is relevant to an issue at the hearing.

(b) The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

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

(d) Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the Presiding Officer and to each of the parties, unless the Hearings Examiner rules otherwise.

(e) When documents are numerous, the Presiding Officer may receive in evidence only those that are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

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

(g) The Presiding Officer may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.

(h) Except as modified by these Rules, the Texas Rules of Evidence govern the admissibility and introduction of evidence.

Rule 14.11 — Testimony.

(a) The Board or Hearings Examiner may compel the testimony of any person that is necessary, helpful, or appropriate to the hearing. The Board or Hearings Examiner may issue subpoenas to compel the testimony of any person and the production of any tangible thing in the manner provided by the Texas Rules of Civil Procedure.

(b) Testimony may be received in written form, so long as the interests of the parties will not be substantially prejudiced. The written testimony of a witness shall be in either narrative or question and answer form, and may be submitted into evidence upon the witness being sworn in and identifying the testimony as being a true and accurate record of what their testimony would be if given orally. The witness will be subject to clarifying questions and cross-examination, and the prepared testimony will be subject to objection.

Rule 14.12 — Recording.

(a) Except as provided by subsection (b), the Presiding Officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the Presiding Officer shall have the hearing transcribed by a court reporter. The Presiding Officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing.

Except as provided by this subsection, the Presiding Officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The Presiding Officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

(b) If a hearing is uncontested, the Presiding Officer may substitute minutes or the report required under Rule 14.14 for a method of recording the hearing.

Rule 14.13 — Continuance. The Presiding Officer may continue a hearing from time to time and from place to place without providing notice under Rule 14.5. If the Presiding Officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the Presiding Officer must provide notice of the continued hearing by regular mail to the parties.

Rule 14.14 — Report.

(a) Except as provided by subsection (e), the Presiding Officer shall submit a report to the Board no later than the 30th day after the date a hearing is concluded.

(b) The report must include:

(1) a summary of the subject matter of the hearing;

(2) a summary of the evidence or public comments received; and

(3) the Presiding Officer's recommendations for Board action on the subject matter of the hearing.

(c) The Presiding Officer or general manager shall provide a copy of the report to:

(1) the applicant; and

(2) each person who provided comments or each designated party.

(d) A person who receives a copy of the report under subsection (c), above, may submit to the Board written exceptions to the report.

(e) If the hearing was conducted by a quorum of the Board and if the Presiding Officer prepared a record of the hearing as provided by Rule 14.12, the Presiding Officer shall determine whether to prepare and submit a report to the Board under this Rule.

Rule 14.15 — Board Action. The Board shall act on a permit or permit amendment application no later than the 60th day after the date the final hearing in the application is concluded.

Rule 14.16 — Request for Rehearing or Findings and Conclusions.

(a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may seek judicial review of a decision of the Board on an application for a permit or permit amendment by first exhausting all administrative remedies by requesting written findings and conclusions or a rehearing before the Board no later than the 20th day after the date of the Board's decision on the application.

(b) On receipt of a timely written request, the Board shall make written findings and conclusions regarding the decision of the Board on the application for a permit or permit amendment. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, no later than the 35th day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions from the Board may request a rehearing before the Board no later than the 20th day after the date the Board issues the findings and conclusions.

(c) A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.

(d) If the Board grants a request for rehearing, the Board shall schedule the rehearing no later than the 45th day after the date the request is granted.

(e) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

Rule 14.17 — Decision; When Final.

(a) A decision by the Board on a permit or permit amendment application is final:

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

(2) if a request for rehearing is filed on time, on the date:

(a) the Board denies the request for rehearing; or

(b) the Board renders a written decision after rehearing.

(b) Except as provided by subsection (c), an applicant or a party to a contested hearing may file a suit against the District under Section 36.251 of the Texas Water Code to seek judicial review of a decision on a permit or permit amendment application no later than the 60th day after the date on which the

decision becomes final.

(c) An applicant or a party to a contested hearing may not file a suit against the District under Section 36.251 if a request for rehearing was not filed on time.

Rule 14.18 — Consolidated Hearing on Applications.

(a) Except as provided by subsection (b), below, a 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:

(1) drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113 of the Texas Water Code;

(2) the spacing of water wells or the production of groundwater under Section 36.116 of the Texas Water Code; or

(3) transferring groundwater out of a District under Section 36.122 of the Texas Water Code.

(b) A 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.

Rule 14.19 — Alternative Dispute Resolution. The District may use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

SECTION 15. RULEMAKING

Rule 15.1 — General Procedures for Amending District Rules. The Board may, following the notice and hearing procedures set out in this section, amend these Rules or adopt new Rules from time to time.

Rule 15.2 — Notice of Proposed Rules. The General Manager shall publish notice of proposed rules in the manner described in Rule 15.3.

Rule 15.3 — Notice of Proposed Rules and Rulemaking Hearing.

(a) No later than the 20th day before the date of a rulemaking hearing, the General Manager or Board shall:

(1) post notice in a place readily accessible to the public at the District Office;

(2) provide notice to the county clerk of each county in the District;

(3) publish notice in a newspapers of general circulation in Zavala, Dimmit, and La Salle Counties;

(4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under subsection (c) below; and

(5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on a generally accessible Internet site.

(b) The notice provided in subsection (a), above, must include:

(1) the time, date, and location of the rulemaking hearing;

(2) a brief explanation of the subject of the rulemaking hearing; and

(3) the location or Internet site at which a copy of the proposed rules may be reviewed.

(c) A person may submit a written request to the District for notice of a rulemaking hearing. A request shall be effective for the remainder of the calendar year in which the request is received. An affidavit of an officer or employee of the District attesting that notice was sent to such persons by either first class mail, facsimile, or electronic mail in accordance with information provided by such persons is proof that notice was provided by the District. Failure by the District to provide notice to such persons will not invalidate an action taken by the District at a rulemaking hearing.

Rule 15.4 — Rulemaking Hearing Procedure.

(a) The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rules as conveniently and expeditiously as possible. Comments may be submitted orally or in writing at the hearing. The presiding officer shall establish the order of speakers and may limit the number of times a person may speak, and the time period for oral comments. The presiding officer may hold the record open for a specified period of time after the conclusion of the hearing to receive additional written comments.

(b) Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. In addition the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

(c) Any interested person may submit written comments, affidavits, technical reports, or other documents relating to the subject of the hearing, in addition to or in lieu of oral testimony at the hearing. Such documents must be submitted no later than the last day of the hearing; provided, however, that the presiding officer may

grant additional time for the submission of documents.

(d) Each person who provides comments at a rulemaking hearing by submitting written documents or testifying at the hearing shall submit a hearing registration form stating:

(1) the person's name;

(2) the person's address; and

(3) whom the person represents, if the person is not at the hearing in the person's individual capacity.

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

(f) If the presiding officer is a hearing examiner, the hearing examiner must, after the record is closed, prepare and submit 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.

(g) The District may use an informal conference 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.

Rule 15.5 — Close of Rulemaking Hearing and Consideration of Public Comment. At the end of the rulemaking hearing the presiding officer shall close the record, and submit the matter to the Board for consideration. The Board may take the matter under advisement and continue it from day to day, reopen or rest the matter, refuse the action sought, grant the action sought in whole or in part, or take any other appropriate action. The Board action takes effect at the conclusion of the meeting. If the Board has not taken action within 6 months after the presiding officer has presented the matter to the Board, the Board must provide notice of the proposed rules again under Rule 15.3 prior to taking any action on them.

Rule 15.6 — Appeal of District Rules. A judicial review of any decision of the Board on a rulemaking matter may be sought by first exhausting administrative remedies by requesting a rehearing. Such request for rehearing shall be received by the Board within twenty (20) calendar days of the Board's decision. Such a request for rehearing must be filed at the District office in writing and must state clear and concise grounds for the request. A request for rehearing is mandatory before any review may be brought. If no request for rehearing is made within the specified time, or upon the Board's denial of all requests for rehearing, or upon rendering a decision after rehearing, the Board's decision shall be deemed final. If a request for rehearing is granted by the Board, the date of the rehearing will be within forty-five (45) calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny a request for rehearing within ninety (90) calendar days of receipt will be

deemed a denial of the request.

Rule 15.7 — Emergency Rules.

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

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

(2) prepares a written statement outlining the reasons for its finding under subsection (a)(1) above.

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

(c) If notice of a hearing on the final rule is given within ninety (90) days after the date the rule is adopted, the rule is effective for an additional ninety (90) day period.

(d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

SECTION 16. INVESTIGATIONS AND ENFORCEMENT.

Rule 16.1 — Notice and Access to Property. Board Members, the General Manager, and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District Act and these Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access shall 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 has been granted to enter without notice. Inhibiting or prohibiting access to any Board Member, the General Manager, or District agents or employees who are attempting to conduct an investigation under the District Act or these Rules shall constitute a violation and shall subject 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 District Act.

Rule 16.2 — Limitations of District Employee Activities. District employees may not gather information not specifically related to the purposes of the District, the District Act, these Rules, or District policy.

Rule 16.3 — Conduct of Investigation. Where investigations or inspections require entrance upon property, such investigations and such inspections will be conducted at reasonable times, and will 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 16.4 — Request for Injunctive Relief and Assessment of Penalties.

(a) If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Act or any Board order, rule or permit, the Board may authorize the General Manager to institute and conduct a suit in the name of the District for injunctive relief, or to recover a civil penalty of up to ten thousand dollars ($10,000.00) per day per violation, and each day of a continuing violation constitutes a separate violation.

(b) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the District's principal office or meeting place is located.

(c) If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of the attorney's fees shall be fixed by the court. Resolution No. R97005 Amended September 11, 2002.

Rule 16.5 — Sealing, Capping, and Plugging of Wells.

(a) **Sealing Wells.** The District may seal wells that are prohibited from withdrawing groundwater within the District by the District Act, these Rules or Board orders, or when the General Manager determines that sealing a well is reasonably necessary to ensure that the well is not operated in violation of the District Act, these Rules or Board orders. A well may be sealed when: (1) the well has not been properly permitted; or (2) continued operation of the well will result in waste or pollution. 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 sealed well constitutes a violation of these Rules and will subject 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 Act and these Rules.

(b) **Capping Wells.** The District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must remain capped until such time as the conditions that led to the capping requirement are eliminated. If well pump equipment is removed from a well and

the well will be re-equipped at a later date, the well must be capped, provided however that the casing is not in a deteriorated condition that would permit commingling of water strata, in which case the well must be plugged.

(c) **Plugging Wells.** It is the responsibility of the landowner or well owner to plug a well that is deteriorated or abandoned. A deteriorated or abandoned well must be capped immediately in accordance with subsection (b). If the well casing deteriorates to a point where commingling of water strata is either possible or occurring, within 30 calendar days the well must either be equipped or plugged to prevent the commingling.

(1) For a deteriorated or abandoned well that does not penetrate any undesirable water zone, all removable casing must be removed from the well and the well plugged as follows:

(i) filled with cement to the land surface; or

(ii) filled with mud followed by a cement plug not less than ten feet long extending down from the land surface; or

(iii) the well must be filled with mud followed by a cement plug not less than ten feet long extending downward from a point four feet below land surface.

(2) For a deteriorated or abandoned well that penetrates any undesirable water zone, all removable casing must be removed from the well and the well plugged as follows:

(i) filled with cement to the land surface; or

(ii) either the zone(s) contributing undesirable water or the fresh water zone(s) must be isolated with cement plugs and the remainder of the well bore filled with mud to form a base for a cement plug not less than ten feet long extending down from the land surface; or

(iii) the well must be filled as provided in subsection (ii) above, except the cement plug may extend downward from a point four feet below land surface.

(3) Any person that plugs a well in the District must, within sixty (60) days after plugging is complete, submit a copy of the plugging report to the District. A copy of the plugging report furnished to the Texas Natural Resource Conservation Commission will suffice as proper notice to the District.

SECTION 17. FEES

Rule 17.1 — Application and Hearing Fees. The Board, by resolution, may establish a schedule of fees for administrative acts of the District, including but not limited to the cost of reviewing and processing permit applications, renewal applications, transport applications, and the cost of permit hearings, and such administrative fees shall not unreasonably exceed the cost to the District for performing such administrative acts. Applications shall not be accepted for filing or processing, nor shall hearings be scheduled, until receipt by the District of all applicable fees.

Rule 17.2 — Groundwater Transportation Fees. The District shall assess a reasonable fee or surcharge for the transportation of groundwater out of the District at 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 of less than 2.5 cents per hundred dollars of valuation.

Rule 17.3 — Other Fees.

Charge for Certified Copies	$ 15.00
Copying Charge per Page	$ 1.00
Exempt Well Registration Fee	$ 10.00
Well Permit Application Fee	$175.00
Emergency Authorization Application Fee	$ 25.00
Temporary Authorization Application Fee	$ 25.00
Groundwater Transportation Application Fee	$175.00

RESOLUTION ADOPTING RULES OF THE WINTERGARDEN GROUNDWATER CONSERVATION DISTRICT

WHEREAS, The Rules of the Wintergarden Groundwater Conservation District, attached hereto as Attachment A, have been developed for the purpose of conserving, preserving, protecting and recharging the groundwater in the District, and this action is taken under the District's statutory authority to prevent waste and protect rights of owners of interest in groundwater;

WHEREAS, In accordance with Section 59, Article 16 of the Constitution of the State of Texas, and in accordance with the Wintergarden Groundwater Conservation District Act, 75th Leg. H.B. 3602; and in accordance with the Texas Water Code Title 2 Water Administration Subtitle E Groundwater Management (ch.35 & 36); the following rules are hereby ratified and adopted as the rules of the Wintergarden Groundwater Conservation District by its Board of Directors.

WHEREAS, The rules, regulations and modes of procedure contained therein are adopted for the purpose of simplifying procedure, avoiding delays, saving expense and facilitating the administration of this District and these rules shall be so construed; and

WHEREAS, Under no circumstances, and in no particular case will these Rules, or any part of them, be construed as a limitation or restriction upon the exercise of any discretion, where such exists; nor may they in any event be construed to deprive the Board of an exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount and character of data or information which may be required for the proper administration of the law.

WHEREAS, all applicable notice requirements related to the adoption of these Rules have been complied with in a timely manner.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WINTERGARDEN GROUNDWATER CONSERVATION DISTRICT THAT:

(1) The "Rules of the Wintergarden Groundwater Conservation District" contained in Attachment A are hereby adopted.

(2) All prior rules are hereby repealed.

(3) The General Manager is hereby authorized to take any all action necessary to implement this resolution.

(4) These rules take effect on March 29, 2007.

AND IT IS SO ORDERED.