

**RULES  
of the  
POST OAK SAVANNAH  
GROUNDWATER CONSERVATION DISTRICT**

**ADOPTED: March 9, 2004  
ADOPTED and READOPTED: June 8, 2004  
*as amended thru October 14, 2008***

The Post Oak Savannah Groundwater Conservation District (District) gave public notice of each of several public hearings to consider proposed rules. Such notices included, but were not limited to, notices published in the Temple Daily Telegram and the Burleson County Tribune on March 20, 2003, March 21, 2003, March 31, 2003, April 3, 2003, June 19, 2003, February 26, 2004, February 28, 2004, May 24, 2004 and May 27, 2004. The District made drafts of such rules available for public review and inspection and conducted the public hearing(s) on the proposed rules in both Milam County and Burleson County, at the times and on the dates provided in the published notices. The District held public hearings on the following dates, among others, March 21, 2003, March 22, 2003, April 5, 2003, April 7, 2003, June 28, 2003, March 9, 2004 and June 8, 2004. The District evaluated the comments submitted at the public hearings and all written comments submitted to the District on the proposed rules. The District further considered the rules at monthly Board meetings at which citizens could communicate with the Board and comment on the rules. The Board then modified the proposed rules based on the comments received, made the revised rules available to the general public, and published notices in the Temple Daily Telegram and the Burleson County Tribune giving notice of a public hearing to be held on the rules at the regular Board meeting on March 9, 2004. At that meeting, the Board held the public hearing, received public comment and adopted these rules to be effective March 9, 2004. The adopted rules were circulated and available to the general public from March 9, 2004 until June 8, 2004 when, after advertisement and public hearing, such rules were adopted and readopted to be effective as of June 8, 2004. *Amended December 2004, January 2005, July 2005, February 2006, May 2006, December 2006, April 2008, and October 2008.*

In accordance with *Section 59 of Article XVI of the Texas Constitution, HB 1784 of the 77<sup>th</sup> Legislature, and Chapter 36 of the Texas Water Code*, the following rules are hereby ratified and adopted by the Board of the Post Oak Savannah Groundwater Conservation District as the rules of this District. Each rule as worded herein has been in effect since the date of adoption and will be and remain in effect, subject to amendment after notice and hearing as provided in these rules.

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

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

## Table of Contents

<b>SECTION 1. DEFINITIONS AND CONCEPTS.</b>	<b>1</b>
RULE 1.1. DEFINITIONS OF TERMS	1
RULE 1.2. PURPOSES OF RULES	7
RULE 1.3. USES AND EFFECT OF RULES	7
RULE 1.4. AMENDMENT OF RULES	8
RULE 1.5. HEADINGS AND CAPTIONS	8
RULE 1.6. CONSTRUCTION	8
RULE 1.7. METHODS OF SERVICE UNDER THE RULES	8
RULE 1.8. SEVERABILITY	8
<b>SECTION 2. BOARD.</b>	<b>9</b>
RULE 2.1. PURPOSE OF BOARD	9
RULE 2.2. BOARD STRUCTURE AND OFFICERS	9
RULE 2.3. MEETINGS	9
RULE 2.4. COMMITTEES	9
RULE 2.5. BOARD MEMBER COMMUNICATIONS	9
RULE 2.6. MINUTES AND RECORDS OF THE DISTRICT	10
RULE 2.7. CERTIFIED COPIES	10
RULE 2.8. OFFICE HOURS	10
<b>SECTION 3. DISTRICT STAFF.</b>	<b>10</b>
RULE 3.1. GENERAL MANAGER	10
RULE 3.2. DELEGATION OF AUTHORITY	10
<b>SECTION 4. SPACING REQUIREMENTS.</b>	<b>10</b>
RULE 4.1. REQUIRED SPACING	10
RULE 4.2. EXCEPTIONS TO SPACING REQUIREMENTS	11
<b>SECTION 5. PRODUCTION LIMITATIONS.</b>	<b>13</b>
RULE 5.1. MAXIMUM ALLOWABLE PRODUCTION	13
RULE 5.2. LIMITATION ON MAXIMUM ALLOWABLE PRODUCTION	14
RULE 5.3. WAIVERS AND VARIANCES	14
RULE 5.4. EMERGENCY PERMITS	15
RULE 5.5. REGULATION FOR PRODUCTION FOR LOCAL WATER UTILITIES	16
<b>SECTION 6. OTHER DISTRICT ACTIONS AND DUTIES.</b>	<b>17</b>
RULE 6.1. DISTRICT MANAGEMENT PLAN	17
<b>SECTION 7. PERMITS, RECORDS, REPORTS, AND LOGS.</b>	<b>17</b>
RULE 7.1. GENERAL PERMIT AND REGISTRATION PROVISIONS	17
RULE 7.2. CHANGE IN OWNERSHIP OF PERMITS	19
RULE 7.3. RECORDS, REPORTS, AND DRILLER'S LOGS	19
RULE 7.4. APPLICATION REQUIREMENTS FOR ALL PERMITS	19
RULE 7.5. NOTICES, HEARINGS, AND DECISION ON APPLICATIONS	21
RULE 7.6. CONSIDERATIONS FOR GRANTING OR DENYING A PERMIT	22

RULE 7.7. PERMITS ISSUED BY THE DISTRICT.....	22
RULE 7.8. AMENDMENT OF A PERMIT.....	22
RULE 7.9. COMPLETION OF PERMIT APPLICATION REQUIRED.....	23
RULE 7.10. EXEMPT WELL STATUS.....	23
RULE 7.11. WELL REGISTRATION.....	26
RULE 7.12. DRILLING PERMITS.....	27
RULE 7.13. DRILLING OR ALTERING A WELL.....	28
RULE 7.14. HISTORIC USE PERMITS.....	30
RULE 7.15. OPERATING PERMITS.....	32
RULE 7.16. INJECTION WELLS.....	33
<b>SECTION 8. TRANSPORT OF GROUNDWATER OUT OF THE DISTRICT.....</b>	<b>34</b>
RULE 8.1. GENERAL PROVISIONS FOR TRANSPORT.....	34
RULE 8.2. APPLICATION FOR TRANSPORT PERMIT.....	36
RULE 8.3. HEARINGS FOR TRANSPORT PERMITS.....	37
RULE 8.4. PERMIT INFORMATION FOR TRANSPORT PERMITS.....	38
RULE 8.5. FEE FOR EXEMPT WELLS; DISCHARGE UNDER OTHER PERMIT.....	39
RULE 8.6. REPORTING.....	39
RULE 8.7. EXTENSION OF TRANSPORT PERMIT.....	39
RULE 8.8. REVOCATION OR MODIFICATION OF TRANSPORT PERMIT.....	39
<b>SECTION 9. FEES AND DEPOSITS.....</b>	<b>39</b>
RULE 9.1. WATER USE FEES.....	39
RULE 9.2. APPLICATION, REGISTRATION, AND OTHER FEES.....	41
RULE 9.3. PAYMENT OF FEES.....	41
RULE 9.4. TRANSPORT PERMIT PROCESSING.....	41
RULE 9.5. INSPECTION AND PLAN REVIEW FEES.....	41
RULE 9.6. EXCEPTIONS.....	41
RULE 9.7. RETURNED CHECK FEE.....	41
RULE 9.8. ACCOUNTING FEE.....	41
RULE 9.9. WELL LOG DEPOSIT.....	42
RULE 9.10. WAIVER AND VARIANCE REQUESTS.....	42
RULE 9.11. DISTRICT EXPENSES AND COSTS.....	42
<b>SECTION 10. GENERAL PROVISIONS.....</b>	<b>42</b>
RULE 10.1. CONJUNCTIVE USE.....	42
RULE 10.2. APPEAL.....	42
RULE 10.3. NOTICE.....	42
RULE 10.4. WELL CLOSING.....	43
RULE 10.5. FORMS REQUIRED BY THESE RULES.....	43
<b>SECTION 11. METERING AND MEASURING.....</b>	<b>43</b>
RULE 11.1. METERING AND MEASURING EXCEPTIONS.....	43
RULE 11.2. METER/MEASUREMENT REQUIRED.....	43
RULE 11.3. METERING AGGREGATE WITHDRAWAL.....	44
RULE 11.4. ACCURACY VERIFICATION.....	44
RULE 11.5. REMOVAL OF METER FOR REPAIRS.....	45
RULE 11.6. WATER METER READINGS.....	45
RULE 11.7. INSTALLATION OF METERS.....	46

<b>SECTION 12. WELL LOCATION AND COMPLETION.....</b>	<b>46</b>
RULE 12.1. RESPONSIBILITY.....	46
RULE 12.2. LOCATION OF WELLS.....	46
RULE 12.3. STANDARDS OF COMPLETION FOR WELLS.....	46
RULE 12.4. MAINTENANCE AND RE-COMPLETIONS REQUIREMENTS.....	47
<b>SECTION 13. WASTE.....</b>	<b>48</b>
RULE 13.1. WASTE.....	48
<b>SECTION 14. HEARINGS.....</b>	<b>48</b>
RULE 14.1. TYPES OF HEARINGS.....	48
RULE 14.2. NOTICE AND SCHEDULING OF HEARINGS.....	49
RULE 14.3. GENERAL PROCEDURES.....	50
RULE 14.4. UNCONTESTED PERMIT HEARINGS PROCEDURES.....	53
RULE 14.5. CONTESTED PERMIT HEARINGS PROCEDURES.....	54
RULE 14.6. CONCLUSION OF THE HEARING AND REPORT.....	58
RULE 14.7. RULEMAKING HEARINGS PROCEDURES.....	59
RULE 14.8. FINAL DECISION AND APPEAL.....	60
<b>SECTION 15. INVESTIGATIONS AND ENFORCEMENT.....</b>	<b>60</b>
RULE 15.1. NOTICE AND ACCESS TO PROPERTY.....	60
RULE 15.2. CONDUCT OF INVESTIGATION.....	61
RULE 15.3. RULE ENFORCEMENT.....	61
RULE 15.4. SEALING OF WELLS.....	61
<b>SECTION 16. MANAGEMENT OF WATER AVAILABILITY &amp; PRODUCTION.....</b>	<b>62</b>
RULE 16.1. MANAGEMENT ZONES.....	62
RULE 16.2. GENERAL.....	62
RULE 16.3. MONITORING OF WATER AVAILABILITY.....	62
RULE 16.4. ACTIONS ON AQUIFER OR PRODUCTION LEVELS.....	62
RULE 16.5. REDUCTIONS REQUIRED BY REGULATORY ACTION.....	64
RULE 16.6. ADJUSTING MAXIMUM PRODUCTION PERMITTED.....	64
RULE 16.7. PERMIT LIMITATIONS AND REDUCTIONS.....	66
RULE 16.8. EXCEPTIONS.....	66
RULE 16.9. NOTICE AND HEARINGS.....	67
RULE 16.10. REHEARING.....	67

**POST OAK SAVANNAH**  
**GROUNDWATER CONSERVATION DISTRICT**  
**DISTRICT RULES**

**SECTION 1. DEFINITIONS AND CONCEPTS.**

**RULE 1.1. DEFINITIONS OF TERMS.** In the administration of its duties, the Post Oak Savannah Groundwater Conservation District follows the definitions of words, terms and phrases set forth in the District Act (as hereinafter defined) and each such definition is adopted herein by reference. In addition, the following words, terms and phrases, when used in these rules, and when used in any other rule or regulation of the District and not defined therein, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in these rules. The word "regulations" means the provisions of any applicable resolution, order, rule, regulation or policy.

**"Abandoned well"** means a well that has not been used for six consecutive months and is not capped, or that is deteriorated, or that does not contain the casing, pump and pump column in good condition. A well is considered to be in use if it is a non-deteriorated well which contains the casing, pump, and pump column in good condition, or is a non-deteriorated well that is capped. "Abandoned well" also means a well that is not registered or permitted with the District or not in compliance with applicable law, including the rules and regulations of the District, the Texas Water Well Driller's Act, Texas Commission on Environmental Quality ("TCEQ" or ACommission@), or any other state or federal agency or political subdivision having jurisdiction.

**"Acre-foot"** means the amount of water necessary to cover one acre of land one foot deep, or about 325,851 U. S. gallons of water.

**"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 justiciable interest.

**"Agricultural crop"** means food or fiber commodities grown for resale or commercial purposes that provide food, clothing, or animal feed and/or as defined in *Acts 2001, 77<sup>th</sup> Legislature R.S., Chapt. 966, Texas General Session Laws (SB 2)*.

**"Aquifer"** means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

**"Beneficial use"** means the use of groundwater for:

1. agricultural, gardening, domestic (including lawn watering), stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes, and uses listed as having priority of use in *Section 11.024, Texas Water Code*;
2. exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
3. any other purpose that is useful and beneficial to the user and approved by the Board.

**"Board"** means the Board of Directors of the District.

**"Business day"** means a weekday, Monday through Friday, excluding District holidays.

**"Casing"** means a watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

**"Capped well"** means a well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

**"Cement"** means a neat portland or construction cement mixture of not more than seven gallons of water per 94 pound sack of dry cement, or a cement slurry which contains bentonite, gypsum, or other additives may be included.

**"Conjunctive use"** means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

**"Deteriorated well"** means a well or borehole the condition of which is causing, or is likely to cause, pollution of groundwater in the District regardless of whether or not the well is in use.

**"De-watering well"** means a well used to remove water from a construction site or excavation, or to relieve hydrostatic pressure or uplift on permanent structures, and/or construction or mining operations.

**"Director"** means a person appointed to serve on the Board of the District.

**"District"** means the Post Oak Savannah Groundwater Conservation District.

**"District Act"** means *Acts 2001, 77<sup>th</sup> Legislature, R.S., Chapter 1307, 2001 Texas General Laws (HB 1784)*, and the non-conflicting provisions of *Chapter 36, Texas Water Code*.

**"District boundaries"** means the boundaries of the District, and such boundaries are coextensive with the outside boundary lines of Milam and Bureson Counties.

**"District office"** means the office of the District located at 310 East Ave C, Milano, Texas 76556. The location of the district office may be changed from time to time by resolution of the Board.

**"Domestic Activity"** means the use of water to provide the daily water needs of a household and not more than ten (10) acres of land used for a lawn, domestic livestock, family garden or orchard, and includes water used on-site for: drinking, washing or culinary purposes; residential landscape watering, or watering of a family garden/orchard; watering of domestic animals; and for residential water recreation uses (e.g., swimming pool, hot tub). Domestic activity does not include water used by, or to support, activities for which consideration is given or received or for which the product of the activity is sold. Domestic activity does not include use by or for a public water system.

**A Domestic use@** means the use of groundwater that is produced from a well drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater per day, and that is used by a person or a household for a domestic activity.

**"Drilling permit"** means a permit issued by the District allowing a new well to be drilled or an existing well to be re-drilled or replaced.

**"Effective date"** means March 9, 2004.

**"Exempt well"** means a new or an existing well that is exempt from permitting under the laws of this State or these rules, and includes a well that is not required to have an operating or historic use permit to withdraw groundwater from an aquifer. A well that by Rule 7.10(1)(b) becomes an exempt well upon completion is also an exempt well.

**"Existing and historic use period" or "historic period"** means the period of time prior to the effective date during which an existing well or well system produced groundwater from an aquifer within the district.

**"Existing well"** means a well that was in existence, or for which drilling commenced, prior to the effective date.

**"General manager"** means the person employed by the Board to manage the District. The general manager shall perform District functions as specified in these rules and determined by the Board.

**"Groundwater"** means water percolating below the surface of the earth, and includes all subsurface water that occurs in a saturated strata or formation within the District.

**"Hearing examiner"** means a person appointed by the Board to conduct a hearing or other proceeding and, for any matter for which no hearing examiner is appointed, the presiding officer.

**"Historic use"** means production and beneficial use of groundwater from an aquifer during the existing and historic use period.

**"Historic use permit"** means a permit required by the District for the operation of any existing well or well system that was operational prior to the effective date.

**"Injection well"** means and includes:

1. An air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;
2. A cooling water return flow well used to inject water previously used for cooling;
3. A drainage well used to drain surface fluid into a subsurface formation;
4. A recharge well used to replenish the water in an aquifer;
5. A saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;
6. A closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink; and
7. An artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well used for the injection of any other fluid; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.

**"Landowner"** means the person(s) who own(s) the land surface.

**"Leachate well"** means a well used to remove contamination from soil or groundwater.

**"Limited Production Well"** means a well that is equipped in a manner that prevents the well from producing more than 1,000 gallons of water per day, or a well that is not otherwise capable of producing more than 1,000 gallons of water per day, or a well that will be operated in compliance with a permit that restricts production, requires compliance to be documented annually by affidavit and authorizes inspection of the premises as needed.

**"Management plan"** means the management plan as adopted by the District, pursuant to *Section*

36.1071, Texas Water Code.

**"Metering or measuring 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 transported from a well or well system during a period of time; provided that any such meter shall be calibrated from time to time to register accurately and within not less than plus or minus two percent (2%) of actual flow.

**"Monitoring well"** means a well installed to measure some property of the groundwater or aquifer it penetrates, and that does not produce more than 5,000 gallons of groundwater per year.

**"New well"** means a well for which drilling commenced on or after the effective date.

**"Open Meetings Act"** means *Chapter 551, Texas Government Code*, as it may be amended.

**"Operating Permit"** means a permit issued by the District for a well or group of wells that allows a specified maximum amount of groundwater to be withdrawn from each well, or from each group of wells, at a specified maximum rate of withdrawal for a designated time period.

**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 legal right to occupy the property and to capture groundwater withdrawn from a well or well system located on the property.

**"Public Information Act"** means *Chapter 552, Texas Government Code*, as amended.

**"Person"** means and includes any human being or legal entity, including, but not limited to, a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association.

**"Pollution"** means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any groundwater in a groundwater reservoir, that renders the groundwater harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or that impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose, including the alteration of groundwater by saltwater or other deleterious matter admitted from another stratum or from the surface of the ground.

**"Presiding officer"** means the President, Vice-President, Secretary, or other director presiding at any hearing or other proceeding, or a hearing examiner conducting any hearing or other proceeding.

**"Production" or "producing"** means the act of extracting groundwater from an aquifer by pumping or other method.

**"Railroad Commission"** means the Railroad Commission of Texas.

**"Registration"** means a certificate issued by the District for an exempt well.

**"Rule" or "rules"** means the rules of the District compiled in this document, as supplemented or amended from time to time, and any rule adopted to implement these rules.

**"Saline line"** means, for the Carrizo-Wilcox Aquifer, the applicable lines that are shown on a map labeled Figure 10, and for the Sparta Sand the line that is shown on Figure 22, of Texas Water Development Board Report No. 185, dated June 1974, entitled "Ground-Water Resources of Brazos and Burleson Counties, Texas", that mark the boundary between that part of the respective aquifers having water with total dissolved solids of less than 3,000 milligrams per liter and that part of the respective aquifers having water with TDS of greater than 3,000 milligrams per liter.

**"Texas Rules of Civil Procedure" and "Texas Rules of Civil Evidence"** means the Texas Rules of Civil Procedure and the Texas Rules of Civil Evidence as amended and in effect at the time of the action or proceeding. Except as modified by the rules of the District, the rights, duties, and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure or the Texas Rules of Evidence are the same as a court acting under those rules.

**"Transport"** means transferring or moving groundwater outside the District boundaries without regard to the manner the water is transferred or moved, including but not limited to discharges into watercourses.

**"Transport permit"** means a permit issued by the District for the transport of a specified maximum amount of groundwater to be transferred at a specified maximum rate of production and transfer from a permitted or registered well or well system to a place of use outside the district boundaries.

**"Variance"** means an authorized exception to requirements or provisions of the rules, granted by the Board.

**"Waste"** means any one or more of the following:

1. Withdrawal of groundwater from an aquifer at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic or stock watering purposes;
2. The flowing or producing of wells from an aquifer if the water produced is not used for a beneficial purpose;
3. Escape of groundwater from an aquifer to any other underground reservoir or geologic strata that does not contain groundwater;

4. 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;
5. Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or ditch that is not the property of the owner, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under *Chapter 26, Texas Water Code*;
6. Groundwater pumped for irrigation that escapes as irrigation tail water onto land other than that of the owner of the well unless the occupant of the land receiving the discharge has granted permission;
7. For water produced from an artesian well, waste has the meaning assigned by *Section 11.205 Texas Water Code*.

**"Water meter"** means a water flow measuring device that can record within +/- 5% the amount of groundwater produced during a measured time; provided that any such meter shall be calibrated from time to time to register accurately and within plus or minus two percent (2%) of actual flow.

**"Water well driller"** has the meaning set forth in *Section 32.001(16), Texas Water Code*.

**"Well"** means any facility, device, or method used to withdraw groundwater.

**"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 legal right to occupy the property and to capture groundwater withdrawn from a well or well system located on the property. The term "well owner" includes, but is not limited to, a person that holds an operating permit for the well; a person who owns or has leased the water rights for the property on which the well is located; and the landowner if the water rights have not been leased or otherwise severed.

**"Well operator"** means a person who operates a well, or a water distribution system supplied by a well.

**"Well system"** means a well or group of wells tied to the same distribution system.

**"Withdraw"** means the act of extracting or producing groundwater by pumping or by another method.

**RULE 1.2. PURPOSES OF RULES.** These rules are adopted to aide in compliance with the provisions of the District Act, to provide regulations necessary and useful to accomplish the purposes set forth in the District Act, and to provide standards and requirements that may be enforced to accomplish such purposes.

**RULE 1.3. USES AND EFFECT OF RULES.** The District uses these rules as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They may not be construed as a limitation or restriction on the exercise of any discretion nor be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law, nor be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act.

**RULE 1.4. AMENDMENT OF RULES.** The Board may, following the applicable notice, hearing, process and procedures requirements set forth in these rules and **those set forth in Chapter 36, Texas Water Code**, amend these rules and adopt new rules from time to time.

**RULE 1.5. HEADINGS AND CAPTIONS.** The section and other headings and captions contained in these rules are for reference purposes only. They do not affect the meaning or interpretation of these rules in any way.

**RULE 1.6. CONSTRUCTION.** A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the Texas Water Code. Construction of words and phrases are governed by the *Code Construction Act, Subchapter B, Chapter 311, Government Code*. References to a code or statutory provision or section in these rules shall include such code or statutory provision as amended, reordered or re-codified. These rules shall be read, interpreted and applied in a manner that is consistent with the District Act and, if any definition or provision of these rules conflicts with or is inconsistent with any definition or provision of the District Act such definition or rule shall be read, construed and applied consistent with the District Act which shall govern and control.

**RULE 1.7. METHODS OF SERVICE UNDER THE RULES.** Except as otherwise expressly provided in these rules, any notice or documents required by these rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopy number. Service by mail is complete upon deposit with postage prepaid in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three days will be added to the prescribed period. Where service by one or more methods has been attempted and has failed, service may be completed by any other of the above-authorized methods of service. If personal service is not made or deemed to be made as above provided, if the location of a person to be served is unknown to the Board, if unknown persons may have a property interest in the matter at issue, or in addition to any other service made, notice may be given by publication and the service by publication is complete upon the notice being published in a newspaper of general circulation in Milam and Burleson Counties. Further, upon approval by the Board, notice may be given in any manner authorized by the Texas Rules of Civil

Procedure.

**RULE 1.8. SEVERABILITY.** If any one or more of the provisions contained in these rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other rule or provision of these rules, and these rules must be construed as if such invalid, illegal or unenforceable rule or provision had never been contained in these rules.

## **SECTION 2. BOARD.**

**RULE 2.1. PURPOSE OF THE BOARD.** The Board was created to determine policy and regulate the withdrawal of groundwater, protect and recharge groundwater, prevent pollution or waste of groundwater, control subsidence caused by the withdrawal of groundwater within the boundaries of the District, and to regulate the transport of groundwater out of the District, for conserving, preserving, protecting and recharging the groundwater within the District, and to exercise the rights, powers, and duties of the District in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.

**RULE 2.2. BOARD STRUCTURE AND OFFICERS.** The Board consists of the members appointed and qualified as required by the District Act. The Board will elect one of its members to serve as President, to preside over Board meetings and proceedings; one to serve as Vice President to preside in the absence of the President; and one to serve as Secretary to keep a true and complete account of all meetings and proceedings of the Board. The Board will elect officers annually. Members and officers serve until their successors are appointed and sworn in accordance with the District Act and these rules. The general manager shall serve as an assistant secretary and all accounts and minutes of all meetings and proceedings of the Board will be kept and maintained in the district office

**RULE 2.3. MEETINGS.** The Board will hold a regular meeting at least once each quarter as the Board may establish from time to time by resolution. At the request of the President, or by written request of at least three members, the Board may hold special meetings. Notice of all Board meetings will be given in compliance with the Open Meetings Act; provided that neither a failure to provide notice of a regular meeting nor an insubstantial defect in the notice of any meeting shall affect the validity of any action taken at the meeting.

**RULE 2.4. COMMITTEES.** The President may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees that may be derived of board members and/or members of the general public. Committee members serve at the pleasure of the President.

**RULE 2.5. DIRECTOR COMMUNICATIONS.** Directors may not communicate, directly or indirectly, about any issue of fact or law in any contested case that is before the Board, with any

agency, person, party or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence. Excluding contested cases, subject only to the applicable provisions of the Open Meetings Act, a director may communicate with other members of the Board, and the administrative staff and legal counsel of the District. A director that engages in prohibited ex parte communications with respect to any contested case shall abstain from participation in deliberations and voting on any matter in which the ex parte communication occurred.

**RULE 2.6. MINUTES AND RECORDS OF THE DISTRICT.** All public documents, reports, records, and minutes of the District are available for public inspection and copying, as provided in, and subject to the exceptions of, the Public Information Act and State law. Upon written application of any person, the District will furnish copies of its public records upon payment of a copying charge pursuant to policies established by the District. The District will furnish a list of the charges for copies. The adopted rules and minutes of the Board shall establish fees for all actions on permits, regulations and authorizations of the District.

**RULE 2.7. CERTIFIED COPIES.** Requests for certified copies must be in writing. Certified copies will be made under the direction of the general manager. A certification charge and copying charge may be assessed, pursuant to policies established by the Board.

**RULE 2.8. OFFICE HOURS.** Official office hours for the district office will be established by the general manager and published in the minutes of the Board.

### **SECTION 3. DISTRICT STAFF.**

**RULE 3.1. GENERAL MANAGER.** The Board may employ or contract with a person to serve as general manager of the District and to perform such services as the Board may from time to time specify. The Board may delegate to the general manager full authority to manage and operate the affairs of the District subject only to orders of the Board. The Board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the business and operation of the District and to determine the compensation to be paid all employees other than the general manager.

If the position of general manager is vacant, the Board may appoint an interim manager, or act to manage the District and perform any function of the general manager identified by these rules.

**RULE 3.2. DELEGATION OF AUTHORITY.** The general manager may delegate assigned duties as may be necessary to effectively and expeditiously accomplish his or her duties, provided, that no such delegation may ever relieve the general manager from responsibilities under the District Act or Board orders.

### **SECTION 4. SPACING REQUIREMENTS.**

#### **RULE 4.1. REQUIRED SPACING.**

1. Except for a well exempted under Rules 4.2(6) or (7), Rule 7.10(b) or 7.10(2)(c), a new well may not be drilled within 50 feet of an existing well, or the property line of any abutting land that is not owned or controlled by the owner of the new well.
2. In the Simsboro formation the spacing of a new well shall be as provided in (a) or (b), at the election of the owner exercised when the application for a new well permit is filed:
  - a. the spacing of a new well from any well existing in that formation shall be a distance of one foot per one gallon per minute of production capacity and one-half foot per gallon per minute from the property line of each adjoining landowner; or
  - b. the spacing of the new well shall be based on engineering studies and drawdown criteria derived from GAM simulations of current and probable future groundwater development in the District, to meet the following performance standards:
    - i. no more than 8% drawdown of hydraulic head [using GAM (2000) levels and referenced from top of the aquifer] at the property boundary;
    - ii. no more than 25% drawdown of hydraulic head anywhere within the property from which the well will produce water; and
    - iii. the applicant must provide for a minimum of one monitoring well for every 2,000 acre/feet/year of permitted production capacity, to demonstrate continuing compliance with these standards.
  - c. A new well to be completed in the Trinity, Sparta, Queen City, Carrizo, Calvert Bluff or Hooper formations shall be spaced a distance of two feet per one gallon per minute production capacity from any well existing in the same formation, and one foot per gallon per minute from the property line of each owner of abutting land that is not owned or controlled by the owner of the new well.

#### **RULE 4.2. EXCEPTIONS TO SPACING REQUIREMENTS.**

1. If an applicant establishes, by clear and convincing evidence, good cause why a new well should be allowed to be drilled closer than the spacing required by Rule 4.1, the issue of spacing requirements will be considered during the permitting process and during any contested case process. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board may limit the production of the well to prevent or limit injury to adjoining landowners, well owners or the aquifer. Any existing well for which a timely application for certificate of registration or historic use permit has been filed in accordance with

these rules is exempt from the spacing requirements under this section.

2. The Board may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing spacing requirements.
3. If an exception to the spacing requirements of the District is desired, a person shall submit an application to the Board at the district office. The application shall be on a form furnished by the District. The application must explain the circumstances justifying an exception to the spacing requirements and include a plat or sketch, drawn to scale, one inch equaling 600 feet. The plat or sketch must show the property lines of all land that abuts the land proposed for the well site within one-half mile of the proposed well, and all registered and permitted wells, within one-half mile of the proposed well site. The application must contain the names and addresses of all landowners and owners of registered and permitted wells within one-half mile of the proposed well site. The application and plat must be certified by some person actually acquainted with the facts who shall state that the facts contained in the application and plat are true and correct.
4. Except as provided in this Rule 4.2, a public hearing will be held on each request for an exception to the spacing requirements. Prior to the public hearing written notice of the public hearing will be sent to the applicant. The notice shall also be sent to: (a) the owners of all land that abuts the land proposed for the well site within one-half mile of the proposed well; and (b) the owners of all registered and permitted wells located within one-half mile from the proposed well site. After all interested parties have an opportunity to appear and be heard at the public hearing, the Board may grant or deny an exception. Provided, however, if all such landowners and owners execute a waiver in writing, stating that they do not object to the granting of the exception, the Board may proceed, upon notice to the applicant only and without hearing, and determine the outcome of the application. The applicant may waive notice or hearing or both.
5. If the applicant presents waivers signed by all landowners and well owners that are required to be given written notice under this Rule 4.2, stating that they have no objection to the proposed location of the well site, the spacing requirements of Rule 4.1 shall not apply to the proposed well location.
6. Permitted wells that are not produced for 180 consecutive days, or more, in any twelve consecutive calendar months, that are less than 80 feet in depth, and that are producing from the Brazos River Alluvium or the Little River Alluvium are exempt from spacing requirements.
7. Wells previously permitted by the Railroad Commission, and exempt under Rule 7.10(2)(b), that are to be re-drilled, replaced or altered for the purpose of supplying water to a drilling rig engaged in drilling or exploration for oil and gas without a new or amended permit being issued by the Railroad Commission, are exempt from the public hearing and spacing requirements if the well:
  - a. will not produce water for more than 180 calendar days, or will not produce more than 25,000

gallons of water per day;

- b. the well is owned or operated by the same person that was issued the initial permit by the Railroad Commission; and
  - c. the well is located on the same oil and gas lease, or within the boundaries of the same field, on which the drilling rig was located when the original permit was granted.
8. Wells exempt pursuant to Rule 7.10(2)(b) or (c) are not subject to the spacing requirements.
  9. Existing Wells that are Limited Production Wells are not subject to the spacing requirements.

## **SECTION 5. PRODUCTION LIMITATIONS.**

### **RULE 5.1. MAXIMUM ALLOWABLE PRODUCTION.**

1. A non-exempt well or well system may not be drilled and equipped for the production of a cumulative total of more than 10 gallons per minute (GPM) per contiguous acre owned or controlled by the well owner or operator, and each well having a production capacity of 1000 gpm, or more, shall have monitoring equipment reasonably required by the District and be capable for use as a monitoring well.
2. Excluding wells operated pursuant to an historic use permit, in no event may a non-exempt well or well system be operated such that the total annual production exceeds 2 acre feet of water per contiguous acre owned or controlled by the landowner, well owner, or well operator, as applicable. If the production of water for a Management Zone reaches the level at which reductions in the permitted amounts are made under Section 16, the maximum amount of groundwater that is authorized by a permit within that Management Zone shall be reduced by the percentage amount that the permitted production is reduced for that Management Zone under Section 16, unless the Board finds the reduced production will likely be for a limited period.
3. A non-exempt well or well system for which an historic use permit has been issued shall be operated such that the total annual production will not exceed the amount authorized under the historic use permit and any additional permits issued in compliance with these Rules. Between the effective date of these rules and the date that a final historic use permit has been issued to a well owner for an existing non-exempt well or well system, the well owner or operator shall not withdraw during any calendar year an amount of groundwater greater than the maximum amount produced in any one calendar year during the historic period as shown in the application for the historic use permit.
4. A well or well system may not be operated such that the total annual production exceeds the maximum production for which the well or well system is permitted.

5. A well or well system may not be operated such that the total annual production exceeds the permitted amount, less any reduction required under Section 16.
6. As used in this Rule 5.1, land and water rights are "contiguous" when:
  - a. The land and the water rights: (i) are located within the District; (ii) are owned or controlled by the well owner or operator; (iii) are located within a continuous perimeter boundary of the land on which the well is located; (iv) are within the same aquifer as that for which production is to be permitted for the well; and (v) the water quality of the aquifer underlying the well site and that part of the aquifer underlying the contiguous land is substantially the same; or
  - b. A waiver or variance is obtained under Rule 5.3; or
  - c. The land and water rights that are owned or controlled by the well owner or operator are separated only by a road, highway, railroad or other right-of-way, or river from the other land and water rights within the District that are owned or controlled by the well owner or operator.

**RULE 5.2. LIMITATION ON MAXIMUM ALLOWABLE PRODUCTION.**

1. Land, and water rights in land, that is not located over the aquifer from which a well is authorized to produce water, will not be included in calculating the volume of water permitted to be pumped under Rule 5.1.
2. Land, and water rights in land, that is located south of the saline line will not be included in calculating the volume of water permitted to be pumped under Rule 5.1. for a well that is located north of the saline line.
3. Land, and water rights in land, that is located south of the saline line will only be included in calculating the maximum production permitted for a well that is located south of the saline line.
4. Maximum allowable production authorized by permit for a well or well system, other than production authorized by a historic use permit, may be reduced as provided in these Rules. Permitted production may be reduced as provided in Section 16.
5. The general manager may issue operating permits stating the maximum permitted production of groundwater, for Existing Wells that are also Limited Production Wells.
6. The general manager may issue drilling and operating permits stating the maximum permitted production of groundwater, for Limited Production Wells that meet the spacing and maximum production requirements of these Rules.
7. The maximum permitted production of groundwater authorized in a permit issued under

Rule 5.2(5) or 5.2(6) above shall be the volume of groundwater (within the 1,000 gallons per day maximum that is permitted for Limited Production Wells) that is determined by the general manager as being necessary to serve the building and building facilities proposed to be served by the well. The general manager may include requirements in the permit that obligate the permittee to (a) equip the well so that it is incapable of producing more groundwater than the maximum daily volume authorized by the permit, (b) meter the water produced by the well, (c) annually give the District an affidavit stating the volume of water produced by the well did not at anytime exceed the maximum daily pumpage authorized for the well, (d) require the buildings and facilities served by the well to be subject to inspection by the District at anytime, (e) specify the specific facilities, e.g. kitchen, one restroom, water fountain, to be served with the water produced, (f) prohibits outside watering or sprinkler systems, or any combination of such restrictions and limitations.

### **RULE 5.3. WAIVERS AND VARIANCES.**

1. Non-contiguous land owned or controlled by the applicant shall be deemed to be within a continuous perimeter boundary of the land on which the well is located if the applicant obtains a waiver from the owners of the water rights located between the well site and the non-contiguous land. In such event, if such non-contiguous land otherwise satisfies the requirements of Rule 5.1.4(a) it shall be deemed to be contiguous for the purposes of this Section 5. The waiver will be on a form provided by the District.
2. The Board will consider applications for a variance from the requirement that only contiguous land be included in the calculation of the maximum of two acre feet per acre of annual water production and the maximum allowable production of 10 GPM per contiguous acre, upon a request by the landowner accompanied by a hydrological study. If the hydrological study shows the aquifer will not be damaged and the water production capacity of the abutting land that is not owned or controlled by the applicant will not be unreasonably limited if the variance is granted, and the Board finds from such report and other evidence presented, including but not limited to a review and report made by the district hydrologist, that granting the variance will not damage the aquifer or unreasonably limit the production capacity of abutting property, the Board will grant a variance. The Board may consider all waivers granted and all waivers refused to be granted by the owners of water rights to property that abuts the land on which the well will be located, and any such waivers by the owners of any other water rights that are located between the well site and the non-contiguous land. The variance may be granted in whole or in part.

### **RULE 5.4. EMERGENCY PERMITS.**

1. Basis for Emergency Permits: Upon application, the general manager may grant an emergency permit that authorizes the withdrawal of water from a well not currently drilled or permitted. An applicant for an emergency permit must present sufficient evidence that: (a) no suitable alternate water supply is immediately available to the applicant; and (b) an emergency need for the groundwater exists.

2. **Action on Requests:** The general manager may grant any application for an emergency permit without notice, hearing, or further action by the Board. The general manager may deny an application for an emergency permit on any reasonable ground including, but not limited to, a determination that the applicant is currently in violation of the District Act or these rules, or that the applicant has a previous unresolved violation on record with the District. Notice of the general manager's action will be served upon the applicant. Any affected party may appeal the general manager's action by filing within twenty (20) business days of that action, a written request for a hearing before the board. The Board will hear the appeal at the next available regular Board meeting. The general manager must notify the Board when an emergency permit is granted. On the motion of any director, and a majority concurrence in the motion, the Board may overrule the action of the general manager.
3. **Term of Emergency Permits:** No emergency permit may be issued unless an application for a permit to be issued under Rule 7.1 has been filed with the District. The term of any emergency permit granted by the general manager under this Rule extends only until the Board makes a final decision on the application for the permit under Rule 7.6. Emergency permits for replacement wells may not require a hearing if there is substantial proof that the replacement well will be in compliance with these rules and will have no greater impact upon the aquifer than the well it is to replace.
4. **Risk Acceptance:** A person that obtains an emergency permit assumes all risk associated with such permit, including all costs and expenses incurred in reliance on the permit. The issuance of an emergency permit shall not obligate the District to issue any related permit, nor constitute evidence or be a consideration in any subsequent hearing or permit process regarding the emergency permit or any other permit, application or well for which the emergency permit was issued.

#### **RULE 5.5. REGULATION OF PRODUCTION FOR LOCAL WATER UTILITIES.**

1. For purposes of this Rule 5.5, "local water utility means a non-profit water supply corporation, a general law or home-rule city, a special utility district, a municipal utility district or any other person included in the definition of Aretail public utility@ under *Section 13.002, Texas Water Code*, whose defined service area, or a portion thereof, lies within the boundaries of the District.
2. For purposes of this Rule 5.5 and Rule 8.1.2, Adefined service area@ means the retail utility service area defined in any certificate of convenience and necessity issued under Chapter 13, *Texas Water Code*; or for a municipality or a special or municipal utility district the term also includes the retail water utility service area authorized under applicable provisions of law.

3. Upon application, if not inconsistent with the management plan or the exceptions listed below, a local water utility shall be issued permits as necessary to produce the volume of water required for compliance with state and federal regulations specifying the production capacity required for each retail customer service/connection within the utility's defined service area. The following exceptions, conditions and limitations are applicable to this rule:
  - a. Only customers/connections within that part of a defined service area that is within the District, or within the District and an adjoining county, will be considered;
  - b. A local water utility is not eligible to obtain a permit under this rule based on customers/connections in the defined service area of another retail water utility;
  - c. For the part of a defined service area that is in a county adjoining the District, only the defined service area as it existed on the effective date will be included for production limits authorized by this rule. However, a local water utility may request production limits for defined service area that is added after the effective date in a county adjoining the District, and the grant of such request shall be within the discretion of the Board.
  - d. Only retail customers (and where applicable, associated fireflow) will be considered in determining the production requirements.
4. Following issuance of a permit under Rule 5.4.3 and upon application by the local water utility, a permit shall be amended to authorize any increase in production necessary to maintain or achieve compliance with state and federal regulations specifying the production capacity required for its retail customer connections within the utility's defined service area. Applications for amendment shall otherwise comply with the requirements of Rule 7.8.
5. In addition to an application under Rule 5.4.3 for the production needed for its defined service area that is within the District or the District and a county that adjoins the District, a local water utility may use a portion of the water included in an historic use permit obtained under the provisions of Rule 7.14 to meet its obligations under a wholesale water supply contract with another retail public utility; provided that the water included in the historic use permit to be supplied to another retail public utility in any calendar year shall not exceed the highest volume of water metered by the local water utility to such other retail public utility in any calendar year during the historic period.
6. A permit issued under this Rule 5.5 shall not have a termination date.
7. The following resolutions previously adopted by the Board are hereby ratified, confirmed and readopted, and incorporated herein by reference as if set forth herein verbatim.
  - a. The resolution adopted on March 11, 2003, that provides definitions, rules and regulations, and

gives retail public utilities within the District an opportunity to obtain permits for the production of water based on long-term water use plans approved by the District; and

b. The resolution adopted on September 9, 2003, amending the resolution referenced and described in 7(a) above.

8. Production authorized for a local water utility, excluding production authorized by historic use permit, may be reduced as provided in Section 16.

## **SECTION 6. OTHER DISTRICT ACTIONS AND DUTIES.**

**RULE 6.1. MANAGEMENT PLAN.** The management plan specifies the acts, procedures, performance and avoidance necessary to minimize waste, the reduction of artesian pressure, or the draw down of the water table. The District shall use the rules to implement the management plan. The Board may amend or adopt a new management plan at anytime and will review the plan at least every fifth year. Once adopted, a plan and all amendments thereto remain in effect until amended or the adoption of a new plan.

## **SECTION 7. PERMITS, RECORDS, REPORTS, AND LOGS.**

### **RULE 7.1. GENERAL PERMIT AND REGISTRATION PROVISIONS.**

1. An operating permit or historic use permit, or amendment thereto, is required to produce water from a non-exempt well, to substantially alter the size or capacity of a non-exempt well, or to alter an exempt well if the alteration will render the well non-exempt.
2. A permit confers only the right to use the permit under the provisions of these rules and according to its terms. The permit terms may be modified or amended pursuant to the provisions of these rules.
3. Within 90 days after the date of a change in ownership of a non-exempt well or well system, the permit holder must notify the District in writing of the name of the new well owner. Any person who becomes the well owner of a currently permitted well, or well system, must, within 90 calendar days from the date of the change in ownership, file an application for an amendment to the permit in accordance with Rule 7.2 to effect a transfer of the permit.
4. An application pursuant to which a permit or registration has been issued is incorporated in the permit or registration, and the permit or registration is granted on the basis of and contingent upon the accuracy of the information supplied in that application. A finding by the Board that false information has been supplied in the application will, at the Board's discretion, be grounds to refuse the application or for immediate revocation of the permit or registration. Well pumps and equipment shall only be installed or serviced in wells registered with the District.

5. Violation of a permit's terms, conditions, requirements or special provisions, including pumping groundwater in an amount in excess of either the permitted production or the authorized maximum withdrawal rate, is a violation of these rules and is punishable as provided by law and these rules.
6. Applications that are requested by the applicant to be processed concurrently will be processed and considered by the Board concurrently according to the standards and rules applicable to each application.
7. All permits issued by the District are subject to the management plan.
8. Historic use permits are issued for an indefinite term, until modified or revoked by the Board after notice and hearing.
9. The term of each operating permit issued by the District will be set by the Board. The term will generally be for a period not to exceed forty years from the date of issuance. The holder of an operating permit will be responsible for making application for review and renewal, as applicable, on approved forms that will be available at the district office. Such applications shall be submitted to the District 90 days prior to the fifth anniversary of the issuance and each subsequent review, and the date of expiration of the operating permit. Each such operating permit will be subject to review every fifth year, and during any such review may be modified to conform with intervening changes in the management plan or state law. The Board may waive any five year review if no material change has been made to the management plan, or if the changes made do not require modification of such permits.
10. Well pumps and equipment shall only be installed or serviced in wells registered with the District.
11. Injection wells are subject to the requirements of Rule 7.16.

**RULE 7.2. CHANGE IN OWNERSHIP OF PERMITS.** A permittee or registrant may transfer the permittee's or registrant's ownership in any valid registration or permit as provided under these rules. The general manager may rule on any application for a permit or registration amendment to transfer the ownership of the registration or permit. The written, sworn application shall include a request to make the ownership change and show the authority for requesting the change. The general manager may grant or deny such an amendment without notice, hearing, or further action by the Board. While the application is pending, the new owner may continue to operate the well or well system in accordance with the existing permit or registration. The new owner of an exempt well may, but is not required to, apply to have the registration changed to reflect the new ownership.

**RULE 7.3. RECORDS, REPORTS, AND DRILLER'S LOGS.** The driller of a well shall keep an accurate driller's log for each new well. The driller shall file a copy of each log and a report detailing the drilling, equipping, and completion of the new well with the District within 60 days

after the date the new well is completed. The report on forms provided by the District and shall include all information submitted by the driller to any agency of the State of Texas. A person developing an application for, or maintaining, an injection well shall make all reports required by State law, including, but not limited to, the reports required by *Sec. 27.024, Texas Water Code*.

**RULE 7.4. APPLICATION REQUIREMENTS FOR ALL PERMITS.**

1. Each original application for a drilling permit, historic use permit, operating permit, transport permit, permit review or renewal, or permit amendment shall be on the form or forms required by the District. The forms will be furnished to the applicant upon request.
2. All permits are granted in accordance with the rules, and acceptance of a permit constitutes an acknowledgment of receipt of the rules and agreement that the permit holder will comply with all of the rules.
3. The application for a permit shall be in writing and sworn to.
4. The following shall be included in the permit application:
  - a. the name and mailing address of the applicant and the owner of the land on which the well is or will be located;
  - b. documentation establishing ownership of the land on which the well is or will be located; and, if the applicant is other than the owner of the property or if the water rights have been sold or leased, documentation establishing the applicable authority to construct and operate a well on such property for the proposed use; the documentation must be one or more documents recorded in the real property records of the County in which the land is located;
  - c. a statement of the nature and purpose of the proposed use and the amount of groundwater to be used for each purpose, including, as applicable, any proposed conjunctive use;
  - d. a water conservation plan or a declaration that the applicant will comply with the management plan;
  - e. the proposed location of each well and the maximum rate at which groundwater is proposed to be withdrawn, accompanied by a map showing the location of the well and the property owned or controlled by the applicant for the production of water;
  - f. a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
  - g. a drought contingency plan;

- h. a statement by the applicant that the groundwater withdrawn under the permit will be put to beneficial use at all times;
  - i. the location of the use of the groundwater from the well;
  - j. the aquifer and formation from which the applicant intends to produce groundwater;
  - k. the total acreage that overlies the aquifer and formation listed under (j) above, from which the applicant has the right to produce groundwater;
  - l. the total number of acres that overlies the aquifer and formation listed under (j) above and that is contiguous to the well(s) listed and located under (e) above; and
  - m. any other information identified by the Board during the permitting process as reasonably required or beneficial to the District's decision.
5. Payment by the permittee of the appropriate application fee.
  6. An application may be rejected as not administratively complete if the District finds that substantive information required by the permit application is missing, false, or incorrect.
  7. An application will be considered administratively complete if it complies with all requirements set forth under this section, includes all information required to be included in the application, and is accompanied by the required application fee.
  8. The general manager shall make the determination of administrative completeness.

**RULE 7.5. NOTICES, HEARINGS, AND DECISION ON APPLICATIONS.**

1. The District shall promptly consider and act on each administratively complete application for a permit. Within 60 days after the administratively complete application is filed, the general manager shall schedule a hearing on the application, if a hearing is required. The hearing shall be held within 35 days after the day on which the hearing schedule is established, unless a continuance is granted for good cause. The application will expire if the information requested in the application is not provided to the District within 90 days after a written request by the District. An administratively complete application requires information set forth in accordance with *Sections 36.113 and 36.1131, Texas Water Code*, and these rules. If, within 60 days after the date the administratively complete application is submitted, an application has not been acted on or set for a hearing on a specific date, the applicant may petition the District Court in the county where the land is located for a writ of mandamus to compel the District to act on the

application or set a date for a hearing on the application. The District shall act on the application within 60 days after the date the final hearing in the application is concluded.

2. Except as specifically provided otherwise in these Rules for drilling or operating permits for certain wells for which a hearing is not required, after the District has received an administratively complete original application for a drilling permit, transport permit, permit amendment or operating permit and schedules a hearing on the application, the General Manager will issue written notice indicating a date and time as set by the general manager for a hearing on the application in accordance with these rules. The notice shall include the name and address of the applicant, a summary of the application that includes a brief explanation of the proposed permit, any amount of groundwater requested, the proposed use and any proposed change in use, the date the application was filed, the time, date and place when any hearing will be held or the application will be considered by the Board, the location and the description of the well that is subject of the application, including a general location map, and any other information requested by the Board. The applicant, at the applicant's expense, shall give the notification by first-class mail to landowners and well owners within one-half mile of the proposed well, and any holder of a certificate of convenience and necessity within which the well is located. The notice given by the applicant for wells that will have 1,000 gpm, or more, capacity must be given thirty (30) business days before the date of the hearing and the notice for all other wells that require a hearing must be given not less than ten (10) business days before the date of the hearing, and the applicant must provide the District with proof of service including a list of names and addresses of landowners and well owners. The General Manager, at the applicant's expense, shall also publish the notice once in a newspaper(s) of general circulation in the District not less than ten (10) business days before the hearing; post the notice on the bulletin Board used to post notice and agendas of Board meetings; provide notice to the county clerk of each county in the District; provide notice by regular mail to the applicant, and by regular mail, facsimile or electronic mail to any person who has timely requested notice; and provide notice by regular mail to any person not provided notice by the applicant and who is entitled to receive notice under these Rules. A publisher's affidavit and tear sheet of the notice shall be provided to the District. The applicant will be responsible for the sufficiency of the notices.
3. The general manager may schedule as many permit applications at one hearing as the general manager deems necessary. Any person that wishes to be heard as a potential party to a hearing must, at least five (5) calendar days prior to the hearing date, provide the general manager with written notice of the person's intent to appear at the hearing. If the general manager decides to contest the application, the general manager must, at least five (5) calendar days prior to the hearing date, provide the applicant with written notice of the general manager's intent to contest the application. Hearings will be held in accordance with Section 14. Notwithstanding the above five day rule, any person may file a written request to be given party status on or before the scheduled starting time of the hearing. The burden shall be on the person making such request to establish in writing a personal

justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and that is affected by the permit or the permit amendment application scheduled for hearing.

4. A hearing shall not be required on administratively complete applications for a drilling or operation permit for a Limited Production Well; provided that all such applications will be considered and acted upon by the Board at a regularly scheduled public meeting.

**RULE 7.6. CONSIDERATIONS FOR GRANTING OR DENYING A PERMIT.** In deciding whether or not to issue a well, drilling, transport, permit amendment or operating permit, and in setting the terms of the permit, the Board will consider *Chapter 36, Texas Water Code*, the District Act and rules, the application, and all other relevant factors, including, but not limited to, (1) the management plan; (2) the quality, quantity, and availability of alternative water supplies; (3) the impact on other landowners from a grant or denial of the permit, or the terms prescribed by the permit including whether the well will interfere with the production of water from exempt, existing or previously permitted wells and surface water resources; and (4) whether the permit will result in a beneficial use and not cause or contribute to waste. If no person notifies the general manager of their intent to contest the application, and if the general manager does not contest the application, the application will be presented directly to the Board for a final decision. The Board may grant or deny the application, in whole or in part, table or continue the application to hear additional evidence, or refer the application to the hearings examiner for a complete hearing. Applications will not be considered administratively complete until all applicable fees are paid to the District.

**RULE 7.7. PERMITS ISSUED BY THE DISTRICT.** All permits issued by the District shall state the following:

1. the name of the person to whom the permit is issued;
2. the date the permit is issued;
3. the date the permit is to expire;
4. the conditions and restrictions, if any, placed on the location of the well, instantaneous rate and annual amount of withdrawal of groundwater;
5. any other conditions or restrictions the District prescribes; and
6. any other information the District determines reasonably useful and beneficial.

**RULE 7.8. AMENDMENT OF A PERMIT.**

1. A substantial change to a permit may be made only after application to amend the

permit has been filed with the District and approved by the Board. It is a violation of these rules to pump any amount of water over the amount authorized, or to exceed the maximum withdrawal rate authorized, by an operating permit. A written, sworn application for a permit amendment to increase the authorized withdrawal or the withdrawal rate must be filed and an amendment granted before any additional production occurs. The applicant must demonstrate that the originally authorized amount is inadequate and the need to increase the withdrawals.

2. A substantial change to a permit includes, but is not limited to, an increase in the instantaneous rate or the annual quantity of groundwater authorized to be withdrawn, a change in place or purpose of use or a change in the location of groundwater withdrawal. The general manager shall decide, consistent with these rules and policies adopted by the Board, whether or not any other permit change is a substantial change.
3. The general manager may rule on any application for a permit amendment to decrease the authorized withdrawal. The general manager may grant such amendment without notice, hearing, or further action by the Board.
4. The general manager may rule on any application for a permit amendment to transfer the ownership of any permit in accordance with Rule 7.2.

**RULE 7.9. COMPLETION OF PERMIT APPLICATION REQUIRED.** The District shall promptly consider and act on each administratively complete application for a permit. If an application is not administratively complete, the District shall request the applicant to provide the additional information necessary to complete the application. The application will expire if the applicant does not complete the application within 30 days of the date of the District's request for additional information. The general manager may grant an extension to the 30-day expiration date if cause is shown why the additional information will take more than 30 days to prepare and submit. Applications that expire may be resubmitted.

**RULE 7.10. EXEMPT WELL STATUS.**

1. Wells exempted or partially exempted by local rule:

a. Wells exempted by local rule:

- i. A well that was in use prior to the effective date of these rules, that is used solely for domestic use, and that was drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater per day is an exempt well.
- ii. A well that, after the effective date of these rule is drilled in full compliance with these rules, that is used solely for domestic use and that is completed, equipped and maintained so that it is incapable of producing more than 25,000 gallons of

groundwater per day, shall be an exempt well from and after the completion.

b. Wells partially exempted by local rule:

- i. Wells that are not produced for 180 consecutive days, or more, in any twelve consecutive calendar months, that are less than 80 feet in depth, and that produce groundwater from the Brazos River Alluvium or the Little River Alluvium for the non-wasteful use by the Owner to raise livestock or agricultural crops, are exempt from production fees, and the public hearing and spacing requirements.
- ii. Wells that will produce groundwater for non-wasteful use by the Owner for the purpose of raising domestic livestock or agricultural crops and that comply with the spacing and production requirements, are exempt from the payment of production fees and the public hearing requirements.
- iii. Wells previously permitted by the Railroad Commission and exempt under Rule 7.10(2)(b) that are to be re-drilled, replaced or altered for the purpose of supplying water to a drilling rig engaged in drilling or exploration for oil and gas, without a new or amended permit issued by the Railroad Commission, are exempted from the public hearing requirements if the well meets the qualification requirement provided in Rule 4.2(7).

2. Wells exempted by State law: As provided in *Chapter 36, Texas Water Code*, the following are exempt wells:

- a. A well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres, that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
- b. The drilling of a well and production to supply water solely for a drilling rig that is actively engaged in drilling or exploration operations for oil and gas, that is permitted by the Railroad Commission, if: (i) the person holding the permit is responsible for the water well; and (ii) the water well is located on the lease on which the drilling rig is located, or within the boundaries of the field in which the drilling rig is located; or
- c. The drilling of a well under a permit issued by the Railroad Commission under *Chapter 134, Texas Natural Resources Code*, or for production from such a well if the water produced or to be produced is necessary or will be necessary for mining purposes.

3. Railroad Commission Jurisdiction. A well drilled or operated under a permit issued by the Railroad Commission is under the exclusive jurisdiction of the Railroad Commission and is exempt from regulation by the District. The following provisions are applicable to wells permitted by the Railroad Commission:

- a. Groundwater produced in an amount and for a purpose authorized by a Railroad Commission permit may be used within or exported from the District for the authorized purpose without a permit from the District;
  - b. To the extent groundwater is produced in excess of Railroad Commission authorization, or for a purpose not authorized by a Railroad Commission permit, the holder of the Railroad Commission permit must apply to the District for the appropriate permit for the well and the production or the excess production, as applicable, and is subject to all applicable fees;
  - c. Groundwater produced from a well under the jurisdiction of the Railroad Commission is generally exempt from District fees, however, the District may impose a pumping fee and, as applicable, an export fee on groundwater produced from an otherwise exempt mine well that is used for either municipal purposes or by a public utility; and any fee imposed by the District under this Rule 7.10(3)(c) may not exceed the fee imposed on other groundwater producers in the District; and
  - d. Wells permitted by the Railroad Commission are exempt to the extent the water use operation and production is permitted and authorized by the Railroad Commission.
4. The District may require an exempt well to obtain an operating permit and comply with these rules if:
- a. a well exempted under subsection 7.10(2)(b) above: (i) is no longer used to supply water for a drilling rig that is actively engaged in drilling or exploration operations permitted by the Railroad Commission; or (ii) is re-drilled, altered or replaced for that purpose without first obtaining a new or amended permit from the Railroad Commission;
  - b. withdrawals from the exempted well are:
    - i. no longer necessary for mining purposes permitted by the Railroad Commission; or
    - ii. greater than the amount necessary for mining purposes permitted by the Railroad Commission under *Chapter 134, Natural Resources Code*;
  - c. the area of the tract of land on which the well is located is reduced, or the well is modified or operated improperly, such that the well is no longer qualified as an exempt well under Rule 7.10; or
  - d. the well is maintained, pumped, operated or used so as to no longer be qualified as an exempt well.
5. A person holding a permit, issued by the Railroad Commission under *Chapter 134, Texas Natural*

*Resources Code*, that authorizes the drilling of a well, shall report monthly to the District the total amount of water withdrawn from the well, the quantity of water necessary for mining purposes, and the quantity of water withdrawn for other purposes.

6. The District shall require all exempt wells to be registered in accordance with these rules. All exempt wells shall be equipped and maintained so as to conform to the rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from one aquifer to another and to prevent the pollution or harmful alteration of the character of the groundwater in any aquifer. A landowner, well owner, or any other person acting on their behalf, of an exempt well shall register the well with the District and comply with all applicable statutes, codes and regulations applicable to the drilling and opening up of the well.
7. A well to supply water for a subdivision of land for which a plat approval is required under *Chapters 212 or 232, Texas Local Government Code*, is not exempted under these rules.
8. Groundwater withdrawn from a well exempt from permitting or regulation under ~~Section~~ **Rule 7.10** and subsequently transported outside the boundaries of the District shall be subject to all applicable water use and transport fees.
9. Wells permitted by the TCEQ pursuant to the Water Code or the Natural Resources Code are exempt only to the extent, if any, provided by State law for the water use and the operation and production permitted and authorized by the TCEQ.
10. Excluding injection wells that receive a permit granted by the TCEQ or the Railroad Commission, which grant is upheld by a final judgement of a court of competent jurisdiction if the issuance of the permit is appealed, this Rule 7.10 does not apply to nor exempt any injection well.

#### **RULE 7.11. WELL REGISTRATION.**

1. All wells that are exempt under Rule 7.10 must be registered with the District by the well owner or the well operator. If the exempt well is in existence on the effective date of these rules, the well owner or operator shall file with the District, on form(s) prescribed by the general manager, an application for certificate of registration. After review and determination by the general manager that the well is exempt, the owner or operator shall be issued a certificate of registration. All registrations for existing exempt wells shall be filed with the District.
  - a. Applications to register exempt wells shall include the information requested on a registration form provided by the District, and other information requested in writing;
  - b. The information required for one category of exempt wells may be different than that required for any other category of exempt wells; and

- c. Other information generally required by these rules for all permits, or for registration of non-exempt wells, shall not be required, unless requested by the District.
2. If the general manager does not find a well to be exempt, the application will be taken up by the Board. The Board may, with or without hearing, find the well is an exempt well and direct issuance of the registration. If the Board does not find the well is exempt or finds the operation and production of the well is such that the well is not wholly exempt, the applicant may make application for an operating permit for the well, or file a request for a full evidentiary hearing to be held pursuant to Section 14.
3. For all new wells that will be an exempt well upon completion in compliance with these rules, except leachate wells, monitoring wells and de-watering wells, the well owner or operator shall file with the District prior to the well being drilled, on form(s) prescribed by the general manager, an application for a drilling registration, the appropriate application fee, well log deposit fee and request that the well be registered. The general manager shall review the drilling registration application and make a determination on whether the well meets the exemptions provided in Rule 7.10. If it is determined that the applicant seeks a drilling registration for a well that will be exempt, the general manager shall notify the applicant. After the exempt well is drilled and the driller's log and completion report are filed with the District, the general manager shall issue to the well owner or operator a certificate of registration. If the well owner or operator provides the required driller's log and completion report to the District within 60 days of completing the well, the general manager shall refund a portion of the well log deposit fee to the applicant in accordance with the provisions of Rule 9.9. All new wells, except wells exempt under Rule 4.2(6) or Rule 7.10(2)(c), shall comply with the spacing requirements.

#### **RULE 7.12. DRILLING PERMITS.**

1. A landowner, well owner, or any other person acting on their behalf, must obtain a drilling permit before a new non-exempt well may be drilled, equipped, or completed. Such permit must also be obtained before re-drilling, replacing or altering a new or existing well that is not exempt under Rule 7.10(2)(a) or (c), or for which a well exempt under Rule 7.10(2)(b) is re-drilled, replaced or altered without a new or amended permit issued by the Railroad Commission. Except as otherwise provided in these rules, wells that are to be used for domestic use, or for poultry or livestock purposes, and that are located on a tract of land that is less than ten acres in size, including wells that will be equipped so as not to be able to produce more than 25,000 gallons per day (GPD), must comply with the requirements set forth in these rules.
2. An application for a drilling permit or registration for a new well shall contain all the information requested in Rule 7.4.
3. An application for a drilling permit or new well registration submitted under this rule shall not be unreasonably denied by the District. Applications must be administratively complete and:

- a. describe a well that meets the District's well completion standards and complies with the District's spacing and production limitation requirements; and
  - b. as applicable, be submitted in conjunction with an application for an operating permit, or with documentation of an existing operating permit to be amended to include the well, or an application to amend an historic use permit to include the proposed well.
4. A drilling permit issued in accordance with this rule shall be valid for a term not to exceed one year from the date of issuance, unless the applicant is granted an extension. Such extensions shall only be granted once and shall not be valid for more than an additional six month period. Thereafter, the applicant must file a new drilling permit application. The term of drilling permits shall, however, be tolled to exclude any time during which an application for an operating permit or amendment to an historic use permit that is submitted in conjunction with the drilling permit is contested. Notwithstanding the foregoing, the Board may grant drilling permits for wells that are planned as a system of wells in a contiguous well field. The term of drilling permits issued for wells that are in a system of wells in a contiguous well field may be for a term not to exceed the term of the operating permit for the well field; provided that not less than one well in such system of wells shall be completed within eighteen months after the date the drilling permits are issued, and the maximum production shall be established for each individual well in the well field. The drilling permits for wells that are within a system of wells in a contiguous well field may be renewed from time to time in the discretion of the Board.
  5. No well that is issued a drilling permit under this Section shall be operated for any purpose other than pump testing or other similar activity prior to production, without an approved operating permit, or an approved registration or amendment to an historic use permit to include the well.
  6. The procedure for the issuance of a District permit for re-drilling, replacing or altering a water well to supply water for a drilling rig actively engaged in drilling or exploration for oil or gas, which well was initially authorized by a permit issued by the Railroad Commission, shall be subject to Rule 7.13(6) and Rule 4.2(7). Unless the application is made by the person holding the original permit for the well, the purpose of the well is to supply water for a drilling rig engaged in drilling or exploration for oil and gas, and the well will be located on the same lease on which the drilling rig was located when the original permit was granted, or within the boundaries of the field in which the original permit was granted, the procedure shall be the same as for a New Well.
  7. The drilling permit will be issued for an aquifer, formation and estimated depth.

**RULE 7.13. DRILLING OR ALTERING A WELL.**

1. No person may drill a new non-exempt well without first obtaining a drilling permit from the District. A new well described in Rule 7.10(1) must obtain a drilling permit and be registered.

2. No person may re-drill, alter or replace a well exempt under 7.10(2)(b) without first obtaining a new or amended drilling permit from the Railroad Commission, or a permit from the District. The application may be made to the District.
3. A violation occurs on the first day the drilling, alteration, or operation without a permit, or registration, begins and continues each day thereafter until the appropriate permit or registration is issued. A well is "altered" under these rules if the well is changed or modified to produce from a different zone or formation, the well is re-drilled, the casing, pump or pump column are modified, or if the production capacity or the rate of production of the well is increased.
4. No person may increase the production rate or the size of a non-exempt well or well pump to exceed the production rate, or size of the well or well pump authorized in the permit, and no person may increase the production rate or size of a well or well pump of a well that is exempt under Rule 7.10(1)(a) or (b), or Rule 7.10(2)(a) to increase the production capacity of the well to more than 25,000 GPD, without first applying for and obtaining a permit from the District.
5. A well owner shall apply for a permit, or registration as applicable, to re-drill, alter or replace a permitted well, or a registered well that is described in Rule 7.10(1) and that remains an exempt well, by filing an application to amend such permit or registration and providing such information as may be required by the general manager under the following conditions:
  - a. the replacement well must be drilled within 30 feet of the location of the well being replaced;
  - b. the replacement well shall not be located any closer to any other permitted or registered well than the well being replaced, unless the new location complies with the minimum spacing requirements of these rules;
  - c. the replacement well or pump shall not be larger in size or capacity than the well being replaced so as to increase the rate of production; and
  - d. if a replacement well is drilled, the well owner must cease production from the well being replaced and begin pursuit of compliance with the well closure requirements of the District for the well being replaced.
6. The owner of a well that is exempt under Rule 7.10(2) or Rule 7.10(3) shall not be required to obtain a permit from the District to re-drill, alter or replace such well if the re-drilled, altered or replaced well is authorized by a permit amendment or new permit issued by the Railroad Commission, provided that all such re-drilled, altered, replaced or relocated wells shall, except for a well described in Rules 4.2(6) or (7), or Rule 7.10(2)(c), comply with the spacing requirements set forth in Section 4 of these rules.
7. Applications submitted under Rule 7.13(2) to re-drill, alter or replace a well described in Rule 4.2(7) may be granted by the General Manager without notice and public hearing. If the General

Manager finds the application requires a public hearing and/or compliance with the spacing requirements, the applicant may appeal to the Board. Upon considering the application the Board may grant the application, or find either or both a public hearing or compliance with the spacing requirements is required.

8. When written notice of an application for a drilling permit is required to be given to landowners or well owners within a geographic area, such notice shall be given in the manner otherwise provided in these rules and as follows:
  - a. if the well is not exempt and will have a production capacity of less than 1000 gpm, written notice shall be given not less than ten (10) days prior to the date of any required hearing; and
  - b. if the well is not exempt and will have a production capacity of 1000 gpm, or more, written notice shall be given at least thirty (30) days prior to the date of the hearing.

**RULE 7.14. HISTORIC USE PERMITS.**

1. An owner of an existing non-exempt well that was completed and operational prior to the effective date, and that produced and used groundwater in any year during the existing and historic use period, shall apply to the District for an historic use permit. The application must be filed on or before December 31, 2007. Failure of an owner of such a well to apply for an historic use permit on or before December 31, 2007, shall preclude the owner from making any future claim or application to the District for an existing or historic use under these rules. The failure of a well owner to file an application for an historic use permit on or before December 31, 2007 shall cause the owner to forfeit his rights and ability to operate the well under these rules, unless the owner thereafter applies for and obtains an operating permit that authorizes production from the well.
2. An application for an historic use permit shall, in addition to the information required under Rule 7.4, include the following information:
  - a. the year in which the well was drilled;
  - b. the purpose for which the well was drilled and any subsequent uses of the groundwater;
  - c. annual groundwater production history of the well for each year during the existing and historic use period;
  - d. legal description of the tract of land on which the well or well system is located;
  - e. all information requested by the District in a declaration of historic use form, which form shall be prescribed and provided by the District; and

- f. any other information determined necessary by the Board.
3. On or before December 31, 2008, the District shall verify the extent of maximum beneficial use of groundwater prior to the effective date of these rules, claimed by each applicant for an historic use permit. The general manager shall either recommend the granting of a proposed historic use permit or a denial, in whole or in part, based on the application and information obtained by the District in relation to the use of groundwater by the applicant. The District shall obtain the information on which to base a recommendation either from the applicant or other credible sources. Such credible sources may include, but not be limited to, federal, state or other local agencies or governmental entities. The District shall publish notice of the recommended proposed permits or denials and make such recommendations available for public review and inspection. Any applicant or any affected party shall have 90 days from the date of the above notice to file a request for hearing. The Board shall consider the proposed historic use permit application and any other evidence presented by an affected party prior to making its decision.
  4. An applicant for an historic use permit for a well that is not exempt under Rule 7.10(1)(a) or Rule 7.10(2) must install a metering or measuring device on each existing well for which an application has been submitted. Such metering or measuring device shall be installed and maintained in accordance with Section 11 of these rules.
  5. The validity of an historic use permit is contingent upon payment by the permittee of the appropriate application fee, if any, established by the Board under Rule 9.2.
  6. Within 15 days of January 31 of each year, each historic use permit holder, other than an historic use permit holder for a well that is exempt under Rule 7.10(1)(a)(i) or 7.10(2)(a), must submit a water use report to the District, on a form provided by the District, stating the following: (a) the name of the permittee; (b) the operating permit number; (c) the well numbers of each well for which the permittee holds a permit; (d) the total amount of groundwater produced by each well and well system during each month of the immediately preceding calendar year; (e) the purposes for which the water was used; and (f) any other information requested by the District.
  7. It is the intent of the District to determine existing and historic use of groundwater within the District as set forth under this rule.
  8. In issuing an historic use permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District. Applicable spacing requirements and production allowances will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate rather than allocating to each well its pro rata share of production. This will allow

a well owner, with a number of water wells that supply a single well system, to apply for an operating permit for the well system without being required to apply for a separate operating permit for each individual well.

#### **RULE 7.15. OPERATING PERMITS.**

1. An operating permit is required for the operation of or production from any non-exempt well for which there is no historic use permit, or amendment thereto to include such well.
2. An application for an operating permit shall contain all the information requested in Rule 7.4.
3. Subject to the considerations listed in Rule 7.5, an application for an operating permit submitted under this rule shall not be unreasonably denied by the District. Prior to issuing an operating permit the District must find there is sufficient groundwater in the aquifer to support the issuance of the permit, in accordance with the management plan; and that:
  - a. the well is already covered by an approved drilling permit, or the application is submitted in conjunction with an application for a drilling permit that meets the requirements of these rules;
  - b. the applicant has, or is purchasing, an historic use permit or permitted well; or
  - c. the applicant is the owner and designates the property that will be covered by the permit, and provides a plan and schedule for the location and drilling of a well or well system.
4. The District may impose more restrictive permit conditions on operating permit applications if the limitations:
  - a. apply uniformly within the same aquifer to all subsequent operating permit applications;
  - b. bear a reasonable relationship to the management plan; and
  - c. are reasonably necessary to protect existing and historic use.
5. The owner of an operating permit is entitled to produce water in accordance with the terms of the permit and these rules.
6. The validity of an operating permit issued by the District is contingent upon payment by the

permittee of the appropriate application fee as set forth under Rule 9.2, the continued payment of all applicable fees and compliance with the permit and these Rules.

7. Within 15 days of January 31 of each year, each permittee must submit a report to the District, on a form provided by the District, stating the following: (1) the name of the permittee; (2) the operating permit number; (3) the well numbers of each well for which the permittee holds a permit; (4) the total amount of groundwater produced by each well or well system during each month of the immediately preceding calendar year; (5) the total amount of groundwater produced by each well and well system during the immediately preceding calendar year; (6) the purposes for which the water was used; and (7) any other information requested by the District.
8. In issuing an operating permit, the authorized withdrawal for a well may be aggregated with the authorized withdrawal from other permitted wells designated by the District. Applicable spacing requirements and production allowances will be considered in determining whether or not to allow aggregation of withdrawal, and if such review does not establish that each well will be produced in conformance with the requirements set forth in Sections 4 and 5 that are intended for the protection of neighboring properties, the production of each well will be separately reported, annually. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production. This will allow an owner, with a number of water wells that supply a single well system, to apply for an operating permit for the well system without being required to apply for a separate operating permit for each individual well.

#### **RULE 7.16. INJECTION WELLS.**

The District will monitor and participate in proceedings at the TCEQ and Railroad Commission applicable to permit applications for injection wells to be located within the District. The District will take action to reasonably assure the District is made aware of permit applications made to locate an injection well within the District, and that the District is entitled to participate in TCEQ and Railroad Commission proceedings regarding applications for injection wells within the District.

1. The District will request the TCEQ and Railroad Commission to give timely notice to the District of each application that is made for a permit to locate an injection well within the District.
2. The General Manager will monitor the notices given, the notices required to be published in the District, permit applications and the permits issued for injection wells to be located in the District, for the purpose of reasonably assuring the District is given timely notice of all permit applications for injection wells.
3. Upon receipt of notice of an application for an injection well the General Manager will review the information provided, and obtain professional assistance and additional information as determined reasonable by the General Manager. The General Manager may communicate in

writing with the TCEQ or Railroad Commission to assure the District the right and option to participate in the permit application and hearing process at the TCEQ or Railroad Commission, prior to submitting the matter to the Board.

4. If, in the judgment of the General Manager, a proposed injection well for which a permit application has been made will not harm or jeopardize any aquifer or groundwater in the District, the General Manager may give the Board written notice that the permit application will not be scheduled for Board review and action. In such event, any member of the Board may require the item to be included on the agenda for the next regular Board meeting for which notice may be timely given.
5. If the General Manager determines a proposed injection well may be detrimental or harmful to an aquifer or groundwater within the District, the pending permit application shall be included on the agenda for the next regular Board meeting for which notice may be timely given. Prior to such meeting, the General Manager shall take such actions as are reasonably necessary with respect to any such application.
6. The District will take action with respect to applications for injection wells permits as is found reasonably necessary to accomplish the public purposes of the District. In appropriate cases, the actions by the District may be to obtain and provide evidence applicable to individual permit applications, file objections to the granting of any application for an injection well permit, participate as a party in any administrative proceeding and, as appropriate, appeal any action by the TCEQ or Railroad Commission granting an application for an injection well permit; provided the District will not participate as a party in any contested administrative proceeding or judicial appeal without Board approval.

## **SECTION 8. TRANSPORT OF GROUNDWATER OUT OF THE DISTRICT.**

### **RULE 8.1. GENERAL PROVISIONS FOR TRANSPORT.**

1. A person who seeks to transport groundwater must obtain a transport permit from the District before transporting groundwater outside of the District boundaries.
2. A transport permit is not required for the transport of groundwater that is part of a manufactured product, or groundwater that is to be used on property that straddles the District boundary line and that is owned by the owner or operator of the well(s) that produce the water. A container of water is not a manufactured product.
3. The District may not impose more restrictive permit conditions on the owner of a transport permit than the District imposes on existing in-district users of water.
4. The District may impose a reasonable fee for processing an application under this Rule. The fee may not exceed similar fees that the District imposes for processing other permit applications.

An application filed under this rule shall be considered and processed under the same procedures as other applications for other permits and shall be combined with any applications filed to obtain a permit for in-District water use from the same applicant.

5. In reviewing an application for a transport permit, the District shall consider:
  - a. the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested, including any planned conjunctive use;
  - b. the projected effect of the proposed transport on aquifer conditions, depletion, and subsidence and effects on existing permit holders or other groundwater users within the District;
  - c. the approved regional water plan and the management plan; and
  - d. whether the applicant has an underlying historic use or operating permit issued or being considered by the District, or a contract for the purchase of water from a person that has an operating permit.
6. Subject to other applicable provisions of these Rules, if the applicant has an historic use permit for the same use of the water as the use for which the water is to be transported, or operating permit, or a contract to purchase water from a person that holds an historic use or operating permit, the District shall not deny a permit under this rule based on the fact that the applicant seeks to transport groundwater outside of the District. The District may restrict a transport permit by limiting the volume of groundwater for transport to the volume of water that is authorized to be produced by the historic use or operating permit, or, not to exceed the otherwise uncommitted production capacity of the well or well system that the applicant has a contract right to purchase from the operator of a permitted well. Each transport permit shall specify the amount of water that may be transported and the period of time for which the water may be transported.
7. The District is prohibited from using revenues obtained under Rule 8.1(4) to prohibit the transport of groundwater outside of the District. The District is not prohibited from using revenues obtained under Rule 8.1(4) to pay expenses related to enforcement of rules or for any other purpose of the District.
8. In applying this rule, the District must be fair, impartial, and non-discriminatory.
9. The District shall not issue a transport permit unless the transport permit applicant has:
  - a. obtained an underlying registration certificate, historic use or operating permit, or an amendment to a permit that authorizes the transport permit applicant to produce the groundwater that is desired to be transported; or

- b. a contract with a permit holder of an historic use or operating permit that entitles the applicant to purchase water from a well or well system.

An application for a transport permit may be submitted and considered concurrently with an application for a registration certificate, an historic use or operating permit, or an amendment to a permit.

10. The term of duration of a transport permit shall be:
  - a. at least three years if construction of a conveyance system has not been initiated prior to the issuance of the transport permit; or
  - b. at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the transport permit; and
  - c. the amount of water that may be transferred under the permit will be subject to periodic review based on the factors set forth in Rule 8.1(5) above; provided that such review may not be more frequent than the review of other permits issued by the District and any resulting limitation will be subject to Rule 8.1(3) above.
11. Despite the term of duration listed in a transport permit, a permittee is authorized to transport water under a transport permit only as long as the permittee also holds a valid historic use, registration or operating permit issued by the District, or has a contract with the holder of such permits to purchase water that is produced under the permits.
12. Transport permits may be issued on terms that recognize that all or a part of the transported water is intended to be used as part of a plan that provides for conjunctive use.
13. The transport and use of water permitted by an historic use permit is limited to the transport and uses recognized in the historic use permit.

**RULE 8.2. APPLICATION FOR TRANSPORT PERMIT.**

1. A transport permit application must be filed with the District on a form prescribed by the District.
2. An application for a transport permit must:
  - a. be in writing and sworn to;
  - b. contain the name, post-office address, and place of residence or principal office of the applicant and the owner of the land on which the well is or will be located;

- c. identify the actual or anticipated location, pump size, and production capacity of the well from which the groundwater to be transported is produced or is proposed to be produced;
- d. describe the proposed transport facilities;
- e. state the nature and purposes of the proposed use and the anticipated amount of groundwater to be used for each purpose, including any proposed conjunctive use;
- f. state the anticipated time within which any proposed construction or alteration of the transport facilities is to begin;
- g. state the presently anticipated duration for the proposed transport of groundwater;
- h. provide information showing what water conservation measures the applicant has adopted, what water conservation goals the applicant has established, and what measures and time frames are necessary to achieve the applicant's established water conservation goals; and
- i. if the water is to be resold to others, provide a description of the applicant's service area, metering, leak detection and repair program for its water storage, delivery and distribution system, drought or emergency water management plan, and information on each subsequent customer's water demands, including population and customer data, water use data, water supply system data, alternative water supply, water conservation measures and goals, conjunctive use, and the means for implementation and enforcement of all applicable rules, plans, and goals.

3. The general manager shall determine whether the application complies with the requirements of this rule and may require amendment of the application to achieve necessary compliance.

4. An application must be accompanied by the required application fee established by the Board.

### **RULE 8.3. HEARINGS FOR TRANSPORT PERMITS.**

1. Within thirty (30) days after receiving an administratively complete application, the District will schedule a hearing on the application. The hearing will be set for a date that is not more than 35 days after the date it is placed on the hearings schedule.

2. The District shall give notice of the hearing on the application as prescribed by this Rule, stating:

- a. the name and address of the applicant;

- b. the date the application was filed;
  - c. the location of the well from which the groundwater to be transported is produced or to be produced;
  - d. the proposed use of the transported groundwater;
  - e. the time and place of the hearing; and
  - f. any additional information identified by the District during the permitting process as reasonably beneficial and useful for public notice.
3. At the time and place stated in the notice, the District shall hold a hearing on the application in accordance with the provisions of Section 14; provided the Board may continue any such hearing from time to time on a timely request being made by the General Manager, the applicant or any person having party status.
4. On approval of an application, the District shall issue a permit to the applicant. The applicant's right to transport groundwater shall be limited to the terms of the permit.

**RULE 8.4. PERMIT INFORMATION FOR TRANSPORT PERMITS.**

1. A transport permit issued by the District shall contain substantially the following information:
- a. the name and mailing address of the permittee;
  - b. the name and mailing address of the owner of the land from which the groundwater will be taken;
  - c. the date the permit is issued;
  - d. the period for which the groundwater may be transported;
  - e. the date the permit is to expire if no groundwater is transported;
  - f. the date the original application was filed;
  - g. a requirement that the groundwater withdrawn under the permit be put to beneficial use at all times;
  - h. the location of use of the transported groundwater;
  - i. the conditions and restrictions, if any, placed on the rate and amount of withdrawal;

- j. the use or purpose for which the water is to be transported;
- k. the maximum quantity of water to be transported annually; and
- l. any other information the District finds reasonably useful and beneficial.

**RULE 8.5. FEES FOR EXEMPT WELLS AND DISCHARGES UNDER STATE PERMITS.**

1. The owner of an exempt well is not excused from the requirements to obtain a transport permit and paying groundwater transport fees if the groundwater produced from the exempt well is transported outside of the District.
2. Groundwater that is discharged within the District pursuant to a permit issued by the Railroad Commission or the TCEQ is not considered to have been transported from the District unless the discharge is part of an overall water transfer for use outside the District.

**RULE 8.6. REPORTING.**

On or before February 15th each year, the owner of a transport permit shall file an annual report with the District describing the amount of water transported under the permit. The report shall be filed on the appropriate form provided by the District and will include the following: (1) the name of the permittee; (2) the well numbers of each well for which the permittee holds a transport permit; (3) the total amount of groundwater transported from each well and well system during the immediately preceding calendar year; (4) the total amount of groundwater transported from each well or well system during each month of the immediately preceding calendar year; (5) the purposes for which the water was transported; and (6) any other information requested by the District.

**RULE 8.7. EXTENSION OF TRANSPORT PERMIT.**

A permittee may apply for an extension of the term of a transport permit granted under this Section. The District shall consider and grant or deny each application for extension of a transport permit in the same manner as is provided herein for the application for a permit.

**RULE 8.8. REVOCATION OR MODIFICATION OF TRANSPORT PERMIT.**

A permit granted under this Section will be subject to review and modification as provided in Rule 8.1(10). The permit shall also be subject to revocation for nonuse or waste by the permittee or for substantial deviation from the purposes or other terms stated in the permit. To revoke a permit for nonuse, the District must determine that construction of a conveyance system has not been initiated within three years after issuance of the transport permit.

**SECTION 9. FEES AND DEPOSITS.**

## **RULE 9.1. WATER USE AND OTHER DISTRICT FEES AND CHARGES.**

1. Except as otherwise provided under Rule 7.10(3)&(4), the exempt wells defined and described in Rule 7.10(1)(a) and Rule 7.10(2), and the partially exempt wells described in Rule 7.10(1)(b), are exempt from payment of water use fees.
2. The water use, permitted production, transport, permits, administrative functions, and other fees heretofore adopted by the Board are hereby ratified, confirmed and readopted by the Board. The Board shall, from time to time, adopt a schedule of fees for water use, production, transport, permits and administrative functions, and any other lawful purpose or business of the District. The fees, rates and charges will be established in a schedule of fees and charges adopted by the Board, and each such schedule of fees and charges shall thereafter be and remain in effect until amended by the Board.
3. The water use fee rate schedule established by the Board shall be applied to the total authorized annual production for each historic use and operating permit. As used in this Section, when applied to the holder of a permit issued by the District the term "water used" shall mean the total annual production authorized in the permit.
4. Water use fees shall be paid to the District for water that is authorized to be pumped from wells that are not exempted by these rules or state law from the payment of such fees. The water use fee rate shall be established by the Board. Except as otherwise provided by these rules or state law, the rate will be initially applied to total volume pumped for a period designated by the Board; and following issuance of permits, the rate shall be applied to the total authorized annual production for each permit, including permits and amendments issued during the fiscal year the rate is in effect. Such annualized fees shall be pro-rated for the remainder of the calendar year in which the permit is issued, and one-twelfth of the annualized fee will be paid by the permittee at the end of each month remaining in that calendar year after the issuance of the permit.
5. Pursuant to the District Act, the water use fee may not exceed:
  - a. \$0.25 per acre-foot for water used for irrigating agricultural crops or operating existing steam electric stations; or
  - b. \$0.17 per thousand gallons for water used for any other purpose.
6. The District may establish a reasonable fee or surcharge for the transport of groundwater, using one of the following methods:
  - a. A fee negotiated between the District and the transport permit holder; or
  - b. A combined production and transport fee not to exceed \$0.17 per thousand gallons of groundwater transported outside the boundaries of the District.

7. The District is prohibited from using revenues obtained from transport fees to prohibit the transfer of groundwater outside the District, but may use transport fees for paying expenses related to the enforcement of *Chapter 36* or the rules, or for any other lawful purpose of the District.

**RULE 9.2. APPLICATION, REGISTRATION, AND OTHER FEES.**

All fees, rates and charges provided for in these rules shall be charged and collected pursuant to a schedule of fees, rates and charges adopted by the Board.

The Board shall establish a schedule of fees, rates and charges for water use, transport, permits and administrative functions. The Board will attempt to set fees for permit applications and administrative functions that do not unreasonably exceed the costs incurred by the District of performing the administrative functions for which the fees are charged. The District's monitor wells are exempt from application, registration, and well log deposits. The general manager shall exempt District monitor wells from any other fees if the general manager determines that the assessment of the fee would result in the District charging itself a fee.

**RULE 9.3. PAYMENT OF FEES.**

All permit fees are due at the time of application or registration. The annual water use and transport fee for each permit shall be paid as directed by the Board.

**RULE 9.4. TRANSPORT PERMIT PROCESSING.**

The Board may adopt an application processing fee for transport permits to cover all reasonable and necessary costs to the District of processing the application. The permit processing fee for an application to transport groundwater out of the District may not exceed the fees that the District imposes for processing applications for the use of groundwater within the District.

**RULE 9.5. INSPECTION AND PLAN REVIEW FEES.**

The Board may, establish fees for the inspection of wells, meters, or other inspection activities; plan reviews; special inspection services requested by other entities; or other similar services that require involvement of District personnel or its agents. Fees may be based on the amount of the District's time and involvement, out-of-pocket costs, number of wells, well production, well bore, casing size, size of transporting facilities, or amounts of water transported.

**RULE 9.6. EXCEPTIONS.** If a regulated water utility or other entity is unable to pass through production fees due to delay in obtaining regulatory approval, or in other unusual instances of hardship, the Board may grant exceptions and establish a payment schedule. Such exceptions shall be applied consistently.

**RULE 9.7. RETURNED CHECK FEE.** The Board may establish a fee for checks returned to the District for insufficient funds, account closed, signature missing, or any other problem causing a check to be returned by the District's depository.

**RULE 9.8. ACCOUNTING FEE.** The Board may establish a fee for permittee requested accounting of production reports, transport reports, water use fee payments, or other accounting matters pertaining to the permittee's account which the District does not routinely maintain in its accounting of a permittee's records. Should a material District error be discovered, the accounting fee, if any, will be fully refunded. Permittees may request one review of their account per fiscal year without charge.

**RULE 9.9. WELL LOG DEPOSIT.** The Board may establish a well log deposit to be held by the District and returned to the depositor if well logs are submitted to the District within sixty (60) days following surface completion of the well. The depositor will receive one-half the well log deposit for well logs received by the District after the sixty (60) day period, less expenses incurred by the District to obtain submission of the well logs.

**RULE 9.10. WAIVER AND VARIANCE REQUESTS.** The Board may establish a base fee to be charged for each waiver or variance requested from the requirements of Section 5. In addition to any such base fee the applicant shall be required to reimburse the District for any professional fees reasonably incurred by the District to review and respond to the request for waiver or variance.

**RULE 9.11. DISTRICT EXPENSES AND COSTS.**

Each applicant for a District permit, or permit amendment, shall be responsible for and required to reimburse the District for, the professional fees and charges paid by the District, and all other expenses reasonably incurred by the District, with respect to the application, including but not limited to any related negotiations or administrative proceedings. Each person, or permit holder, that is the subject of action by the District to enforce the terms of any permit or these Rules and is found to have not been in compliance with the permit or these Rules, shall be responsible for and required to reimburse the District for, the professional fees and charges paid by the District, and all other expenses reasonably incurred by the District, with respect to any action or proceeding by the District to enforce the terms and conditions of the permit or these Rules.

**SECTION 10. GENERAL PROVISIONS.**

**RULE 10.1. CONJUNCTIVE USE.**

The District will collect data and information regarding conjunctive use, if any, proposed for each operating and each transport permit.

**RULE 10.2. APPEAL.**

Any affected person may appeal a decision by the general manager to administratively grant or deny any permit or registration without a hearing. Except as otherwise specifically provided herein any such appeal must be in writing and filed in the district office within thirty days after the date of the

administrative decision that is being appealed.

**RULE 10.3. NOTICE.**

Except as provided otherwise in these rules for a specific notice, when written notice of any application is required to be given to the landowners and well owners within a specific geographic area, such notice shall be given, not less than ten (10) days before the hearing scheduled, as follows:

1. to the landowners within the geographic area, as shown in the tax records of the county in which the land is located and at the mailing address provided in the tax records; and
2. to the owners of wells within the geographic area as shown by the list of registered wells on file with the District.

**RULE 10.4. WELL CLOSING.**

Abandoned wells, deteriorated wells, wells constituting a threat to the water quality of any aquifer, and wells containing mineral or other substances injurious to vegetation or agriculture shall be closed and plugged in compliance with these Rules, the *Water Code*, *Natural Resources Code*, *Health & Safety Code*, the *Occupations Code* and the rules and regulations of the TCEQ and Railroad Commission, as applicable. Within thirty (30) days after a well is plugged, a report of that action shall be made to the District.

**RULE 10.5. FORMS REQUIRED BY THESE RULES.**

The General Manager shall from time to time prepare, modify, amend and place into effect forms for permits, applications, completion reports and other matters as reasonably useful and necessary to assist persons to make applications and reports required by these Rules, or by the District to obtain needed information or give effect to these Rules. Any person may appeal to the Board the nature, type or kind of information required to be provided on any such form, or that the form is not a form or report that is authorized to be required pursuant to these Rules.

**SECTION 11. METERING AND MEASURING.**

**RULE 11.1. METERING AND MEASURING EXCEPTIONS.**

Except for wells specifically exempt under State law from metering requirements, or wells exempt under Rule 7.10(1)(a), Rule 7.10(2)(a), all wells obtain and install a metering or measuring device under this section. Wells exempt under Rule 7.10(2)(b) or (c), or Rule 7.10(3) shall have a metering device as necessary to comply with reporting requirements provided by State law. If a well is no longer exempt by State law or these Rules, or such well is required by *Chapter 36, Texas Water Code* or these rules to pay a water use or transport fee for any subsequent use of groundwater withdrawn from such well, a meter or other approved metering device is required.

**RULE 11.2. METER/MEASUREMENT REQUIRED.**

1. The owner of a non-exempt well located in the District shall equip the well with a metering

or measuring device meeting the specifications of these rules, and shall operate the meter on the well to measure the instantaneous flow rate and cumulative total amount of groundwater withdrawn from the well. Except as provided in Rule 11.1, the owner of a well existing on the effective date of these rules shall install a meter on the well on or before December 30, 2007. An hour meter may be considered as a production monitoring device on a well, if the output (gpm) can be accurately determined.

2. A mechanically driven, digital, totalizing water meter is the only type of meter that may be installed on a well. The digital totalizer must not be re-settable 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 registering accuracy as 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.
3. 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 Rule 11.4. 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 pipe section. All meters must measure only groundwater.
4. Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's standards, instructions, or recommendations, and shall ensure an accuracy reading range of 95% to 105% of actual flow. When installed, and when recalibrated, the meter must be calibrated to an accuracy reading within 2% of actual flow.
5. The owner of a well is responsible for the installation, operation, maintenance, and repair of the meter associated with the well.
6. Bypasses are prohibited unless they are also metered.

### **RULE 11.3. 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 Rule 9.2 apply to meters measuring aggregate pumpage. Notwithstanding the foregoing it will be the responsibility of the owner or operating permit applicant to show that the inclusion of any well in an aggregate well system will not result in a violation of the Sections 4 and 5 spacing requirements that are intended

for the protection of neighboring properties. If the owner or applicant fails, for any well, to show adequate spacing and production safeguards that will reasonably comply with the intent of Sections 4 and 5 for the protection of neighboring properties, such well shall be metered.

#### **RULE 11.4. ACCURACY VERIFICATION.**

1. **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 general manager must approve the third party 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; provided that water meters shall be recalibrated not less frequently than every three years to result in the metering of water volume within +/- 2% of actual flow. 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 the tests and investigations and 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 permittee shall promptly report such incident to the District. The District may require the permittee, at the permittee's expense, to take appropriate steps to remedy the damage and to retest the water meter within 90 calendar days from the date the problem is discovered and reported to or by the permittee.
2. **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.
3. **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.

#### **RULE 11.5. 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.

**RULE 11.6. 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 during reasonable business hours.

**RULE 11.7. INSTALLATION OF METERS.**

Except as otherwise provided by these rules, a meter required to be installed on a new well under these rules shall be installed on new wells and properly calibrated either before the well owner or operator begins withdrawing groundwater for use or 90 days after the date the new well has been drilled and equipped for production, whichever occurs first.

**SECTION 12. WELL LOCATION AND COMPLETION.**

**RULE 12.1. RESPONSIBILITY.**

Notwithstanding any other provision of these rules, unless the Board grants a waiver, the location of all new wells, excluding a well that is exempt under Rule 7.10(1)(c) or Rule 7.10(2)(c) of these rules, must be in compliance with the spacing requirements. After an application for a drilling permit or certificate of registration has been granted, the well, if drilled, must be drilled within thirty feet (30') of the location specified in the permit and in compliance with the spacing requirements. If the well is commenced or drilled at a different location, the Board, pursuant to Chapter 36, Texas Water Code, may enjoin the drilling or operation of such well. As described in the Texas Water Well Drillers' Rules, all well drillers and persons having a well drilled, deepened, or otherwise altered, shall adhere to the provisions of the rules prescribing the location of wells and proper completion.

**RULE 12.2. LOCATION OF WELLS.**

1. A well must be located a minimum horizontal distance of 50 feet from any watertight sewage facility or liquid-waste collection facility.
2. A well must be located a minimum horizontal distance of 150 feet from any contamination, such as existing or proposed livestock or poultry yards, privies and septic system absorption fields.
3. A well must be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it must be completed with a watertight sanitary well seal and steel casing extending a minimum of 24 inches above the known flood level.
4. No well may be located within five hundred (500) feet of a cemetery, sewage treatment plant,

solid waste disposal site, or land irrigated by sewage plant effluent, or within three hundred (300) feet of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.

**RULE 12.3. STANDARDS OF COMPLETION FOR WELLS.**

Water well drillers must indicate the method of completion performed, for each well. The method must be specified on the Well Report (TNRCC-0199) "Section 10 Surface Completion". Domestic, industrial, injection, and irrigation wells must be completed in accordance with the following specifications and in compliance, as applicable, with local county and city ordinances, rules, regulations and policies:

1. The annular space between the borehole and the casing shall be filled with cement slurry from the ground level to a depth of not less than 10 feet below the land surface or wellhead.
2. All wells shall have a concrete slab or sealing block above the cement slurry and around the well at the ground surface.
3. The slab or block shall extend at least two (2) feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.
4. The surface of the slab shall be sloped to drain away from the well. In all wells:
  - a. The casing shall extend a minimum of one foot above the original ground surface; and
  - b. A slab or block as described in Rule 12.3.2 is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells provided that:
    - i. the pitless adapter is welded to the casing or fitted with another suitably effective seal; and
    - ii. the annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.
5. All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack, or cause quality degradation of any aquifer or zone.
6. The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

**RULE 12.4. MAINTENANCE AND RE-COMPLETION REQUIREMENTS.**

1. The landowner shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water, or the unwanted loss of water through the well bore to other porous strata.
2. If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.
3. The Board may direct the landowner to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water. The Board may order that an abandoned well be capped, and that any additional action necessary to minimize waste or pollution be taken.
4. Wells shall be operated and maintained in a manner to comply with all applicable laws, rules and regulations. A well that is exempt under Rule 7.10(1) or 7.10(2)(a) or that has a permit issued under these rules, and that is not a deteriorated well, may be maintained as a capped well.
5. Abandoned wells shall be capped. An abandoned well may be re-opened or recompleted only in compliance with all applicable laws, rules and regulations.
6. The owner or lessee of an open or uncovered well may be required to keep the well closed or capped as provided in Sec. 36.118, *Tex. Water Code*.

### **SECTION 13. WASTE.**

#### **RULE 13.1. WASTE.**

1. Groundwater shall not be produced within, or used within or without the District, in such a manner as to constitute waste.
2. No person shall pollute or harmfully alter the character of the underground water reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata, or from the surface of the ground.
3. No person shall commit waste.
4. An abandoned well shall be capped and maintained in a manner to prevent pollution, including the commingling of undesirable water and fresh water or the unwanted loss of water.

### **SECTION 14. HEARINGS.**

#### **RULE 14.1. TYPES OF HEARINGS.**

The District conducts two general types of hearings: hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing; and 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 referred by the Board for hearing before a hearing examiner. The Board may appoint a hearing examiner for any matter, at anytime prior to the final decision on the matter.

##### 1. Permit Hearings:

- a. Permit Applications, Amendments and Revocations: The District will hold hearings on water well drilling permits, operating permits, transport permits, permit renewals or amendments and permit revocations or suspensions; provided that hearings shall not be required for administratively complete applications for a drilling or operating permit for a Limited Production Well. Hearings involving permit matters may be scheduled before a hearing examiner.
- b. Motions for Rehearing: Motions for Rehearing will be heard by the Board pursuant to Rule 14.8.

##### 2. Rule-making Hearings:

- a. Management Plan: At its discretion, the Board may hold more than one hearing to consider amending or adopting a new management plan.
- b. Rules: The Board shall give at least twenty (20) days public notice prior to any rulemaking hearing, and shall comply with the applicable notice, process and procedure requirements set forth in these rules and in Chapter 36, Texas Water Code. Public notice given prior to a rulemaking hearing shall have the content and be given in the manner specified in *Sec. 36.101, Texas Water Code*.
- c. Other Matters: A public hearing may be held on any matter within the jurisdiction of the Board, if the Board deems a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District.

#### **RULE 14.2. NOTICE AND SCHEDULING OF HEARINGS.**

1. Once the District has received an administratively complete original application for a permit for a non-exempt well and the general manager has scheduled a hearing on the application, the general manager and the applicant will issue written notice as provided in Section 7.5(2).

2. The general manager is responsible for giving notice of all hearings not later than 10 days before the date of the hearing, in the following manner:
  - a. Notice will be given to each person who requests copies of hearing notices pursuant to the procedures set forth in 14.2.2 below, and any other person the Board deems appropriate. The date of delivery or mailing of notice may not be less than ten calendar days before the date set for the hearing.
  - b. Provide notice to the county clerk of Milam County and Burleson County, and post a copy of the notice at the county courthouses of Burleson and Milam Counties in the place where notices are usually posted for the respective county. The date of posting may not be less than ten calendar days before the date of the hearing.
  - c. A copy of the notice will be posted at a place readily accessible to the public at the District offices. The date of posting may not be less than ten calendar days before the date of the hearing.
  - d. The notice will be sent by regular mail to the applicant.
  - e. The notice will be sent by regular mail, facsimile or electronic mail to any person who has timely requested notice.
  - f. The notice will be sent by regular mail to any person entitled to receive notice under these rules.
3. Any person having an interest in the subject matter of a hearing or hearings may receive written notice of such hearing or hearings by submitting a request in writing. The request must identify with as much specificity as possible the hearing or hearings for which written notice is requested. The request remains valid for the remainder of the calendar year in which the request was received by the District. After the calendar year expires a new request may be submitted. Failure to provide written notice under this section does not invalidate any action taken by the Board.
4. The general manager may schedule as many applications at one hearing as the general manager deems necessary. Any person that wishes to be heard as a potential party to a hearing must, at least five (5) business days prior to the hearing date, provide the general manager with written notice of the person's intent to appear at the hearing. If the general manager decides to contest the application, the general manager must, at least five (5) business days prior to the hearing date, provide the applicant with written notice of the general manager's intent to contest the application. Hearings will be held in accordance with Section 14.
5. Hearings may be scheduled any business day. All permit hearings will be held at the district office or regular meeting location of the Board, unless another location within the District is

specified by the Board and in the hearing notice. However, the Board may from time to time change the location for hearings, or schedule additional dates, times, and places for permit hearings by resolution (motion and vote) adopted at a regular Board meeting. The general manager is instructed by the Board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings. Other hearings will be scheduled at the dates, times and locations set at a regular or called Board meeting.

**RULE 14.3. GENERAL PROCEDURES.RULE 14.3. GENERAL PROCEDURES.**

1. Authority of Presiding Officer: The presiding officer may conduct the hearing or other proceeding in the manner the presiding officer deems most appropriate for the particular proceeding. The presiding officer has the authority to:
  - a. set hearing dates, other than the initial hearing date for permit matters set by the general manager in accordance with Rule 14.2.4;
  - b. convene the hearing at the time and place specified in the notice for public hearing;
  - c. establish the jurisdiction of the District concerning the subject matter under consideration;
  - d. rule on motions and on the admissibility of evidence and amendments to pleadings;
  - e. designate and align parties and establish the order for presentation of evidence;
  - f. administer oaths to all persons presenting testimony;
  - g. examine witnesses;
  - h. issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
  - i. require the taking of depositions and compel other forms of discovery under these rules;
  - j. permit admissible information and testimony to be introduced as conveniently and expeditiously as possible, without substantially prejudicing the rights of any party to the proceeding;
  - k. conduct public hearings in an orderly manner in accordance with these rules;
  - l. recess any hearing from time to time and place to place;
  - m. reopen the record of a hearing for additional evidence when necessary to make the record more complete;

- n. exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of the presiding officer.
  - o. limit party status and participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application;
  - p. exercise such other authority and take such other action as is appropriate from time to time and authorized in *Subchapt. M, Chapt. C, TWC*, or in these Rules, to be taken by the presiding officer; and
  - q. at anytime before final Board action, issue an order that refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing, determine how the cost of the procedure will be apportioned among the parties, and appoints an impartial third party to facilitate that procedure.
2. Hearing Registration Forms: Each individual attending a hearing or other proceeding of the District, that plans to testify, offer any evidence, or file any document, must submit a form providing the following information: name; address; whether the person plans to testify or introduce documents; and any other information relevant to the hearing or other proceeding.
  3. Appearance and Representative Capacity: Any interested person may appear in person or may be represented by counsel, engineer, or other representative provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of 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 for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.
  4. Alignment of Parties and Number of Representatives Heard: Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to the parties and the issues. The presiding officer may require the participants of an aligned class to select one or more persons to represent them in the proceeding or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.
  5. Appearance by Applicant or Movant: The applicant, movant or party requesting the hearing or other proceeding, or a representative, should be present at the hearing or other proceeding. Failure to so appear may be grounds for withholding consideration of a matter, dismissal without

prejudice, or may require the rescheduling or continuance of the hearing or other proceeding if the presiding officer deems it necessary in order to fully develop the record.

6. Reporting: Hearings and other proceedings will be recorded on audio cassette tape or any other electronic means, at the discretion of the presiding officer, may be recorded by a certified shorthand reporter. The District does not prepare transcripts of hearings or other proceedings recorded on audio cassette tape on District equipment but the District will arrange access to the recording. Subject to availability of space, any party may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 14.5. If a reporter records a proceeding other than a permit hearing, and any person orders a copy of the transcript of testimony, the testimony will be transcribed and the original transcript filed with the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.
7. Continuance: The presiding officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a hearing or other proceeding is continued and the time and place (other than the district office) to reconvene the hearing or other proceeding are not publicly announced at the hearing or other proceeding by the presiding officer before it is recessed, a notice of any further setting of the hearing or other proceeding will be delivered at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Rule 14.2 and any other person the presiding officer deems appropriate. Posting at the county courthouses or publication of a newspaper notice of the new setting is not required.
8. Filing of Documents and Time Limit: Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these rules or by law must be received in hand at the district's office within the time limit, if any, set by these rules or by the presiding officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.
9. Computing Time: In computing any period of time specified under authority of the District Act or these rules, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday as determined by the Board, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.
10. Affidavit: Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel, based on personal knowledge. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.

11. Broadening the Issues: No person will be allowed to appear in any hearing or other proceeding that in the opinion of the presiding officer appears for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
12. Conduct and Decorum: Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If, in the judgment of the presiding officer, a person is acting in violation of this provision, the presiding officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.
13. The Board may, at the initial hearing held by the Board after all notices have been timely given, grant or deny the permit application in whole or in part, if the application is uncontested. Such action by the Board shall be subject to the rights of the applicant to file a written request for conclusions and findings, or rehearing.
14. If any term or provision of these Rules for the giving of notice or the process or procedures for the scheduling and conduct of hearings, motions for rehearing and appeal therefrom conflict with any term or provision of *Chapt. 36, Tex. Water Code, Chapt. 36* shall govern and control to the extent of such conflict.

#### **RULE 14.4. UNCONTESTED PERMIT HEARINGS PROCEDURES.**

1. Written Notice of Intent to Contest: Any person who intends to contest a permit application must provide written notice of that intent to the applicant and to the District. The notice to the District shall be to the district office located at 310 East Ave C, Milano, Texas 76556. Such notice to the applicant and to the District shall be delivered at least five business days prior to the date of the hearing. If the general manager intends to contest a permit application, the general manager must provide the applicant written notice of that intent not later than the later to occur of the following: the date of the last Board meeting that is held prior to the scheduled date of the hearing; or five business days prior to the date of the hearing. If no notice of intent to contest is received five business days prior to the hearing, the general manager, as instructed by the Board, will cancel the hearing and the Board will consider the permit at the next regular board meeting.
2. Informal Hearings: Permit hearings may be conducted informally when, in the judgment of the hearing examiner, the conduct of a proceeding under informal procedures will save time or cost to the parties, or may lead to a negotiated or agreed settlement of facts or issues in controversy, and will not substantially prejudice the rights of any party.
3. Agreement of Parties: If, during an informal proceeding, all parties reach a negotiated or

agreed settlement which, in the judgment of the hearing examiner, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the hearing examiner will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing, and submit the same to the Board with the hearing examiner's recommendation and decision.

4. Decision to Proceed as Uncontested or Contested Case:

- a. If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the hearing examiner determines these issues will require extensive discovery proceedings, the hearing examiner will declare the case to be contested and convene a pre-hearing conference as set forth in Rule 14.5. The hearing examiner may also recommend issuance of a temporary permit for a period not to exceed one hundred twenty (120) days, with any special provisions the hearing examiner deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the hearing examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.
- b. If the general manager discovers evidence during the course of an uncontested hearing process that warrants the general manager deciding to contest any application, the general manager shall give notice to the applicant and the Board and thereafter contest the application. In such event, the hearing schedule may be modified to enable the applicant and other parties time to prepare.

**RULE 14.5. CONTESTED PERMIT HEARINGS PROCEDURES. RULE 14.5. CONTESTED PERMIT HEARINGS PROCEDURES.**

1. Pre-hearing Conference: A pre-hearing conference may be held to consider any matter, which may expedite the hearing or otherwise facilitate the hearing process.
  - a. Matters Considered: Matters which may be considered at a pre-hearing conference include, but are not limited to, (1) the designation of parties; (2) the formulation and simplification of issues; (3) the necessity or desirability of amending applications or other pleadings; (4) the possibility of making admissions or stipulations; (5) the scheduling of discovery; (6) the identification of and specification of the number of witnesses; (7) the filing and exchange of prepared testimony and exhibits; and (8) the procedure at the hearing.
  - b. Notice: A pre-hearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 14.2, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the hearing examiner.

- c. Conference Action: Action taken at a pre-hearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.
2. Assessing Reporting and Transcription Costs: Upon the timely request of any party, or at the discretion of the hearing examiner, the hearing examiner may assess reporting and transcription costs to one or more of the parties. The hearing examiner must consider the following factors in assessing reporting and transcription costs:
    - a. the party who requested the transcript;
    - b. the financial ability of the party to pay the costs;
    - c. the extent to which the party participated in the hearing;
    - d. the relative benefits to the various parties of having a transcript;
    - e. the budgetary constraints of a governmental entity participating in the proceeding; and
    - f. any other factor supported by the evidence that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of reporting or transcription costs is an issue, the hearing examiner must provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs must be included in the hearing examiner's report to the Board.

3. Designation of Parties: Parties to a hearing will be designated on the first day of hearing and at such other times as the hearing examiner determines. The Board and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. After parties are designated, no other person may be admitted as a party unless, in the judgment of the hearing examiner, there exists good cause and the hearing will not be unreasonably delayed.
4. Rights of Designated Parties: Subject to the direction and orders of the hearing examiner, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.

5. **Persons Not Designated Parties:** At the discretion of the hearing examiner, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the hearing examiner as evidence.
6. **Furnishing Copies of Pleadings:** After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the party filing the instrument to every other party or the party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.
7. **Interpreters for Deaf Parties and Witnesses:** If a party or subpoenaed witness in a contested case is deaf, if not waived in writing, 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, which inhibits the person's comprehension of the proceedings or communication with others.
8. **Agreements to be in Writing:** No agreement between parties or their representatives affecting any pending matter will be considered by the hearing examiner unless it is in writing, dated, signed, and filed as part of the record, or unless it is announced at the hearing and read into the record of the hearing.
9. **Discovery:** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the hearing examiner. Unless specifically modified by these rules or by order of the hearing examiner, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the hearing examiner.
10. **Discovery Sanctions:** If the hearing examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the hearing examiner may:
  - a. suspend processing of the application for a permit if the applicant is the offending party;
  - b. disallow any further discovery of any kind or a particular kind by the offending party;
  - c. rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;

- d. limit the offending party's participation in the proceeding;
  - e. disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; or
  - f. recommend to the Board that the hearing be dismissed with or without prejudice.
11. **Ex Parte Communications:** The hearing examiner may not communicate, directly or indirectly, in connection with any issue of fact or law, with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence.
  12. **Compelling Testimony; Swearing Witnesses and Subpoena Power:** The hearing examiner may compel the testimony of any person, which is necessary, helpful, or appropriate to the hearing. The hearing examiner will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The hearing examiner may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.
  13. **Evidence:** Except as modified by these rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
  14. **Written Testimony:** When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
  15. **Requirements for Exhibits:** Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
  16. **Abstracts of Documents:** When documents are numerous, the hearing examiner may receive in evidence only those which are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

17. Introduction and Copies of Exhibits: Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the hearing examiner and to each of the parties, unless the hearing examiner rules otherwise.
18. Excluding Exhibits: If an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.
19. Official Notice: The hearing examiner may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
20. Documents in District Files: Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.
21. Oral Argument: At the discretion of the hearing examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The hearing examiner may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, the Board may hear further oral arguments.

#### **RULE 14.6. CONCLUSION OF THE HEARING AND REPORT.**

1. Closing the Record and Final Report: At the conclusion of the presentation of evidence and any oral argument, the hearing examiner may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the hearing examiner. After the record is closed, the hearing examiner will prepare a report to the Board. The report must include a summary of the evidence, together with the hearing examiner's findings and conclusions and recommendations for action. Upon completion and issuance of the hearing examiner's report, a copy must be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties must be by certified mail.
2. Exceptions to the Hearing Examiner's Report and Reopening the Record: Prior to Board action any party in a contested case may file written exceptions to the hearing examiner's report, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board. Upon review of the report and exceptions, the hearing examiner may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the report and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the hearing examiner for further proceedings.

3. Time for Board Action on Certain Permit Matters: In the case of hearings involving new permit applications, original applications for existing wells, or applications for permit renewals or amendments, the hearing examiner's report should be submitted, and the Board should act, within 60 calendar days after the close of the hearing record. If the matter is remanded to the hearing examiner, the Board will again act on the matter within sixty (60) days after receiving the hearing examiners subsequent recommendation.

#### **RULE 14.7. RULEMAKING HEARINGS PROCEDURES.**

1. General Procedures: The presiding officer will conduct the rulemaking hearing in the manner the presiding officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The presiding officer may follow the guidelines of "Parliamentary Procedure at a Glance," New Edition, O. Garfield Jones, 1971 revised edition, or as amended.

2. Submission of Documents: Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 14.2; provided, however, that the presiding officer may grant additional time for the submission of documents.

3. Oral Presentations: Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

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

5. Exceptions to the Hearing Examiner's Report and Reopening the Record: Any interested person may make exceptions to the hearing examiner's report, and the Board may reopen the record as provided in Rule 14.6.2.

6. Notice of rulemaking hearings shall be given by posting and publishing a notice of the time,

date, place and subject matter of the hearing, not less than twenty (20) days prior to the date of the hearing. The posting, publication and content of the notice, and the hearing procedures, shall comply with Sec. 36.101, Texas Water Code.

#### **RULE 14.8. FINAL DECISION AND APPEAL.**

1. Board Action: After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action; provided that the Board shall act on the application not later than the 60<sup>th</sup> day after the date of the final hearing. The Board action takes effect at the conclusion of the meeting at which the Board by majority vote takes final action, and is not affected by a motion for rehearing, unless such motion is granted.

2. Requests for Rehearing: Any decision of the Board on a matter may be administratively appealed by the applicant or other party by filing a written request for written findings and conclusions or a rehearing by the Board. Such request for rehearing must state clear and concise grounds for the request. A written request for rehearing or for written findings and conclusions must be filed in writing at the district office within 20 calendar days of the Board's decision. Such a written request for written findings and conclusions or a rehearing request is mandatory with respect to any decision or action of the Board before any judicial appeal may be filed. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for written findings and conclusions or rehearing, or upon the Board rendering a decision after rehearing. 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 is a designated party, not later than the 35<sup>th</sup> day after the date the Board receives the request. If the Board grants the rehearing request, the date of the rehearing will be within 45 calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within 90 calendar days of submission will be deemed to be a denial of the request.

#### **SECTION 15. INVESTIGATIONS AND ENFORCEMENT.**

**RULE 15.1. NOTICE AND ACCESS TO PROPERTY.** Directors and the District's agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any director or district agent or employee who is attempting to conduct an investigation under the rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties

set forth in the *Texas Water Code, Chapter 36*.

**RULE 15.2. CONDUCT OF INVESTIGATION.** Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the well.

**RULE 15.3. RULE ENFORCEMENT. RULE 15.3. RULE ENFORCEMENT.**

1. If it appears that a person has violated, is violating, or is threatening to violate any provision of the rules the Board may institute and conduct a suit in the name of the District for enforcement of rules through the provisions of *Chapter 36, Texas Water Code*.

2. These rules may be further enforced by injunction and other judicial proceedings, either at law or in equity, and, in lieu of or in addition to any other authorized enforcement action, any person who violates any term or provision of these rules will be subject to civil fine and penalties as provided herein.

3. Any person violating any of the provisions of these rules or failing to comply therewith or with any of the requirements thereof, or who drills or operates any well, or transports water outside of the District in violation of these rules or any written statement or plan submitted and approved hereunder, will be subject to a civil penalty of not less than one dollar (\$1.00) and not more than ten thousand dollars (\$10,000.00), and each day such violation continues will constitute a separate offense. The Board may by rule assess such civil penalties for breach of any rule of the District, and such penalty assessed by the Board shall be in addition to all the other remedies provided herein.

**RULE 15.4. SEALING OF WELLS.** The District may, upon an order being obtained from a court of competent jurisdiction, seal wells that are prohibited by District rule from withdrawing groundwater within the District, to ensure that a well is not operated in violation of these rules. A well may be sealed when: (1) no application has been made for a permit to drill a new well that has not been excluded or exempted by the Board; or (2) no application has been made for an operating permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or (3) the Board has denied, canceled or revoked a drilling permit or an operating permit; or (4) no application is made for a certificate of registration for a new well.

The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District, and other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

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

## **SECTION 16. MANAGEMENT OF WATER AVAILABILITY AND PRODUCTION**

**RULE 16.1. MANAGEMENT ZONES.** Groundwater availability will be conserved, preserved and protected by well spacing, permit and/or limiting water drawdown levels within seven Management Zones. Individual aquifers or groupings of aquifers in the District will be separate Management Zones as provided in the Management Plan, and these Rules as follows: the Trinity Zone, the Alluvium Zone (Brazos and Little Rivers), the Queen City and Sparta Zone, the Shallow Carrizo-Wilcox Zone (including Simsboro), the Deep Simsboro Zone, the Deep Carrizo-Wilcox Zone, and the Yegua-Jackson Zone.

**RULE 16.2. GENERAL.** All permits issued by the District that authorize the production of water shall be subject to the terms, conditions and provisions of this Section. All other terms, conditions and provisions of these Rules shall be and remain in full force and effect. Any conflict between this Section and any other Rule will be resolved by the Board upon a written request being made.

**RULE 16.3. MONITORING OF WATER AVAILABILITY.** The District will monitor total permitted production, total actual production and the water levels for each of the individual Management Zones. If permitted production or the water level within a Management Zone reaches the volume of water available for production or the water drawdown level set forth for the Management Zone in the chart provided in Rule 16.4, or if actual production reaches 80% of the groundwater available for production, the District will promptly give notice, conduct further review and evaluate the records, water drawdown levels, water availability and Management Zone as provided in Rule 16.4. The District will take action as provided in this Section, based on water availability, permitted production, actual production, the water level, and the review, evaluation and monitoring. The District may reduce both the maximum acre feet of water per acre of land for which the District may issue a permit and/or the volume of water authorized to be produced under any permit issued by the District for the Management Zone, as a result of the water availability, actual production, permitted production, or water level drawdown within a Management Zone.

**RULE 16.4. ACTIONS ON AQUIFER OR PRODUCTION LEVELS.** If permitted production and/or water drawdown level within a Management Zone reaches the water availability or water drawdown level established for that Management Zone in the following chart, or if actual production reaches 80% of groundwater availability for the zone, the General Manager will give notice of that event to all permit holders within the Management Zone and proceed as provided in this Rule.

**Chart No. 1**

<b>Management Zone<sup>1</sup></b>	<b>Estimated Groundwater Availability (ac-ft/yr)<sup>1</sup></b>	<b>Maximum Annual Production <sup>2</sup></b>	<b>Groundwater Drawdown Trigger Level (feet below 2005 Baseline Levels)<sup>3</sup></b>
<b>Trinity</b>	<b>300</b>	<b>2 acre-ft/acre</b>	<b>NA</b>
<b>Brazos River and Little River Alluvium</b>	<b>9,400</b>	<b>2 acre-ft/acre</b>	<b>NA</b>
<b>Shallow Carrizo-Wilcox</b>	<b>33,750</b>	<b>2 acre-ft/acre</b>	<b>50</b>
<b>Deep Simsboro</b>	<b>60,000</b>	<b>2 acre-ft/acre</b>	<b>300</b>
<b>Deep Carrizo-Wilcox</b>	<b>30,750</b>	<b>2 acre-ft/acre</b>	<b>190</b>
<b>Queen City-Sparta-Yegua</b>	<b>14,500</b>	<b>2 acre-ft/acre</b>	<b>NA</b>

1. The notice will include the cause for the notice, the fact that an additional review, evaluation and study is being made, and that a reduction of the maximum allowable production per acre and/or the permitted production may be approved following the review and evaluation.

2. The General Manager and District Hydrologist will review and evaluate the permit applications pending, the permits issued and the records of the District, any estimates of total production by exempt wells, and increase the frequency or locations of water drawdown monitoring within the Management Zone. If the notice is due to the drawdown of water exceeding the corresponding water level in Chart 1, an evaluation of the reasons for the drawdown will be included in the review. Review is not required for any reduction of

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<sup>1</sup> \_\_\_\_ Refer to Groundwater Management Plan for description of the Management Zones and basis for groundwater availability estimates.

<sup>2</sup> \_\_\_\_ Refer to Rule 4.1 for well spacing requirements.

<sup>3</sup> \_\_\_\_ Measured at District monitoring wells.

drawdown levels or production required by Rule 16.5.

3. The General Manager will promptly report to the Board that notices have been, or are being, given and the event that required the notice to be given. The General Manager will advise the Board of the plan for review and evaluation recommended under (b) and, if the plan will be implemented over a period of more than one month, during the evaluation, review, study and any additional monitoring period, the General Manager will keep the Board advised of the progress of the review and evaluation. Upon completion of the review, evaluation and any additional monitoring, the General Manager and District Hydrologist will make a final report to the Board, together with their recommendation for action.

4. If the General Manager and District Hydrologist find the evaluation, study, review and/or monitoring supports a recommendation that an adjustment of permitted production is not recommended for the entire Management Zone, but is recommended for a part or portion of the Management Zone, the recommendation shall be consistent with the finding and provide supporting documentation for the limitation.

**RULE 16.5. REDUCTIONS REQUIRED BY REGULATORY ACTION.** Notwithstanding any other term or provision of these Rules, the Board may proportionately reduce the maximum amount of water that may be permitted per acre and volume of water authorized to be produced under any permit issued by the Board, and may adjust the water drawdown level established in Chart No. 1, as required by state law or by a regional plan or an area or regional agreement mandated by state law and which, by authority of state law, requires water availability or production to be limited or regulated based on water availability within a geographic area that includes land in more than one groundwater water conservation district. In the event permitted production or water level drawdown will be reduced by reason of any such state law or regulation, the District will give notices as provided in Rule 16.4, hold one or more public hearings on the resulting limitations, and, to the extent permitted by state law, or the regional plan or agreement, implement any such reductions in a manner and over a period consistent with this Section 16.

**RULE 16.6. ADJUSTING MAXIMUM PRODUCTION PERMITTED.** The maximum groundwater production permitted per acre, the permitted production under any permit issued by the District, and the water drawdown level for a Management Zone may be adjusted as follows:

1. If the water drawdown level within a Management Zone, or in an adjacent zone in which the water drawdown level is impacted by production in such Management Zone, exceeds the water drawdown level provided for the zone in Chart No. 1, unless the General Manager and District Hydrologist recommend a different course of action based on a review, evaluation, study and increased monitoring, or unless the Board decides otherwise, upon the General Manager and District Hydrologist giving the final report provided for in Rule 16.4(c), the maximum water production permitted per acre for the Management Zone and the water authorized to be produced under any permit issued by the District for that zone will be reduced. The required reduction will be determined by the Board based on the evaluation and the evidence received by the Board

at a public hearing. The production in one Management Zone may be reduced to the extent that production is impacting water drawdown levels in an adjacent zone.

2. If the permitted production for a Management Zone reaches the corresponding water availability number for that zone, as provided in Chart No. 1, additional monitoring, review, study and evaluation will be initiated. Based on such additional monitoring and evaluation (including actual production), and changes in the water drawdown level, the Board may increase, retain or reduce the water availability estimate, or reduce the maximum allowable production of 2 acre feet of water per acre of land for that Management Zone and/or the volume of water authorized to be produced under any permit issued by the District. The results and recommendations reported by the General Manager and the District Hydrologist based on the monitoring, review and evaluation, and evidence presented at a public hearing held for that purpose, shall be considered by the Board. In making such decision, the Board will give weight to the actual production within the Management Zone and projected production increases from permits issued or permit applications pending.

3. If the actual production of water within a Management Zone increases to eighty percent of the corresponding water availability number for that zone as provided in Chart No. 1, additional review, evaluation and monitoring will be initiated, and the Board may maintain, increase, or reduce the water availability estimates, or reduce the maximum allowable production of water per acre of land authorized for the Management Zone, and/or the volume of water authorized to be produced under any permit issued by the District. The results and recommendations reported by the General Manager and the District Hydrologist based on the review, evaluation and monitoring, and any evidence presented at a public hearing held for that purpose, shall be considered by the Board. Any reduction shall generally be sufficient to reduce the volume of water for which production permits have been issued by an amount to limit the permitted production to the water availability number specified in Chart No. 1 or such number as revised by the Board. The Board shall consider any evidence presented to show the availability of more groundwater in the Management Zone than is provided for in Chart No. 1. If the maximum allowable groundwater production per acre is reduced for a Management Zone, thereafter, as additional permits are issued, if the water availability has not been increased by the Board, the total amount of production authorized by each permit issued by the District will be proportionately reduced by an amount sufficient to off-set the additional permits for groundwater production and the maximum allowable production.

4. The maximum allowable production of 2 acre feet per acre of land, provided in Rule 5.1.2, may be reduced, and the maximum allowable production may be established or reduced for any one, or more than one, Management Zone(s).

5. Production authorized under permits issued by the District for any Management Zone may be reduced on a schedule to, when considered together with future permits for which the authorized production per acre will be at the lower maximum allowable production per acre, generally over a period not to exceed 40 years, reduce groundwater production by an amount required to return

the water level in the Management Zone to the water drawdown level set forth in Chart 1.

6. The Board may adjust permitted production within any part or portion of a Management Zone, based upon the review, evaluation, study and monitoring, and any evidence presented at a public hearing, if it finds the adjustment is appropriate for a part or portion but not all of the Management Zone.

7. The Board may increase or reduce the water availability estimate for any Management Zone based on the results of the review, evaluation, study and monitoring, and any evidence presented at a public hearing; provided that increases of the estimated groundwater availability will not increase the maximum allowable production per acre for a Management Zone or the permitted production authorized under any permit.

**RULE 16.7. PERMIT LIMITATIONS AND REDUCTIONS.** The maximum allowable production of water authorized by a permit may be limited, adjusted and reduced as follows:

1. If the maximum allowable production of 2 acre feet per acre of water of contiguous land is reduced for a Management Zone, or if any such reduced maximum of allowable production is thereafter reduced again, a new permit may not be issued for the production of more water than is established under this Section as the maximum allowable production of water per acre of land for the Management Zone;

2. Excluding production authorized by a historic use permit, and production authorized by wells exempt under Rule 7.10(1), the production of water authorized by any permit issued by the District for the production of water is subject to limitation, adjustment and reduction;

3. The volume of water authorized by permit to be produced in a Management Zone may be reduced by two percent per year with the reduction beginning twelve months after a decision by the Board that such reduction is reasonably required for the conservation and preservation of groundwater, or the protection of groundwater users, within the Management Zone; and

4. If the Board finds it is necessary to reduce the maximum allowable production per acre, or the permitted production for any Management Zone, more quickly than is provided in Rule 16.7(3), to preserve and conserve groundwater or protect groundwater users within a Management Zone, or to implement reductions required under Rule 16.5, the Board shall establish a schedule for a phased reduction in the maximum allowable production or permitted production for the zone.

**RULE 16.8. EXCEPTIONS.** The following are exceptions to the rules set forth in this Section 16 for the limitation and reduction of production:

1. Production authorized for wells exempt pursuant to Rule 7.10(1) will not be included in calculating water availability within a Management Zone;

2. After a reduction of the maximum allowable permitted production per acre in a Management Zone, the maximum allowable production per acre of land for which a permit may be issued in the Management Zone shall not exceed the maximum allowable production per acre as modified or reduced under this Section 16;
3. Within the Trinity Zone groundwater availability will be preserved and conserved, and groundwater users will be protected, by well spacing and the maximum allowable production per acre provided in Rule 5.1.2; and
4. The Queen City-Sparta-Yegua Zone is a recharge based zone with relatively low to moderate yield domestic and small municipal wells, and, in lieu of limiting water drawdown levels in this zone, during droughts permitted production may be temporarily reduced to protect groundwater users.

**RULE 16.9. NOTICE AND HEARINGS.** A limitation, adjustment or reduction of the maximum allowable production of water per acre, or the volume of water authorized to be produced under permits issued by the District, may be adopted by the Board at anytime after written notice is given to the permit holders as provided in Rule 16.4 and a public hearing held, for which twenty days, or more, notice of such public hearing is published in one or more newspapers of general circulation in Milam County and Burleson County, Texas.

**RULE 16.10. REHEARING.** The owner or the operator of a well or well field for which permitted production is being reduced pursuant to this Section may request a rehearing on a decision by the Board to reduce permitted production by more than ten percent in any five year period, or to make a reduction that exceeds two percent in any one year period. Except as otherwise specifically provided herein any such motion for rehearing must be in writing, state the nature of material additional evidence to be presented, and filed in the district office within thirty days after the date of the Board decision that is being appealed. Such rehearing request will not stay or abate the required reduction or production while the request is pending.