

SUGGESTED RULE MODIFICATIONS FOR HEARING PROCESS

"Hearing examiner" means a person appointed by the Board to conduct a hearing or other proceeding ~~or a qualified administrative law judge assigned by the State Office of Administrative Hearings ("SOAH") to conduct a hearing on an application or permit when (a) requested by the Board; or (b) timely requested by an applicant or person having party status, pursuant to Sec. 36.416, Tex. Water Code, and the required cost deposit. [Amended June 12, 2012]~~

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"Presiding Officer" means, in this order, 1) the President, Vice-President, Secretary, or other director presiding at any hearing or other proceeding; 2) a hearing examiner conducting any hearing or other proceeding or 3) a qualified administrative law judge assigned by the State Office of Administrative Hearings ("SOAH") to conduct a hearing on the application or permit when (a) requested by the Board; or (b) timely requested by an applicant or person having party status, pursuant to Sec. 36.416, Tex. Water Code, and the required cost deposit has been made.

RULE 7.4. APPLICATION REQUIREMENTS FOR ALL PERMITS.

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8. An application will be considered administratively complete if it complies with all requirements set forth under this Section 7, includes all information required to be included in the application, including the information set forth in accordance with Sections 36.113 and 36.1131, Texas Water Code, and these Rules. and is accompanied by the required application fee.

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RULE 7.5. APPLICATIONS, ADMINISTRATIVE INCOMPLETENESS,

1. Within sixty (60) calendar days after an administratively complete application is filed, the general manager shall follow the procedure set forth in Section 14.2 of these Rules and establish an initial schedule for a hearing on the application, if a hearing is required. The hearing shall be held within thirty-five (35) calendar days after the day on which the hearing schedule is established, unless a continuance is requested and granted for good cause.
2. Applications that remain administratively incomplete thirty (30) calendar days after notification by the General Manager will expire if the information requested for the application is not provided to the District. If, within sixty (60) calendar 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 request the Board to promptly give notice and schedule a hearing or 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 sixty (60) calendar days after the date the final hearing on the application is concluded. [Amended October 14, 2008] [Amended June 12, 2012] [Amended July 2, 2019] [Amended May 12, 2020]

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3. 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, all further proceedings shall be as set out in Section 14.2, et seq., of these Rules.

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. [Added October 14, 2008]

RULE 8.3. HEARINGS FOR TRANSPORT PERMITS.

1. Within sixty (60) calendar days after receiving an administratively complete application, the District will schedule a hearing on the application in accordance with Section 14.2 of these Rules. The hearing will be set for a date that is not more than thirty-five (35) calendar days after the date it is placed on the hearings schedule. [Amended June 12, 2012] [Amended May 12, 2020]

2. The District shall draft and ensure that notice is given 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 Rule 14; Amended April 8, 2008]

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 and subject to all applicable terms, provisions and conditions of these rules. [Amended June 12, 2012]

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 in an adjudicative proceeding and opportunity for an adjudicative hearing; and rulemaking hearings involving matters of general applicability that implement, interpret,

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or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. Additionally, the Board may be called upon to conduct enforcement hearings as set out in Section 14.10. 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 any time prior to the final decision on the matter. [Amended June 12, 2012] [Amended May 10, 2022]

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; ~~hearings shall not be required for administratively complete applications for a drilling or operating permit for a limited production well.~~
- b. Hearings involving permit matters may be scheduled before a hearing examiner or requested to be heard in front of SOAH. [Amended October 14, 2008]
- c. Motions for Rehearing: Motions for Rehearing will be heard by the Board pursuant to Rule 14.7. [Amended June 12, 2012]
- d. Hearings and procedures on permits and applications are governed by this Rule 14.1.1 and Rules 14.2 through Rule 14.7. [Added June 12, 2012]

2. Rule-making and Public 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) calendar 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*. [Amended May 12, 2020]
- 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.
- d. Rulemaking hearings and other public hearings are governed by this Rule 14.1.2 and Rule 14.8. [Added June 12, 2012]

RULE 14.2. NOTICE AND SCHEDULING OF HEARINGS ON APPLICATIONS.

1. Upon receipt of an administratively complete original application for a permit for a non- exempt

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well, a drilling permit, historic use permit, operating permit, transport permit, permit review or renewal, or permit amendment, the general manager shall, if a hearing is required to be held, establish the schedule for the initial hearing which shall include the following matters: deadline for notice of the preliminary hearing, date for preliminary hearing, deadline for preliminary hearing motions, filing deadline for requests for a contested case or for party status, date for a pre-hearing conference and anticipated date for the hearing on the merits on the application. [Amended October 14, 2008] [Amended June 12, 2012]

2. For hearings on transport permits, the notice of the hearing on the application shall include:
- 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. The general manager is responsible for drafting the notice of hearing on permits and applications, transmitting a copy of such notice to applicant not less than fifteen (15) days prior to the date set for the hearing and ensuring that applicant provides such notice, in the following manner: [Amended October 14, 2008] [Amended June 12, 2012] [Amended May 12, 2020]
- a. Applicant shall provide notice to each person who requests copies of hearing notices pursuant to the procedures set forth hereinafter in this Rule 14.2.2, and by also giving notice to any other person the Board deems appropriate.
 - b. The notice may be sent by regular mail, facsimile or electronic mail to any person who has timely requested notice.
 - c. The date of delivery or mailing of notice may not be less than ten (10) business days before the date set for the hearing. [Amended June 12, 2012] [Amended July 2, 2019]
 - d. District will 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. [Amended October 14, 2008] [Amended July 2, 2019]
 - e. District will post a copy of the notice, at a place readily accessible to the public at the District office. [Amended October 14, 2008] [Amended July 2, 2019]
 - f. The notice will be sent by regular mail to any other person entitled to receive notice under these rules.

4. 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 be in writing and 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 is received by the District. After the calendar year expires a new request may be submitted. Failure of the District to provide written notice under this Section 14 does not invalidate any action taken by the Board. [Amended October 14, 2008] [Amended June 12, 2012]

5. The general manager may schedule as many applications at one hearing as the general manager

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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 together with evidence establishing their standing as an affected person. 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 Rules 14.2 through Rule 14.7, as applicable. [Amended June 12, 2012]

6. Hearings may be scheduled to be held on any business day. All permit hearings will be held at the regular meeting location of the Board, unless another location within the District is specified by the Board and included 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. Hearings may also be scheduled at the dates, times and locations set at, or for, a regular or called Board meeting. [Amended October 14, 2008] [Amended June 12, 2012] [Amended July 2, 2019]

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7. 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) business days prior to the date of any required hearing; [Amended July 2, 2019] 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) calendar days prior to the date of the hearing. [Amended July 2, 2019] [Amended November 5, 2019] [Amended May 12, 2020]

All other notices shall be given not less than ten (10) business days prior to the date of any required hearing.

8. Written Notice of Intent to Contest:

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- a. Any person who believes they are affected and/or intends to contest a permit application must provide timely written notice of that intent to the applicant and to the District's general manager. The notice to the District shall be to the District office located at 310 East Ave C, Milano, Texas 76556.
- b. Notice of intent to contest must be given at least seven (7) business days prior to the date of the initial hearing scheduled on the application.
- c. 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 latter to occur of the following: the date of the last Board meeting that is held prior to the scheduled date of the hearing or seven (7) business days prior to the date of the hearing on the merits.
- d. If no notice of intent to contest is received within the timeframes set out herein, the general manager, as instructed by the Board, will cancel the initial hearing and the Board will consider the permit at the next regular Board meeting. The fact that an application is uncontested does not obligate the Board to grant the permit or take any other specific action that is not found

appropriate by the Board. [Amended June 12, 2012] [Amended July 12, 2016]

RULE 14.3. GENERAL PROCEDURES FOR HEARINGS ON APPLICATIONS.

- 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, in any preliminary or evidentiary hearing, to: [Amended June 12, 2012]
 - a. set hearing dates or direct the general manager to set such dates, other than the initial hearing date for permit matters set solely 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; [Amended October 14, 2008]

- o. determine a person's party status and limit party status and participation in a hearing on a permit or contested application to affected persons that have satisfied the requirements for making a timely appearance in the matter; [Added October 14, 2008] [Amended June 12, 2012]
 - p. exercise such other authority and take such other action as is appropriate from time to time and authorized in *Subchapt. M, Chapt. C, Tex. Water Code*, or in these rules, to be taken by the presiding officer; [Added October 14, 2008]
 - q. at any time before final Board action, issue an order that refers parties to a contested hearing or 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 appoint an impartial third party to facilitate that procedure [Added October 14, 2008]; and
 - r. establish the cash deposit that is required to be deposited with the District by an applicant or a person granted party status, that, pursuant to *Sec. 36.416(c), Tex. Water Code*, makes a timely request for a contested case to be heard by SOAH. [Added June 12, 2012]
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. All persons that testify, offer evidence, or file any document must be an affected person, or be appearing as a representative of an affected person. [Amended June 12, 2012]
 3. Appearance and Representative Capacity: An affected person that has filed a timely notice and appearance regarding an application for a permit or permit amendment may appear and 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. [Amended June 12, 2012]
 4. Alignment of Parties and Number of Representatives Heard: Affected persons may, in a permit or permit amendment hearing, be aligned according to the nature of the proceeding and their relationship to the parties and the issues. The presiding officer may require affected persons and the representatives 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. [Amended June 12, 2012]

5. Appearance by Applicant or Movant: In a permit hearing the applicant, movant or affected person requesting the hearing or other proceeding, or a representative, shall 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. [Amended June 12, 2012]

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6. Reporting: Hearings and other proceedings will be recorded electronically, at the discretion of the presiding officer, the proceedings may be recorded by a certified shorthand reporter. The District is not required to prepare transcripts of hearings or other proceedings recorded electronically on District equipment but the District will arrange access to or a copy of 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. Notwithstanding the foregoing, the failure of the District to record any hearing shall not invalidate the hearing or the action taken or decision made for the hearing. [Amended June 12, 2012]

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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 posted at the District Offices and delivered to all parties or 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; provided that if the Board continues a hearing, to comply with the Open Meetings Act additional notice will be given. [Amended June 12, 2012]

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8. Filing of Documents and Time Limit: Unless otherwise set by the presiding officer or law, initial or general motions, including motions for a hearing examiner or to transfer to SOAH, exceptions, communications, requests or other papers and documents by those who are or those who are seeking to be considered for party status shall be filed at the District's office not later than seven (7) business days prior to hearing date unless a different date is set by the presiding officer in a scheduling order. Dispositive motions and briefs shall be filed in accordance with a scheduling order issued by the presiding officer. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.

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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. If the District has received requests for consideration for party status or a contested case, the general manager may still set both an initial hearing and a hearing on the merits for the same date. Such action by the Board shall be subject to the rights of the applicant to file a written request for conclusions and findings or motion for 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. [Added October 14, 2008]

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RULE 14.4. UNCONTESTED PERMIT HEARINGS PROCEDURES.

1. If the District has received no requests for consideration of party status or a contested case hearing by the deadline established in the notice, the general manager shall include on the agenda for the meeting at which the initial hearing will be held by the Board an agenda item for taking up the permit application for a hearing on the merits/evidentiary hearing. The Board may grant or deny the permit application in whole or in part at that time, 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. [Added October 14, 2008]
2. Informal Hearings: Permit hearings may be conducted informally when, in the judgment of the presiding officer, the conduct of a proceeding under informal procedures will save time or cost to the applicant and affected persons making a timely appearance, or may lead to a negotiated or agreed settlement of facts or issues in controversy, and will not substantially prejudice the rights of the applicant or any affected person. [Amended June 12, 2012]
3. Agreement of Parties: If, during an informal proceeding, the applicant and affected persons that have given timely notice under Rule 14.4.1 reach a negotiated or agreed settlement which, in the judgment of the presiding officer, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the presiding officer will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing, and submit the same to the Board with the presiding officer's recommendation and decision. [Amended June 12, 2012]
4. Decision to Proceed as Uncontested or Contested Case:
 - a. If the parties referenced in Rule 14.4.3 above do not reach a negotiated or agreed settlement of the facts and issues in controversy or if the applicant or any such affected person contests a staff recommendation, and the presiding officer determines these issues will require extensive discovery proceedings, the presiding officer will declare the case to be contested and convene a pre-hearing conference as set forth in Rule 14.5. The presiding officer may also recommend issuance of a temporary permit for a period not to exceed one hundred twenty (120) calendar days, with any special provisions the presiding officer deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the presiding officer will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board. [Amended June 12, 2012] [Amended May 12, 2020]
 - 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 affected persons time to prepare. [Amended June 12, 2012]

Moved up [1]: <#>Written Notice of Intent to Contest: Any affected person who intends to contest a permit application must provide timely 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. Notice of intent to contest must be given at least five (5) business days prior to the date of the first hearing scheduled on the application. Such notice shall be given to both the applicant and to the District and shall be delivered at least five (5) 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 (5) business days prior to the date of the hearing. If no notice of intent to contest is received at least five (5) 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. The fact that an application is uncontested does not obligate the Board to grant the permit or take any other specific action that is not found appropriate by the Board. [Amended June 12, 2012] [Amended July 12, 2016]

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14.5. CONTESTED PERMIT HEARING 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.~~

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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; (8) the alignment of parties, ~~and the procedure at the hearing. [Amended June 12, 2012]~~

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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 ~~presiding officer,~~

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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 ~~presiding officer,~~ the ~~presiding officer~~ may assess reporting and transcription costs to one or more of the parties. The ~~presiding officer~~ must consider the following factors in assessing reporting and transcription costs:

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a. the party who requested the transcript;

b. the financial ability of the party to pay the costs will be given ~~some consideration; [Amended June 12, 2012]~~

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c. the extent to which a party participated in the hearing;

d. the relative benefits to the various parties of having a transcript;

e. the budgetary constraints of governmental entities that participated in the proceeding; and [Amended June 12, 2012]

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 ~~presiding officer~~ 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

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~~presiding officer's~~ report to the Board.

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3. Preliminary Hearing.

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a. The ~~general manager~~ shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted under Section 36.415, *Texas Water Code*. ~~Unless a party has already requested the matter be referred to SOAH,~~ the preliminary hearing may be conducted by:

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- (i) a quorum of the Board;
- (ii) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or
- (iii) the State Office of Administrative Hearings under Section 36.416.

b. A request for a contested case hearing must substantially comply with the following:

- i. give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, email, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- ii. ~~at least an initial statement about the~~ the person's or entity's personal justiciable interest affected by the application. ~~If not provided at the time of filing the initial request, all individuals or entities must be prepared to provide (1)~~ a brief, but specific written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and (2) how and why the requestor believes he/she/it will be affected by the activity which is the subject of the hearing in a manner not common to members of the general public owning land with an actual well in compliance with the District's rules and within the District's boundaries of Milam and Burleson counties; and (3) provide documentation, including any scientific studies or reports, that supports or shows how the explanation set out in (2) above demonstrates a personal justiciable interest that will be resolved by participation in the contested case. [Added July 2, 2019]

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c. Following a preliminary hearing, the Board/~~Presiding Officer, Hearing Examiner or SOAH~~ shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. ~~If it is determined,~~ that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the Board/~~Presiding Officer, Hearing Examiner or SOAH~~ may take any action as follows:

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- (i) grant the application;
- (ii) grant the application with special conditions; or
- (iii) deny the application.

d. An applicant may, not later than the 20th day after the date the ~~Board/Presiding Officer, Hearing Examiner or SOAH~~ issues an order granting the application, demand a contested case hearing if the order:

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- (i) includes special conditions that were not part of the application as finally submitted; or
- (ii) grants a maximum amount of groundwater production that is less than the amount requested in the application. [Amended July 12, 2016]

4. Designation of Parties: Parties to a hearing will be designated on the first day of hearing and at such other times as the Presiding Officer determines. The District and the applicant or 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 to establish affected person status and seek to be designated. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Presiding Officer, for good cause and that the hearing will not be unreasonably delayed. [Amended June 12, 2012] [Amended May 12, 2020]

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5. Rights of Designated Parties: Subject to the direction and orders of the Presiding Officer, designated 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. [Amended June 12, 2012]

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6. Persons Not Designated Parties: At the discretion of the Presiding Officer, affected persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Presiding Officer as evidence. [Amended June 12, 2012]

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7. 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.

8. 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.

9. Agreements to be in Writing: No agreement between parties or their representatives affecting any pending matter will be considered by the Presiding Officer, unless it is in writing, 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.

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10. Discovery: Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Presiding Officer. Unless specifically modified by these rules

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or by order of the **Presiding Officer**, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the **Presiding Officer**,

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11. Discovery Sanctions: If the **Presiding Officer** finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the **Presiding Officer** may:

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- 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.

12. Ex Parte Communications: The **Presiding Officer** may not communicate, directly or indirectly, in connection with any issue of fact or law, with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence.

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13. Compelling Testimony: Swearing Witnesses and Subpoena Power: The **Presiding Officer** may compel the testimony of any person, which is necessary, helpful, or appropriate to the hearing. The **Presiding Officer** 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 **Presiding Officer** 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.

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14. 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.

15. 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.

16. 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, drawings, and spread sheets may not exceed 8-1/2 by 11 inches in size. [Amended June 12, 2012]
17. Abstracts of Documents: When documents are numerous, the Presiding Officer 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.
18. Introduction and Copies of Exhibits: Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Presiding Officer, and to each of the parties, unless the Presiding Officer rules otherwise.
19. 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.
20. Official Notice: The Presiding Officer may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
21. 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.
22. Oral Argument: At the discretion of the Presiding Officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Presiding Officer may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, the Board may hear further oral arguments.
23. The Presiding Officer may require that any, or all, petition(s), pleading(s), written agreement(s), brief(s), exhibit(s) or documents be filed in both electronic format and hard copy. [Added June 12, 2012]

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24. If an administrative law judge (ALJ) conducts a contested case hearing, such ALJ shall consider applicable rules or policies of the District in conducting the hearing; the District shall have no supervision over the ALJ in such hearing. The District shall provide the ALJ with a copy of all applicable rules or policies. [Amended July 12, 2016]

RULE 14.6. CONCLUSION OF THE HEARING AND PROPOSAL FOR DECISION.

[Added July 12, 2016]

1. Closing the Record and Final Report: At the conclusion of the presentation of evidence and any oral argument, the **Presiding Officer** may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the **Presiding Officer**.
2. After the record is closed, the **Presiding Officer** will prepare a proposal for decision to the Board not later than the 30th day after the date the evidentiary hearing is closed. The proposal for decision must include a summary of the evidence, together with the **Presiding Officer's** findings and conclusions and recommendations for action. Upon completion and issuance of the **Presiding Officer's** proposal for decision, a copy must be submitted to the Board and delivered to each designated party. In a contested case, delivery to the parties must be by certified mail.
3. Exceptions to the **Presiding Officer's** Proposal for Decision and Reopening the Record: Prior to Board action any party in a contested case may file written exceptions to the **Presiding Officer's** proposal for decision, 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 proposal for decision and exceptions, the **Presiding Officer** may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the proposal for decision 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.
4. 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 **Presiding Officer's** proposal for decision should be submitted, and the Board should act, within **sixty (60)** calendar days after the close of the hearing record. If the matter is remanded to the **Presiding Officer**, the Board will again act on the matter within sixty (60) calendar days after receiving the **Presiding Officer's** subsequent recommendation. [Amended May 12, 2020]

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RULE 14.7. FINAL DECISION AND APPEAL FOR PERMITS AND APPLICATIONS.
[Added July 12, 2016]

1. Board Action: After the record is closed and the matter is submitted to the Board at a final hearing, 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. Additional evidence may not be presented during such final hearing, although the parties may present oral arguments to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. 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. [Amended October 14, 2008]
2. The Board may change a finding of fact or conclusion of law made by the ALJ or may vacate or modify an order issued by the ALJ only if the Board determines:
 - a. that the ALJ did not properly apply or interpret applicable law, district rules, written policies provided or prior administrative decisions;
 - b. that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or
 - c. that a technical error in a finding of fact should be changed.
3. Requests for Rehearing: Any decision of the Board on a matter may be administratively appealed by the applicant or other party filing a written request for written findings and conclusions. 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 twenty (20) calendar days from issuance of the Board's decision. Such a written request for written findings and conclusions 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 written findings and conclusions is made within the specified time. The Board shall provide certified copies of the findings and conclusions to the person who requested them and to each designated party, not later than the thirty-fifth (35th) day after the date the Board receives the request. A party to a contested hearing may request a rehearing not later than the twentieth (20th) day after the date the Board issues the findings and conclusions. Such request must be filed in the District's office and must state the grounds for the request. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing.

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