

Central Texas Groundwater Conservation District

DISTRICT RULES

Effective September 1, 2009

**Central Texas
Groundwater Conservation District**

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**Central Texas
Groundwater Conservation District
District Rules**

PREAMBLE

The Central Texas Groundwater Conservation District (“District”) was created in 2005 by the 79th Legislature with a directive to conserve, preserve, protect, and recharge the groundwater resources of Burnet County, and to prevent waste and degradation of quality of those groundwater resources. The boundaries of the District are coextensive with the boundaries of Burnet County. The citizens of Burnet County confirmed creation of the District by an election held on September 21, 2005.

The District is committed to manage and protect the groundwater resources of Burnet County and to work with others to ensure a sustainable, adequate, high-quality and cost-effective supply of water, now and in the future. The District will strive to develop, promote, and implement water conservation, augmentation, and management strategies to protect water resources for the benefit of the citizens, economy, and environment of Burnet County. The preservation of this most valuable resource can be managed in a prudent and cost-effective manner through conservation, education, management, and permitting. Any action taken by the District shall only be after full consideration and respect has been afforded to the individual property rights of the citizens of Burnet County.

CHAPTER 1
GENERAL PROVISIONS

SUBCHAPTER A. Definitions

§ 1.01 Definition of Terms

In the administration of its duties, the District follows the definitions of terms set forth in Chapter 36 and other definitions as follows:

- (1) "Abandoned well" means a well that is not in use. A well is considered to be in use if:
 - (A) the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;
 - (B) the well is not a deteriorated well and has been capped; the water from the well is being put to a beneficial use;
 - (C) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or
 - (D) the landowner is participating in a federal conservation program as defined by Chapter 36, Texas Water Code.
- (2) "Acre-foot" means 325,851 U.S. gallons of water.
- (3) "Affected person" means, for any application, a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (4) "Aquifer" means any water bearing geologic formation located in whole or in part within the boundaries of the District.
- (5) "Available Sustainable Yield" is calculated by subtracting Current Permitted Production from Sustainable Yield.
- (6) "Beneficial use" or "beneficial purpose" means use of groundwater for:
 - (A) agricultural, gardening, domestic (including lawn-watering), stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes;
 - (B) exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals;
 - (C) or any other purpose that is useful and beneficial to the user that does not constitute waste.
- (7) "Board" means the Board of Directors of the District.
- (8) "Casing" means a tubular, watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine groundwater to its zone of origin and to prevent the entrance of surface pollutants.

- (9) “Cement” means a neat Portland or construction cement mixture of not more than seven gallons of water per 94 pound sack of dry cement, creating a cement slurry in which bentonite, gypsum, or other additives may be included.
- (10) “Chapter 36” means Chapter 36, Texas Water Code.
- (11) “Contiguous Controlled Acre” means a surface acre of land upon which a well that is the subject of an Operating Permit or permit application is located, and each additional acre of land that is:
 - (A) owned in fee by the applicant or for which the applicant has a legal right of possession or the right to produce groundwater;
 - (B) located over the same aquifer as the aquifer from which the well will be producing groundwater, and
 - (C) either:
 - (i) located within the perimeter of the same surface estate plat, deed, or other legally recognized surface estate property description filed in the deed records of Burnet County as the acre on which the well is located;
 - (ii) located within the perimeter of an area of land on which the well is located that is under the same fee simple surface estate ownership as the surface acre of land upon which the well is located, although the property may be described in separate plats or deeds; or
 - (iii) contiguous to acreage described under (A) or (B), but on a different tract of land that does not meet the description of acreage under (A) or (B).

Acreage on separate tracts of land that would otherwise be contiguous under this definition but for the need to cross over to the other side of a public right-of-way or an easement shall be considered contiguous for the purposes of this definition. Separate tracts of land must share a common boundary of at least one-eighth of the length of the total tract perimeter of the tract without the well in order for the acreage on the separate tracts to be considered contiguous to the well. The acreage of the public right-of-way itself shall not be included for purposes of calculating the amount of total contiguous acreage unless the permit applicant has the right to produce groundwater from the public right of way. However, acreage on two otherwise non-contiguous tracts of land shall not be considered contiguous simply because they are joined by the length of a public right of way or easement.

- (12) “Current Permitted Production” means the total volume of groundwater, expressed in terms of acre-feet per year, that the District has authorized through Operating Permits and Grandfathered Use Permits to be withdrawn from a single formation, or formation subdivision, within the management zone.
- (13) “Desired future condition” means the desired condition of groundwater resources, developed for a specific aquifer or aquifers, at a specified time in the future, as defined by the groundwater conservation districts participating in Groundwater Management Area No. 8, including the District, as part of the joint planning process described under Chapter 36.

- (14) “Deteriorated well” means a well, the condition of which will cause or is likely to cause pollution of groundwater in the District.
- (15) “Dewatering well” means a well that is constructed to produce groundwater for the purpose of lowering the water table or potentiometric surface, or to relieve hydrostatic uplift, for mining, quarrying, or excavation purposes.
- (16) “Director” means a person who is elected and qualified to serve on the Board of Directors of the District as established by the District Act.
- (17) “District” means the Central Texas Groundwater Conservation District created in accordance with Section 59, Article XVI, Texas Constitution, Chapter 36, and the District Act.
- (18) “District Act” means Act of May 25, 2005, 79th Leg. R.S., ch. 855, 2005 Tex. Gen. Laws 2899, as may be amended from time to time.
- (19) “District office” means the office of the District located in Burnet, Burnet County, Texas. The location of the District office may be changed from time to time by the Board.
- (20) “Domestic use” means the use of groundwater by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard; for watering of domestic animals; and for water recreation including aquatic and wildlife enjoyment. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold. Domestic use does not include use by or for a public water system. Domestic use does not include water used for open-loop residential geothermal heating and cooling systems, but does include water used for closed-loop residential geothermal systems. Domestic use for essential irrigation of lawns or other landscaped areas by sprinkler or other irrigation system, whether above ground or below ground, permanent or temporary (other than hand-held hose or single sprinkler attached to a garden hose), for any irrigation system: (1) installed after September 1, 2009, or (2) for which ownership of the well supplying groundwater to the system changes after September 1, 2009. Any such well supplying water to an irrigation system that does not qualify as domestic use shall obtain a permit from the district prior to producing water from the well for such an irrigation system.
- (21) “Drilling Permit” means a permit required by the District to drill a well to conduct a pumping test as set forth in Section 3.61. Drilling Permits are required only for proposed wells with a maximum capacity as equipped of more than 50 gallons per minute or if the authorization to produce will be for 10 acre-feet or more per year.
- (22) “Emergency Permit” means a permit required by the District for emergency needs, as set forth under Section 3.65.
- (23) “Exempt well” means a new or an existing well that is exempt from permitting under Section 3.40.
- (24) “Existing well” means a well that was in existence or for which drilling commenced prior to September 1, 2009.
- (25) “Effective date” means the original effective date of these rules, September, 1, 2009.

- (26) “General Manager” means the person employed by the Board to manage the employees and day-to-day operations and affairs of the District and whose title is “General Manager”.
- (27) “Grandfathered Use Permit” means a type of permit that the District may issue to qualified Operating Permit holders that authorizes, under certain conditions, additional production based on Grandfathered Use.
- (28) “Grandfathered Use Period” means any time prior to September 1, 2009.
- (29) “Grandfathered Use” is calculated by subtracting the annual amount of groundwater that a permittee is originally authorized by the District to produce from an existing well under the terms of an Operating Permit from the permittee's Maximum Grandfathered Use.
- (30) “Groundwater” means water percolating below the surface of the earth.
- (31) “Hearing Body” means the Board, a committee of the Board, and/or a Hearing Examiner serving in a quasi-judicial capacity at a hearing held under Chapter 36 and/or these Rules.
- (32) “Hearing Examiner” means a person appointed in writing by the Board to conduct a hearing or other proceeding and who has the authority granted to a Presiding Officer under these rules, except as that authority may be limited by the Board or pursuant to the appointment.
- (33) “Hydrogeologic Report” means a report detailing the results of a hydrogeologic investigation conducted pursuant to Section 3.63 that identifies the availability and quality of groundwater in a particular area and formation and the observed impacts of groundwater production on the surrounding environment, including impacts to nearby or adjacent wells.
- (34) “Landowner” means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on the land surface.
- (35) “Leachate well” means a well used to remove contamination from soil or groundwater. The term does not include a dewatering well.
- (36) “Livestock use” means the use of groundwater for the open-range watering of livestock, exotic livestock, game animals or fur-bearing animals. For purposes of this definition, the terms "livestock" and "exotic livestock" are to be used as defined in § 1.003 and § 142.001 of the Agriculture Code, respectively, and the terms “game animals” and “fur-bearing animals” are to be used as defined in §63.001 and §71.001, respectively, of the Parks and Wildlife Code. Livestock use does not include use by or for a public water system.
- (37) “Managed Available Groundwater” means the amount of water that may, to the extent possible, be permitted by the District for beneficial use in accordance with the desired future conditions of the aquifers as determined under Section 36.108, Water Code, after taking into consideration the amount of water used by exempt wells and other non-permitted discharges.
- (38) “Management Plan” means the District Management Plan required under Section 36.1071, Texas Water Code, and as further described in these rules.
- (39) “Management zone” means one or more of the zones into which the Board may divide the District, as set forth under Section 4 of these rules.

- (40) "Maximum Grandfathered Use" means the largest volume of groundwater produced from an aquifer and beneficially used by an applicant for an Operating Permit for an existing well during a calendar year in the Grandfathered Use Period. For applicants seeking an Operating Permit for an existing well who did not commence the beneficial use of water from an aquifer until less than one calendar year before the end of the Grandfathered Use Period, the term means the calculated amount of groundwater that the applicant would in all reasonable likelihood have beneficially used during the entire final calendar year of the Grandfathered Use Period for the applied-for purpose, had the applicant commenced the activities that required the groundwater production on the first day of the final calendar year of the Grandfathered Use Period.
- (41) "Meter" or "measurement device" means a water flow measuring device that can measure within +/- 5% of accuracy the instantaneous rate of flow and record the amount of groundwater produced or transferred from a well or well system during a measure of time.
- (42) "Monitoring well" means a well installed to measure some property of the groundwater or the aquifer that it penetrates, and does not produce more than 5,000 gallons per year.
- (43) "New well" means a well for which drilling commenced on or after September 1, 2009.
- (44) "Non-exempt well" means an existing or a new well that does not qualify for exempt well status under these Rules.
- (45) "Open Meetings Act" means Chapter 551, Texas Government Code, as it may be amended from time to time, also known as the "Texas Open Meetings Act".
- (46) "Operating Permit" means a permit that may be issued by the District for drilling, equipping, completing, substantially altering, operating, or producing groundwater from any new or existing non-exempt water well.
- (47) "Party" means a person who is an automatic participant in a proceeding before the District as set forth under Chapter 7 or a person who has been designated as an affected person and admitted to participate in a contested case before the Board, except where the usage of the term clearly suggests otherwise.
- (48) "Person" means an individual, corporation, limited liability company, organization, government, governmental subdivision, agency, business trust, estate, trust, partnership, association, or other legal entity.
- (49) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any groundwater in the District that renders the groundwater harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or public enjoyment of the water for any lawful or reasonable use.
- (50) "Presiding Officer" means the president, vice-president, secretary, or other Board member presiding at any hearing or other proceeding or a Hearing Examiner appointed by the Board to conduct or preside over any hearing or other proceeding.
- (51) "Production," "producing," or "produce" means the act of extracting groundwater from an aquifer by pumping or other method, or any act or activity that allows more than 25,000 gallons per day of groundwater to escape from an aquifer by any means.

- (52) “Public Information Act” means Chapter 552, Texas Government Code, as it may be amended from time to time.
- (53) “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. 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 a 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 served by the combined systems total 25 or greater at least 60 days out of the 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.
- (54) “Pump” means any facility, device, equipment, materials, or method used to obtain water from a well.
- (55) “Registration” means a well owner providing certain information about a well to the District for the District's records, as more particularly described under Section 3.30.
- (56) “Retail Public Utility” means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling in this state facilities, for providing potable water service or sewer service, or both, for compensation, as defined by Section 13.002 of the Texas Water Code.
- (57) “Rule” or “Rules” means these District Rules collectively or a particular rule contained within these District Rules, as determined by the context in which the term is used.
- (58) “Review period” means the period of time between the date of a Board order publishing a Sustainable Yield calculation and the time identified in the same order when the Board anticipates making a subsequent calculation for the same formation, or formation subdivision, within the same management zone.
- (59) “Substantially alter” or “substantial alteration” with respect to the size or capacity of a well means to increase the inside diameter of the pump discharge column pipe size of the well in any way, to alter or replace the pump to increase its designed production capacity in any way, or to otherwise increase the capacity of the well to produce groundwater so that the maximum production capacity is increased by a factor of five (5) percent or more over the pre-alteration capacity .
- (60) “Sustainable Yield” means a volume of water, expressed in terms of acre-feet per year, that, when factoring all current estimated exempt uses and additional exempt uses that are

anticipated for the review period, can be withdrawn through permitted production within a management zone while achieving applicable desired future conditions within the zone.

- (61) “Transfer” means a change in a permit or application for a permit or a change in a registration as follows, except that the term “transfer” shall have its ordinary meaning as read in context when used in other contexts:
- (A) ownership;
 - (B) the person authorized to exercise the right to make withdrawals and place the groundwater to beneficial use;
 - (C) point of withdrawal;
 - (D) purpose of use;
 - (E) place of use; or
 - (F) maximum rate of withdrawal.
- (62) “Unused well” means a well that has been registered with the District, is not a deteriorated well, and contains the casing, gearhead, pump base, pump, pump column in good condition, as well as if applicable, the power unit, and that:
- (A) has not been operated for three (3) or more years; or
 - (B) has been capped. The term includes a well that has not been operated for three (3) or more years while the real property on which the Well was located was enrolled in a state or federal conservation program such as the Conservation Reserve Program (CRP).

The term does not include a well in which any or all of the equipment has been removed for a reasonable amount of time for repair to the equipment.

- (63) “Verification Period” means June 1, 2010, to June 1, 2011.
- (64) “Waste” means one or more of the following:
- (A) withdrawal of groundwater from an aquifer at a rate and in an amount that causes or threatens to cause an intrusion into the aquifer of water unsuitable for agriculture, gardening, domestic, or stock raising purposes;
 - (B) the flowing or producing of wells from an aquifer if the water produced is not used for a beneficial purpose;
 - (C) escape of groundwater from an aquifer to any other reservoir or geologic stratum that does not contain groundwater;
 - (D) pollution or harmful alteration of groundwater in an aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
 - (E) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or other order

issued by the Texas Commission on Environmental Quality under Chapter 26, Texas Water Code;

- (F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge;
 - (G) for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205, Texas Water Code;
 - (H) operating a deteriorated well;
 - (I) drilling a well within the boundaries of the District without a required permit;
 - (J) operating a well within the boundaries of the District without a required permit;
 - (K) producing groundwater in violation of Chapter 5; or
 - (L) producing groundwater in violation of any District rule governing the withdrawal of groundwater through production limits on wells, managed depletion, or both.
- (65) “Well” means any artificial excavation located within the boundaries of the District dug or drilled for the purpose of exploring for or withdrawing groundwater from an aquifer. The term does not include an aggregate quarry; groundwater use by aggregate quarries is regulated under Chapter 13.
- (66) “Well owner” means the person who owns a possessory interest in: (1) the land upon which a well or well system is located or to be located; (2) the well or well system; or (3) the groundwater withdrawn from a well or well system.
- (67) “Well system” means a well or group of wells tied to the same distribution system.
- (68) “Withdraw” means the act of extracting or producing groundwater by pumping or other method.
- (69) “Year” means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.
- (70) “Zone” means a management zone, except as provided in the definition of “casing”.

SUBCHAPTER B. Purpose and General Provisions

§ 1.02 Authority of District

The Central Texas Groundwater Conservation District is a political subdivision of the State of Texas organized and existing under Section 59, Article XVI, Texas Constitution, Chapter 36, and the District Act.

§ 1.03 Purpose of Rules

These rules are adopted under the authority of Section 36.101, Texas Water Code, and the District Act for the purpose of conserving, preserving, protecting, and recharging groundwater in the District in order to prevent subsidence, prevent degradation of water quality, prevent waste of groundwater, and to carry out the powers and duties of the District Act and Chapter 36.

§ 1.04 Use and Effect of Rules

These Rules are used by the District in the exercise of the powers conferred on the District by law and in the accomplishment of the purposes of the law creating the District. These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case will they, or any part therein, be construed as a limitation or restriction upon the District to exercise powers, duties, and jurisdiction conferred by law.

§ 1.05 Purpose of District

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

§ 1.06 Ownership of Groundwater

The ownership and rights of the owners of land within the District, and their lessees and assigns, in groundwater are hereby recognized, and nothing in Chapter 36 shall be construed as depriving or divesting those owners or their lessees and assigns of that ownership or those rights, except as those rights may be limited or altered by these Rules.

§ 1.07 Construction

A reference to a chapter, subchapter, section, or rule without further identification is a reference to a chapter, subchapter, section, or rule in these Rules, except that a reference to "Chapter 36" shall mean Chapter 36, Water Code. A reference to a subsection without further identification is a reference to a subsection in the same section. Construction of words and phrases is governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code. The singular includes the plural, and the plural includes the singular. The masculine includes the feminine, and the feminine includes the masculine.

§ 1.08 Methods of Service Under the Rules

Except as provided in these rules for notice of hearings on permit applications or otherwise, any notice or document required by these rules to be served or delivered may be delivered to the recipient or the recipient's authorized representative in person, by agent, by courier receipted delivery, by certified or registered mail sent to the recipients last known address, or by telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 o'clock p.m. (as shown by the clock in District's office in Burnet, Texas) on the date which it is due. Service by mail is complete upon deposit in a post office depository box or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer commencing after 5:00 o'clock p.m. (as shown by the clock in the District's office in Burnet, Texas) shall be deemed complete the following business day. If service or delivery is by mail and the recipient has the right or is required to do some act within a prescribed period of time after service, three days will be added to the prescribed period. If service by other methods has proved unsuccessful, service will be deemed complete upon publication of the notice or document in a newspaper of general circulation in the District or by such other method approved by the General Manager.

§ 1.09 Severability

If a provision contained in these Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability does not affect any other Rules or provisions of these Rules, and these Rules shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in these Rules.

§ 1.10 Regulatory Compliance

All well owners, operators, permittees, and registrants of the District shall comply with all applicable rules and regulations of all governmental entities. If District Rules and regulations are more stringent than those of other governmental entities, the District Rules and regulations control.

§ 1.11 Computing Time

In computing any period of time prescribed or allowed by these Rules, order of the Board, or any applicable statute, the day of the act, event, or default from which the designated period of time begins to run is not included, but the last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

§ 1.12 Time Limits

Applications, requests, or other papers or documents required or allowed to be filed under these Rules or by law must be received for filing in the District office within the time limit for filing, if any. The date of receipt, not the date of posting, is determinative of the time of filing. Time periods set forth in these rules shall be measured by calendar days, unless otherwise specified.

§ 1.13 Show Cause Orders and Complaints

The Board, on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite a person operating within the District to appear before it at a public hearing and require the person to show cause why a suit should not be initiated against the person in a district court for failure to comply with the orders or Rules of the Board, the relevant statutes of the State, or failure to abide by the terms and provisions of a permit issued by the District or the operating authority of the District. A hearing under this Rule shall be conducted in accordance with the rules of procedure and practice of the District. Nothing in this rule shall be construed as a mandatory prerequisite to the District instituting a suit or other enforcement under Chapter 8 of these Rules.

§ 1.14 Notification of Rights of Well Owners

As soon as practicable after the effective date of these rules, September 1, 2009, the District shall publish notice to generally inform the well owners of the District's existence and the well owners' rights and duties under the rules.

§ 1.15 Amending of Rules

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

CHAPTER 2
DISTRICT MANAGEMENT PLAN

§ 2.01 District Management Plan

Following notice and hearing, the District adopted a comprehensive District Management Plan in accordance with Chapter 36. The Management Plan, as implemented by the District through these Rules, specifies the acts and procedures and performance and avoidance measures necessary to prevent waste, the reduction of artesian pressure, or the draw-down of the water table. The Board will review the Management Plan at least every five years. If the Board considers a new Management Plan necessary or desirable based on evidence presented at a hearing, a new Management Plan will be developed and adopted. A Management Plan, once adopted, remains in effect until the subsequent adoption of another Management Plan.

CHAPTER 3
PERMITS AND REGISTRATIONS

SUBCHAPTER A. General Provisions Applicable to All Permits and Registrations

§ 3.01 Activities Prohibited Without Prior Authorization

- (a) No person may:
 - (1) drill a well without first obtaining from the District a permit or other express written authorization to drill, or unless otherwise expressly authorized by these Rules;
 - (2) alter the size of a well or pump such that it would bring that well into the jurisdiction of the District, or would disqualify the well from a permitting exemption, without first obtaining a permit from the District;
 - (3) substantially alter the size of a well or pump without first obtaining a permit, permit amendment, or other express written authorization from the District; or
 - (4) produce water from any non-exempt well after without first having obtained from the District a valid Operating Permit or amendment thereto, Grandfathered Use Permit, or Emergency Permit that authorizes the withdrawal of the amount produced.
- (b) No well may be operated unless the well is registered with the District, or unless otherwise expressly authorized in these Rules.
- (c) For existing wells, Subsections (a)(2) and (a)(3) are effective on September 1, 2009, and Subsection (a)(4) is effective on June 1, 2010. For new wells, Subsection (a) is effective in its entirety on September 1, 2009.
- (d) A violation of any of the prohibitions in Subsection (a) or (b) occurs on the first day that the prohibited drilling, alteration, operation or production begins, and continues each day thereafter as a separate violation until cessation of the prohibited conduct, or until the necessary authorization from the District is formally granted by the Board.

§ 3.02 Permits Issued by District

- (a) An Operating Permit is required for drilling, substantially altering, operating, or producing groundwater from any non-exempt well.
- (b) The District must include the following in each permit it issues:
 - (1) the name of the person to whom the permit is issued;
 - (2) the date the permit is issued;
 - (3) the permit expiration date;
 - (4) each applicable permit condition and restriction; and
 - (5) any other information the District determines appropriate.

§ 3.03 Permits Subject to Modification and Additional Production Limitations

- (a) A permit issued by the District confers only the legal ability to undertake the activity specifically described in the terms of the permit. The terms of any permit issued by the District may be modified or amended pursuant to these Rules. A permit conveys no vested right, and itself is no vested right, of the permit holder. The board may revoke or amend a permit in accordance with these Rules when reasonably necessary to accomplish the purposes of the District, the District's rules, Management Plan, or Chapter 36.
- (b) All permits issued by the District are subject to the District's rules, proportional adjustment regulations, and Management Plan.
- (c) Each permit to produce groundwater issued by the District may be issued with special conditions and is at all times subject to additional production restrictions based on:
 - (1) the amount of calculated Sustainable Yield and Available Sustainable Yield in a formation, or formation subdivision, within a designated management zone;
 - (2) prohibiting unreasonable impacts to surrounding landowners;
 - (3) the proportional adjustment regulations of the District;
 - (4) the attainment of applicable desired future conditions;
 - (5) the accomplishment of the purposes of the District, the District's rules, Management Plan, or Chapter 36; and
 - (6) any other applicable production limitations set forth in Chapter 5 of these rules.
- (d) By submitting an application for any permit issued by the District, the applicant acknowledges that any permit issued based on the submitted application does not guarantee the availability of any groundwater.
- (e) The Board may amend these Rules at any time to allocate water available for permitting within a management zone, after considering an estimate of total exempt use produced within the zone, based upon the surface acreage owned by the holder of an Operating Permit or the surface acreage for which the holder of an Operating Permit controls the right to produce groundwater within the same zone.

§ 3.04 Compliance With Permit Terms

The terms, conditions, requirements, and special provisions of a permit issued by the District must be adhered to at all times. The failure of any person bound to comply with the terms, conditions, requirements, and special provisions of a permit is prohibited and is therefore grounds for enforcement as provided by these Rules and other applicable law.

§ 3.05 Permit Terms and Renewal

- (a) Grandfathered Use Permits and Operating Permits issued by the District will be valid only for the term set by the District, not to exceed five years from the date of issuance, or until revoked or amended.
- (b) Except as otherwise provided by these Rules, a permit will be renewed by the General Manager at the end of its term unless the Board acts to amend, cancel, or revoke the permit at the end of its term to accomplish the purposes of Chapter 4, unresolved rules violations, or as otherwise authorized under these Rules.

- (c) If the Board intends to amend on its own motion, cancel, or revoke a permit at the end of its term, the District shall provide the permit holder with written notice of a hearing on the matter at least 90 days before the expiration date of the permit. A hearing under this subsection shall be held using the permit hearing procedures set forth under Chapter 7. This provision shall not be construed to prohibit the District from amending, canceling, or revoking a permit prior to the expiration of its term as otherwise authorized by these Rules.
- (d) The General Manager may approve automatic permit renewals under this Rule without notice, hearing, or further action by the Board, or with such notice and hearing as the General Manager deems practical and necessary under the circumstances. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager. The General Manager may authorize a permit holder to continue operating under the conditions of the prior permit, subject to any changes necessary under proportional adjustment regulations, these Rules, or the Management Plan, for any period in which the permit is the subject of a renewal, amendment, cancellation, or revocation hearing. Only the Board may amend, cancel, or revoke a permit.

§ 3.06 Permit Revocation or Amendment for Nonuse

- (a) To prevent speculation in groundwater permits and the issuance of permits that are not being used, which may result in the denial of permits to other applicants where there is no available water, a permit holder must begin to produce and beneficially use groundwater in accordance with the terms and conditions of a permit within five years of the date of issuance of a permit or permit amendment. The District shall schedule a permit that fails to begin producing and using groundwater in accordance with the permit within five years of permit issuance for a permit revocation hearing, after providing written notice to the permittee, to determine whether to revoke the permit or whether good cause exists to continue authorizing production under the terms of the permit.
- (b) If the total annual groundwater authorization in a permit has been partially, but not fully, used beneficially in a calendar year within five years of permit issuance, the District may schedule a permit amendment or revocation hearing, after providing written notice to the permittee, to determine whether to:
 - (1) continue authorizing production under the terms of the permit;
 - (2) amend the permit to lower the groundwater production authorization to reflect the extent of annual beneficial use; or
 - (3) revoke the permit entirely.
- (c) The District shall not amend or revoke a permit for nonuse if the Board determines, based on evidence presented by the permittee, that:
 - (1) the permit was partially utilized within the initial five-year period; and
 - (2) the unused portion of the permit can be reasonably expected to be fully utilized within ten years of permit issuance based upon the nature of the project, including a demonstration:

- (A) that reasonable progress has been made on the project since permit issuance; and
 - (B) of the likelihood of continuing progress, based upon the nature of the project, so that full utilization of the total permitted amount before the end of the original ten-year period from permit issuance is probable.
- (d) In considering whether to revoke or amend a permit for full or partial nonuse under Subsection (c), the Board shall also consider, where applicable:
- (1) whether the permit was obtained to meet a demonstrated long-term public water supply need, including the gradual addition of retail connections supplied by infrastructure associated with the well and permit;
 - (2) whether nonuse was the result of implementation of water conservation measures; and
 - (3) whether the nonuse is attributable to a public water supplier or other permittee who, although produced groundwater from the well covered by the permit at one time, has converted its water supply in whole or in part to surface water or other alternative supplies and no longer uses the well except for emergency or back-up purposes.
- (e) Any permit continued by the Board under this provision shall be scheduled for a review hearing at each time it is otherwise scheduled for automatic permit term renewal prior to the end of the original ten-year period from the date of issuance to determine the extent of progress since the last time it was considered by the Board and whether good cause exists to amend or revoke the permit.
- (f) Any person whose permit is revoked or amended may reapply for a new permit or permit amendment at a later date in the manner set forth in these rules for new permits or permit amendments generally. The application will be processed in the same manner and under the same criteria and rules applicable to other new permit or permit amendment applications at the time of such reapplication.
- (g) Acceptance of a permit constitutes an acknowledgment by the permit holder of receipt of the rules of the District and agreement that the permit holder will comply with all rules of the District.
- (h) The District may amend any permit, in accordance with these Rules, to accomplish the purposes of the District Rules, Management Plan, the District Act, or Chapter 36.

§ 3.07 Applications Incorporated Into Permits and Registrations

- (a) Each permit and well registration is issued by the District on the basis of, and contingent upon, the accuracy of the information supplied in the underlying applications. The information, statements and commitments contained in an application for a well registration, an Operating Permit, or a Grandfathered Use Permit is incorporated into the permit or registration as though the information was set forth in the permit or registration verbatim.
- (b) A finding that false information has been supplied in any application submitted to the District may be grounds to refuse or deny the application, or to immediately revoke the

permit or registration, except as authorized under Section 3.53 to allow a permit applicant for an existing well to amend a permit application.

§ 3.08 Transfer of Well Ownership

- (a) Within 90 days after the date of a change in ownership of a well, well system, or the right to produce water under a permit, the new well owner (transferee) must file a notice of transfer of ownership of a non-exempt well with the District that includes the new well owner's name and mailing address. The District staff shall develop a form for such purpose, and make the form available in the District office. Once the new well owner files a completed notice of transfer of ownership with the District, the District will recognize the new well owner as the applicable permit holder that will be authorized to produce groundwater from the applicable well pursuant to the terms and conditions of the permit.
- (b) Within 90 days after the date of a change in ownership of a well that is not exempted under Section 3.40, the new well owner (transferee) shall submit to the District, on a form provided by the District staff, a signed and sworn-to application for change of ownership.
- (c) If a permittee conveys by any lawful and legally enforceable means to another person the real property interests in one or more wells or a well system that is recognized in the permit so that the transferring party (the transferor) is no longer the "well owner" as defined herein, and if notice of change of ownership under Subsection (a) has been filed with the District, the District shall recognize the person to whom such interests were conveyed (the transferee) as the legal holder of the permit, subject to the conditions and limitations of these District Rules, and the terms and conditions of each applicable permit.
- (d) Where more than one well is authorized under a single permit, but where not all permitted wells are included in a conveyance of real property interests in the wells to another person, the District may allocate the production authorization of the permit among the well owners pursuant to the terms of the conveyance, these Rules, and applicable law.
- (e) The burden of proof in any proceeding related to a question of well ownership or status as the legal holder of a permit issued by the District and the rights thereunder shall be on the person claiming such ownership or status.

[Sections 3.09 – 3.19 reserved for expansion]

SUBCHAPTER B. Filing and Processing Permit Applications

§ 3.20 Processing Multiple Applications Concurrently

If a person has multiple applications pending before the District, and has requested in writing that the applications be processed concurrently, the District will process and the Board will consider the applications concurrently according to the standards and rules applicable to each, but only to the extent that concurrent processing is practicable under these Rules.

§ 3.21 Application Requirements for all Permits

- (a) All permits are granted in accordance with the provisions of the District Rules.
- (b) The application for a permit must be submitted to the District in writing and must be sworn to by the applicant.
- (c) Each application for a permit issued by the District must contain the following:
 - (1) the name and mailing address of the applicant and the owner of the land on which the well is or will be located;
 - (2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to file the application, hold the permit in lieu of the property owner, and construct and operate a well for the proposed use;
 - (3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
 - (4) a declaration that the applicant will comply with the District Management Plan;
 - (5) the location of each well and the estimated rate at which water will be withdrawn;
 - (6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
 - (7) a drought contingency plan, if the applicant is required by law to have a drought contingency plan;
 - (8) a statement by the applicant that the water withdrawn under the permit will be put to beneficial use at all times;
 - (9) the location of the use of the water from the well;
 - (10) the name of the aquifer or subdivision thereof from which water will be produced by the well;
 - (11) legal description of the tract of land on which the well or well system is located;
 - (12) the number of Contiguous Controlled Acres, a legal description of all such surface acreage, and information demonstrating that the extent to which the surface acreage is located over the same aquifer as the aquifer from which the well will be producing.
 - (13) any additional information required for an Operating Permit under Section 3.50;
 - (14) any additional information required for a Grandfathered Use Permit under Section 3.53; and
 - (15) any other information deemed necessary by the Board that relates to the purposes of the District.
- (d) An application for a permit issued by the District cannot be deemed administratively complete until the applicant has submitted any administrative fees or well report deposits required by the District for permit applications under Chapter 12.
- (e) An application may be rejected as administratively incomplete if the District finds that substantive information required by the permit application is missing, false, or incorrect.

- (f) An application is administratively complete when it meets all requirements set forth under Chapter 36, the District Act, and the District Rules.
- (g) The General Manager will determine whether an application for a permit issued by the District is administratively complete.

§ 3.22 Considerations for Granting or Denying a Permit Application

- (a) Before granting or denying a permit application, the Board shall consider whether the application conforms to the requirements prescribed by Chapter 36, the District Act, the Management Plan, and the District Rules, including without limitation:
 - (1) the criteria under Section 36.113, Water Code;
 - (2) whether the proposed use of water unreasonably affects surrounding landowners;
 - (3) whether the amount of groundwater requested in the application would exceed the Available Sustainable Yield of the formation, or formation subdivision, within the management zone in which the well will be completed;
 - (4) the amount of time expected to lapse, if any, between the application date and the date that the applicant can put the requested water to a beneficial use;
 - (5) whether the applicant commits to placing the water produced under the requested permit to a beneficial use;
 - (6) the spacing and completion requirements of Chapter 6;
 - (7) whether any special conditions should be included, as described under Section 3.03(c) or otherwise;
 - (8) whether the application is submitted in conjunction with any request to transfer another permit; and
 - (9) whether the issuance of the requested permit or permits would authorize the withdrawal of groundwater in amounts that are greater than necessary for the project proposed in the application.
- (b) In determining whether the applicant has demonstrated a need for the requested production authorization and the ability to produce the requested volumes in a manner that complies with the District Rules, the Board shall consider whether the applicant has demonstrated, by a preponderance of evidence, that the quantity of water requested in the application is reasonably needed by the applicant and that the applicant can feasibly begin production and beneficial use of the requested groundwater within three years of the date of permit issuance.
- (c) The evidence required under Subsection (b) must include planning, design, and financing documents appropriate to the nature of the project.

§ 3.23 Amendment of Permit

- (a) If a permit holder intends to undertake any action that would exceed the maximum amount of groundwater authorized to be produced from a well, or change the ownership of a well or permit, the location of a proposed well, the purpose of or location of use of the groundwater produced, or any other applicable term, condition or restriction of an existing

permit, the permit holder must first apply for and obtain an appropriate permit amendment.

- (b) A major amendment to a permit includes, but is not limited to, a change that would substantially alter the size or capacity of a well, an increase in the annual quantity of groundwater authorized to be withdrawn, a change in the purpose or place of use of the water produced, the addition of a new well to be included in an already permitted aggregate system, or a change of location of groundwater withdrawal, except for a replacement well authorized under Section 3.71, and any other change that is not a minor amendment.
- (c) A major amendment to a permit shall not be made prior to notice and hearing.
- (d) All applications for major amendments to any permit issued by the District shall be subject to the considerations in Section 3.60.
- (e) Amendments that are not major, such as a change in ownership of the land the well or well system is located on or an amendment sought by the permittee for a decrease in the quantity of groundwater authorized for withdrawal and beneficial use, are minor amendments and may be approved by the General Manager.
- (f) The General Manager is authorized to approve a minor permit amendment and may approve such minor amendments without public notice and hearing. Such decision by the General Manager may be appealed by an affected person to the Board of Directors. This appeal is a prerequisite to filing suit against the District to overturn the General Manager's decision. The General Manager may also send an application for a minor permit amendment to the Board for consideration, and must do so if the General Manager proposes to deny the application. Any minor amendment sent to the Board for consideration shall be set on the Board's agenda and shall comply with the notice requirements of the Texas Open Meetings Act.
- (g) Grandfathered Use Permits issued by the District may not be amended to allow for:
 - (1) a purpose of use that is different than the purpose of use originally authorized; or
 - (2) use of any water produced under the terms of the applicable permit at any point outside of the District's boundaries, if no such out-of-District use was originally authorized.
- (h) A permit amendment is not required for any well, well pump, or pump motor maintenance or repair if the maintenance or repair does not substantially alter the well, well pump, or pump motor.

§ 3.24 Completion of Permit Application Required

- (a) The District may not act on any application it receives that is not administratively complete. It shall promptly consider and act on each administratively complete application it receives.
- (b) If a filed application is not administratively complete, the District shall notify the applicant in writing of the incomplete nature of the application and request the information needed to complete the application.

- (c) If the District does not receive the information requested pursuant to Subsection (b) within 30 calendar days after the request is tendered, unless good cause is shown the application will be deemed abandoned and shall be returned to the applicant, along with any applicable fees or deposits.

§ 3.25 Aggregation of Multiple Wells Under a Permit

- (a) Multiple wells that are part of an aggregate well system that are owned and operated by the same permit holder and serve the same subdivision, facility, or a certificated service area authorized by the Texas Commission on Environmental Quality may, at the sole discretion of the District, be authorized under a single permit. Multiple wells that are not part of an aggregate well system but that are located on a single tract of land and owned and operated by the same permit holder may be also authorized under a single permit at the sole discretion of the District.
- (b) For the purposes of categorizing wells by the amount of groundwater production, when wells are permitted with an aggregate withdrawal, the aggregate value shall be assigned to the group, rather than allocating to each well its prorated share of estimated production.
- (c) Operating Permits for existing wells and Grandfathered Use Permits issued to an aggregate system will be based upon a consideration of the combined Maximum Grandfathered Use of all wells within the aggregate system, rather than the historic average use of each individual well.

[Sections 3.26 – 3.29 reserved for expansion]

SUBCHAPTER C. Well Registration Requirements

§ 3.30 Registration Requirements Applicable to All Wells

- (a) Each application for well registration must be sworn-to and must include the following on a form provided by the District:
 - (1) the name and mailing address of the registrant and the owner of the land on which the well is or will be located;
 - (2) if the applicant is a person other than the owner of the property, documentation establishing the authority of the applicant to file the application for well registration, to serve as the registrant in lieu of the property owner, and to construct and operate the well for the proposed use;
 - (3) a statement of the nature and purpose of the existing or proposed use and the amount of water used or to be used for each purpose;
 - (4) the location of the well and the estimated rate at which water is or will be withdrawn;

- (5) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
 - (6) a statement that the water withdrawn from the well will be put to beneficial use at all times;
 - (7) the location of the use of the water from the well;
 - (8) the maximum production capacity of the well as equipped for a 24-hour period; and
 - (9) any other information deemed necessary by the Board that relates to the purposes of the District.
- (b) For purposes of determining applicable well spacing and permitting requirements, the information included in a timely filed, administratively complete application for well registration may be used as evidence that the well existed before September 1, 2009.
 - (c) Upon receipt of the well report required by Section 3.70, a registration shall be perpetual in nature, subject to enforcement and/or cancellation for violation of these Rules.

§ 3.31 Deadlines for Registration

- (a) An application for registration for each existing, non-exempt well must be filed with the District by no later than June 1, 2010.
- (b) The owner of an existing well that is exempt under Section 3.40 must register the well with the District on or before September 1, 2010.
- (c) No new well may be drilled or completed until the proposed new well has first been registered with the District.
- (d) No enforcement action may be initiated by the District against any person who fails to register an existing, exempt well in accordance with this section. However, the failure to timely register an existing, exempt well will waive all protections against well interference that are provided in Chapter 6 for the period of time September 1, 2010, and the date the well is finally registered with the District. A failure to timely register an existing, exempt well also waives the eligibility for any special notice afforded to registered well owners pursuant to these rules.

[Sections 3.32 – 3.39 reserved for expansion]

SUBCHAPTER D. Exemptions from Permitting

§ 3.40 Permitting Exemptions

- (a) No permit is required for the following:
 - (1) the operation of an existing well that is:

- (A) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater per 24-hour interval; and
 - (B) used solely for domestic, livestock or poultry use, regardless of the tract size where the well is located;
- (2) the drilling or operation of a new well to be located on a tract of land 10 (ten) acres or larger that will be:
- (A) drilled, equipped, or completed so that it is incapable of producing more than 25,000 gallons of water per 24-hour interval; and
 - (B) used solely for domestic, livestock, or poultry;
- (3) the drilling or operation of a new well to be located on a tract of land smaller than 10 (ten) acres in size if:
- (A) the well is drilled, completed, and equipped so that it is incapable of producing more than 25,000 gallons of water per 24-hour interval;
 - (B) the well will be used solely for domestic, livestock or poultry use;
 - (C) the tract was platted, qualified for an exception to platting, or was otherwise lawfully configured as a tract less than 10 (ten) acres in size before September 1, 2009; and
 - (D) the tract is not divided into smaller tracts of land at any time between September 1, 2009, and the date the drilling of the well commences; or
- (4) the drilling or operation of leachate wells and monitoring wells.
- (b) The use at any time of water produced through an exempt well for any purpose other than those purposes expressly provided for in Subsection (a) will immediately render the well unqualified for a permitting exemption under this section .
- (c) The owner of a well that is exempt from permitting under this section must register the well with the District as an exempt well in accordance with Section 3.31, except as provided by Section 3.31(d).
- (d) Geologic exploration holes, geotechnical borings, and blasting holes are exempt from the drilling, permitting, registration, and reporting requirements of these rules. However, these borings must be plugged with cement or bentonite upon completion of the use of the boring for exploration or testing purposes, to the extent that the borings and holes are not demolished through excavation or blasting.

[Sections 3.41 - 3.49 reserved for expansion]

SUBCHAPTER E. Authorization for Production from Existing Wells

§ 3.50 Operating Permits

- (a) The owner of each existing, non-exempt well that produced or beneficially used groundwater at any time prior to September 1, 2009, must apply to the District for an Operating Permit on or before June 1, 2010, to continue operating the well after that date.
- (b) In addition to the application requirements set forth in Section 3.21, an Operating Permit application for an existing well must also include the following information:
 - (1) the year that the well was drilled;
 - (2) the purpose for which the well was originally drilled;
 - (3) all purposes that water produced from the well was used for prior to September 1, 2009;
 - (4) documentation demonstrating the annual production history of the well for whatever time period the applicant has records, up to at least the last ten calendar years of the Grandfathered Use Period;
 - (5) the Maximum Grandfathered Use of the well or well system and the calendar year during which it took place;
 - (6) all information requested by the District in a Declaration of Grandfathered Use form, which shall be prescribed and provided by the District; and
 - (7) any other information determined necessary by the Board that relates to the purposes of the District.
- (c) The Presiding Officer or the Board may require an applicant for an Operating Permit for an existing well to conduct an aquifer test, and submit a hydrogeologic report describing the results of the test, in the manner generally set forth under Section 3.63, if:
 - (1) the application requests authorization to produce more than 10 acre-feet per year, or the well that is the subject of the application has a maximum production capacity of more than 50 gallons per minute; and
 - (2) a contested case hearing has been granted on the application pursuant to Section 7.61.
- (d) If an aquifer test and accompanying hydrogeologic report is ordered under Subsection (c), the Presiding Officer or Board may require in its order that notice of the test be given, and the Presiding Officer or Board must specify therein which requirements set forth under Section 3.63 the applicant must adhere to in conducting the test or developing the report.
- (e) Subject to the considerations listed in Section 3.22, and any limitations or conditions imposed on the permit application pursuant to that section, an application for an Operating Permit submitted under this section shall not be unreasonably denied by the District.
- (f) No water may be produced from an existing, non-exempt well that is required to be metered under Section 11.01 after June 1, 2010, unless the well is equipped with a properly installed, fully functional flow meter.

- (g) An Operating Permit authorizes the holder to produce groundwater only in accordance with the terms of the permit and these Rules.

§ 3.51 Reporting Requirements for Metered Existing Wells

Beginning no later than February 15, 2011, and each February 15 thereafter, each applicant or holder of an Operating Permit authorizing production from an existing well that is required to be metered under Section 11.01 must, on a form provided by the District, submit a report of the following:

- (1) the name of the permit holder;
- (2) the well numbers associated with each permit held;
- (3) the total amount of groundwater produced by each well or well system during each month of the previous calendar year;
- (4) the purposes for which the water was used;
- (5) the place the water was used;
- (6) the amount and source of any surface water used; and
- (7) any other germane information requested by the District.

§ 3.52 Existing, Non-exempt Wells Used for Domestic, Livestock or Poultry Purposes

- (a) Notwithstanding anything to the contrary in these rules, no applicant for an Operating Permit for an existing well that is used solely for domestic, livestock, or poultry use, but that is not exempt under Section 3.40, may be required:
 - (1) to demonstrate its Maximum Grandfathered Use as a condition to permit issuance; or
 - (2) to provide the information required in Section 3.50(b)(4)-(6) in the permit application.
- (b) For each well described in Subsection (a), the Board, at its sole discretion, may issue a permit that limits production generally to only the amount of water that can be used beneficially for the specified purpose of use, instead of limiting production based on a quantified annual production authorization. This subsection does not prohibit the District from limiting production from such a well in the future during drought conditions, or otherwise to carry out the purposes of the District.

§ 3.53 Grandfathered Use Permits

- (a) The owner of any existing, non-exempt well that was used to produce groundwater at any time during the Grandfathered Use Period may apply to the District for a Grandfathered Use Permit if the owner:
 - (1) timely files an application for an Operating Permit for the same well; and
 - (2) complies with the provisions of this section of these rules.
- (b) Applications for Grandfathered Use Permits must be filed with the District no later than June 1, 2010.

- (c) The failure of any person to file an application for a Grandfathered Use Permit by June 1, 2010, is a waiver of any claim such person may have had for authorization to produce water based on the person's Grandfathered Use.
- (d) In addition to the information required under Section 3.21, an application for a Grandfathered Use Permit must include the following:
 - (1) a copy of the Operating Permit application associated with the Grandfathered Use Permit application;
 - (2) the amount of production authorization proposed under the requested Grandfathered Use Permit, stated in an annual volume; and
 - (3) any other information determined necessary by the Board that relates to the purposes of the District.
- (e) No later than July 15, 2011, each applicant requesting a Grandfathered Use Permit for a well that is required to be metered under Section 11.01 must supplement the application with a record of monthly meter readings from the well for each month of the Verification Period.
- (f) Notwithstanding Section 3.20, an application for a Grandfathered Use Permit will be processed by the District concurrently with the associated application for Operating Permit.
- (g) An applicant for an Operating Permit for an existing well, or for a Grandfathered Use Permit, shall amend the applicant's application(s) to include any new information, or to update information that the applicant has determined to be inaccurate or incorrect, on or before July 15, 2011.
- (h) The District will begin its review and determination of the Maximum Grandfathered Use for each application filed pursuant to this section after July 15, 2011, as set forth in Chapter 7A of these rules.
- (i) An applicant requesting a Grandfathered Use Permit may apply for a production authorization in an amount less than the applicant's Maximum Grandfathered Use.
- (j) The District shall, to the extent possible without impairing the attainment of applicable desired future conditions, issue all uncontested Operating Permits for existing wells and Grandfathered Use Permits.
- (k) Failure to install a meter by June 1, 2010, if one is required under Section 11.01, shall be grounds for the District to deny the permit application and/or pursue enforcement action for violation of the District's rules.
- (l) An application for a Grandfathered Use Permit cannot be deemed administratively complete without the information required by this section, Section 3.21, and Section 7A.2. For an application related to a well that is required to be metered under Section 11.01, the General Manager may withhold a determination of administrative completeness until the applicant has completed and submitted the reports required under Subsection (e) for groundwater that was produced during the Verification Period.

§ 3.54 Interim Production Authorization

- (a) Between June 1, 2010, and the date of final issuance or denial of an application for an Operating Permit or Grandfathered Use Permit for an existing, non-exempt well, the applicant may withdraw and beneficially use an annual volume of water not to exceed the Maximum Grandfathered Use listed in the application(s), subject to Chapter 5 of these Rules.
- (b) This interim authorization by rule based on the information included in the application(s), or most recent amendment thereto, shall constitute the applicant's interim permit to operate and produce groundwater from the well identified in the application for purposes of Chapter 36 until final Board action on the application(s).
- (c) The interim production authorized by this section may be limited by the Board, following an interlocutory hearing on the matter, if the Board concludes that the production unreasonably affects surrounding landowners.
- (d) Notwithstanding any other provision of this section to the contrary, if the application for an Operating Permit for an existing well or the application for a Grandfathered Use Permit is contested and remains contested one year after the date of publication of the Proposed Operating Permit or Proposed Grandfathered Use Permit, the Board may limit the amount of water that the applicant is authorized to produce in the interim until the Board has issued a final decision on the application(s). Such an interim production limitation shall be established by the Board only after an expedited interlocutory hearing before the Board to be initiated by motion of the General Manager.
- (e) An applicant who withdraws more water from a well than the amount claimed as the Maximum Grandfathered Use in the permit application(s) for the well, or most recent amendment thereto, will be subject to enforcement for violation of the District Rules.

§ 3.55 Exception to Verification Period Requirement

- (a) An applicant for an Operating Permit for an existing well or a Grandfathered Use Permit who has records of metered groundwater production documenting all of the applicant's Maximum Grandfathered Use during the calendar year for which the applicant is claiming Maximum Grandfathered Use may elect to have the District proceed with processing the permit application(s) under Chapter 7A of these rules before the end of the Verification Period.
- (b) Each applicant seeking an expedited review under Subsection (a) must submit a written request for expedited review prior to June 1, 2010.

§ 3.56 Transfer of Grandfathered Use Permit or Operating Permit

- (a) The holder of a Grandfathered Use Permit, or an Operating Permit issued under this Subchapter or Subchapter F, may apply to the District to transfer the place of use authorized under the terms of the applicable permit.
- (b) In considering an application made pursuant to Subsection (a), the District must consider:
 - (1) any adverse effects on the aquifers located within the District that can reasonably be anticipated from the proposed transfer;

- (2) any interference with adjacent wells or unreasonable impacts on surrounding landowners that can reasonably be anticipated to result from the proposed transfer; and
 - (3) whether the proposed transfer would unreasonably impair the desired future conditions adopted by the Groundwater Management Area for any aquifer and/or its subdivision(s) located within the District.
- (c) The District may not authorize a transfer requested under this section if the District determines, after a hearing on the matter, that the transfer would unreasonably interfere with adjacent wells, adversely affect the aquifers located within the District, or significantly impair the attainment of the desired future conditions for any aquifer, or its subdivisions.
- (d) A permittee seeking a transfer under this rule shall also comply with the District's procedural and substantive rules governing permit amendments.
- (e) **Operating Permits:** The District may authorize a permit holder to transfer its Operating Permit, or groundwater allocation under such a permit, with the qualification that withdrawals be made from the same aquifer and within the same management zone if one has been established, subject to the considerations set forth under Sections 3.22 and 3.23.
- (1) If the transferor retains any interest in the permit, the District may issue a second permit to the transferee that contains the benefits severed and transferred and may amend the permit of the transferor accordingly, along with the conditions imposed by the District and these Rules.
 - (2) The District may disallow a partial transfer of the right to produce groundwater under a permit in increments of less than 10,000 gallons per year and may round the partial transfer to the nearest 10,000 gallons increment notwithstanding the terms of the transfer.
 - (3) The District shall limit the amount of production authorized in the transfer of a permit to a different location of use or type of use to the amount of groundwater that was produced and used beneficially without waste by the transferor in accordance with the terms and conditions of the original permit.
- (f) **Grandfathered Use Permits:** Under no circumstance may the holder of a Grandfathered Use Permit modify (i) the place of use authorized under a Grandfathered Use Permit, if the new proposed place of use is located outside the District's boundaries or (ii) the purpose of use authorized under a Grandfathered Use Permit.
- (1) The District may authorize a permit holder to transfer its Grandfathered Use Permit, or groundwater allocation under such a permit, with the qualification that withdrawals be made from the same aquifer and within the same management zone if one has been established, subject to the considerations set forth under Sections 3.22 and 3.23.
 - (2) If the transferor retains any interest in the permit, the District may issue a second permit to the transferee that contains the benefits severed and transferred and may amend the permit of the transferor accordingly, along with the conditions imposed by the District and these Rules on each.

- (3) The District may disallow a partial transfer of the right to produce groundwater under a permit in increments of less than 10,000 gallons per year and may round the partial transfer to the nearest 10,000 gallons increment notwithstanding the terms of the transfer.
- (4) The District shall limit the amount of production authorized in the transfer of a permit to a different location of use to the amount of groundwater that was produced and used beneficially without waste by the transferor in accordance with the terms and conditions of the original permit.
- (g) If the withdrawal authorized for multiple wells has been aggregated under one permit pursuant to Section 3.25 and one or more wells under the permit will be transferred, the District will allocate a pro rata share of the total authorized aggregated production to each well transferred unless the conveyance documents transferring the wells clearly provide for a different allocation.

[Sections 3.57 – 3.59 reserved for expansion]

SUBCHAPTER F. Authorization for Production from New Wells

§ 3.60 Construction of New Wells

- (a) For all new wells, except replacement wells, the well owner, water well driller, or any other person acting on behalf of the well owner pursuant to written authority, must submit an application for well registration with the District, and must receive specific authorization from the District, before the well may be drilled or completed. Application must be made in accordance with Section 3.30, using the registration form provided by the District.
- (b) The General Manager shall review each application submitted pursuant to Subsection (a) and shall determine, based on the information provided by the applicant, whether the proposed well qualifies for a permitting exemption under Section 3.40 and whether it meets spacing and completion requirements under Chapter 6. The General Manager shall inform the applicant of this determination in writing within ten (10) business days of receipt of the completed registration application.
- (c) For proposed new wells that the General Manager determines qualify for a permitting exemption under Section 3.40 and that comply with Chapter 6, the applicant may begin drilling the well described in the application upon receipt of the approved registration.
- (d) For proposed wells that the General Manager determines do not qualify for an exemption under Section 3.40, application must be made for all appropriate permits required by these rules, including an Operating Permit and, when applicable for larger wells, a Drilling Permit. For proposed wells that the General Manager determines do not comply with Chapter 6, the application must be amended to comply with the requirements of Chapter 6 or a variance obtained as set forth under Chapter 6. Any applicant may appeal the General

Manager's ruling by filing, within 30 days, a written request for a hearing before the Board.

- (e) The registration requirements in this section do not apply to proposed leachate wells, monitoring wells, or wells described in Section 3.40(d).
- (f) A registrant for a well described in Subsection (c) has 120 days from the date of the General Manager's written determination provided under Subsection (b) to drill and complete the well, and must file the well report within 60 days of completion as required by Section 3.70.

§ 3.61 Drilling Permits for Certain New Large Wells

- (a) No new well may be drilled that is proposed to produce more than 10 acre-feet per year, or that will have a maximum capacity of more than 50 gallons per minute, without the issuance of a Drilling Permit under this section that specifically authorizes the drilling and completion of the proposed well. A Drilling Permit is not required for new wells that are proposed to produce 10 acre-feet of water per year or less, or that will have a maximum capacity of 50 gallons per minute or less. However, no new wells that are proposed to produce 10 acre-feet of water per year or less, or that will have a maximum capacity of 50 gallons per minute or less, may be drilled, completed, or operated without the issuance of an Operating Permit under Section 3.62 that specifically authorizes the drilling, completion, and operation of the proposed well
- (b) Each application for a Drilling Permit under this section must be sworn-to and must include the following information:
 - (1) the name and physical address of the legal owner of the property on which the proposed well is to be located;
 - (2) a description of the location of the proposed well, including the physical address of the property on which the well is proposed to be located, and the latitudinal and longitudinal coordinates of the proposed well location, as measured by a properly functioning and calibrated Global Positioning System unit;
 - (3) the type of use proposed for water produced from the well;
 - (4) the anticipated total depth of the well bore;
 - (5) the proposed diameter of the well bore;
 - (6) the date that drilling is proposed to begin and estimated to be completed;
 - (7) the drilling method proposed to be used;
 - (8) the borehole completion method that is proposed to complete the well, including the depth, size and character of the proposed casing to be installed;
 - (9) a description of the annular seals that will be installed in the well;
 - (10) the surface completion method that will be performed on the well;
 - (11) identification of each water bearing formation that the proposed well will be designed and completed to withdraw from;

- (12) the type of pump proposed to be installed in the well, including the horsepower rating of the pump motor and the designed production capability of the pump, as assigned by the pump manufacturer;
 - (13) the date or dates that the applicant proposes to conduct the hydrologic investigation required by Section 3.63, should the application be granted;
 - (14) a location map that identifies the locations of all wells within 1/2 miles of the location of the proposed well that, as of the date of filing the application, are registered with the District;
 - (15) a tax plat map or maps that identify:
 - (A) the property boundaries of all properties located, in whole or in part, within 1/2 mile of the location of the proposed well;
 - (B) the names, mailing addresses, and, where available, the physical addresses of the owners of each property located, in whole or in part, within 1/2 mile of the location of the proposed well; and
 - (C) the boundaries of the property on which the proposed well will be located; and
 - (16) a statement that, if the application is granted, the applicant will drill, complete and otherwise construct the well in a manner that substantially conforms to what is proposed in the application.
- (c) The District shall make form applications available for requests for Drilling Permits under this section and shall, upon request, provide information reasonably available to the District to assist the applicant with its identification of the locations of registered wells within 1/2 miles of the location of the proposed well.
 - (d) The applicant shall be notified in writing of the General Manager's determination that the application for a Drilling Permit is administratively complete within five business days from the date that the determination is made.
 - (e) The Board must hold a hearing in accordance with Chapter 7 of these rules on each application for a Drilling Permit that is submitted to the District.
 - (f) The Board may not grant an application for a Drilling Permit unless:
 - (1) within 10 business days following the date that the General Manger determined the application to be administratively complete, the District mailed written notice of the application to the owner of each property located, in whole or in part, within 1/2 mile of the location of the proposed well;
 - (2) that notice of the application was published in a newspaper of general circulation in Burnet County within 15 business days of the date that the General Manger determined the application to be administratively complete; and
 - (3) the Board determines that the well, as proposed, complies with all applicable spacing, construction and completion requirements under these Rules and all applicable law.

- (g) Once the Board has made a final determination on an application made under this section, it shall notify the applicant in writing of the determination reached by the Board by providing the applicant with a copy of the order issued by the Board on the application.
 - (1) If the Board grants the application for a Drilling Permit, it shall, in the same order granting the application, authorize the General Manager to issue the Drilling Permit within 60 days of the Board's decision.
 - (2) If the Board denies the application for a Drilling Permit, it shall include, in the same order denying the application, a short, plain statement of the factual and legal bases for its denial.
- (h) The notice required by Subsection (f) must include each of the following:
 - (1) the name and physical address of the legal owner of the property on which the proposed well is to be located;
 - (2) a description of the location of the proposed well, including the physical address of the property on which the well is proposed to be located, and the latitudinal and longitudinal coordinates of the proposed well location, as measured by a properly functioning and calibrated Global Positioning System unit;
 - (3) the type of use proposed for water produced from the well;
 - (4) the date that drilling is proposed to begin and estimated to be completed;
 - (5) the proposed designed maximum production capacity of the well as equipped with the pump and pump motor described in the application;
 - (6) the date(s) chosen by the applicant for conducting the one or more aquifer tests required by this section, if the application were to be granted;
 - (7) a statement that the application is available at the District office for public review during regular business hours; and
 - (8) the physical address and main telephone number of the District office.
- (i) Each drilling permit issued by the District shall incorporate, by reference or by attachment, or both, the information provided in the application for the permit, as though set forth in the permit verbatim, as terms and conditions of the Drilling Permit.
- (j) The authorization provided for in a Drilling Permit issued by the District under this Section shall expire after the passage of 120 days from the date of permit issuance by the General Manager. Extensions to the 120 day validity of the permit may be granted only upon a showing of good cause to the Board.
- (k) The applicant for a Drilling Permit under this Section bears the risk of drilling a well that does not meet the District's spacing and location requirements of Chapter 6 and the appendices of these rules, or the District's well completion requirements in Chapter 6 of these rules.
 - (1) The failure to drill, complete and otherwise construct a well for which a Drilling Permit is required under this Section in accordance with the terms and conditions of the Drilling Permit could result in the denial of the applicant's subsequent Operating Permit application for the well at issue.

- (2) The holder of a Drilling Permit issued by the District is required to plug any well, as though the well is an abandoned or deteriorated well under these Rules, that has been drilled but is the subject of an Operating Permit application that has been denied by the District. Alternatively, the Board may order the holder of the Drilling Permit to re-complete or re-equip any such well, or both, in a manner that will comply with terms and conditions authorized by the Board.
- (l) No later than 90 days following the date of completion of a well drilled pursuant to a Drilling Permit issued under this section, the well owner must submit an application under Section 3.62 for an Operating Permit.
- (m) The failure to submit an application for an Operating Permit within the time required under Subsection (l) may result in the Board declaring the well abandoned.

§ 3.62 Operating Permits for New Wells

- (a) No new, non-exempt well may be operated without the issuance of an Operating Permit under this section that specifically authorizes the operation of, and production of water from, the well identified in the permit.
- (b) Larger Wells: An application for an Operating Permit for which a separate Drilling Permit is required under Section 3.61 must be sworn-to and contain the following:
 - (1) all information requested in Section 3.21;
 - (2) a copy of the application for Drilling Permit;
 - (3) a copy of the Well Report required by Section 3.70;
 - (4) notice of any application to the Texas Commission on Environmental Quality to obtain or modify a Certificate of Convenience and Necessity to provide water or wastewater service with water obtained pursuant to the requested permit; and
 - (5) a hydrogeologic report conducted in conformity with, and that otherwise complies with, Section 3.63.
- (c) Smaller Wells: Authorization to drill, complete, and operate any new, non-exempt well proposed to produce 10 acre-feet of water per year or less, or that will have a maximum capacity of 50 gallons per minute or less, may be issued as a single permit, in the form of an Operating Permit issued under this section. Applications for Operating Permits for such smaller wells must be sworn-to and must contain the following:
 - (1) all information requested in Section 3.21;
 - (2) all information requested in Section 3.61(b); and
 - (3) notice of any application to the Texas Commission on Environmental Quality to obtain or modify a Certificate of Convenience and Necessity to provide water or wastewater service with water obtained pursuant to the requested permit.
- (d) Within 60 days of the date the General Manger declares an application submitted pursuant to this section administratively complete, the Board shall hold an evidentiary hearing on the application, in accordance with Chapter 7 of these Rules.

- (e) For larger wells described under Subsection (b), in addition to all other applicable considerations, the Board may not grant an application for an Operating Permit submitted under this section unless:
 - (1) within 10 business days following the date that the General Manger determined the application to be administratively complete, the District mailed written notice of the application to the owner of each property located, in whole or in part, within 1/2 mile of the location of the proposed well; and
 - (2) notice of the application was published in a newspaper of general circulation in Burnet County within 15 business days following the date that the General Manger determined the application to be administratively complete.
- (f) Subject to the considerations listed in Section 3.22, and any limitations imposed on the permit application pursuant to those considerations, an application for an Operating Permit submitted under this section may not be unreasonably denied by the District
- (g) An Operating Permit issued for wells described in Subsection (c) that authorizes drilling of a new well, shall expire on the first anniversary of the date of permit issuance, unless the permit holder:
 - (1) has demonstrated to the District that it has completed the well in accordance with the well description in the applications, the District's well spacing, construction and completion requirements provided for in these rules, and all other standards required under other applicable law; or
 - (2) has applied for, and been granted, an extension. Such extensions shall only be granted once and shall not be valid for more than an additional one-year period. Thereafter, the applicant must file a new Operating Permit application.
- (h) If an application is submitted to the District for an Operating Permit for a new well with a proposed maximum designed production capacity of 50 gallons per minute or less, but the well as completed is capable of producing more than 50 gallons per minute, the permit holder must:
 - (1) equip the well so that it is incapable of producing more than the maximum designed production capacity described in the permit application; or
 - (2) apply for and obtain an amendment to the Operating Permit, and comply with the notice, aquifer test, and hydrogeological reporting requirements of this chapter applicable to applications for wells of that production capacity.
- (i) An Operating Permit authorizes the permittee to produce water only in accordance with the terms of the permit and these Rules.
- (j) No water may be produced from any new, non-exempt well that is required to be metered under Section 11.1 unless the well is first:
 - (1) permitted by an Operating Permit issued pursuant to this section; and
 - (2) equipped with a properly installed, fully functional flow meter.

§ 3.63 Hydrogeologic Investigation and Reports

- (a) Following the completion of each well authorized to be drilled pursuant to a Drilling Permit issued under Section 3.61, the holder of the Drilling Permit must conduct a hydrogeologic investigation of each water bearing formation in which the well is completed to produce groundwater, or, if agreeable to the Board, a hydrogeologic investigation of the collective formations in which the well is completed to produce groundwater. In addition, the Board may order a hydrogeologic investigation be conducted under this section for any application where the Board determines that such report is warranted based on aquifer conditions, type of modification, status of adjacent wells, local water use trends, and other aquifer management considerations, including when a permit application if granted would result in no Available Sustainable Yield in the formation or formation part.
- (b) Within 90 days following September 1, 2009, the District shall adopt a hydrogeologic investigation and reporting policy as a component of these rules that shall govern the procedure and protocol for conducting hydrogeologic investigations and for preparing hydrogeologic reports. The policy shall be designed to provide the District with information that is sufficient to assess the hydrogeologic impacts related to the proposed water production rate or to the transportation of water to a point or points outside of the District. Applicants may not rely solely on hydrogeologic reports previously filed with or prepared by the District. If a hydrogeologic report is required by this section as a component of an application, the application is not administratively complete until the required hydrogeologic report is submitted to the District.
- (c) Following the conclusion of a hydrogeologic investigation conducted pursuant to this section, the well owner must develop a hydrogeologic report that assesses and documents the local aquifer characteristics and the potential influences of the proposed production on local wells and water quality.
- (d) Each hydrogeologic report conducted pursuant to this section must be completed in a manner that complies with the policy adopted by the District for this purpose pursuant to Subsection (b).
- (e) Notwithstanding Section 3.62(a), the operation of a well for which the District has not issued a permit to produce groundwater, and the production of water from the same well, is authorized for the limited purpose of conducting a hydrogeologic investigation under this section.

§ 3.64 Reporting Requirements for Metered New Wells

Beginning in 2011 and no later than February 15 of each year thereafter, the holder of an Operating Permit for each new well that is required to be metered under Section 11.01 must, on a form provided by the District, submit a report to the District providing the information required under Section 3.51.

§ 3.65 Emergency Permits

- (a) Upon application, the General Manager may grant an Emergency Permit that authorizes the drilling, equipping, completion, substantial altering with respect to size or capacity, or operation of a well and production from it as set forth under this Section.

- (b) An application for an Emergency Permit shall contain the information set forth in Section 3.21 and present sufficient evidence that:
 - (1) no suitable surface water or permitted groundwater is immediately available to the applicant; and
 - (2) an emergency need for the groundwater exists such that issuance of the permit is necessary to prevent the loss of life or to prevent severe, imminent threats to the public health or safety.
- (c) The General Manager may rule on any application for an Emergency Permit without notice, hearing, or further action by the Board, or with such notice and hearing as the General Manager deems practical and necessary under the circumstances. Notice of the ruling shall be given to the applicant. Any applicant may appeal the General Manager's ruling by filing, within ten business days of the General Manager's ruling, a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next available regular Board meeting or at a special Board meeting called for that purpose. The General Manager shall inform the Board of any Emergency Permits granted or denied. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager.
- (d) The administrative fees, if any, to be assessed for an Emergency Permit under this Rule shall be the same as a permit issued under Section 3.62.
- (e) Emergency Permits may be issued for a term determined by the General Manager based upon the nature and extent of the emergency, such term not to exceed 60 days. Upon expiration of the term, the permit automatically expires and is cancelled.

[Sections 3.66 – 3.69 reserved for expansion]

SUBCHAPTER G. Well Reports; Well Replacement and Alteration; Unused Wells

§ 3.70 Reports of Drilling, Pump Installation and Alteration Activity

- (a) Each person who drills, deepens, completes or otherwise alters a well shall make, at the time of drilling, deepening, completing or otherwise altering the well, a legible and accurate Well Report recorded on forms provided by the District or by the Texas Department of Licensing and Regulation.
- b) Each Well Report required by Subsection (a) must contain:
 - (1) the name and physical address of the well owner;
 - (2) the location of the drilled, deepened, completed or otherwise altered well, including the physical address of the property on which the well is or will be located, and the latitudinal and longitudinal coordinates of the wellhead location, as measured by a properly functioning and calibrated Global Positioning System unit;

- (3) the type of work being undertaken on the well;
 - (4) the type of use or proposed use of water from the well;
 - (5) the diameter of the well bore;
 - (6) the date that drilling was commenced and completed, along with a description of the depth, thickness, and character of each strata penetrated;
 - (7) the drilling method used;
 - (8) the borehole completion method performed on the well, including the depth, size and character of the casing installed;
 - (9) a description of the annular seals installed in the well;
 - (10) the surface completion method performed on the well;
 - (11) the location of water bearing strata, including the static level and the date the level was encountered, as well as the measured rate of any artesian flow encountered;
 - (12) the type and depth of any packers installed;
 - (13) a description of the plugging methods used, if plugging a well;
 - (14) the type of pump installed on the well, including the horsepower rating of the pump motor and the designed production capability of the pump, as assigned by the pump manufacturer;
 - (15) the type and results of any water test conducted on the well, including the yield, in gallons per minute, of the pump operated under optimal conditions in a pump test of the well;
 - (16) the actual production capacity of a well as equipped, stated in gallons per minute, as determined under Subsection (d);
 - (17) a description of the water quality encountered in the well;
 - (18) the Texas Water Development Board State Well Number Grid quadrangle in which the well is located; and
 - (19) an identification of the aquifer supplying water to the well.
- (c) If the well is constructed and completed to produce water from more than one aquifer, as authorized under Section 6.04, the Well Report submitted for the well shall also include the following:
- (1) a statement that the well is completed to produce water from more than one aquifer;
 - (2) an identification of each aquifer supplying water to the well; and
 - (3) an estimate in gallons per minute of the contribution of water from each aquifer supplying water to the well.
- (d) In determining the actual production capacity of the well for the information required under Subsection (b)(16), the person providing the information should consider all available information, including the pump column size, bowl size, casing size, horsepower, pumping level, pump tests, manufactures pump rating, or other information

available to or provided by the pump installer or well driller. For the purpose of these rules, the production capacity shall be stated in gallons per minute produced by the well under normal operating conditions.

- (e) The person who drilled, deepened, completed, equipped or otherwise altered a well shall, within 60 days after the date the well is completed or such other action is taken, file a Well Report described in this section with the District.

§ 3.71 Replacement Wells and Substantial Alteration of Completed Wells

- (a) No person may substantially alter a well or pump, or replace a well, without first having obtained authorization for such work from the District. Authorization for substantial alterations or replacement wells may only be granted following the submission of an application for such a request with the District.
- (b) Applications for replacement wells submitted under this subsection may be granted by the General Manager without notice or hearing if the replacement well will comply with each of the following conditions:
 - (1) the replacement well must be drilled within 50 feet of the location of the well being replaced;
 - (2) the replacement well or pump shall not be larger in size or capacity than the well being replaced so as to substantially alter the size or capacity of the well; and
 - (3) immediately upon commencing operation of the replacement well, the well owner will cease production from the well being replaced and will immediately undertake the plugging of the well being replaced.
- (c) For the substantial alteration of existing wells, the applicant must obtain approval by the Board of a permit amendment application under Section 3.23 that provides all of the following information that applies:
 - (1) a description of the features of the well or pump that the applicant proposes to substantially alter, and a description of the same features of the well or pump as they currently exist;
 - (2) the extent of any recompletion or reworking proposed for the well, and the methods proposed to be used to accomplish such recompletion or reworking;
 - (3) for requests for the substantial alteration of a well with an outside casing diameter greater than 6 5/8 inches, if the proposed alteration will increase the capacity of the well to produce groundwater by more than 10 acre-feet per year than before the alteration, a hydrogeologic report conducted in accordance with Section 3.63; and
 - (3) the reasons for the proposed substantial alterations.
- (d) The Board may grant a variance to the 50-foot requirement under Subsection (b) only after notice and hearing on an amendment application.
- (e) The General Manager shall review applications for substantial alteration of existing wells submitted under Subsection (c) to determine whether the proposed substantial alteration would constitute a major or minor permit amendment, or would disqualify an exempt well from the applicable permitting exemption under Section 3.40.

§ 3.72 Returning an Unused Well to Production

If an unused well, as defined in Section 1.01, is returned to production, the well must be brought into compliance with the current District Rules, and the owner shall obtain a permit or permit amendment for the well prior to operating the well. The rules relating to permit and permit amendment applications, including the spacing requirements applicable to new wells under Chapter 6, shall apply to the application for returning the unused well to production.

CHAPTER 4
MANAGEMENT ZONES

§ 4.01 Management Zones

- (a) Using the best hydrogeologic and other relevant scientific data readily available, the Board by resolution may create certain management zones within the District based on geographically or hydrogeologically defined areas, aquifers, or aquifer subdivisions, in whole or in part, within which the District may:
 - (1) assess water availability;
 - (2) authorize total production and make proportional adjustments to permitted withdrawals;
 - (3) allow for the transfer of permits; and
 - (4) otherwise undertake efforts to manage the groundwater resources in a manner that is consistent with the District Act, Chapter 36, and that aids in the attainment of all applicable desired future conditions.
- (b) In creating zones pursuant to Subsection (a), the Board shall attempt to delineate zone boundaries that will promote fairness and efficiency by the District in its management of groundwater, while considering hydrogeologic conditions.
- (c) Where practicable, the Board may consider the ability of the public to readily identify the boundaries of designated zones based on features on the land surface.

§ 4.02 Calculation of Sustainable Yield Within Management Zones

- (a) Upon designating a management zone or no later than 24 months after such designation, , the Board shall publish by order the calculated Sustainable Yield and review period for each formation, or formation subdivision, within each zone designated pursuant to Section 4.01.
- (b) In making each Sustainable Yield calculation, the Board must consider the most reliable, necessary scientific and economic information readily available to it regarding the hydrologic condition of the formation, or formation subdivision, within the zone and the current and anticipated demands on that formation or formation subdivision from exempt uses. Such information may include, without limitation:
 - (1) groundwater availability models made available by the Texas Water Development Board or other such models;
 - (2) relevant information from hydrogeologic reports conducted pursuant to Section 3.63 and submitted to the District by permit applicants;
 - (3) information from monitoring wells;
 - (4) information in the District Management Plan;
 - (5) information in the approved state or regional water plan for the area;
 - (6) the applicable Managed Available Groundwater number, if any;
 - (7) any well reports on file with the District;

- (8) population counts, available population estimates, and available population growth forecasts for relevant areas within the zone from the state demographer, the Texas Water Development Board, or the United States Census Bureau; and
 - (9) information published by the United States Department of Agriculture, the Texas Department of Agriculture, and the Texas A&M Cooperative Extension Service regarding relevant trends in the livestock and poultry industries that may influence the volumes of water used for exempt livestock and poultry purposes during the review period.
- (c) Each Sustainable Yield calculation published by the District must be such that a calculation of zero (0) acre feet per year for the same formation within every designated zone would accommodate all estimated current exempt uses, plus the additional exempt uses anticipated during the review period, while allowing attainment of applicable desired future conditions.

§ 4.03 Consideration of Permit Applications in Formations or Management Zones With No Available Sustainable Yield

- (a) When considering any application for a permit in a formation, or formation subdivision, within a management zone that, if granted in the amount requested, would result in an Available Sustainable Yield for the formation or formation subdivision of zero (0) acre-feet per year or less, the Board shall order that production from any existing non-exempt or exempt well within the appropriate area of the proposed new well will be reduced proportionally as necessary to allow for the additional production and to achieve any applicable desired future conditions.
- (b) The provisions of this section do not apply to Grandfathered Use Permits issued in accordance with the Rules of the District.

§ 4.04 Proportional Adjustments of Permitted Production Authorization

- (a) If the Available Sustainable Yield for any formation, or formation subdivision, within a management zone reaches a volume that is less than zero (0), the Board may order that all permitted or exempt withdrawals authorized from the formation or formation subdivision within the zone be reduced proportionally so that the volume of Available Sustainable Yield will be equal to or greater than zero (0) acre-feet per year or as otherwise necessary to achieve attainment of applicable desired future conditions.
- (b) When establishing proportional adjustment regulations for a zone that contemplate the reduction of authorized production, the Board may consider the time reasonably necessary for water users to secure alternate sources of water, including surface water, by economically feasible means and may incorporate those time considerations in the adoption and implementation of the proportional adjustment regulations. The Board may also include provisions in the proportional adjustment regulations that engender or facilitate cooperative arrangements between permittees within a zone to diminish the impacts to the permittees in complying with the regulations.

CHAPTER 5
REGULATION OF PRODUCTION

§ 5.01 Interim and Permanent Production Limits for Existing Wells Eligible for Operating and Grandfathered Use Permits

- (a) The maximum annual quantity of groundwater that may be withdrawn by an applicant for an Operating Permit for an existing non-exempt well, or withdrawn in total by an applicant for both an Operating Permit and a Grandfathered Use Permit, during the time between September 1, 2009, and the issuance or denial of the permit or permits shall be the amount specified in the applications or most recent amendment thereto as the Maximum Grandfathered Use.
- (b) The maximum annual quantity of groundwater that may be withdrawn under an Operating Permit for an existing non-exempt well or a Grandfathered Use Permit issued by the District shall be no greater than the amount specified in the terms of the permit, subject to any production restrictions ordered by the Board pursuant to Chapters 3 or 4 of these Rules. The Board shall limit the maximum annual quantity of groundwater that may be withdrawn under a Grandfathered Use Permit to an amount equal to or less than the amount determined by the board, after a hearing on the application, to be the Maximum Grandfathered Use, subject to the considerations set forth under Section 3.22 and Chapter 4 of these rules, including without limitation limiting the amount if the Board determines that the withdrawal would unreasonably affect surrounding landowners.

§ 5.02 Production Limitations for Operating Permits

- (a) In order to accomplish the purposes of Chapter 36 and these Rules, and achieve the goals of the Management Plan, including achieving attainment of the desired future conditions of the aquifers, the District shall establish production limitations for all permits and may amend such limitations at some time before or after the Verification Period, as applicable, based upon the District's determination of claims of Maximum Grandfathered Use under Chapter 3 and and water availability under Chapter 4 of these rules.
- (b) The maximum annual quantity of groundwater that may be withdrawn under an Operating Permit for a new well shall be no greater than the amount specified in the terms thereof, subject to any production restrictions ordered by the Board pursuant to Chapters 3 or 4.
- (c) No Operating Permit shall be issued by the Board that authorizes the production of groundwater in an annual amount that exceeds the lesser of the following:
 - (1) the amount of water determined by the Board after considering the factors enumerated in Section 3.22, and applicable considerations in Chapter 3, Subchapters E and F, and Chapter 4; or
 - (2) Except as provided for in Subsection (i), an annual amount of groundwater equal to 1/2 acre-foot per Contiguous Controlled Acre.
- (d) Each Contiguous Controlled Acre is presumed to be located over the same aquifer from which the well is, or is proposed to be, producing.
- (e) The presumption in Subsection (d) may be rebutted only by a preponderance of evidence, admitted by the District or a person contesting the permit application.

- (f) The presumption in Subsection (d) does not apply to acreage that does not meet the definition of "Contiguous Controlled Acre" in Section 1.01. The applicant must, in such circumstances, demonstrate by a preponderance of evidence:
 - (1) that such acreage is located over the same aquifer from which the well is, or is proposed to be, producing; and
 - (2) that groundwater can be physically produced in substantially similar quantities as is produced, or is proposed to be produced, from the well site property.
- (g) In addition to all other applicable provisions, if an applicant for an Operating Permit seeks to produce an increased amount of groundwater from a well located on one tract of land based on surface acreage located on a different, but contiguous, tract of land, as specifically described under Subdivision (3)(C) of the definition of "Contiguous Controlled Acre" in Section 1.01, the applicant must demonstrate that groundwater could actually physically be produced from the different tract of land in the quantity claimed for that acreage on the different tract.
- (h) A surface acre of land may not be assigned as a Contiguous Controlled Acre to more than one well, well system, or permit holder.
- (i) The Board may establish aquifer-specific or management zone-specific production regulations that allow more than the limit set forth under Subsection (c)(2) in an area or aquifer established as a management zone in accordance with the provisions of Chapter 4. Any such special production regulations shall be adopted in the manner and under the procedures applicable to the adoption of rules generally, and shall be attached as an Appendix to these rules.
- (j) Any person may petition the Board to establish a special production regulation or management zone pursuant to Subsection (i), or the Board may do so on its own initiative. If the Board initiates or grants a hearing on such a petition, the Board may establish a zone and a special production regulation if the Board determines that there is clear and convincing evidence that:
 - (1) the special production regulation will not unreasonably impact surrounding landowners or any other landowners hydrologically connected to the groundwater resource in question;
 - (2) the correlative amount of groundwater that may be produced from each surface acre of land in the proposed zone is higher than the limit set forth under Subsection (c)(2); and
 - (3) the special production regulation will not unreasonably impact the goals and objectives of the District Management Plan, the attainment of the adopted desired future conditions of the aquifer, other groundwater production that is hydrologically connected to the proposed zone, or production for exempt use.
- (k) If the Board establishes special production regulations under Subsection (i), the Board may require permit applicants in the zone that are requesting more than the limit set forth under Subsection (c)(2) to:
 - (1) provide additional information to the District, in accordance with Section 3.63 and any additional Hydrogeological Report Guidelines adopted by the Board, that is

acceptable to the Board and could be used to support the establishment of a special production regulation for a proposed well;

- (2) sign a written acknowledgement that any maximum annual quantity of groundwater that may be withdrawn under an Operating Permit in excess of the limit set forth under Subsection (c)(2) per Contiguous Controlled Acre shall be subject to future reductions and proportional adjustment regulations;
 - (3) agree that location of use must occur within a defined radius of the well;
 - (4) agree to purchase or reimburse the District for the cost of drilling and equipping any monitoring wells adjacent to the applicant's property to monitor for any unreasonable affects on surrounding landowners due to the production of groundwater in excess the limit set forth under Subsection (c)(2); or
 - (5) sign a written acknowledgement that the District may reduce in production based on criteria established by the District from data collected from the monitor wells if such data indicates unreasonable affects on surrounding landowners or the aquifer.
- (l) Notwithstanding anything to the contrary in these Rules, all permits issued by the District may be subject to future production limitation reductions or special conditions by the Board in the event that the Board adopts rules in the future creating interruptible permits or creating interruptibility conditions or groundwater withdrawal reduction conditions in previously issued permits due to drought conditions, aquifer conditions, or other criteria once total permitted production from an aquifer has reached the Managed Available Groundwater amount or once there is no longer Available Sustainable Yield in a formation, or formation subdivision, in a management zone.
 - (m) Notwithstanding anything to the contrary in these rules, if the holder of a Grandfathered Use Permit is located in an area for which a special production regulation is established under this section that, based upon the holder's Contiguous Controlled Acreage, would have allowed the permit holder's total production from a well to be authorized solely under an Operating Permit if the special production regulation had been in place at the time the Grandfathered Use Permit was issued, the District may amend the permit holder's Operating Permit to include the production authorization under the Grandfathered Use Permit and then revoke the Grandfathered Use Permit.
 - (n) For any aquifer or zone including an aquifer for which no desired future condition has been adopted, the Board may utilize an expedited process to establish a zone and a special production regulation under Subsection (i) and begin studying and monitoring the formation to determine the reasonableness of the special regulation. The Board may immediately impose the requirements set forth under Subsection (k) on any permit applicants in the zone that are requesting more than the limit set forth under Subsection (c)(2).

Historical and Administrative Notes

The default production limit set forth under Subsection (c)(2) was established by the Board after careful deliberation using the best science and information presently available, as a reasonable balance between:

- (1) The amount of groundwater that could be expected to be assigned to each surface acre located over an aquifer under a modified correlative rights

approach after considering the lateral extent of the surface area of the aquifers in the District and dividing that surface area by the availability of groundwater within each aquifer, as set forth in the District Management Plan and after considering estimates of exempt use and the available Managed Available Groundwater and desired future conditions for each aquifer, which results in an acre-foot per surface acre allocation that is only a small fraction of one acre-foot of groundwater per surface acre per year, even in areas of land overlying more than one aquifer, which fraction is so small that if adopted by the Board as a production limitation would prohibit virtually any reasonable use of groundwater by any landowner in the District; and

- (2) The amount of groundwater needed per surface acre of land to allow reasonable beneficial use of groundwater without waste, encourage conservation, and support continued economic growth in the District.

Thus, the limit set forth under Subsection (c)(2) is one determined by the Board in light of the best information presently available to be substantially greater than the actual amount of groundwater that a surface acre of land would be assigned under the modified correlative rights approach described above for each and every aquifer in the District for which a desired future condition has been established, but nonetheless a reasonable amount to promote continued use and development of the groundwater resource while encouraging conservation and avoidance of waste.

In establishing this maximum production limitation, the Board carefully considered the diverse nature of the aquifers in the District and the wide discrepancies in the physical ability to produce groundwater from different areas and aquifers of the District, the limited groundwater availability nature has provided in this semi-arid region of Texas, the rights of property owners in the District, and the guarantees provided in these Rules to all property owners in the District that they are at least entitled to produce groundwater sufficient to support human and animal life on all tracts of land existing in the District as of the original date of adoption of these Rules.

Notwithstanding the foregoing, the Board is committed to continue to develop and receive science, data, and information on the diverse groundwater resources in the District and pursue groundwater management strategies that are supported by such science, data, and information while carrying out the District's statutory obligations and pursuing the goals and objectives in the District Management Plan. In light of that commitment, the Board has adopted the process described under Subsections (i) and (j) to allow for the consideration by the Board of new science and data on particular aquifers or subdivisions thereof and the establishment of special production regulations in an aquifer or management zone where necessary and appropriate based upon such science and data.

§ 5.03 Production Capacity and Rate for Grandfathered and Operating Permits

A permittee may produce the total authorized annual groundwater production amount authorized in the permit at any rate deemed necessary by the permittee, including any rate necessary to comply with any applicable minimum water system capacity requirements of the Texas Commission on Environmental Quality, to the extent that the permittee can physically produce the groundwater at the well capacity recognized in the permit.

CHAPTER 6
WELL SPACING AND COMPLETION

§ 6.01 Spacing and Location of Existing Wells

- (a) Wells drilled prior to September 1, 2009, shall be drilled in accordance with state law in effect, if any, on the date such drilling commenced.
- (b) Existing wells are grandfathered from the spacing requirements established by these rules for the casing size of the well as it existed on September 1, 2009.
- (c) If a person wishes to increase the casing size of the existing well, the well will become subject to the spacing requirements of these rules.
- (d) A person may increase the capacity of or total annual production from an existing well after September 1, 2009, without becoming subject to the spacing requirements of these rules if the person complies with other applicable rules set forth herein regarding the registration, permitting, operation, and regulation of production of wells.

§ 6.02 Spacing and Location of New Wells

- (a) All new wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant.
- (b) To prevent interference between wells and impacts to neighboring wells within the same aquifer, new wells must be drilled or completed at locations that comply with the minimum tract sizes requirements, the minimum distances from the nearest existing or permitted well or authorized well site that does or will produce from the same aquifer, and the minimum distances from the property lines for the land upon which the well is to be located, as provided in the appendices to these rules. An appendix with minimum tract sizes and spacing distances has been established for each aquifer located within the boundaries of the District and is attached to these rules and incorporated into them.
- (c) As used in this rule and the attached appendix, "tract" shall mean a surface estate plat, surface estate deed, or other legally recognized surface estate property configuration recorded in the deed records of Burnet County as the well, and "property line" shall mean the property line of such tract.
- (d) After authorization to drill a well has been granted under the District's registration rules or through a permit, the well, if drilled, must be drilled within the area that extends no farther than 10 yards (30 feet) from the proposed location point specified in the permit, but that is nevertheless at a point that complies with the spacing and location requirements of these rules. If drilling of the well is initiated at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36 and these Rules.

§ 6.03 Exceptions to Spacing Requirements

- (a) The Board may grant exceptions to the spacing requirements of the District only after considering an application requesting a spacing variance.
- (b) An application for spacing variance must be sworn-to, and must include the following
 - (1) a description of the circumstances that justify the requested exception;
 - (2) a map accurately identifying the locations of all wells within a radius of 1/2 miles of the proposed well that, as of the date of filing of the application, are registered with the District;
 - (3) a tax plat map or other documentation from the tax appraisal district or other governmental office indicating the boundaries of the all properties within a radius of 1/2 miles of the proposed well;
 - (4) the names and addresses of all owners of property whose property adjoins the tract on which the well is to be located;
 - (5) the names and addresses of all owners of registered wells located within a radius of 1/2 miles of the proposed well site;
 - (6) each formation from which the applicant proposes to make withdrawals using the well that is the subject of the application;
 - (7) the formation from which each affected well located within the applicable spacing distance from the well that is the subject of the application is producing; and
 - (8) an affidavit certifying both the application and the plat by an individual with personal knowledge of facts presented in the application, that attests under oath that the facts contained in the application and plat are true and correct.
- (c) The Board may not grant an application filed pursuant to this Section unless it first:
 - (1) receives proof from the applicant that written notice of the application was submitted to:
 - (A) the owner of each property within a radius of 1/2 miles of the proposed well; and
 - (B) the owner of each registered well located within a radius of 1/2 miles of the proposed well site; and
 - (2) conducts a public hearing on the application where interested parties are given an opportunity to appear and be heard on the application.
- (d) Subsection (c) does not apply to an application that includes a written notarized acknowledgment, signed by the owner of each property and registered well whose property or wells would be located within the applicable minimum distance from the well that is the subject of the application, affirmatively stating the absence of any objection to the applicant's proposed well location.
- (e) If the Board grants an exception to its spacing requirements, the applicant must, within 60 days of granting the variance, record the Board order granting the spacing variance in the

real property records of Burnet County and provide the District with a copy of the recorded filing.

- (f) Notwithstanding anything to the contrary in this rule, upon application by a person, and without the need for written notice to other landowners or well owners, the Board shall grant an exception to its spacing requirements for a well that will be equipped so that it is incapable of producing more than 25,000 gallons of water per 24-hour interval and that will be used solely for domestic, livestock, or poultry use to:
 - (1) equip or operate a well that was previously a monitoring well of the District pursuant to a written agreement between the District and the owner; or
 - (2) to drill a well on a tract of land that was platted, meets an exception to platting, or was otherwise lawfully configured prior to September 1, 2009, as a tract that is too small to comply with the minimum tract size and spacing requirements set forth in these rules, only if such tract is not further subdivided into smaller tracts of land after September 1, 2009, and prior to the drilling, completion, or equipping of the well.
- (g) The burden of proof in any proceeding related to an application for an exception to a spacing requirement under this Section shall be on the applicant. The Board may impose additional restrictions on the exact location of a well to be drilled pursuant to an exception that it grants.

§ 6.04 Standards of Completion for All Wells

- (a) All wells must be completed in accordance with the well completion standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and under these Rules.
- (b) In addition to the requirements under Subsection (a), all new wells, re-worked wells, and re-completed wells shall be equipped in such a manner as to allow the measurement of the water level in the aquifer supplying water to the well as follows:
 - (1) For all wells exempt under Section 3.40, the well head shall be equipped so that it will allow the introduction and unimpaired retrieval of a steel tape, e-line, or similar device of at least 3/8th inches in width or diameter in order to measure the aquifer level in the well.
 - (2) For all non-exempt wells, the well head shall be equipped with either of the following:
 - (A) a one-half inch inside diameter drop tube which is equipped with a removable threaded cap at the well head and which extends to a depth that is within 1 foot of the top of the pump installed in the well; or
 - (B) an air line composed of non-corrodible material which is equipped with a pressure gauge capable of displaying pressure in at least 1-pound per square-inch (PSI) increments and which extends to a depth that is within 1 foot of the top of the pump installed in the well; the air line shall have a weather-resistant tag affixed at the well head displaying the depth below land surface of the air-line orifice.

- (3) The driller or employee of the driller shall determine that the completed well complies with this subsection.
- (c) 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 aquifer subdivision.
- (d) In order to protect water quality, the integrity of the well, or loss of groundwater from the well, the District may impose additional well completion requirements on any well as determined necessary or appropriate by the Board.
- (e) In recognition of the potential for low productivity of any single aquifer in certain areas of the District, and the resulting need to construct and complete a well to produce water from more than one aquifer to achieve at least a minimal water supply, the Board by resolution may establish areas within the District where wells may be constructed and completed to produce water from more than one aquifer, provided that the following requirements are observed:
- (1) the well is located within the certain areas established by Board resolution; and
 - (2) the multiple-aquifer completion does not violate the rules of the Texas Department of Licensing and Regulation.
- (f) In addition to all other applicable completion standards, wells that penetrate more than one aquifer, but that are intended to produce water from a single aquifer only, must be completed in accordance with each of the following standards:
- (1) the well bore diameter must be at least two inches greater than the largest outside dimension of the casing to be installed in the well;
 - (2) a rubber strap-on packer, or equivalent device acceptable to the District, shall be installed on the casing to seal the casing annulus either one foot above the base of the casing for open-hole completed wells or the upper-most well screen; and
 - (3) the casing annulus must be filled with bentonite grout for a distance of at least two feet above the packer required by Subsection (f)(2)—the bentonite grout seal may be achieved by manually emplacing dry bentonite chips of no greater than 3/8-inch diameter for the requisite distance above the packer during installation of the casing.
- (g) For wells constructed and completed to produce water from more than one aquifer pursuant to this section, the Well Report for each well must comply with the additional requirements of Section 3.70(c).
- (h) A person that desires to construct a multiple-aquifer well in an area that has not been designated under Subsection (e) for use of multiple-aquifer wells, and who reasonably believes that a multiple-aquifer well completion is necessary to achieve at least a minimal water supply may appear before the Board to request authorization to construct the multiple aquifer well.
- (i) The Board may consider a request for a waiver submitted pursuant to Subsection (h) and:
- (1) authorize the request and order that the well be constructed and completed following the standards set forth under Subsection (e);

- (2) authorize the General Manager to review the request and, where the General Manager determines in his discretion that the request should be granted, administratively approve the request by authorizing the well to be completed following the standards set forth under Subsection (e); or
- (3) deny the request.

CHAPTER 7
HEARINGS ON RULEMAKING AND PERMIT MATTERS

SUBCHAPTER A. General Provisions

§ 7.01 Types of Hearings

The District conducts two general types of hearings: (1) hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing, and (2) rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. Any matter designated for hearing before the Board may be heard by a quorum of the Board, referred by the Board for hearing before a Hearing Examiner, or heard by a quorum of the Board along with an appointed Hearing Examiner who officiates during the hearing. For actions for which a hearing is not required, the Board shall act at a meeting, as defined by Section 55 1.001, Government Code, unless authority has been delegated to the General Manager under these Rules.

[Sections 7.02 – 7.09 reserved for expansion]

SUBCHAPTER B. Permit Hearings

§ 7.10 Permit Applications, Amendments, and Revocations

- (a) The District shall hold a hearing for each activity for which a permit or permit amendment is required pursuant to Chapter 3, subject to the exception in Subsection (b). A hearing involving permit matters may be scheduled before a Hearing Examiner.
- (b) The District shall hold a hearing for minor amendments only if the General Manager determines that a hearing is required.
- (c) The District may hold hearings on permit renewals, permit revocations or suspensions.

§ 7.11 Hearings on Motions for Rehearing.

Motions for Rehearing will be heard by the Board pursuant to Section 7.9 1(b).

§ 7.12 Notice and Scheduling of Permit Hearings.

- (a) This rule applies to all permit matters for which a hearing is required, except as provided under Section 7A for Grandfathered Use Permit applications.
- (b) Notice may be provided under this rule for permit renewals, revocations and suspensions if the General Manager determines that a hearing is required.
- (c) Not later than the 10th day before the date of a hearing, the General Manager, as instructed by the Board, is responsible for giving notice in the following manner:

- (1) notice of hearing will be published at least once in a newspaper of general circulation in the District;
 - (2) notice shall be posted in a place readily accessible to the public at the District's office;
 - (3) notice of the hearing shall be provided to the county clerk;
 - (4) notice of the hearing shall be provided by regular mail to the applicant; and
 - (5) notice of the hearing shall be provided by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d).
- (d) A person having an interest in the subject matter of a hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this Subsection does not invalidate any action taken by the Board.
- (e) The notice provided under Subsections (a) and (b) must include:
- (1) the name of the applicant;
 - (2) the address or approximate location of the well or proposed well;
 - (3) if the notice is for a permit, permit amendment or permit renewal, provide a brief explanation, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
 - (4) a general explanation of the manner by which a person may contest the permit, permit amendment, or permit renewal, including information regarding the need to appear at the hearing or submit a motion for continuance on good cause under Section 7.62(e)(4);
 - (5) the time, date, and location of the hearing; and
 - (6) any other information the Board or General Manager deems relevant and appropriate to include in the notice.
- (f) An administratively complete application shall be set for a hearing on a specific date within 60 days after the date it is administratively complete. A hearing shall be held within 35 days after the setting of the date, and the District shall act on the application within 60 days after the date the final hearing on the application is concluded.
- (g) A hearing may be scheduled during the District's regular business hours, excluding District holidays. All permit hearings will be held at the District Office or regular meeting location of the Board. The Board, however, may change or schedule additional dates, times, and places for hearings.

[Sections 7.13 – 7.19 reserved for expansion]

SUBCHAPTER C. Rulemaking Hearings

§ 7.20 Rules and District Management Plan

The Board may hold a hearing, after giving notice, to consider adoption of a new District Management plan or revising an existing District Management Plan or to amend the District Rules or adopt new District Rules.

§ 7.21 Other Matters

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

§ 7.22 Notice and Scheduling of Rulemaking Hearings

- (a) Not later than the 20th day before the date of a rulemaking hearing, the General Manager, as instructed by the Board, is responsible for giving notice in the following manner
 - (1) notice of the hearing will be published at least once in a newspaper of general circulation in the District;
 - (2) notice will be posted in a place readily accessible to the public at the District's office;
 - (3) notice of the hearing will be provided to the county clerk; and
 - (4) notice will be provided by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (b).
- (b) A person having an interest in the subject matter of a hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this Subsection does not invalidate any action taken by the Board.
- (c) The notice provided under subsection (a) 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) a location or Internet site at which at which a copy of the proposed rules may be reviewed or copied.
- (d) A hearing may be scheduled during the District's regular business hours, excluding District holidays. All rulemaking hearings shall be held at the District Office or regular meeting location of the Board unless the Board provides for hearings to be held at a

different location. The Board, however, may change or schedule additional dates, times, and places for hearings.

- (e) The District shall make available a copy of all proposed rules at a place accessible to the public during normal business hours, and post an electronic copy of the rules on the District's internet site.

[Sections 7.23 – 7.29 reserved for expansion]

SUBCHAPTER D. General Procedures

§ 7.30 Authority of Presiding Officer

- (a) The Presiding Officer may conduct a hearing or other proceeding in the manner the Presiding Officer determines most appropriate for the particular proceeding.
- (b) The authority of a Hearing Examiner appointed by the Board to serve as Presiding Officer may be limited at the discretion of the Board. The Presiding Officer may:
 - (1) set hearing dates other than the initial hearing date for permit matters which is set by the General Manager;
 - (2) convene the hearing at the time and place specified in the notice for public hearing;
 - (3) establish the jurisdiction of the District concerning the subject matter under consideration;
 - (4) rule on motions, the admissibility of evidence, and amendments to pleadings;
 - (5) designate parties and establish the order for presentation of evidence;
 - (6) administer oaths to all persons presenting testimony;
 - (7) examine witnesses;
 - (8) prescribe reasonable time limits for the presentation of evidence and oral argument;
 - (9) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party to the proceeding;
 - (10) conduct public hearings in an orderly manner in accordance with these Rules;
 - (11) recess a hearing from time to time and place to place;
 - (12) reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
 - (13) exercise any other lawful power necessary or convenient to effectively carry out the responsibilities of the Presiding Officer.

§ 7.31 Registration Form

Each individual attending a hearing or other proceeding of the District who wishes to testify or otherwise provide information to the District must submit a form to the Presiding Officer providing the following information: the individual's name; the individual's address; whether the individual plans to testify; whom the person represents, if the person is not there in the person's individual capacity; and any other information relevant to the hearing or other proceeding.

§ 7.32 Appearance; Representative Capacity

An interested person may appear in person or may be represented by counsel, an engineer, or other representative, provided the representative is authorized to speak and act for the principal. The person or the person's representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. A partner may appear on behalf of a partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear on behalf of the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority to so appear.

§ 7.33 Alignment of Parties; Number of Representatives Heard

Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The Presiding Officer may require the members of an aligned class to select one or more persons to represent the class in the proceeding or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative from each aligned class to be heard in the proceeding or on any particular matter or ruling.

§ 7.34 Appearance by Applicant or Movant

The applicant, movant, party, or their representative in accordance with Section 7.32, should be present at the hearing or other proceeding. Failure to appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the Presiding Officer determines that action is necessary to fully develop the record.

§ 7.35 Recording of Hearings

- (a) **Contested Hearings:** A record of the hearing in the form of an audio or video recording or a court reporter transcription shall be prepared and kept by the Presiding Officer in a contested hearing. The Presiding Officer shall have the hearing transcribed by a court reporter upon a request by a party to a contested hearing. The Presiding Officer may assess court reporter transcription costs against the party requesting the transcription or among the parties to the hearing. 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 rule, unless the parties have agreed that the costs assessed against such party will be paid by another party.
- (b) **Uncontested Hearings:** In an uncontested hearing, the Presiding Officer may use the means available in Subsection (a) to record a proceeding or substitute meeting minutes or the report set forth under Section 7.64 for a method of recording the hearing.

- (c) Rulemaking Hearings: The Presiding Officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

§ 7.36 Continuances

Except as required by the Open Meetings Act, the Presiding Officer may continue a hearing or other proceeding without the necessity of publishing, serving, mailing, or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District Office) to reconvene are not publicly announced at the hearing or other proceeding by the Presiding Officer before it is recessed, a notice of any further setting of the hearing or other proceeding will be mailed at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Sections 7.1(b) and 7.22(c), and any other person the Presiding Officer deems appropriate, but it is not necessary to provide other notice under Sections 7.1 and 7.22.

§ 7.37 Filing of Documents; Time Limit

Applications, motions, exceptions, communications, requests, briefs, or other papers and documents required to be filed under these Rules or by law must be received at the District Office within the time limit, if any, set by these Rules or by the Presiding Officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.

§ 7.38 Affidavit

If a party to a hearing or other proceeding is required to make an affidavit, the affidavit may be made by the party or the party's representative. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.

§ 7.39 Broadening the Issues

No person will be allowed to appear in a hearing or other proceeding that in the opinion of the Presiding Officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.

§ 7.40 Conduct and Decorum

Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If, in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer determines necessary.

§ 7.41 Public Comment

Documents that are filed with the Board that comment on an application but that do not request a hearing will be treated as public comment. The Presiding Officer may allow any person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application.

[Sections 7.42 – 7.59 reserved for expansion]

SUBCHAPTER E. Contested and Uncontested Applications

§ 7.60 Contesting a Permit Application

- (a) The following may request a contested case hearing on an application for a permit or permit amendment:
 - (1) the General Manager;
 - (2) the applicant; or
 - (3) an affected person.
- (b) A request for a contested case hearing must substantially comply with the following:
 - (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
 - (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
 - (3) set forth the grounds on which the person is protesting the application;
 - (4) request a contested case hearing;
 - (5) be timely submitted under Subsection (d); and
 - (6) provide any other information required by the public notice of application.
- (c) If a person or entity is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.
- (d) A hearing request is considered timely if it complies with Subsection (b) and:
 - (1) it is submitted in writing to and received by the District prior to the date of the hearing and action by the Board on the application; or
 - (2) the person appears before the Board at the hearing and opposes the application. For a hearing request on a Grandfathered Use Permit Application, the date of the Preliminary Hearing set forth in accordance with Section 7A.3 shall be used for purposes of determining timeliness under this subsection.
- (e) **Contested Case:** A matter is considered to be contested if a hearing request is made pursuant to Subsection (b), complies with Subsection (c), made in a timely manner pursuant to Subsection (d), and declared as such by the Presiding Officer. Any case not declared a contested case under this Section shall be considered an uncontested case.

§ 7.61 Decision to Proceed as Uncontested or Contested Case

- (a) The written or oral submittal of a hearing request is not, in itself, a determination of a contested case. The Presiding Officer will evaluate the contested case hearing request at the hearing and may:
 - (1) determine that a hearing request does not meet the requirements of Section 7.60(b) and deny the request;
 - (2) determine that the person requesting the hearing is not an affected person related to the application and deny the hearing request;
 - (3) determine that a hearing request meets the requirements of Section 7.60(b), and designate the matter as a contested hearing upon determining that the person is an affected person; or
 - (4) refer the case to a procedural hearing.
- (b) The Presiding Officer may hold a hearing on any issue related to the determination of whether to declare a matter as a contested case.
- (c) Any case not declared a contested case under this Section is an uncontested case, and the Presiding Officer will summarize the evidence and issue a report to the Board within 30 days after the date a hearing is concluded. Such report must include a summary of the subject matter of the hearing; a summary of the evidence or public comments received; and the Presiding Officer's recommendations to the Board. A copy of the report must be provided to the applicant; and each person who provided comment. A report is not required if the hearing was conducted by a quorum of the Board and the hearing was recorded pursuant to Section 7.35(f).

§ 7.62 Contested Permit Hearings Procedures

- (a) **Procedural Hearing:** A procedural hearing may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process in contested matters.
- (b) **Matters Considered:** Matters that may be considered at a procedural hearing include:
 - (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 depositions, if authorized by the Presiding Officer;
 - (6) the identification of and specification of the number of witnesses;
 - (7) the filing and exchange of prepared testimony and exhibits; and
 - (8) the procedure at the evidentiary hearing.
- (c) **Notice:** A procedural hearing or evidentiary hearing may be held at a date, time, and place stated in a notice, given in accordance with Section 7.1, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued at the discretion of the Presiding Officer.

- (d) Procedural Hearing Action: Action taken at a procedural hearing may be reduced to writing and made a part of the record or may be stated on the record at the close of the hearing.
- (e) Designation of Parties
 - (1) Parties to a contested permit hearing will be designated as determined by the Presiding Officer.
 - (2) The General Manager and the applicant are automatically designated as parties.
 - (3) In order to be admitted as a party, persons other than the automatic parties must appear at the hearing in person or by representation and seek to be designated as a party.
 - (4) A person requesting a contested case hearing that is unable to attend the first day of the proceeding must submit a continuance request to the Presiding Officer, in writing, stating good cause for his inability to appear at the proceeding. The Presiding Officer may grant or deny the request, at his discretion.
 - (5) After parties are designated, no other person may be admitted as a party unless, in the judgment of the Presiding Officer, there exists good cause and the hearing will not be unreasonably delayed.
- (f) Furnishing Copies of Pleadings: After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every party or party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies to a party or a party's representative may be grounds for withholding consideration of the pleading or the matters set forth therein.
- (g) Disabled Parties and Witnesses: Persons who have special requests concerning their need for reasonable accommodation, as defined by the Americans With Disabilities Act, 42 U.S.C.121 11(9), during a Board meeting or a hearing shall make advance arrangements with the General Manager of the District. Reasonable accommodation shall be made unless undue hardship, as defined in 42 U.S.C. 12111(10), would befall the District.
- (h) Interpreters for Deaf Parties and Witnesses: If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.
- (i) Agreements to be in Writing: No agreement between parties or their representatives affecting any pending matter will be considered by the Presiding Officer unless it is in writing, signed by all parties, and filed as part of the record, or unless it is announced at the hearing and entered on the record.
- (j) Ex Parte Communications: Neither the Presiding Officer nor a Board member may communicate, directly or indirectly, in connection with any issue of fact or law in a contested case with any agency, person, party, or representative, except with notice and an opportunity for all parties to participate. This provision does not prevent such

communications between Board members and District staff, attorneys, or other professional consultants retained by the District.

- (k) **Written testimony:** The Presiding Officer may allow testimony to be submitted in writing, either in narrative or question and answer form, and may require that the written testimony be sworn to. On the motion of a party to a hearing, the Presiding Officer may exclude written testimony if the person who submits the testimony is not available for cross-examination in person or by phone at the hearing, by deposition before the hearing, or other reasonable means.
- (l) **Cross-examination:** All testimony in a contested case hearing shall be subject to cross-examination.
- (m) **Evidence:**
 - (1) The Presiding Officer shall admit evidence if it is relevant to an issue at the hearing. The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
 - (2) Notwithstanding Paragraph (1), the Texas Rules of Evidence govern the admissibility and introduction of evidence of Grandfathered Use in a Grandfathered Use Permit application, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

§ 7.63 Consolidated Hearing on Applications

- (a) Except as provided by Subsection (b), the Board shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant.
- (b) The Board 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.

§ 7.64 Closing the Record; Final Report

- (a) At the conclusion of the presentation of evidence and any oral argument in a contested case, the Presiding Officer may either close the record or keep it open for an additional 10 days to allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials.
- (b) After the record is closed, the Presiding Officer will prepare a report to the Board. The report must include a summary of the subject matter of the hearing, a summary of the evidence, and the Presiding Officer's recommendations for action.
- (c) Upon completion of the Presiding Officer's report, the Presiding Officer must submit a copy to the Board and deliver a copy to each party to the proceeding and to each person who provided comments on the application.
- (d) 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 Section 7.35(f), the Presiding Officer shall determine whether to prepare and submit a report to the Board.

§ 7.65 Exceptions to the Presiding Officer's Report; Reopening the Record

- (a) Prior to Board action, any party in a contested case may file with the Presiding Officer written exceptions to the Presiding Officer 's report.
- (b) Upon review of the report and exceptions, the Presiding Officer may reopen the record for the purpose of developing additional evidence or may deny the exceptions and submit the report and exceptions to the Board.
- (c) Any party in an uncontested case may request of the Board an opportunity to make an oral presentation of exceptions to the Board. The Board, at any time and in any case, may remand the matter to the Presiding Officer for further proceedings.

§ 7.66 Time for Board Action on Certain Permit Matters

In a hearing involving an application for an Operating Permit or an application for a permit renewal or amendment, the Presiding Officer's report should be submitted and delivered within 30 calendar days after the date of the closing of the hearing record, and the Board should act within 60 calendar days after the date of the closing of the hearing record.

[Sections 7.67 – 7.79 reserved for expansion]

SUBCHAPTER F. Procedures for Rulemaking Hearings

§ 7.80 General Procedures

- (a) The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer determines most appropriate to obtain all relevant information pertaining to the subject matter of the hearing as conveniently, inexpensively, and expeditiously as possible.
- (b) The Presiding Officer may follow the guidelines of "Parliamentary Procedure at a Glance," New Edition, O. Garfield Jones, 1971 revised edition, or as amended.

§ 7.81 Submission of Documents

Any interested person may submit to the Presiding Officer written statements, protests, comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject matter of the hearing. Such documents must be submitted no later than the time of the hearing as stated in the notice of hearing given in accordance with Section 10.02. The Presiding Officer may grant additional time for the submission of documents.

§ 7.82 Oral Presentations

Any person desiring to testify on the subject matter of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer establishes the order of

testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. The Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

§ 7.83 Conclusion of the Hearing; Closing the Record; Hearing Examiner's Report

- (a) At the conclusion of testimony and after the receipt of all documents, the Presiding Officer may close the record or keep it open to allow the submission of additional information.
- (b) If the Presiding Officer is a Hearing Examiner, the Hearing Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject matter of the hearing and the public comments received, together with the Hearing Examiner's recommendations for action.
- (c) Upon completion of the Hearing Examiner's report, the Hearing Examiner must submit a copy to the Board. Any interested person who so requests in writing will be notified when the report is complete and furnished a copy of the report.

§ 7.84 Exceptions to the Hearing Examiner's Report; Reopening the Record

Any interested person may make exceptions to the Hearing Examiner's report, and the Board may reopen the record in the manner prescribed in Section 7.65(b).

[Section 7.85 – 7.89 reserved for expansion]

SUBCHAPTER G. Post-hearing Procedures

§ 7.90 Board Action Following Conclusion of Hearing

- (a) After the record is closed on a permit or rulemaking hearing and the matter is submitted to the Board, the Board may take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought, grant the action sought in whole or part, or take any other appropriate action.
- (b) Board action on a rulemaking hearing takes effect at the conclusion of the meeting in which the Board took the action and is not affected by a request for rehearing.

§ 7.91 Requests 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 administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the board not later than the 20th day after the date of the board's decision.
- (b) On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each

designated party, not later than the 35th day after the date the board 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 not 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 not 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.

§ 7.92 Decision; When Final

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

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

§ 7.93 Minutes and Records of the District

All documents, reports, records, and minutes of the District are available for public inspection and copying under the Texas Public Information Act. Upon written application of any person, the District will furnish copies of its public records. The Board will set a reasonable charge for such copies and will publicly post a list of copying charges.

CHAPTER 7A
PROCEDURES FOR THE PROCESSING AND DETERMINATION
OF APPLICATIONS FOR OPERATING PERMITS FOR EXISTING WELLS AND
GRANDFATHERED USE PERMITS

§ 7A.1 Implementation of Grandfathered Use Permit Program

This Section has been adopted to implement the District's permit program in furtherance of the requirements set forth in Sections 3.50 and 3.53, and shall apply solely to Operating Permit applications for existing wells and Grandfathered Use Permit applications.

§ 7A.2 Determination of Administrative Completeness

Upon conclusion of the Verification Period and receipt of the supplemental monthly meter readings of groundwater production during the Verification Period for wells that are required to be metered under Section 11.01, the General Manager shall conduct an initial review of Operating Permit applications for existing wells and Grandfathered Use Permit applications for administrative completeness. During this initial review or upon determination that an application is or is not administratively complete, the General Manager shall mail written notification to the applicant of any deficiencies in the application or of the General Manager's determination that the application is administratively complete. Any additional information received from the applicant will become part of the application. An application shall not be considered administratively complete until all requested information has been submitted and all applicable fees have been paid. The application may be deemed to have expired, at the discretion of the Board, if the applicant does not complete the application within 90 days of the date of the District's initial request for additional information.

§ 7A.3 Technical Review and Issuance of Notice of Proposed Permit

- (a) **Technical Review:** Upon determination that an application is administratively complete, the General Manager shall conduct a technical review of the application and prepare a recommendation for Board action on the application based upon the information contained in the application and after consideration of the applicable criteria set forth in Chapter 36, the District Act, and the District Rules. The General Manager may request additional information from the applicant to support the General Manager's technical review and development of a recommendation. If the General Manager's recommendation is to grant a permit in whole or in part, the recommendation shall include an amount that the General Manager believes the weight of the evidence will support as the applicant's Maximum Grandfathered Use, and the General Manager shall not be constrained by the amount designated as Maximum Grandfathered Use by the applicant in the application or most recent amendment thereto in developing the recommendation.
- (b) **Issuance of Notice of Proposed Permit:** After completing the Technical Review and developing a recommendation on an application and no less than 30 days prior to the Preliminary Hearing, the General Manager shall issue notice of the recommendation and setting of the Preliminary Hearing in the following manner:
 - (1) The General Manager's recommendation shall be incorporated into a Proposed Permit(s) and provided to the applicant by regular mail, along with an advisory

how to protest the recommendation, and notice of the date, time, and place of the Preliminary Hearing.

- (2) The General Manager's recommendation shall be posted at a place convenient to the public in the District Office, published in a newspaper of general circulation in the District, provided to the County Clerk for posting on a bulletin board at a place convenient to the public at the county courthouse, and provided by mail, facsimile, or email to any person who has requested notice under Subsection (b)(3). This notice may include recommendations on one or more applications and shall include the following information:
 - (A) name and address of the applicant;
 - (B) the approximate location or address of the well or wells that are the subject of the application;
 - (C) the Maximum Grandfathered Use claimed by the applicant;
 - (D) a brief explanation of the proposed permit(s) and the General Manager's recommended action, including the proposed Maximum Grandfathered Use recommendation, if applicable;
 - (E) notice of the date, time, and place of the Preliminary Hearing;
 - (F) an advisory how to protest the recommendation; and
 - (G) any other information the General Manager deems appropriate to include in the notice.
- (3) A person having an interest in the subject matter of a hearing on an Operating Permit application for an existing well or a Grandfathered Use Permit application may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this Paragraph does not invalidate any action taken by the Board.

§ 7A.4 Contesting an Application

The requirements set forth in Section 7.60 relating to requests for contested case hearings shall apply to Operating Permit applications for existing wells and Grandfathered Use Permit applications.

§ 7A.5 Hearing Before the Board

- (a) An application designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner or may be heard by the Board along with an appointed Hearing Examiner who officiates during the hearing. Upon issuance of the Notice of Proposed Permit under this Section, the Board shall proceed with setting and conducting the following hearings on an application:

- (1) Preliminary Hearing—a Preliminary Hearing shall be held after issuance of the Notice of a Proposed Permit;
 - (2) Pre-Evidentiary Hearing, if determined by the Board or Hearing Examiner to be necessary;
 - (3) Evidentiary Hearing—an Evidentiary Hearing shall be conducted no later than 75 days from the date the Preliminary Hearing is held;
 - (4) Hearing for Board’s Consideration of Hearing Report and Final Decision;
 - (5) Hearing on any filed motions for rehearing; and
 - (6) Rehearing if a motion for rehearing is granted.
- (b) The parties shall bear their own costs, and the District shall not assess costs associated with the hearing, beyond any application fee, to the applicant or other parties, except as provided by these Rules.

§ 7A.6 Preliminary Hearing

- (a) Uncontested applications: For any application determined to be uncontested, as set forth in Section 7.61, the Hearing Body may proceed at the Preliminary Hearing to review the evidence on file with the District and, upon consideration of the relevant factors, make a decision on the application if the Hearing Body is the Board of Directors. If the Hearing Examiner or two or more members of the Hearing Body disagree with the General Manager’s Proposed Permit(s), the applicant and General Manager shall be given an opportunity to present additional argument and evidence to address the Hearing Examiner’s or Hearing Body’s concerns. The Hearing Body or Hearing Examiner may continue the hearing to grant additional time to the applicant to file supplemental evidence with the District. For any application determined to be uncontested, the uncontested hearing procedures of Chapter 7, as set forth in Subchapter D, and Section 7.61 shall apply. At the discretion of the Hearing Body, the procedures of Section 7.62 may also be applicable.
- (b) Contested applications: For any application determined to be contested, the contested hearings procedures of Chapter 7, as specifically set forth in Subchapter D, and Section 7.62, shall apply to Grandfathered Use Permit applications.

CHAPTER 8.
INSPECTION AND ENFORCEMENT OF RULES

§ 8.1 Notice of Inspection

Inspections that require entrance upon property must be conducted at reasonable times and must be consistent with the property's rules and regulations concerning safety, internal security, and fire protection. A person conducting an inspection under this Rule must identify themselves to the land owner, lessee, operator, or person in charge of the well upon commencement of the inspection and must present credentials upon request of the land owner, lessee, operator, or person in charge of the well.

§ 8.2 Rules Enforcement

- (a) If it appears that a person or entity has violated, is violating, or is threatening to violate any provision of the District Rules, the Board of Directors may institute and conduct a suit in a court of competent jurisdiction in the name of the District for injunctive relief, recovery of a civil penalty in an amount set by District Rule per violation, both injunctive relief and a civil penalty, or any other appropriate remedy. Each day that a violation continues shall be considered a separate violation. The civil penalty for a violation of any District rule is hereby set at the lower of:
- (1) \$10,000.00 per violation; or
 - (2) a lesser amount based on the severity of the violation set forth in a civil penalty schedule which the Board of Directors may adopt from time to time via resolution in a properly noticed meeting, which civil penalty schedule is incorporated by reference into these Rules and shall constitute a Rule of the District for all purposes.
- (b) A penalty under this section is in addition to any other penalty provided by law and may be enforced by filing a complaint in a court of competent jurisdiction in the county in which the District's principal office or meeting place is located.
- (c) If the District prevails in a suit to enforce its Rules, the District may seek and the court shall grant, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of attorney's fees awarded by a court under this Rule shall be fixed by the court.
- (d) If the District receives a written complaint from an aggrieved party alleging that a person has drilled or operated a well without a required permit or in violation of the District Rules, the District shall investigate the complaint. After notice and hearing, the Board shall determine based upon the evidence presented at the hearing whether a District Rule has been violated and shall make a written summary of its determination available to the aggrieved party not later than the 90th day after the date the written complaint was received by the District.

§ 8.3 Tagging of Wells

- (a) The District may take action, including but not limited to tagging the well or seeking an injunction to prevent the operation of a well, against wells that are prohibited from withdrawing groundwater within the District by these Rules or Board order when the

General Manager, or a designated District employee, determines that such action is reasonably necessary to assure that a well is not operated in violation of these Rules or Board orders. The District may take action when:

- (1) no application has been made for a permit to drill a new water well;
 - (2) no application has been made for a Grandfathered Use Permit or Operating Permit to withdraw groundwater from an existing well that is not exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater;
 - (3) the Board has denied, canceled, or revoked an Operating or Grandfathered Use Permit,
 - (4) a permit has been granted, but the administrative fees have not been paid within the time period provided for payment; or
 - (5) an owner of a non-exempt well will no longer operate the well.
- (b) The well may be tagged to indicate that the well may not be operated by order of the District. The District may recover costs incurred for tagging a well under this Rule from the owner of the well. Other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.
- (c) Tampering with, altering, damaging, or removing the tag placed on well or in any other way violating the integrity of the tag or pumping groundwater from a well that has been tagged constitutes a violation of these Rules and subjects the person performing that action, as well as any well owner or primary operator who authorizes or allows that action, to such penalties as provided by law and District Rules.
- (d) The owner of the well may appeal the decision of the Board or General Manager to tag the well by filing a written request for a hearing before the Board, in which case the Board will hear the owner's appeal at the next regular Board meeting for which notice has not already been published. The owner may also take corrective action to address the cause for which the General Manager tagged the well and thereafter request the General Manager to remove the tag at the General Manager's discretion.

§ 8.4 Open or Uncovered Wells

- (a) The District may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds except when the well is in actual use.
- (b) The owner or lessee of land on which an open or uncovered well is located must close or cap the well within 10 days of receiving written notice from the District that the well must be closed or capped.
- (c) As used in this section, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the aquifer that is not capped or covered as required by this Rule.
- (d) If an owner or a lessee fails or refuses to close or cap the well in compliance with this Rule, any person, firm, or corporation employed by the District may go on the land and close or cap the well safely and securely.

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

§ 8.5 Abandoned and Deteriorated Wells

- (a) Not later than the 180th day after the date a well owner or other person who possesses an abandoned and or deteriorated well learns of its condition, the well owner or other person shall have the well plugged or capped under the standards and procedures adopted by the Texas Commission of Licensing and Regulation.
- (b) Not later than the 30th day after the date the well is plugged, a water well driller, licensed pump installer, or well owner who plugs an abandoned and deteriorated well shall submit a plugging report to:
 - (1) the District; and
 - (2) the Executive Director of the Texas Department of Licensing and Regulation.
- (c) The District shall enforce compliance with Subsection (a).
- (d) The District may bring an action to enjoin a person from violating Subsection (a).
- (e) The District may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under Chapter 1901, Texas Occupations Code that is related to Section 1901.255, Texas Occupations Code and Subsection (a).
- (f) The District may bring an action to recover a civil penalty under Section 1901.401, Texas Occupations Code for a violation of Chapter 1901, Texas Occupations Code or a rule adopted under Chapter 1901, Texas Occupations Code related to Section 1901.255, Texas Occupations Code and Subsection (a).
- (g) The District may bring the action in the county in which:
 - (1) the offending activity occurred; or
 - (2) the person engaging in the activity resides.

- (h) When the General Manager is informed of an abandoned well, the General Manager shall notify the well owner of the condition of the well. The notification to the well owner shall include:
 - (1) the conditions under which the well may be considered abandoned through action of the Board;
 - (2) any corrective action the well owner may take to prevent the well from being abandoned; and
 - (3) the date, time and location of the meeting at which the Board will determine if the well is abandoned.
- (i) After being notified by the District, the well owner or representative of the well owner may meet with the General Manager to discuss corrective actions necessary to prevent the well being deemed abandoned. If the well owner has met the requirements necessary to bring the well into compliance with the District Rules, and Chapter 1901, Texas Occupations Code or has decided to abandon the well before the Board meeting, the General Manager will report this to the Board.

§ 8.6 Failure to Report Pumpage and/or Transported Volumes

The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources in Burnet County. Failure of the permittee to submit complete, accurate, and timely pumpage and transportation reports as required by District Rule may result in late payment fees, forfeiture of the permit, payment of meter reading and administrative fees as a result of District inspections to obtain current and accurate pumpage and/or transported volumes, and other enforcement for violation of District Rules.

CHAPTER 9
WASTE

§ 9.01 Waste

- (a) Groundwater shall not be produced within and used within the District, or produced within the District and used outside the District, in such a manner as to constitute waste.
- (b) A person producing or using groundwater within the District shall use every possible precaution, in accordance with reasonable methods, to stop and prevent the waste of such water.
- (c) A person shall not pollute or harmfully alter the character of the aquifer within the boundaries of the District by means of saltwater or other deleterious matter admitted to the aquifer from some other stratum or strata or from the surface of the ground.
- (d) A person under the jurisdiction of the District shall not commit waste.

CHAPTER 10
TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT

§ 10.01 General Provisions

- (a) A person who produces or wishes to produce water from a well required to be permitted which is located or will be located within the District and transport such water for use outside of the District must obtain an Operating Permit, Grandfathered Use Permit, or amendment to such a permit from the District in the manner provided under these rules for production and use of water within the District before transporting the water out of the District.
- (b) If the District finds that a transfer of groundwater out of the District negatively impacts any of the following factors, the District may impose additional requirements or limitations on the permit which are designed to minimize those impacts:
 - (1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
 - (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence or effects on existing permit holders or other groundwater users within the District; and
 - (3) the approved regional water plan and certified management plan.
- (c) The District may impose more restrictive permit conditions on transporters than the District imposes on in-district users.
- (d) The District may impose a Groundwater Transport Fee on such a permittee as set forth under Chapter 12 for any water transported out of the District and shall require the permittee to install any meters necessary to report the total amount of groundwater transported outside of the District for reporting purposes and for purposes of calculating the Groundwater Transport Fee.
- (e) The District may establish a term for an Operating Permit or Grandfathered Use Permit for a well that produces groundwater for transport which is consistent with Section 3.05.
- (f) The District may not, in a manner inconsistent with rules and fees applied to production and use occurring wholly within the boundaries of the District, regulate production of groundwater or assess fees against the transfer of water produced in an area of a retail public utility that is located inside the district boundaries and transferred for use to an area that is within the same retail public utility but that is located outside the district boundaries if the majority of the geographic area of the retail public utility's boundaries or defined service area is within the boundaries of the District and the majority of the groundwater produced is used within the boundaries of the District. If conditions change over time such that the majority of such geographic area or use is not within the boundaries of the District, the groundwater used outside of the District shall be assessed the Groundwater Transport Fee.
- (g) Trucks hauling bulk water produced within the District under an Operating or Grandfathered Use Permit for use outside the District are exempt from the requirement to

pay a Groundwater Transport Fee or report annual amounts of groundwater transported out of the District.

§ 10.02 Fee for Exempt Wells; Discharge Under Other Permit

- (a) The owner of an exempt well is not excused from paying a Groundwater Transport Fee if the groundwater produced from the exempt well is transported for use outside of the District.
- (b) Groundwater that is discharged pursuant to a permit issued by the Texas Commission on Environmental Quality and not sold is not considered to have been transported from the District unless the discharge is part of an overall water transfer and sale.

§ 10.03 Reporting

- (a) A permit holder with authorization to transport groundwater for use outside of the District shall file annual reports with the District disclosing the amount of water transported under the permit and used.
- (b) The report required under Subsection (a) shall be filed with the District no later than February 15, 2011, and each February 15 thereafter, on a form provided by the District and shall include the following:
 - (1) the name of the permittee;
 - (2) the well numbers of each well for which the permittee holds a permit;
 - (3) the total amount of groundwater produced from each well or well system during the immediately preceding calendar year;
 - (4) the total amount of groundwater transported outside of the district from each well or well system during each month of the immediately preceding calendar year;
 - (5) the purposes for which the water was transported;
 - (6) the amount and source of surface water transported; and
 - (7) any other information requested by the District.

CHAPTER 11
METERING

§ 11.01 Water Meter Required

- (a) Meters are not required for the following wells under these Rules:
- (1) an existing well which is used solely for domestic, livestock, or poultry use, regardless of the size or capacity of the well;
 - (2) an existing well which is used for purposes of use other than domestic, livestock, or poultry use if the well does not have the capacity, as equipped, to produce more than 50 gallons per minute; and
 - (3) a new well which is used solely for domestic, livestock, or poultry use if the well does not have the capacity, as equipped, to produce more than 25,000 gallons of water per 24-hour interval, regardless of the size of the tract upon which the well is located.
- (b) Meters are required for the following wells under these Rules:
- (1) an existing well which has the capacity, as equipped, to produce 50 gallons per minute or more that is used in whole or in part for purposes of use other than domestic, livestock, or poultry use;
 - (2) a new well which has the capacity, as equipped, to produce 25,000 gallons per 24-hour interval or more that is used solely for domestic, livestock, or poultry use;
 - (3) a new well which has the capacity, as equipped, to produce 25,000 gallons per 24-hour interval or more that is used in whole or in part for purposes of use other than domestic, livestock, or poultry use; and
 - (4) a well of any capacity that is involved in the transport of any groundwater for use outside of the District for any activity for which a fee that is based on the amount of groundwater transported is required to be calculated under these Rules.
- (b) The owner of a well required to be metered under this Section shall equip the well with a flow measurement device meeting the specifications of these Rules and shall operate the meter on the well to measure the flow rate and cumulative amount of groundwater withdrawn from the well.
- (c) The owner of an existing well that is required to install a meter under this Section shall install the meter prior to producing groundwater from the well after June 1, 2010. The owner of a new well that is required to install a meter under this Rule shall install the meter prior to producing groundwater from the well.
- (d) A mechanically driven, totalizing water meter is the only type of meter that may be installed on a well permitted by or registered with the District. The totalizer must not be resettable by the permittee and must be capable of a maximum reading greater than the maximum expected pumpage during the permit term. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American

Water Works Association standards for cold-water meters as those standards existed on the date of adoption of these Rules.

- (e) The water meter must be installed according to the manufacturer's published specifications in effect at the time of the meter installation, or the meter's accuracy must be verified by the permittee in accordance with Section 11.03. If no specifications are published, there must be a minimum length of five pipe diameters of straight pipe upstream of the water meter and one pipe diameter of straight pipe downstream of the water meter. These lengths of straight pipe must contain no check valves, tees, gate valves, back flow preventers, blow-off valves, or any other fixture other than those flanges or welds necessary to connect the straight pipe to the meter. In addition, the pipe must be completely full of water throughout the region. All installed meters must measure only groundwater.
- (f) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's standards, instructions, or recommendations, and shall be calibrated to ensure an accuracy reading range of 95% to 105% of actual flow.
- (g) The owner of a well is responsible for the installation, operation, maintenance, and repair of the meter associated with the well.
- (h) Bypasses, which include any device or feature located between the wellhead and the meter that would allow water to be diverted for use before it passes through the meter, are prohibited unless they are also metered.

§ 11.02 Metering Aggregate Withdrawal

Where wells are permitted in the aggregate, one or more water meters may be used for the aggregate well system if the water meter or meters are installed so as to measure the groundwater production from all wells covered by the aggregate permits. The provisions of Section 11.01 apply to meters measuring aggregate pumpage.

§ 11.03 Accuracy Verification.

- (a) **Meter Accuracy to be Tested:** The General Manager may require the permittee, at the permittee's expense, to test the accuracy of a water meter and submit a certificate of the test results. The certificate shall be on a form provided by the District. The General Manager may further require that such test be performed by a third party qualified to perform such tests. The third party must be approved by the General Manager prior to the test. Except as otherwise provided herein, certification tests will be required no more than once every three years for the same meter. If the test results indicate that the water meter is registering an accuracy reading outside the range of 95% to 105% of the actual flow, then appropriate steps shall be taken by the permittee to repair or replace the water meter within 90 calendar days from the date of the test. The District, at its own expense, may undertake random tests and other investigations at any time for the purpose of verifying water meter readings. If the District's tests or investigations reveal that a water meter is not registering within the accuracy range of 95% to 105% of the actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or wells, the permittee shall reimburse the District for the cost of those tests and investigations, and the permittee shall take appropriate steps to bring the meter or meters into compliance with these Rules within 90 calendar days from the date of the tests or investigations. If a water

meter or related piping or equipment is tampered with or damaged so that the measurement of accuracy is impaired, the District may require the permittee, at the permittee's expense, to take appropriate steps to remedy the problem and to retest the water meter within 90 calendar days from the date the problem is discovered and reported to the permittee.

- (b) Meter Testing and Calibration Equipment: Only equipment capable of accuracy results of plus or minus two percent of actual flow may be used to calibrate or test meters.
- (c) Calibration of Testing Equipment: All approved testing equipment must be calibrated every two years by an independent testing laboratory or company capable of accuracy verification. A copy of the accuracy verification must be presented to the District before any further tests may be performed using that equipment.

§ 11.04 Removal of Meter for Repairs

A water meter may be removed for repairs and the well remain operational provided that the District is notified prior to removal and the repairs are completed in a timely manner. The readings on the meter must be recorded immediately prior to removal and at the time of reinstallation. The record of pumpage must include an estimate of the amount of groundwater withdrawn during the period the meter was not installed and operating.

§ 11.05 Water Meter Readings

The permittee of a well must read each water meter associated with the well and record the meter readings and the actual amount of pumpage in a log at least monthly. The logs containing the recordings shall be available for inspection by the District at reasonable business hours. Copies of the logs must be furnished to the District annually no later than February 15. The permittee of a well shall read each water meter associated with the well within 15 days before or after the date the permit expires and shall within 30 days after the date of expiration of the permit, report the readings to the District on a form provided by the District or other acceptable format approved by the District.

§ 11.06 Installation of Meters

Except as otherwise provided by these Rules, a meter required to be installed under these Rules shall be installed before producing water from the well under a permit issued by the District.

CHAPTER 12
FEES AND PAYMENT OF FEES

§ 12.01 Application and Other Fees

The Board, by resolution, shall establish a schedule of fees for administrative acts of the District, including the cost of reviewing and processing permits and the cost of hearings for permits, and such administrative fees shall not unreasonably exceed the cost to the District for performing such administrative acts. In addition to such fees, the District shall assess a permit application fee set by Board resolution to help reimburse the District for the costs of publishing notice of a hearing related to a permit matter for each notice published for a particular application.

§ 12.02 Groundwater Transport Fee

- (a) The District shall impose a reasonable fee or surcharge, established by Board resolution, for transportation of groundwater out of the District using one of the following methods:
 - (1) a fee negotiated between the District and the transporter; or
 - (2) an export surcharge.
- (b) Groundwater Transport Fee payments for the previous calendar year shall be remitted by the permittee to the District on or before February 15th of each calendar year. Payments received within the 30 days following the due date will not be subject to a late payment fee. Failure to make complete and timely payment of a fee as required by these Rules shall automatically result in a late payment fee of ten percent of the amount not paid beginning on the 31st day following the due date. The fee payment plus the late payment fee must be made within 30 days following the date of the assessment of the late payment fee, otherwise the Board may declare the permit void and/or proceed with enforcement action as provided by these Rules. Overdue fees not paid within 60 days of the due date shall thereafter accrue a monthly late charge at a simple interest rate of ten percent per annum.

§ 12.03 Returned Check Fee

The Board, by resolution, may establish a fee for checks returned to the District for insufficient funds, account closed, signature missing, or any other reason causing a check to be returned by the District's depository.

§ 12.04 Well Report Deposit

The Board, by resolution, may establish a well report deposit to be held by the District. The District shall return the deposit to the depositor if all relevant well reports are timely submitted to the District in accordance with these Rules. In the event the District does not timely receive all relevant well reports, or if rights granted within the registration or permit are not timely used, the deposit shall become the property of the District.

CHAPTER 13
QUARRIES

§ 13.01 Definitions

- (a) Notwithstanding anything to the contrary in Section 1.01, the following definitions of words shall apply in this section:
- (1) “Aggregates” means any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, granite, gravel, gypsum, marble, sand, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance. The term does not include clay or shale mined for use in manufacturing structural clay products.
 - (2) “Consumptive use” of groundwater, or groundwater "consumptively used", means that portion of produced groundwater assumed to be lost from the aquifer to the environment by evaporation, transpiration, incorporation into a product or crop, or otherwise consumed by man, animals, or processes and not effectively recharged to the aquifer from which it was produced.
 - (2) “Operator” means any person engaged in or responsible for the physical operation and control of a quarry.
 - (3) “Owner” means any person having title, wholly or partly, to the land on which a quarry exists or has existed.
 - (4) “Pit” means an open excavation from which aggregates have been or are being extracted with a depth of five feet or more below the adjacent and natural ground level.
 - (5) “Quarrying” means the current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates for commercial sale from natural deposits occurring in the earth.
 - (6) “Quarry” means the site from which aggregates for commercial sale are being or have been removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which the plant processing the raw materials is located. The term does not include any land owned or leased by the responsible party not being currently used in the production of aggregates for commercial sale or an excavation to mine clay or shale for use in manufacturing structural clay products.
 - (7) “Site” means the tract of land on which is located a pit and includes the immediate area on which the plant, if any, used in the extraction of aggregates is located.

§ 13.02 Waste prohibited

An owner or operator of a quarry shall not produce groundwater or otherwise allow groundwater to escape from a site in a manner that constitutes waste.

§ 13.03 Dewatering wells

Dewatering wells are subject to the permitting requirements, including without limitation the production limitations, of these rules.

§ 13.04 Discharge of groundwater from quarry prohibited

- (a) An owner or operator of a quarry shall not discharge groundwater produced from a site to a creek, stream, river, or other watercourse, or allow groundwater to escape from a site to a creek, stream, river, or other watercourse, except as authorized under this rule.
- (b) Notwithstanding Subsection (a), this rule does not apply to the discharge or escape from a site to a watercourse of:
 - (1) Storm water or diffused surface water from rainfall runoff; or
 - (2) groundwater that has been commingled with storm water or diffused surface water from rainfall runoff that has not yet entered a watercourse if:
 - (A) the total amount of commingled water discharged to a watercourse is equal to or less than the volume of the surface water component of the commingled water; and
 - (B) the water is discharged to the watercourse in compliance with state and federal law and all applicable rules and regulations of other governmental entities with jurisdiction over the discharge, including without limitation the rules and regulations of the Texas Commission on Environmental Quality and applicable river authorities of the State of Texas.

§ 13.05 Recirculation of groundwater required; permit required

- (a) Groundwater from quarry dewatering wells or groundwater that gathers in pits through seepage in quarries by quarrying below the water table in an aquifer or otherwise and that is not fully consumptively used for mining purposes, such as dust control or washing of aggregates, must be recirculated by directing the water to and holding the water in settling ponds or other pits that will recharge the groundwater to the aquifer or from where the water can be reused and recirculated again.
- (b) An owner or operator of a quarry shall obtain a Grandfathered Use Permit or Operating Permit from the District for the amount of the consumptive use of groundwater that is produced at the site from dewatering wells or seepage.
- (c) In light of the impracticability of actually metering seepage in pits, groundwater consumptively used for mining purposes, groundwater lost to evaporation and transpiration, groundwater returned to settling ponds, groundwater that effectively recharges to the aquifer, and other components of the recirculation system other than actual production of groundwater by water wells, an owner or operator of a quarry shall determine a reasonable estimate of the amount of groundwater consumptively used from the site annually and report the amount annually to the District in the manner set forth under Rule 11.05. The estimate submitted to the District under this subsection must be:
 - (1) prepared by, signed, and sealed by a registered professional engineer in the State of Texas or a licensed professional geoscientist in the State of Texas; or

- (2) signed by the quarry operator and derived from an alternate measuring methodology previously approved by the Board after receiving an application from the operator for approval of an alternate measuring methodology.
- (d) If the quarry operator desires to seek approval of an alternative measuring methodology for determining the amount of groundwater consumptively used at a quarry, the operator must apply to the District for approval of the methodology. The Board shall authorize the alternative measuring method if the operator demonstrates that the alternative measuring method will provide a reasonable estimate of the amount of groundwater consumptively used. In deciding whether to approve an alternate measuring methodology, the District may require as a condition precedent to its approval:
 - (1) the installation by the operator of one or more meters to monitor production or discharge of groundwater;
 - (2) the drilling, monitoring, and sampling of one or more monitoring wells by the operator at or adjacent to the site to assist the District in monitoring production, consumptive use, unmetered seepage, or pollution of groundwater at a site; and
 - (3) other reasonable requirements to measure the consumptive use of groundwater by the quarry operation.
- (e) For operators that elect to have the estimate submitted to the District under this subsection prepared by, signed, and sealed by a registered professional engineer in the State of Texas or a licensed professional geoscientist in the State of Texas, the District may at its own expense require the drilling, monitoring, and sampling of one or more monitoring wells at or adjacent to the site to assist the District in monitoring consumptive use of groundwater.
- (d) It shall be a violation of these rules for an owner or operator of a quarry to consumptively use more groundwater than authorized for consumptive use under a Grandfather Use Permit or Operating Permit. The District shall authorize consumptive use for a quarry under this rule under the same standards, criteria, and rules as it authorizes annual production limits for regular water wells, including Section 3.22, so as to be fair and impartial in its administration of groundwater removed from the aquifer for beneficial use without waste.
- (e) In implementing Subsection (a) of this rule to recirculate and recharge groundwater to an aquifer, an owner or operator of a quarry shall not cause or allow pollution of groundwater in an aquifer and shall implement any and all management practices as may be necessary or appropriate to prevent such pollution and protect aquifer recharge features.

§ 13.06 Use of quarry derived groundwater for another purpose

Groundwater derived from quarry dewatering wells or seepage as described under Subsection (a) of Section 13.05 may be used for a purpose of use other than mining, such as municipal use or agricultural irrigation, only if the production of groundwater through wells or seepage is permitted in accordance with the general permitting, production limitation, spacing, reporting, transport, fee, metering, and other requirements and procedures of these rules and this section applicable to water wells generally. For such groundwater derived from seepage, the District may waive or conform certain requirements of these rules applicable to water wells to the extent that applying them as written to seepage from a quarry would be impossible,

impractical, or cause unreasonable hardship to the applicant as determined in the sole discretion of the District.

CHAPTER 14
EFFECTIVE DATE

§ 14.01 Effective Date

These Rules take effect on September 1, 2009, and an amendment to these Rules takes effect on the date of the amendment's original adoption. It is the District's intention that the rules and amendments thereto be applied retroactively to activities involving the production and use of groundwater resources located in the District.

APPENDIX A

AQUIFER-SPECIFIC WELL SPACING REQUIREMENTS

A. Trinity Aquifer

1. Upper Trinity Aquifer

Casing Size	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The inside diameter, measured in inches, of the tubing or well screen installed within the borehole of a well for the purpose of preventing collapse of the borehole, protecting water quality or for any other purpose.	The minimum tract size that is owned or controlled, in acres, which may be considered an appropriate site for the permitted discharge of groundwater from a well of a specified size of casing.	The minimum distance, in feet, that a new well or proposed well site may be located from a registered well or authorized well site that does or will produce water from the same subdivision of the same aquifer.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line or limit of control of the tract of land on which it is to be located.
5-inch or less	Minimum Tract Size is 2 acres; For Permits above 2 Acre-Feet per Year Tract Size (in Acres) Must Equal or Exceed the Permit Value in Acre-Feet per Year	150 feet	50 feet
More than 5-inch and less than 8-inch		1,000 feet	100 feet
8-inch or larger but less than 10 inch		1,800 feet	200 feet
10-inch or larger		2,800 feet	400 feet

2. Middle Trinity Aquifer

Casing Size	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The inside diameter, measured in inches, of the tubing or well screen installed within the borehole of a well for the purpose of preventing collapse of the borehole, protecting water quality or for any other purpose.	The minimum tract size that is owned or controlled, in acres, which may be considered an appropriate site for the permitted discharge of groundwater from a well of a specified size of casing.	The minimum distance, in feet, that a new well or proposed well site may be located from a registered well or authorized well site that does or will produce water from the same subdivision of the same aquifer.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line or limit of control of the tract of land on which it is to be located.
5-inch or less	Minimum Tract Size is 2 acres; For Permits above 2 Acre-Feet per Year, Tract Size (in Acres) Must Equal or Exceed the Permit Value in Acre-Feet per Year	150 feet	50 feet
More than 5-inch and less than 8-inch		1,200 feet	100 feet
8-inch or larger but less than 10 inch		1,800 feet	200 feet
10-inch or larger		2,400 feet	400 feet

3. Lower Trinity Aquifer

Casing Size	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The inside diameter, measured in inches, of the tubing or well screen installed within the borehole of a well for the purpose of preventing collapse of the borehole, protecting water quality or for any other purpose.	The minimum tract size that is owned or controlled, in acres, which may be considered an appropriate site for the permitted discharge of groundwater from a well of a specified size of casing.	The minimum distance, in feet, that a new well or proposed well site may be located from a registered well or authorized well site that does or will produce water from the same subdivision of the same aquifer.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line or limit of control of the tract of land on which it is to be located.
5-inch or less	Minimum Tract Size is 2 acres; For Permits above 2 Acre-Feet per Year, Tract Size (in Acres) Must Equal or Exceed the Permit Value in Acre-Feet per Year	150 feet	50 feet
More than 5-inch and less than 8-inch		1,200 feet	100 feet
8-inch or larger but less than ten inch		1,500 feet	200 feet
10-inch or larger		1,800 feet	400 feet

B. Granite Aquifer

Casing Size	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The inside diameter, measured in inches, of the tubing or well screen installed within the borehole of a well for the purpose of preventing collapse of the borehole, protecting water quality or for any other purpose.	The minimum tract size that is owned or controlled, in acres, which may be considered an appropriate site for the permitted discharge of groundwater from a well of a specified size of casing.	The minimum distance, in feet, that a new well or proposed well site may be located from a registered well or authorized well site that does or will produce water from the same subdivision of the same aquifer.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line or limit of control of the tract of land on which it is to be located.
5-inch or less	Minimum Tract Size is 1 acre; For Permits above 1 Acre-Foot per Year, Tract Size (in Acres) Must Equal or Exceed the Permit Value in Acre-Feet per Year	150 feet	50 feet
More than 5-inch and less than 8-inch		1,200 feet	100 feet
8-inch or larger but less than ten inch		1,500 feet	200 feet
10-inch or larger		2,400 feet	400 feet

C. Hickory Aquifer

Casing Size	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The inside diameter, measured in inches, of the tubing or well screen installed within the borehole of a well for the purpose of preventing collapse of the borehole, protecting water quality or for any other purpose.	The minimum tract size that is owned or controlled, in acres, which may be considered an appropriate site for the permitted discharge of groundwater from a well of a specified size of casing.	The minimum distance, in feet, that a new well or proposed well site may be located from a registered well or authorized well site that does or will produce water from the same subdivision of the same aquifer.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line or limit of control of the tract of land on which it is to be located.
5-inch or less	Minimum Tract Size is 1 acre; For Permits above 1 Acre-Foot per Year, Tract Size (in Acres) Must Equal or Exceed the Permit Value in Acre-Feet per Year	150 feet	50 feet
More than 5-inch and less than 8-inch		300 feet	100 feet
8-inch or larger but less than ten inch		600 feet	200 feet
10-inch or larger		1,000 feet	400 feet

D. Welge-Lion Mountain Aquifer

Casing Size	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The inside diameter, measured in inches, of the tubing or well screen installed within the borehole of a well for the purpose of preventing collapse of the borehole, protecting water quality or for any other purpose.	The minimum tract size that is owned or controlled, in acres, which may be considered an appropriate site for the permitted discharge of groundwater from a well of a specified size of casing.	The minimum distance, in feet, that a new well or proposed well site may be located from a registered well or authorized well site that does or will produce water from the same subdivision of the same aquifer.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line or limit of control of the tract of land on which it is to be located.
5-inch or less	Minimum Tract Size is 2 acres; For Permits above 2 Acre-Feet per Year, Tract Size (in Acres) Must Equal or Exceed the Permit Value in Acre-Feet per Year	200 feet	50 feet
More than 5-inch and less than 8-inch		300 feet	100 feet
8-inch or larger but less than ten inch		2,800 feet	200 feet
10-inch or larger		3,900 feet	400 feet

E. Ellenburger-San Saba Aquifer

Casing Size	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The inside diameter, measured in inches, of the tubing or well screen installed within the borehole of a well for the purpose of preventing collapse of the borehole, protecting water quality or for any other purpose.	The minimum tract size that is owned or controlled, in acres, which may be considered an appropriate site for the permitted discharge of groundwater from a well of a specified size of casing.	The minimum distance, in feet, that a new well or proposed well site may be located from a registered well or authorized well site that does or will produce water from the same subdivision of the same aquifer.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line or limit of control of the tract of land on which it is to be located.
5-inch or less	Minimum Tract Size is 1 acre; For Permits above 1 Acre-Foot per Year, Tract Size (in Acres) Must Equal or Exceed the Permit Value in Acre-Feet per Year	150 feet	50 feet
More than 5-inch and less than 8-inch		300 feet	100 feet
8-inch or larger but less than ten inch		600 feet	200 feet
10-inch or larger		1,000 feet	400 feet

F. Marble Falls Aquifer

Casing Size	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The inside diameter, measured in inches, of the tubing or well screen installed within the borehole of a well for the purpose of preventing collapse of the borehole, protecting water quality or for any other purpose.	The minimum tract size that is owned or controlled, in acres, which may be considered an appropriate site for the permitted discharge of groundwater from a well of a specified size of casing.	The minimum distance, in feet, that a new well or proposed well site may be located from a registered well or authorized well site that does or will produce water from the same subdivision of the same aquifer.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line or limit of control of the tract of land on which it is to be located.
5-inch or less	Minimum Tract Size is 2 acres; For Permits above 2 Acre-Feet per Year, Tract Size (in Acres) Must Equal or Exceed the Permit Value in Acre-Feet per Year	150 feet	50 feet
More than 5-inch and less than 8-inch		300 feet	100 feet
8-inch or larger but less than ten inch		2,800 feet	200 feet
10-inch or larger		3,900 feet	400 feet