RUSK COUNTY GROUNDWATER CONSERVATION DISTRICT

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GROUNDWATER CONSERVATION
DISTRICT

DISTRICT RULES

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DISTRICT RULE REVISION DATES

ADOPTED DECEMBER 5, 2005
AMENDED APRIL 3, 2006
AMENDED MAY 7, 2007
AMENDED AUGUST 8, 2008
AMENDED JULY 7, 2014
AMENDED MAY 9, 2016
AMENDED AUGUST 29, 2016
AMENDED APRIL 9, 2018
AMENDED JUNE 11, 2018
AMENDED XXXX XX, 2019

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ADOPTED RULES OF THE
RUSK COUNTY GROUNDWATER CONSERVATION DISTRICT

Effective as of
~~June 11, 2018~~

The District is authorized under § 36.101 of the Texas Water Code to make and enforce Rules, including Rules limiting groundwater production and the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by Chapter 36 of the Texas Water Code. The District incorporates by reference all authorities granted to the District by the District Act and Chapter 36 of the Texas Water Code into its District Rules. These Rules were initially adopted and effective on January 1, 2006 and amended on ~~June 11, 2018~~.

In adopting these rules, The District considered all groundwater uses and needs; developed rules that are fair and impartial; considered the groundwater ownership and rights described by Section 36.002; considered the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution; and considered the goals developed as part of the District's management plan under Section 36.1071; and developed rules that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

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1.1. DEFINITION OF TERMS

In the administration of its duties, the Rusk County Groundwater Conservation District follows the definitions of terms set forth in the District Act, Chapter 36 of the Texas Water Code, and other definitions as follow:

(1) "Acre-foot" means the amount of water necessary to cover one acre of land one foot deep, or about 325,000 gallons of water.

(2) "Additional production" means the amount of water produced from an excluded well in excess of that amount produced under permit by the Railroad Commission of Texas.

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

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

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

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

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

(E) wildlife management; and

(F) raising or keeping equine animals.

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

(5) "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.

(6) "Beneficial use" or "beneficial purpose" means use of groundwater for:

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

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

(C) any other purpose that is useful and beneficial to the user that does not commit or result in waste as that term is defined in these rules.

(7) “Best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

(8) “Board” means the Board of Directors of the Rusk County Groundwater Conservation District.

(9) “Casing” means a tubular, water tight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the ground waters to their zones of origin and to prevent the entrance of surface pollutants.

(10) “Cement” means a neat Portland or construction cement mixture of not more than seven gallons of water per ninety-four (94) pound sack of dry cement, creating a cement slurry in which bentonite, gypsum, or other additives may be included.

(11) “Contiguous acreage” means land with the same continuous boundary within the District that is owned or legally controlled for the purpose of groundwater withdrawal by the well owner or operator. A majority of the contiguous acreage assigned to the well shall bear a reasonable reflection of the cone of depression impact near the pumped well, as based on the best available science. Land that is owned or legally controlled by the well owner or operator that is separated only by a road, highway or river from other land owned or controlled by the well owner or operator is contiguous.

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

(13) “Deteriorated well” means a well, the condition of which will cause, or is potentially likely to cause, pollution of any water in the district.

(14) “De-watering Well” means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.

(15) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

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

(17) “District” means the Rusk County Groundwater Conservation District as

authorized under House Bill 3569 (Acts 2003, 78th Legislature, Regular Session, chapter. 764, p. 2214).

(18) “District Office” means the office of the District, which may be changed from time to time by resolution of the board.

(19) “Drilling permit” means a permit for a water well to be drilled, including test wells, or an existing well that is to be re-drilled.

(20) “Existing Well” means a groundwater well within the District’s boundaries, for which drilling or significant development of the well commenced before the effective date of these Rules, February 1, 2014.

(21) “GPM” means gallons per minute.

(22) “Groundwater” means water percolating below the surface of the earth.

(23) “Groundwater reservoir” means a specific subsurface water-bearing stratum.

(24) “Hearing body” means the board, any committee of the board, or a hearing examiner at any hearing held under the authority of law.

(25) “Hearing examiner” means the person appointed by the board of directors to conduct a hearing or other proceeding.

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

(27) “Injection well” includes:

(A) 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;

(B) a cooling water return flow well used to inject water previously used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish the water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the

overdraft of fresh water; or

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(28) “Landowner” means the person who bears ownership of the land surface.

(29) “Leachate Well” means a well used to remove contamination from soil or groundwater.

(30) "Managed available groundwater" means the amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer as determined under Section 36.108.

(31) "Management Area" means an area designated and delineated by the Texas Water Development Board under Chapter 35 as an area suitable for management of groundwater resources.

(32) "Modeled available groundwater" means the amount of water that the Texas Water Development Board determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108.

(33) “Monitoring Well” means a well installed to measure some property of the groundwater or aquifer it penetrates, and does not produce more than 5,000 gallons of groundwater per year.

(34) “New Well” means any Well other than an existing well.

(35) “New Well Application” means an application for a permit to drill and operate a new well.

(36) “Open Meeting Law” means Chapter 551, Texas Government Code.

(37) “Operating Permit” means a permit issued by the District for the operation of or production from a water well for a designated period, which may include authorization to drill or complete a water well if the District does not require a separate permit for drilling or completing the water well

(38) “Permit” is a written document detailing activities authorized by the Board.

(39) “Property legally assigned to a well” is property owned or legally controlled for purposes of groundwater withdrawal by a well owner or operator and assigned to a well by the owner or operator.

(40) “Public Information Act” means Chapter 552, Texas Government Code.

(41) "Public water supply well" means a well that produces the majority of its water for use by a public water system.

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

(43) “Presiding Officer” means the President, Vice-President, Secretary, or other Board member presiding at any hearing or other proceeding or a Hearing Examiner conducting any hearing or other proceeding.

(44) “Produce or Production” means extracting groundwater by pumping or by another method.

(45) “Quorum” means a majority of the members of the board of directors.

(46) “Rate of Production” means the amount of groundwater that is stated in the District’s operating permits that limits the number of gallons of groundwater produced per minute (“gpm”), with a maximum annual cap of overall groundwater production specified in acre-feet. For example, a District operating permit could state that the authorized rate of production is 1000 gpm, not to exceed a total amount of 5000 acre-feet of groundwater production per year.

(47) "Recharge” means the amount of water that infiltrates to the water table of an aquifer.

(48) “Registration” means a certificate issued by the District for exempt wells.

(49) “Rules” means the Rules of the District compiled in this document and as may be supplemented or amended from time to time.

(50) “Texas Rules of Civil Procedure” and “Texas Rules of Civil Evidence” mean the civil procedure and evidence Rules as amended and in effect at the time of the action or proceeding. Except as modified by the Rules of the District, the rights, duties, and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure or the Texas Rules of Evidence are the same as a court acting under those Rules.

(51) “Transport” means exporting, transferring, or moving groundwater outside the District.

(52) “Transport Permit” means an authorization issued by the District allowing the transport of a specific quantity of groundwater outside the District’s boundaries for a designated time period. All applicable permit Rules apply to transport permits.

(53) "Waste" means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of

water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

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

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

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

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

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

(G) for water produced from an artesian well, "waste" also has the meaning assigned by Section 11.205, Texas Water Code.

(51) “Water Meter” means a water flow measuring device that can accurately record the amount of water produced during a measured time.

(52) “Well” means any facility, device, or method used to withdraw groundwater from within the District’s boundaries.

(53) “Well operator” means the person who operates a well or a water distribution system supplied by a well.

(54) “Well Owner” or “Well Operator” 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 a well permit for the well.

(55) “Well System” means a well or group of wells tied to the same distribution or transportation system.

(56) “Withdraw or Withdrawal” means extracting groundwater by pumping or by

another method.

(57) “Windmill” means a wind-driven or hand-driven device that uses a piston pump to remove groundwater.

1.2. PURPOSE OF RULES

These rules are adopted pursuant to the authority of the District Act and Section 36.101, Texas Water Code, for the purpose of conserving, preserving, protecting, and recharging groundwater in the District, and these rules are adopted under the District’s statutory authority to prevent waste and to protect the rights of owners of interests in groundwater.

1.3. USE AND EFFECT OF RULES

The District uses these Rules 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.

1.4. 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.

1.5. CONSTRUCTION

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

1.6. METHODS OF SERVICE UNDER THE RULES

Except as otherwise expressly provided in these Rules, any notice or documents required by these Rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three (3) days will be added to the prescribed period. Where service by one or more methods has been attempted and failed, the service is complete upon notice publication in a general circulated newspaper in Rusk County.

1.7. SEVERABILITY

If any one or more of the provisions contained in these Rules are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other Rules or provisions of these Rules, and these

Rules must be construed as if such invalid, illegal, or unenforceable Rules or provision had never been contained in these Rules.

RULE 2. BOARD

2.1. PURPOSE OF BOARD

The board is created to manage the withdrawal of groundwater within the boundaries of the District, and to exercise its rights, powers and duties in a manner that will effectively and expeditiously accomplish the purposes of the law creating the District and Chapter 36, Texas Water Code. The board's responsibilities include, but are not limited to, adoption and enforcement of reasonable rules, policies, permits, and orders.

2.2. BOARD STRUCTURE, OFFICERS

The board consists of elected members, qualified as required by law. Each year at its regular November meeting, and if there is no November meeting, at its next regular meeting, the board will select one of its members to serve as president to preside over board meetings and proceedings, one to serve as vice-president to preside in the absence of the president, and one to serve as secretary-treasurer to keep a true and correct account of all meetings and proceedings of the board. The board may appoint an assistant secretary to assist the secretary. Members and officers serve until their successors are appointed or elected and qualified to hold the office. In the event of a vacancy on the board, a replacement member will be appointed by the board to fill out the term of the vacancy. In the event of a vacancy in an office of the District, the board shall select out of its members a person to serve out the remaining term of the office. In the absence of a general manager, the president shall exercise all of the duties delegated to the general manager under these rules. Business of the District will be conducted when a quorum is present.

2.3. MEETINGS

The board may hold a regular meeting each month on a day and place that the board establishes. At the request of the president, or by written request of at least five members, the board may hold special meetings. All board meetings will be held in accordance with the Open Meetings law.

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, which may be derived from the board or outside of the board. Committee members serve at the request of the president.

2.5. EX PARTE COMMUNICATIONS

Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested case before the board, with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. A board member may communicate ex parte with other members of the board, if a quorum is not present

RULE 3. GENERAL MANAGER

3.1 GENERAL MANAGER

The board may employ or contract with a person to be the general manager, who is the chief administrative officer of the District. The general manager shall have full authority to manage and to operate the affairs of the District, subject only to the direction given by the board through policies and orders adopted by it. At least annually, the board shall determine the compensation to be paid to the general manager and review the action and performance of the general manager to determine how the general manager has fulfilled the responsibilities and whether additional responsibilities should be delegated to the general manager. The general manager, with the approval of the board, may employ or contract with all persons necessary for the proper handling of the business and operation of the District.

3.2 DELEGATION OF AUTHORITY

The general manager may delegate duties as may be necessary to effectively and expeditiously accomplish those duties, provided that no such delegation may relieve the general manager from responsibilities under the Texas Water Code, the act creating the District, and the policies, orders and permits promulgated by the board.

RULE 4. DISTRICT

4.1 MINUTES AND RECORDS OF THE DISTRICT

All documents, reports, records, and minutes of the District are available for public inspection and copying in accordance with the Open Records law. Upon written application of any person, the District will furnish copies of its public records. Persons who are furnished copies may be assessed a copying charge, pursuant to policies established by the board. A list of charges for copies will be furnished by the District.

4.2 CERTIFIED COPIES

Requests for certified copies must be in writing. Certified copies may be made by the District and will be affixed with the seal of the District. Persons furnished with certified copies may be assessed a certification charge, in addition to the copying charge, pursuant to policies established by the board.

4.3 OFFICIAL OFFICE AND OFFICE HOURS

The board, by resolution, shall establish an official office for the District, and the regular business hours to be maintained.

RULE 5. DISTRICT MANAGEMENT PLAN AND JOINT PLANNING

5.1. DISTRICT MANAGEMENT PLAN

The District Management Plan, and any amendments thereto, shall be developed using the District's best available data and forwarded to the Region I Regional Water Planning Group for use in their planning process. The District Management Plan must also use the

groundwater availability modeling information provided by the Texas Water Development Board in conjunction with any available site-specific information provided by the District and acceptable to the Texas Water Development Board. The District shall use the Rules of the District to implement the Management Plan. The Board will review the plan at least every fifth year and shall adopt amendments as necessary, after notice and hearing. Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

5.2. JOINT PLANNING IN MANAGEMENT AREA

(a) Upon completion and approval of the District's comprehensive Management Plan, as required by §§36.1071 and 36.1072, Texas Water Code, the District shall forward a copy of the new or revised Management Plan to the other groundwater districts in its Texas Water Development Board designated Management Area. The Board shall consider the plans of the other districts individually and shall compare them to other management plans then enforce in the Management Area.

(b) The presiding officer, or the presiding officer's designee, of the District shall meet at least annually to conduct joint planning with the other districts in the Management Area and to review the management plans and accomplishments for the Management Area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:

(1) the goals of each management plan and its impact on planning throughout the Management Area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the Management Area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the Management Area;

(4) and the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(c) Not later than May 1, 2021, and every five years thereafter, the districts in Groundwater Management Area 11 shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under the districts shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the Texas Water Development Board, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) the feasibility of achieving the desired future condition; and

(9) any other information relevant to the specific desired future conditions.

(d) After considering and documenting the factors described by Subsection (c) and other relevant scientific and hydrogeological data, the districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(e) The desired future conditions must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a).

(f) The desired future conditions proposed must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the

public comment period, the District shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered and groundwater availability model run results. After the close of the public comment period, the District shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.

(g) After all the districts have submitted their district summaries, the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be approved by a resolution adopted by a two-thirds vote of all the district representatives not later than January 5, 2022. Subsequent desired future conditions must be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

(1) identify each desired future condition;

(2) provide the policy and technical justifications for each desired future condition;

(3) include documentation that the factors under Subsection (c) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;

(4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and

(5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

(h) After a district receives notification from the Texas Water Development Board that the desired future conditions resolution and explanatory report are administratively complete, the district shall adopt the applicable desired future conditions in the resolution and report.

(i) Except as provided by this section, a joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of a joint meeting must be provided at least 10 days before the date of the meeting by:

(1) providing notice to the secretary of state;

(2) providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and

(3) posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.

(j) The Secretary of State and the county clerk of each county shall post notice of the meeting in the manner provided by Section 551.053, Government Code. Notice of a joint meeting must include:

(1) the date, time, and location of the meeting;

(2) a summary of any action proposed to be taken;

(3) the name of each district located wholly or partly in the management area; and

(4) the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.

(k) The failure or refusal of one or more districts to post notice for a joint meeting does not invalidate an action taken at the joint meeting.

5.3 APPEAL OF DESIRED FUTURE CONDITIONS

(a) In this section:

(1) "Affected person" has the meaning assigned by Section 36.1082.

(2) "Development board" means the Texas Water Development Board.

(3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 120th day after the date on which a district adopts a desired future condition under Section 36.108(d-4), an affected person may file a petition with the district requiring that the district contract with the office to conduct a hearing appealing the reasonableness of the desired future condition. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area.

(c) Not later than the 10th day after receiving a petition described by Subsection (b), the district shall submit a copy of the petition to the development board. On receipt of the petition, the development board shall conduct:

(1) an administrative review to determine whether the desired future condition established by the district meets the criteria in Section 36.108(d); and

(2) a study containing scientific and technical analysis of the desired future condition, including consideration of:

(A) the hydrogeology of the aquifer;

(B) the explanatory report provided to the development board under Section 36.108(d-3);

(C) the factors described under Section 36.108(d); and

(D) any relevant:

(i) groundwater availability models;

(ii) published studies;

(iii) estimates of total recoverable storage capacity;

(iv) average annual amounts of recharge, inflows, and discharge of groundwater; or

(v) information provided in the petition or available to the development board.

(d) The development board must complete and deliver to the office a study described by Subsection (c)(2) not later than the 120th day after the date the development board receives a copy of the petition.

(e) For the purposes of a hearing conducted under Subsection (b):

(1) the office shall consider the study described by Subsection (c)(2) and the desired future conditions explanatory report submitted to the development board under Section 36.108(d-3) to be part of the administrative record; and

(2) the development board shall make available relevant staff as expert witnesses if requested by the office or a party to the hearing.

(f) Not later than the 60th day after receiving a petition under Subsection (b), the district shall:

(1) contract with the office to conduct the contested case hearing requested under Subsection (b); and

(2) submit to the office a copy of any petitions related to the hearing requested under Subsection (b) and received by the district.

(g) A hearing under Subsection (b) must be held:

(1) at a location described by Section 36.403(c); and

(2) in accordance with Chapter 2001, Government Code, and the rules of the office.

(h) During the period between the filing of the petition and the delivery of the study described by Subsection (e)(2), the district may seek the assistance of the Center for Public Policy Dispute Resolution, the development board, or another alternative dispute resolution system to mediate the issues raised in the petition. If the district and the petitioner cannot resolve the issues raised in the petition, the office will proceed with a hearing as described by this section.

(i) The district may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of the office. In accordance with rules adopted by the district and the office, the district shall provide:

(1) general notice of the hearing; and

(2) individual notice of the hearing to:

(A) the petitioner;

(B) any person who has requested notice;

(C) each nonparty district and regional water planning group located in the same management area as a district named in the petition;

(D) the development board; and

(E) the commission.

(j) Before a hearing conducted under this section, the office shall hold a prehearing conference to determine preliminary matters, including:

(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and

(3) which affected persons shall be named as parties to the hearing.

(k) The petitioner shall pay the costs associated with the contract for the hearing under this section. The petitioner shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. After the hearing, the office may assess costs to one or more of the parties participating in the hearing and the district shall refund any excess money to the petitioner. The office shall consider the following in apportioning costs of the hearing:

(1) the party who requested the hearing;

(2) the party who prevailed in the hearing;

(3) the financial ability of the party to pay the costs;

(4) the extent to which the party participated in the hearing; and

(5) any other factor relevant to a just and reasonable assessment of costs.

(l) On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the district shall issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The district may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.

(m) If the district vacates or modifies the proposal for decision, the district shall issue a report describing in detail the district's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the district's decision.

(n) If the district in its final order finds that a desired future condition is unreasonable, not later than the 60th day after the date of the final order, the districts in the same management area as the district that received the petition shall reconvene in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition.

(o) A final order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this section.

(p) The administrative law judge may consolidate hearings requested under this section that affect two or more districts. The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

(q) Judicial Appeal of Desired Future Conditions.

(1) A final district order issued under Section 36.1083 may be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order. An appeal under this subsection must be filed with the district court not later than the 45th day after the date the district issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the same management area as the district that received the petition to reconvene not later than the 60th day after the date of the court order in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that

received the petition.

(2) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

5.4 MODELED AVAILABLE GROUNDWATER

(a) The Texas Water Development Board shall require the districts in a management area to submit to the Texas Water Development Board not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):

(1) the desired future conditions adopted under Section 36.108;

(2) proof that notice was posted for the joint planning meeting; and

(3) the desired future conditions explanatory report.

(b) The Texas Water Development Board shall provide each district and regional water planning group located wholly or partly in the management area with the modeled available groundwater in the management area based upon the desired future conditions adopted by the districts.

RULE 6. WASTE PREVENTION

6.1 WASTE PROHIBITED

(a) Groundwater shall not be produced within, or used within or without the District, in such a manner or under such conditions as to constitute waste as defined in Rule 1.1(50).

(b) Any person producing or using groundwater shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of such water.

(c) No person shall pollute or harmfully alter the character of a groundwater aquifer of the District by means of salt water or other deleterious matter admitted from other stratum or strata or from the surface of the ground.

6.2 ORDERS TO PREVENT WASTE/POLLUTION

After providing notice to affected parties and opportunity for a hearing, the Board may adopt orders to prohibit or prevent waste or pollution. If the factual basis for the order is disputed, the Board shall direct that an evidentiary hearing be conducted prior to entry of the order. If the Board determines that an emergency exists, requiring the immediate entry of an order to prohibit waste or pollution and protect the public health, safety, and welfare, it may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of fifteen (15) days or until a hearing can be conducted.

RULE 7. SPACING REQUIREMENTS

7.1. REQUIRED SPACING

To minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, and to prevent waste, the District will enforce spacing requirements on applicable wells in the District drilled after February 1, 2014.

As stated below, there are two types of spacing requirements, both of which apply to all new non-exempt wells in the District, existing wells applying for an amendment to increase the permitted annual groundwater production or increase the permitted production rate, and water wells that require registration for production activities related to oil and gas exploration and production. The first spacing rule is the distance that the well site must be from the perimeter of the real property that is assigned to that well under Rule 8.1(b). The second spacing rule is the distance that the well site must be from all permitted non-exempt wells and all registered exempt wells.

(a) Spacing of new non-exempt wells completed in the District shall be one-half foot per gallon per minute (½ ft / gpm) of production capacity from the perimeter of the property that is legally assigned to that well.

(b) Spacing of new non-exempt wells completed in the District shall be one foot per one gallon per minute (1 ft / gpm) of production capacity from permitted or registered wells in the District.

7.2. EXCEPTIONS TO SPACING REQUIREMENTS

(a) If the applicant presents waivers signed by the landowners and/or registration/permit holders that are located within the spacing-requirement circumference of the applied-for well(s), stating that they have no objection to the proposed location of the well site, a waiver to the spacing requirements may be granted for the new proposed well location.

A waiver may be submitted to the District by a single permit holder to waive the spacing requirements between the permit holder's own wells within in a single well field. The District may waive the spacing requirements on the well field if the applicant submits adequate evidence showing that the increased cone of depression caused by the well field will not increase the impact on nearby existing wells, or cause an overall reduction in the total amount of groundwater available within the District, any greater than the spacing requirements under rule 7.1.

(b) Providing an applicant can show, by clear and convincing evidence, good cause why the well should be allowed to be drilled closer than the required spacing of Rule 7.1, the issue of spacing requirements will be considered during the permitting 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(s) to minimize injury to existing wells or the aquifer.

(c) The Board or General Manager, if authorized by 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.

(d) Well spacing Rules in Rule 7 apply to all new non-exempt wells, existing wells applying for an amendment to increase the permitted annual production, and water wells that require registration for production activities related to oil and gas exploration and production wells in the District, except those that are exempt under District Rule 9.1(a)(1) and 9.1(a)(3). Permitted wells are required to observe spacing requirements from exempt wells completed in the same aquifer that are registered with the District.

(e) The District recognizes that permitted "existing wells," as defined by Rule 1.1(20), were not required to comply with the District's spacing rules of 7.1, nor the Production Based Acreage requirement of 8.1(b). The District also recognizes that all permitted "new wells," as defined by Rule 9.3, should have the right to produce groundwater within their Production Based Acreage footprint of Rules 8.1(b), notwithstanding the permitting of existing wells. Therefore, well spacing of new non-exempt wells completed in the District are exempted from complying with Rule 7.1 (b), to the extent that the spacing does not allow the new well owner to produce their Production Based Acreage under Rules 8.1(b).

RULE 8. PRODUCTION LIMITATIONS

8.1. MAXIMUM ALLOWABLE PRODUCTION

To minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, and to address the potential loss of opportunity to drill a well because of spacing requirements, and to prevent waste, the District adopts the following Rules to regulate the production of groundwater.

(a) **Availability Goal**

The water Availability Goals of the District are expressed through the Desired Future Conditions adopted by the GMA 11 pursuant to Section 36.108 of the Texas Water Code, and listed in the District's Certified Management Plan in Management of Groundwater Supplies, for the following aquifer formations: Carrizo-Wilcox. The adopted Availability Goals are supported by the hydrogeological data of the Region I Water Planning Group, the Texas Water Development Board, and the District's hydrologist. The District's Certified Management Plan may be revised to amend the initial Availability Goals based on new and additional data received by the District and shall reflect the Modeled Available Groundwater determined by the Texas Water Development Board pursuant to the adopted Desired Future Conditions for the District.

The adopted Availability Goals will be applied in reviewing permit applications. Groundwater production on new permit applications and increased use by existing users may be limited in accordance with the availability goal, as supported by the best available science, in a fair and impartial manner, regardless of type or location of use.

(b) **Production Based Acreage**

A permit holder's groundwater production for a new non-exempt well drilled in the District, is limited by the number of contiguous acres that are legally assigned to the well site. A majority of the contiguous acreage assigned to the well shall bear a reasonable reflection of the cone of depression impact near the pumped well, as based on the best available science and the required production based acreage. The amount of groundwater production based on the assigned contiguous acreage will be determined by the following formula:

$$\frac{\left(\text{Well Production Capacity in Gallons/Minute} \times \text{District Spacing Requirement Between Wells}\right)^{2} \times \pi}{43{,}560} = \text{Total number of contiguous acres required to be assigned to the well site}$$

Example: $\frac{(900\text{gpm} \times 1\ \text{ft/gpm})^{2} \times \pi}{43{,}560} = 58$ acres

Therefore, under this example, to be permitted for a well with a maximum capacity of 900 gpm, the land assigned to that well must encompass 58 contiguous acres.

More than one well may be assigned to the production acreage at the discretion of the Board as long as the spacing requirements are met.

The maximum well pumping capacity denoted in gallons per minute does not mean that the well is authorized by the District to pump that maximum capacity. The authorized amount of water to be produced annually by a permittee is not tied to the pump size. The authorized withdrawal amount of groundwater is stated in each well permit as the rate of production, which authorizes a maximum gpm production, not to exceed a specified number of acre-feet of groundwater production each year.

The permitted groundwater production capacity is also subject to the spacing requirements in Rule 7, as well as the availability, production, and beneficial use limits in Rule 8.

If an amendment to increase the annual production is received for any well, whether it was initially required to comply with the production based acreage rule or not, the permit holder must comply with the production based acreage requirement in this rule for the new maximum annual production amount.

(c) **GPM Production Limit**

The Board may set a limit on wells within the District, requiring that they must be designed and equipped to not exceed a maximum production limit of a specified number of gallons per minute under normal operating condition, as supported by the

best available science.

(d) **Beneficial Use**

Production limits on wells will be based on evidence of beneficial use submitted in Operating Permit applications. The District may verify the actual use of permitted wells by operating the District's healthy well inspection program, which includes water level measurements and production rate verification.

8.2 ACTIONS BASED ON AQUIFER RESPONSE TO PUMPING

(a) The District shall utilize its existing well monitoring program, to access aquifer levels in the District and the effects caused by groundwater production to enforce the District's adopted Desired Future Conditions of the aquifers and to conserve and preserve groundwater availability and protect groundwater users and groundwater ownership and rights. The District shall, if applicable, use the Texas Water Development Board's collected data for incorporation.

(b) The District shall adopt threshold average aquifer drawdown amounts that will be used to initiate groundwater management responses that will be implemented to enforce the District's adopted Desired Future Conditions of the aquifers and to conserve and preserve groundwater availability and protect groundwater users and groundwater ownership and rights.

(c) **Standard Actions to Enforce DFCs**

Prior to approaching the initial adopted DFC Threshold, the District shall follow the below-listed actions to monitor aquifer levels; regulate, educate, and promote water conservation; and enforce the Desired Future Conditions of the aquifers;

(1) monitor groundwater production reports, with District onsite confirmation if deemed necessary, as appropriate;
(2) permit and register wells according to District Rules;
(3) monitor groundwater production and/or aquifer level fluctuations in adjoining GCDs and outlying counties coordinating responses as needed with adjoin GCDs;
(4) prepare an annual report on groundwater production and aquifer fluctuation trends and changes;

(d) The District shall initially adopt three threshold average aquifer drawdown levels to act as triggers to provide for increased levels of District regulatory responses based on the change in three (3) consecutive years average aquifer drawdown levels across the District an aquifer. The District shall monitor how rapidly each threshold is achieved and amend or add new thresholds as improved hydrological assessment data becomes available. The initial DFC threshold levels are: Level 1, Level 2, and Level 3. Each level will be based on an average of three (3) consecutive years immediately prior to reaching the trigger. The District-approved methodology to calculate the District-wide average aquifer drawdown and the protocol to measure static water levels shall be guided by the District's hydrologist for continued advancements in best management practices.

(1) **DFC Threshold Level 1**: If Threshold Level 1 is reached, additional study and

monitoring may be undertaken as appropriate at such timed as the average aquifer drawdown on a District-wide basis, calculated with a District-approved methodology for an aquifer, is greater than **65 percent** of the average aquifer drawdown amounts adopted as a DFC for that aquifer identified in the District's Management Plan. The following District actions shall occur to enforce the Desired Future Condition of the aquifers and to conserve and preserve groundwater availability and protect property rights of landowners and groundwater users:

(A) Adopt a Study Area(s) for an Aquifer(s): Based on the best available science, the District may designate Study Areas for portions of an aquifer within the District that are experiencing significant drawdowns of the aquifer levels, which may be caused by concentrated groundwater pumping, and develop additional hydrological data and analysis of the causes of the drawdown and hydrological trends developing and make recommendations for appropriate action;
(B) Monitor aquifer levels;
(C) Monitor groundwater production reports, with District onsite confirmation if deemed necessary, as appropriate;
(D) Monitor groundwater production and/or aquifer fluctuations in adjoining GCDs and outlying counties;
(E) Prepare an annual report on groundwater production and aquifer fluctuations;
(F) If DFC Threshold Level 1 is exceeded, the District may perform studies to provide additional information on the hydrogeology in the area. The results may be used to improve Groundwater Availability Models and other methodologies used to analyze monitoring and pumping data and predict future aquifer response and groundwater availability.

(2) **DFC Threshold Level 2**: If DFC Threshold Level 2 is reached, a District review of the Management Plan, Rules and Regulations may be initiated at such time as the average aquifer drawdown over the District calculated with a District-approved methodology for an aquifer is greater than **80 percent** of the average aquifer drawdown amounts adopted as a DFC for that aquifer identified in the District's Management Plan. The following District actions shall occur to enforce the Desired Future Condition of the aquifers and to conserve and preserve groundwater availability and protect property rights of landowners and groundwater users:

(A) Consider Adoption of Depletion Management Zone(s) for the Aquifer(s): Based on the best available science, the District may designate Depletion Management Zones in areas of the District that are experiencing significant drawdowns of the aquifer levels, which may be caused by concentrated groundwater pumping. Within designated Depletion Management Zones, the District may adopt appropriate production limitations to alleviate the substantial stress on the aquifer(s). Management strategies within the designated Depletion Management Zones may include, but are not limited to, a reduction in groundwater production of existing and future permits and increased will spacing requirements. Amendments to permits due to Depletion

Management Zone(s) curtailment will be subject to permit hearing procedures in Section 14 of the District's Rules.

(B) Monitor aquifer levels;

(C) Monitor groundwater production reports, with District onsite confirmation if deemed necessary, as appropriate;

(D) Monitor groundwater production and/or aquifer fluctuations in adjoining GCDs and outlying counties;

(E) Prepare an annual report on groundwater production and aquifer fluctuations;

(F) If DFC Threshold Level 2 is exceeded, the District shall reevaluate the monitoring program, pumping inventory and response of the aquifers to pumping, both inside and outside of the District. Revisions to the DFCs could be considered as part of the Joint Planning Process of the Groundwater Management Area 11. The District shall conduct a public hearing to discuss the status of the aquifer or aquifers and develop a response plan focused on achieving the District's goals and objectives, including not exceeding the DFCs. The response plan should be completed within 6 months after the first public hearing and should be available to the public through the District's website.

(3) **DFC Threshold Level 3**: If DFC Threshold Level 3 is reached, the Board shall consider amendments to the Management Plan, Rules and Regulations at such time as the average aquifer drawdown over the District for an aquifer, calculated with a district approved methodology, is greater than **90 percent** of the average aquifer drawdown amounts adopted as a DFC for that aquifer in the District's Management Plan. The following District actions shall occur to enforce the Desired Future Conditions of the aquifers and to conserve and preserve groundwater availability and protect groundwater users and groundwater ownership and rights:

(A) Consider Adoption of Depletion Management Zone(s) for the Aquifer(s). Based on the best available science, the District may designate Depletion Management Zones in areas of the District that are experiencing significant drawdowns of the aquifer levels, which may be caused by concentrated groundwater pumping. Within designated Depletion Management Zones, the District may adopt specific production limitations to alleviate the substantial stress on the aquifer(s). Management strategies within the designated Depletion Management Zones may include, but are not limited to, a reduction in groundwater production of existing and future permits and increased well spacing requirements. Amendments to permits due to Depletion Management Zone(s) curtailment will be subject to permit hearing procedures in Section 14 of the District's Rules.

(B) Monitor aquifer levels;

(C) Monitor groundwater production reports, with District onsite confirmation if deemed necessary, as appropriate;

(D) Monitor groundwater production and/or aquifer fluctuations in adjoining GCDs and outlying counties;

(E) Prepare an annual report on groundwater production and aquifer fluctuations;

(F) Curtailment of groundwater production as average aquifer drawdown amounts reach 90 percent of DFC or it's trending to exceed DFC. The District shall curtail groundwater production under DFC Threshold Level 3 as follows:

i. All groundwater production shall be reduced at the same time.

ii. Reductions to groundwater production will be based on actual production amounts and will be based on the maximum production from a well or aggregate of wells that has been put to beneficial use in any permitted year.

iii. Singled permitted wells will be reduced based on the production from the single well. Wells permitted in aggregate will be reduced in aggregate.

iv. The groundwater production reduction formula may be increased or decreased by the Board, based on the aquifer response to achieve the District's adopted DFCs.

v. Groundwater production from registered exempt wells cannot be reduced by the Board, per existing law at the time of the adoption of this rule (April 9, 2018).

vi. Permitting New Wells after Curtailment. New wells will be permitted pursuant to District Rules, including but not limited to Sections 6 and 7. The permit amount will be immediately reduced by the total amount of curtailments that have already occurred. Upon completion and equipping of the well, the permit holder has one (1) year to provide evidence of beneficial use, which will then become the basis for the curtailment amount, pursuant to (G)(iv) above.

vii. If Threshold Level 3 is exceeded, the District shall conduct a public hearing to discuss the status of the aquifer or aquifers and develop a response plan focused on achieving the district's goals and objectives, including not exceeding the DFCs. The response plan should be completed within six (6) months after the first public hearing and should be available to the public through the District's website.

Groundwater reductions that result from entering DFC Threshold Level 3 may be reinstated if aquifer levels rise and the average drawdown amount is less than 90% of the adopted DFC.

RULE 9. REGISTRATION AND PERMITTING

9.1. EXCLUSIONS AND EXEMPTIONS

(a) The permit requirements in Rule 9 do not apply to:

(1) all groundwater wells in Rusk County that are either drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons of groundwater per day;

(2) the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is

responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or

(3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities.

(b) The District may require a well to be permitted by the District and to comply with all District rules if:

(1) a groundwater well exempted under Subsection (a)(1) is altered to be capable of producing more than 25,000 gallons of groundwater per day;

(2) the purpose of a well exempted under Subsection (a)(2) is no longer used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(3) the withdrawals from a well exempted under Subsection (a)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

9.2. REGISTRATION OF EXEMPT WELLS

(a) All water wells exempt under Rule 9.1 from the requirement to obtain a permit must be registered with the District by the well owner or the well operator in order to be protected by the District, as authorized by Chapter 36 of the Texas Water Code. The District will require compliance. 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 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. A fee may be charged for the registration of exempt wells.

(b) For a well that is exempt under Rule 9.1, a well registration form must be submitted to the District prior to the well being drilled. The applicant and/or the well driller violate the District's Rules and Chapter 36, Texas Water Code, by drilling or causing to be drilled, a well(s) without prior authorization from the District;

(c) If the well is not exempt under Rule 9.1, a permit application shall be submitted to the District under Rules 9.3 and 9.4. Also, if a well that was previously exempt under Rule 9.1, no longer meets the exemption criteria under Rule 9.1, then a permit application shall be submitted to the District under Rules 9.3 and 9.4.

(d) New exempt water wells shall be equipped and maintained so as to conform to the District's Rule 13.3 requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing

groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(e) Except as provided below, a permit may be required for a Monitor Well or a Remediation Well. A copy of the Driller's Report must be filed with the District within (60) sixty days. If the use of a Monitor Well or Remediation Well is changed to produce non-contaminated water, it then becomes subject to the permitting or registration requirements of these Rules depending upon use and volume.

(f) All wells that are exempt under Rule 9.1, whether new or existing wells, are required by State law and District rules to be registered with the District. Exempt wells that are not registered will not be protected by the District.

(g) An exemption provided under Subsection 9.1 does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.

(h) A registration for a well or well site will automatically expire within one year from its issuance if the registration well(s) has not been completed or is not significantly under development.

9.2.5 WELL CLOSURE, RETAINMENT, OR TRANSFER OF WATER WELLS USED FOR OIL AND GAS OPERATIONS

Any water well drilled after August 8, 2008, used to supply water for a rig that is actively engaged in drilling, exploration, or production operations for an oil and gas well permitted by the Railroad Commission of Texas shall be plugged within 180 days of the water well rig being removed from the property. The well owner may obtain an extension to plug the well if the well owner submits a written request to the District prior to the expiration of the 180 days. The written request must establish good cause for the extension. The District's General Manager has the discretion to grant the extension. Before the water well is plugged, and while the well is not in use, the well must be capped. All capped and plugged wells must meet regulatory standards adopted by the Texas Department of Licensing and Regulations. The licensed well driller will submit a copy of the state plugging report to the District once it is plugged. The District employees or agents may inspect any well to insure compliance with District rules.

If the land owner or the oil and gas company wants to retain the well for a beneficial use, the following actions must take place before the transfer or approval of the well can be completed:

(a) The pump must be removed from the well casing;

(b) The District will be notified in writing on a District authorized form for inspection under District rule 9.2.5, that the land owner or operator desires to take or retain control of the water well;

(c) The District will inspect the well for indications of commingling of aquifers or zones down hole and well construction completion.

(d) Payment of required Fee as set in the District's Adopted Fee Schedule.

If there is indication of commingling of the aquifers or zones or well construction failures, transfer of the water well will not be permitted and the well must be plugged or repaired, as described above. If the well passes inspection, the land owner or requestor to retain the well will be given an approved registration or operating permit for the water well as appropriate. Use of water from the well must comply with all rules and regulations of the TDLR, Chapter 36 of the Texas Water Code, and District Rules.

9.3. PERMITTING OF NON-EXEMPT WELLS

(a) Permit to Drill and Produce Groundwater
No person, including a well owner or well driller, shall construct or drill a well without first obtaining a drilling permit, unless the well is exempt under Rule 9.1 and is constructed according to Rule 9.2(b). An application for a drilling permit shall accompany an operating permit application for the well(s), and must be completed in accordance with Rule 9.4.

(b) Operating Permit

(1) No person shall modify, alter or operate a well without an operating permit, unless the well is exempt under Rule 9.1.

(2) Except as provided by Rule 12.1(a), no person shall modify or alter an existing well or alter the size of a pump without an operating permit, unless the well is exempt under Rule 9.1.

(c) Before granting or denying a drilling and/or operating permit for a well, or permit amendment under §36.1146, the District shall consider whether:

(1) the application conforms to the requirements prescribed by these Rules and Chapter 36, Texas Water Code, and is accompanied by the prescribed fees, and is therefore Administratively Complete;

(2) the applicant violated the District's Rules and Chapter 36, Texas Water Code, prior to submitting its application to the District by either drilling or operating a well(s) without a permit;

(3) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(4) the proposed use of water is dedicated to a beneficial use and whether sufficient evidence of an intended beneficial use is presented;

(5) the proposed use of water is consistent with the District's Certified Water Management Plan, including the District's Availability Goals;

(6) the applicant has agreed to avoid waste and achieve water conservation;

(7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure; and

(8) would not be otherwise contrary to the public welfare.

(9) This section does not apply to the renewal of an operating permit issued under §36.1145.

(d) The District may impose more restrictive permit conditions on new permit applications and applications for increased use by existing users, provided that:

(1) such limitations apply to all subsequent new permit applications and permit amendment applications to increase use by existing users, regardless of type or location of use;

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

(3) such limitations are reasonably necessary to protect existing use.

(e) Permits and permit amendments may be issued subject to the Rules promulgated by the District and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

(e-1) Permit Applications for groundwater production of less than 200 acre-feet/year may be granted by the District's General Manager if the application meets the requirements of the District's Rules. The General Manager may grant such administratively complete permit applications without notice, hearing, or further action by the Board; but shall provide a report of the granted permits to the Board.

(f) Changes in the amount or rate of withdrawal or use of groundwater under a District

(g) permit may not be made without the prior approval of a permit amendment issued by the District.

(h) Permits Based on Modeled Available Groundwater

(1) The District, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.

(2) In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:

(A) the modeled available groundwater determined by the Texas Water Development Board;

(B) the Texas Water Development Board's estimate of the current and projected amount of groundwater produced under exemptions granted by District Rules and Section 36.117;

(C) the amount of groundwater authorized under permits previously issued by the District;

(D) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and

(E) yearly precipitation and production patterns.

9.4. APPLICATIONS

Each original application for a certificate of registration, water well drilling permit, operating permit, transport permit, and permit renewal or amendment, and well plugging or closure requires an application by the applicant. Applications for multiple wells may be combined if submitted by the same applicant. Application forms will be provided by the District and furnished to the applicant by request. The District will hold hearing(s) on a permit application(s) in accordance with Section 14 of the District's Rules.

An application shall be in writing and sworn and shall contain:

(a) the name and mailing address of the applicant and the name and address of the owner of the land, if different from the applicant, on which the well is to be located;

(b) if the applicant is not the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;

(c) the applicant must provide evidence that they have the legal authority to produce groundwater associated with the land surface and the permit application, as required by Rule 8.1(b). The applicant must also provide any documents that transfer that right to own, control, or produce groundwater rights to another person/entity that are associated with the land surface and the permit application as required by Rule 8.1(b). A permit may be amended or revoked if the groundwater rights or right to produce, related to a permit under Rule 8.1(b), are legally transferred to another person/entity. The person shall attest to the information required in this rule by a District-provided affidavit form and submit the affidavit with the permit applications.

A notarized original of any legal document affecting the legal authority to produce groundwater on real property in Rusk County is required to be filed with the Rusk

County Deed Records.

(d) for exempt wells, a statement regarding the basis for asserting that the well will be exempt under Rule 9.1.

(e) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose and any evidence supporting the authenticity of the intended beneficial use;

(f) except for exempt wells and operating permits for Existing wells based on existing use, availability of feasible and practicable alternative supplies to the applicant;

(g) the applicant's water conservation plan and, if any subsequent user of the water is a municipality or entity providing retail water services, the water conservation plan of that municipality or entity shall also be provided along with a copy of the contract between the applicant and any subsequent user of the water, indicating that the applicant and that municipality or entity will comply with the District's Management Plan.

(h) the location of the well(s) and the estimated rate at which water will be withdrawn and where the water is proposed to be used; The District may access the well location and conduct a well inspection gathering data to confirm construction compliance with District, TDLR, and/or TCEQ regulations, whichever applicable, including; GPS coordinates, photographs, confirmation of surface completion, confirmation of annular seal completion, and if determined necessary, confirmation of down-hole completion by camera and/or geo-physical electric log, in compliance with District Rule 15.1.

(i) a well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the District;

(j) the identity of the well driller, including the well driller's license number;

(k) for applications required to go through a public hearing, proof of notification of the application to all landowners and/or registration/permit holders that are located within the spacing-requirement circumference of the applied for well(s), along with the publisher’s affidavit showing publication of the notice.

(l) The permit and registration application may also require additional information, including: a physical address of the well site location, a legal description of the property (plat or survey), API number, lease agreement; a site map that shows the location and distance of the proposed well to existing wells, property lines, septic tank, drain field, structures, neighboring septic systems if located closer than 100 feet, and any other sources of contamination within 50 feet; and a copy of the warranty deed, a construction diagram for well construction and/or plugging, pump specifications (including type, horsepower, and pump curve); and,

(m) except for exempt wells and wells not capable of producing more than 250 gallons per

minute:

(1) Hydrological Study Type 1: In the case of wells capable of producing over 250 gallons per minute but less than 500 gallons per minute: an evaluation of the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, or effects on existing permit holders or other groundwater users in the District;
The evaluation report shall include the following:

(a) The depth interval and water bearing zone proposed to be screened, the anticipated thickness of the water bearing zone, and whether the water bearing zone is anticipated to be in an unconfined or confined condition.

(b) A table giving data on each registered or permitted well located within one mile of the well(s) and screening the same aquifer. The well table shall include the name of the owner, well registration or permit number, casing and screen diameters and depth settings, total well depth, and aquifer screened. A map shall be provided showing the location of the well(s) at a scale no greater that one-inch equals 1,000 feet.

(c) An estimate of the drawdown that be caused by pumping the well(s) at the permitted rate for one year and ten years at a distance of up to five miles from the well(s). Water level drawdown contours shall be shown at ten-foot contour intervals. The estimate can be developed using the Theis equations and aquifer transmissivity and storage coefficients in the TWDB Carrizo-Wilcox, Queen City, and Sparta GAM, as applicable. Aquifer hydraulic data available from other sources and in proximity to the well(s) also can be considered in estimating the water-level drawdown effects of pumping.

(d) A table giving the drawdown at the location of existing registered and permitted wells contained in the District's database that screen the same aquifer as the well(s) and are located within one mile of the well(s).

(2) Hydrological Study Type 2: In the case of wells capable of producing 500 gallons per minute or more: a study shall be conducted by a registered professional engineer or geologist that has expertise in groundwater hydrology evaluating the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, or effects on existing permit holders or other groundwater users in the District. Five copies and one digital copy of the reports shall be submitted with the permit application.

The evaluation report shall include the following:

(a) A description of the hydrogeologic conditions in proximity to the well(s) that includes:

(i) The surface geology,

(ii) The depth interval of the proposed water bearing zone,
(iii) The anticipated thickness of the water bearing zone,
(iv) A statement of whether the water bearing zone is anticipated to be in unconfined or confined condition,
(v) A description of any hydrologic features or geologic features located within one mile of the proposed well(s) site(s).

(b) A well table giving data on each registered or permitted well located within one mile of the well(s) and screening the same aquifer. The well table shall include the name of the well owner, well registration or permit number, casing and screen diameter and depth settings, total well depth, and aquifer screened. A map shall be provided showing the location of the well(s) at a scale no greater that one-inch equals 1,000 feet.

(c) An estimate of the water-level drawdown that can be caused by pumping the well(s) at the permitted rate for one year and ten years at a distance of five miles from the well(s). Water-level drawdown contours shall be shown at ten-foot contour intervals. The estimate of pumping effects shall be developed using the TWDB Carrizo-Wilcox, Queen City, and Sparta GAM, as applicable. Aquifer hydraulic data available from other sources for wells located in proximity to the well(s) may be considered in estimating the water-level drawdown effects of pumping. Include in the evaluation an estimate of the drawdown at the locations of existing registered and permitted wells contained in the District's database that screen the same aquifer as the well(s) and are located within one mile of the well(s).

(d) After construction and testing of the wells(s), provide well pumping test results within sixty (60) days of the date construction is completed to include the aquifer testing data and evaluation. In general, the well pumping test shall consist of a phase where the static water level of the well(s) is measured on a regular basis for at least six (6) hours prior to a test, a constant pumping phase of not less than sixteen (16) hours, and a recovery phase of at least six (6) hours during which the static water level is measured on a regular basis in the well(s), unless an alternative pumping test schedule is proposed by the applicant and found acceptable by the District. The well(s) shall be equipped for the pumping test to produce water at a rate similar to its ultimate planned use, and the evaluation shall address the impacts of that use including the water-level drawdown effects of pumping after one year and ten years of pumping over the area that extends five miles from the well(s). The Board shall have the option of adjusting the permit conditions based on the best available science including the results of the pumping test that provides data regarding the aquifer hydraulic properties in the vicinity of the well(s).

(3) the District may adopt a guidance document to specify the required contents of the hydrogeological evaluation or report.

(4) for a single well application, an applicant may request that the District engage its hydrologist to complete the required report specified in this subsection. The District has complete discretion to accept or deny the applicant's request. If the District does agree to have its hydrologist perform the report, then the applicant is required to pay for the District's actual cost of conducting the hydrogeological study. The District's hydrologist will not perform a report for a multiple well application or for multiple single-well applications that are submitted less than 24 months apart.

(5) a permittee that applies for an amendment to an existing permit seeking to increase the allowable production to 500 gallons per minute or more, must submit a hydrogeologic study under (2), above, with their amendment application.

a permittee that applies for an amendment to increase an existing permit that currently has allowable production of 500 gallons per minute or more, shall submit a new hydrogeologic study under (2), above, if the requested amendment increases the annual production by 20% or more.

9.5. OPERATING PERMIT TERM AND RENEWAL

(a) Application Deadline – An application to renew permits must be made within fourteen (14) calendar days prior to the last scheduled Board meeting before the expiration of the permit. If an application to renew a permit is not received during this time, the permit may lapse and the well owner may be subject to penalty if the well is operated without a valid permit. Once the permit has lapsed, the landowner or well owner may have to apply for a new operating permit.

(b) Duration of Permit – All operating permits and permit renewals are effective for a term of five (5) years from the date a permit is granted, unless otherwise stated on the permit. Except, an operating and drilling permit for a well or well site will automatically expire one year from its issuance if the permitted well(s) has not been completed or is not significantly under development.

(c) Processing Fee – The application to renew a permit shall be accompanied by payment of the application processing fee established by the Board, if any.

(d) Decision on Renewal Application—

(1) Except as provided by Subsection (ii), the District shall without a hearing renew or approve an application to renew an operating permit before the date on which the permit expires, provided that:

(A) the application is submitted in a timely manner and accompanied by any required fees in accordance with District rules; and

(B) the permit holder is not requesting a change related to the renewal that would require a permit amendment under District rules.

(2) The District is not required to renew a permit under this section if the applicant:

(A) is delinquent in paying a fee required by the District;

(B) is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; or

(C) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or rule.

(3) If the District is not required to renew a permit under Subsection (2)(B), the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

(4) (A) If the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District rules, the permit as it existed before the permit amendment process remains in effect until the later of:

(i) the conclusion of the permit amendment or renewal process, as applicable; or

(ii) final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.

(B) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Section 36.1145 without penalty, unless Subsection (b) of that section applies to the applicant.

(C) The District may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the District's rules. If the District initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

9.6. AGGREGATION OF WITHDRAWAL

In issuing an operating permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District, at the discretion of 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 it's 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.

9.7. OPERATING PERMIT PROVISIONS

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

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

(b) This permit confers only the right to operate the permitted well under the provisions of the District Rules and its terms may be modified or amended pursuant to the provisions of those Rules. To protect the permit holder from the illegal use of a new landowner, within ten (10) days after the date of sale of property containing a well having been issued an operating permit, the operating permit holder must notify the District in writing of the name of the new owner. Any person who becomes the owner of a currently permitted well must, within forty-five (45) calendar days from the date of the change in ownership, file an application for a permit amendment to affect a transfer of the permit.

(c) The operation of the well for the authorized purposes must be conducted in a non-wasteful manner.

(d) Withdrawals from all non-exempt wells must be measured or estimated by the owner or operator using a device or method approved by the District that is within plus or minus 10% of accuracy, subject to Rule 9.10. The operating permit holder shall maintain records of withdrawal on the property where the well is located or at its business office, and shall make those records available to the District for inspection. Whether measured or estimated by an approved method, water use shall be reported to the District annually, as requested by the District.

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

site by the District representatives.

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

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

(h) The permittee will use reasonable diligence to protect groundwater quality and will follow well-plugging guidelines at the time of well closure.

The issuance of this permit alone does not grant to Permittee the right to use another person's or entity's private property or public property, for the production of movement of water. Neither does this permit authorize the invasion of any personal rights not the violation of any federal, state, or local laws, rules or regulation. Further, the District makes no representation and shall have no responsibility with respect to the availability or quality of water authorized to be pronounced under this permit.

9.8. OPERATING PERMIT LIMITATIONS

(a) Maximum Authorized Withdrawal. It is a violation of these Rules to withdraw any amount of water over the authorized permit limits.

(b) Operating Permit Required. It is violation of these Rules to withdraw groundwater from a non-exempt well without an operating permit from the District, except as provided by Rule 9.3 (b)(2).

9.9. PERMIT AMENDMENTS

(a) Permit Amendment Increasing Authorized Withdrawal. A written application for a permit amendment to increase the authorized withdrawal must be filed and an amendment granted before any over pumpage occurs.

(1) Submission of application. An applicant for a permit amendment increasing the authorized withdrawal must demonstrate that the increased amount of withdrawal will be put to a beneficial use, and is consistent with the District's Rules and Certified Management Plan.

(2) Action on amendment. Applications shall be considered by the Board, provided that the General Manager may rule on the first application for an amendment to an operating permit for an increase in total groundwater production up to, but not exceeding, 20 percent of the initially authorized total production amount or does not exceed 200 acre-feet/year without notice, hearing, or further action of the Board. Thereafter, such applications shall be considered by the Board. Once a ruling is made by the General Manager, notice of the ruling shall be served upon the applicant. Any applicant may appeal the General Manager's ruling by filing a

written request for hearing within ten (10) business days of the date of service of the General Manager's decision. If a written request for a hearing is filed, or if the applicant seeks an increase greater than 20 percent of the initially authorized total production amount, notice shall be issued and a hearing conducted in the manner prescribed for operating permit issuance.

(b) Amendment to Decrease Authorized Withdrawal. 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.

(c) Amendment to Transfer Ownership of a Permit. The General Manager may rule on any application for a permit amendment to transfer the ownership of any 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 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.

(d) District-Initiated Amendments. The District may initiate a permit amendment(s) to Permits with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, including but not limited to enforce the adopted desired future conditions of the aquifer(s), lessen interference between wells, or control and prevent subsidence. District-initiated permit amendments are subject to notice and hearing under Rule 14. If the District initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

9.10 MEASURING AND REPORTING REQUIREMENTS

(a) All well logs, pump test data, water level data, water quality data, or any other data pertinent to a well shall be submitted to the District office within sixty (60) calendar days after completion of the well or well project. In accordance with Section 36.111, records shall be kept and reports be made to the District regarding the drilling, equipping, and completing of water wells and of the production capability and use of groundwater by the well owner.

(b) The following permittees and registrants shall file with the District annual reports describing the metered amount of water produced monthly and used for the permitted or registered purpose. Such report shall be filed on the appropriate forms(s) provided by the District within forty-five (45) days of the first of each year:

(1) Water wells permitted after April 9, 2018 to produce water for uses including, but not limited to public water supply, industrial, commercial, poultry houses, electrical power, and recreation;

(2) Existing permitted water wells that are replaced or have had a pump repaired or replaced after April 9, 2018, and have uses including, but not limited to, public water supply, industrial, commercial, poultry houses, electrical power, and recreation.
(3) Exempt registered wells that are solely used for oil and gas rig supply wells under Rule 9.1(a)2; and
(4) Exempt registered wells associated with a mining permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, under Rule 9.1(a)3.

Wells used solely for domestic and/or agricultural use are not required to be metered nor submit an annual report.

(c) The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources. The permittee or registered well user shall submit complete, accurate, and timely metered pumpage and transport reports as required by the District. The report shall be filed on a form obtained from the District.

(1) A registrant holding a mining permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

(A) the total amount of water withdrawn during the month;
(B) the quantity of water necessary for mining activities; and
(C) the quantity of water withdrawn for other purposes.

The wells shall be registered with at least a central meter per mine, if the individual well is not metered.

(2) A water well used for hydraulic fracturing or other oil and gas production shall report the metered amount of groundwater used within 30 days of each hydraulic fracturing occurrence.

The well shall be registered and metered; and the water user from the well shall accurately and timely report the groundwater production. The registration shall include the name of the (1) surface owner, (2) water rights owner and/or lessee, (3) well owner, and (4) water user.

(3) Exempt wells that are solely used for oil and gas rig supply wells under Rule 9.1(a)2 shall report usage within 30 days of the rig leaving the site.

The well shall be registered and metered; and the water user from 9.10: the well shall accurately and timely report the groundwater production. The registration shall include the name of the (1) surface owner, (2) water rights owner and/or lessee, (3) well owner, and (4) water user.

(c) Permittees, including but not limited to retail water utilities, shall report within 30 days to the District of when its water conservation plan, or a new stage of the water conservation plan, is put into effect.

RULE 10. FEES AND DEPOSITS

10.1. APPLICATION, REGISTRATION, AND OTHER FEES

The Board, by Order, shall establish a schedule of fees. The Board will attempt to set fees that do not unreasonably exceed the costs incurred by the District for performing the administrative function for which the fee is charged. District Monitor Wells are exempt from application, registration, and well log deposits. The General Manager shall exempt District monitoring wells from any other fee if it is determined that the assessment of the fee would result in the District charging itself a fee.

10.2. INSPECTION AND PLAN REVIEW FEES

The Board may, by Order, 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 significant involvement of District personnel or its agents. Fees may be based on the amount of District time and involvement, number of wells, well production, well bore, casing size, size of transporting facilities, or amounts of water transported.

10.3. EXCESS PUMPAGE FEES

The Board may, by Order, establish additional water use fees for any pumpage exceeding the permitted pumpage volume.

10.4. RETURNED CHECK FEE

The Board may, by Order, 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.

10.5. ACCOUNTING FEE

The Board may, by Order, establish a fee for permittee-requested accounting of pumpage 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 District error be discovered, the accounting fee, if any, will be fully refunded. Permittee's may request one review of their account per fiscal year without charge.

10.6. WELL LOG DEPOSIT

The District shall require a Well Log Deposit for all wells drilled in the District, to be held by the District for return to the depositor if the well logs are submitted to the District within sixty (60) days following surface completion of the well. The depositor will not receive the Well Log Deposit for well logs received by the District after the sixty (60) day period.

10.7. WATER EXPORT FEES

(a) Fees for transporting groundwater out of the District.

(1) In accordance with H.B. 3569 of the 78th legislature 2003 Section 14 (c) (1) (B), the Board assess a production fee of $0.0425 per 1000 gallons for all groundwater used for the purpose of transporting out of the District, effective December 1, 2005.

(2) In accordance with H.B. 3569 of the 78th legislature 2003 Section 14 (c) (2), the production fee may be increased at a cumulative rate not to exceed three percent (3%) per year.

(3) In addition to this production fee the board assess an export fee, in accordance with H.B. 3569 of the 78th legislature 2003 Section 14 (d), for groundwater exported out of the, equal to fifty percent (50%) of the production fee. This export fee is in addition to the production fee.

(4) The fees are payable on water exported on or after November 1, 2005. Operators of wells exporting water out of the District shall provide payment to the District each quarter. Payment shall be due within thirty (30) days of the last day of March, June, September, and December with their quarterly reports. Operators shall provide monthly production records to document payment amount. The payment shall be accompanied by the report form specified by the Board.

(b) The fees listed in subsection (a)(1)-(3), reflect the fees allowed by state law. Actual fees are reflected in the District's schedule of fees.

(c) Each day that a payment remains unpaid after it is due shall constitute a separate violation of these Rules. A late payment charge equal to one percent per month following the due date shall be assessed on past due export fees.

(d) The District is prohibited from using revenues obtained from export fees to prohibit the transfer of groundwater outside of the District, but may use export fees for paying expenses related to enforcement of Chapter 36 of the Texas Water Code or the District Rules.

10.8. TRANSPORT / EXPORT PERMIT PROCESSING FEES

An application processing fee, sufficient to cover all reasonable and necessary costs to the District of processing the application, will be charged. The application must be accompanied by the Fee. If the fee is determined by the General Manager or the Board to be insufficient to cover anticipated costs of processing the application, the applicant may be required to post a deposit in an amount determined by the General Manager or the Boards representative to be sufficient to cover anticipated processing cost. As costs are incurred by the District in processing the application, those costs may be reimbursed from funds deposited by the applicant. The District shall provide a monthly accounting of billings against the application processing deposit. Any funds remaining on deposit after the

conclusion of application processing shall be returned to the applicant. If initially deposited funds are determined by the General Manager to be insufficient to cover costs incurred by the District in processing the application, an additional deposit may be required. If the applicant fails to deposit funds as required by the District, the application may be dismissed.

RULE 11. TRANSFER OF GROUNDWATER OUT OF THE DISTRICT

11.1. PERMIT REQUIRED

Groundwater produced from a well within the District may not be transported outside the District's boundaries unless the Board has issued the well owner or operator a transport permit, except as provided within these Rules.

11.2. APPLICABILITY

(a) A person proposing to transport groundwater out of the District must obtain a transport permit, in addition to a drilling/operating permit for a well, or an operating permit for an existing well, to:

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

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

(b) The District may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.

(c) A transport permit for the transportation of water outside the District is not required for the transportation of groundwater that is part of a manufactured product, or the groundwater is to be used on property that straddles the District boundary line, or the groundwater is used within the existing contiguous service area of an existing retail public utility that straddles the District boundary line. Transportation of groundwater, created by the expansion of an existing retail public utility into counties that are not contiguous to the District, will require a transport permit.

11.3. APPLICATION

An application for a transport permit must be filed in the District office and must include the information required under Rule 9.4 for a drilling and/or operating permit, plus the following information:

(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 the:

(1) location of the proposed receiving area for the water to be transported;

(2) information describing alternate sources of supply that might be utilized by the

applicant and the groundwater user, and the feasibility and practicability of utilizing such supplies; and

(3) description of the amount and purpose of use in the proposed receiving area for which water is needed.

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

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

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

(4) the names and addresses of the landowners and/or registration/permit holders and the location of their water wells, that are located within the spacing-requirement circumference of the applied-for well from which water to be transported to the proposed receiving area is to be produced; and

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

(c) the approved Regional Water Plan and certified District Management Plan, including a description of how the proposed transport is addressed in any approved regional water plan(s) including the Region I Regional Water Plan and, the certified District Management Plan.

(d) a technical description of the facilities to be used for transportation of water and a time schedule for any construction thereof, that will be used to establish the term of the transport permit, under Section 36.122 (i) of the Texas Water Code.

11.4. <u>HEARING AND PERMIT ISSUANCE</u>

(a) Applications for transport permits are subject to the hearing procedures provided by these Rules in Section 14.

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

(1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;

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

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

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

(1) such limitations apply to all subsequent new operating permit applications and permit amendment applications to increase use by existing users, regardless of type or location of use;

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

(3) such limitations are reasonably necessary to protect existing use.

(d) In addition to conditions provided by Section 36.1131, Texas Water Code, the operating permit to transport water out of the District shall specify:

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

(2) the period for which the water may be transferred, which shall be:

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

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

(e) Periodic Review

(1) The District may periodically review the amount of water that may be transferred under an operating permit to transport water out of the District and may limit the amount if additional factors considered, related to the factors in Subsection (b), above.

(2) After conducting its periodic review, more restrictive permit conditions may only be imposed if the factors in Subsection (c), above, are met.

(f) The District shall extend a term under Subsection (d)(2) on or before its expiration in the manner prescribed by Section 36.1145:

(1) to a term that is not shorter than the term of an operating permit for the production of water to be transferred that is in effect at the time of the extension; and

(2) for each additional term for which that operating permit for production is renewed under Section 36.1145 or remains in effect under Section 36.1146.

(g) A permit extended under Subsection (f) continues to be subject to conditions contained in the permit as issued before the extension.

(h) The district may grant or deny an application to extend a term under Subsection (d)(2) submitted under this section only using rules that were in effect at the time the application was submitted.

(i) An application to extend a term under Subsection (d)(2) is governed solely by district rules consistent with Subsection (f).

11.5. FEES INCLUDED WITH APPLICATION

The transport permit application must be accompanied by the application processing fee, inspection fee, or other fees as appropriate. Such fees must be paid before notice is published and mailed. Payment of all fees including water use fees remain the responsibility of the permit holder.

RULE 12. REWORKING AND REPLACING A WELL

12.1. PROCEDURES

(a) An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well status without obtaining a permit amendment.

(b) A permit must be applied for and the Board will consider approving the permit, if a person wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe or gpm rate by reworking, re-equipping, or re-drilling such well as described in this section.

(c) A permit must be applied for and granted by the Board if a person wishes to replace an existing well with a replacement well.

(d) A replacement well must be completed in the same aquifer as the well it replaces, and shall not be drilled, equipped, or completed so as to increase the rate of production of water from the well it replaces. A replacement well must not be located closer to any other well or authorized well site unless the new location complies with the minimum spacing requirements of Rule 7.1; otherwise, the well shall be considered a new well for which an application must be made.

(e) The landowner or his/her agent must within 120 days of the issuance of the permit declare in writing to the District which one of these two wells is desired to be produced. If the landowner does not notify the District of his/her choice within this 120 days, then it will be conclusively presumed that the new well is the well he/she desires to retain.

Immediately after determining which well is retained for production, the other well shall be:

1) Properly equipped in such a manner that it cannot produce more than 25,000 gallons of water a day; or
2) Closed in accordance with applicable state law and regulation, pursuant to Section 756.002, Texas Health and Safety Code

3) Violation of such Article is made punishable by a fine as provided by law.

(f) In the event the application meets spacing and production requirements, and satisfies all requirements of these Rules, the Board or General Manager may grant such application without further notice.

(g) Emergency Authorization: Any person, who has a Permit or Certificate of Registration from the District to operate a well, may apply to the District for emergency authorization to drill and operate a replacement well as set forth below. The emergency must meet all of the following conditions:

(1) The "emergency" must present an imminent threat to the public health and safety or to an agricultural activity, must be explained to the satisfaction of the District and include any documentation requested by the District.

(2) Neither the emergency authorization nor an applicant for a permit to drill the well has been denied.

(3) A completed application as required by these Rules must be sent by telecopy or hand delivery within three (3) business days after notifications of the emergency conditions is given.

(4) All application fees must be paid within 7 days of the emergency notifications.

(5) Such other information as requested has been received by the District.
(6) The well must comply with all the other provisions for a replacement well as specified in Rule 12.1.

RULE 13. WELL LOCATION AND COMPLETION

13.1. DRILLING LOCATION OF PERMITTED WELL OR REGISTERED OIL AND GAS WELL

After an application for a well permit has been granted or a registration granted under District Rule 9.1(a)(2), the well, if drilled, must meet the spacing requirements specified in Rule 7 and be drilled within fifty (50) feet of the location specified in the permit or registration, and not elsewhere. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code. 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 this Rule and Rule 13.2 prescribing the location of wells and proper completion of the wells under Rule 13.3, 16 Texas Administrative Code Chapter 76 (Rules for Water Well Drillers and Water Well Pump Installers), and other applicable State laws and regulations.

13.2. LOCATION OF REGISTERED WELLS UNDER DISTRICT RULE 9.1(A)(1) & (3)

With regard to potential sources of contamination, wells registered with the District pursuant to District Rule 9.1(a)(1) and (3) shall be located in conformity with the Rules and regulations promulgated by the Texas Commission on Environmental Quality and the Texas Department of Licensing and Regulation, as applicable.

13.3. STANDARDS FOR WELL COMPLETIONS

(a) Water well drillers must indicate the method of completion performed on the Texas Department of Licensing and Registration Well Report form.

(b) All registered and permitted wells within the District must be completed in accordance with applicable State and local standards, to 16 Texas Administrative Code Chapter 76 (Rules for Water Well Drillers and Water Well Pump Installers) and 31 Texas Administrative Code Chapter 290 (TCEQ Water Hygiene Rules for Public Water Supply Systems).

(c) Any well within the District not completed in accordance with applicable State and local law is subject to enforcement under section 15.1.

13.4. STANDARDS FOR PREVENTION OF WASTE, CONTAMINATION, & COMMINGLING

(a) The well owner 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 and shall comply with the Water Well Drillers and Pump Installers Administrative Rules under *16 Texas Administrative Code, Chapter 76*.

(b) 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. The plugging of abandoned and/or deteriorated wells must comply with the Water Well Drillers and Pump Installers Administrative Rules under *16 Texas Administrative Code, Chapter 76*. The District may require a well plugging application prior to the well being plugged.

(c) The Board may direct the well owners and/or permit holders to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

13.5. REQUIREMENT OF DRILLERS LOG, PUMP DATA, AND WELL

DEVELOPMENT

(a) Records and Reports

Complete records shall be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled. Such records shall include an accurate driller's log, any electric log which shall have been made, and such additional data concerning the description of the well, its potential, hereinafter referred to as "maximum rate of production" and its actual equipment and rate of discharge permitted by said equipment as may be required by the Board. Such records shall be filed with the District Board within 60 days after completion of the well.

(b) State Well Report & Pump Installation Report

(1) Well drillers who drill, deepen, or alter any water well within the District shall comply with 16 Texas Administrative Code, Chapter 76.70, in completing and submitting a State of Texas Well Report. The regulation includes the requirement to deliver, transmit electronically, or send by first-class mail a copy of the State of Texas Well Report to the groundwater conservation district in which the well is located, if any. Every well driller shall also deliver, transmit electronically, or send by first-class mail a copy to the owner or person for whom the well was drilled, within sixty (60) days from the completion or cessation of drilling, deepening, or otherwise altering a well.

(2) Well drillers, pump installers, and/or well owners are required to submit a Pump Installation Report upon completion or cessation of drilling, deepening, or otherwise altering a well that accurately reflects the pump settings on the well. The Pump Installation Report shall be submitted by the well driller with the above-required State Well Report or within thirty (30) days of pump alteration to any groundwater well by driller, pump installer, or well owner and shall be completed on a District-approved form.

(c) Well Production

No person shall produce water from any well hereafter drilled and equipped within the District, except that necessary to the drilling and testing of such well and equipment, unless or until the District has been furnished an accurate driller's log, any electric log which shall have been made, and a registration of the well correctly furnishing all available information required on the forms furnished by the District.

(d) Well Development

Pursuant to District Rule 15, District employees or agents may inspect any well of new construction, repair, plugging, or enhancement;

(1) If determined a geophysical electric log (e-log) or down-hole camera inspection is needed to protect the groundwater resources, the District may perform or require an e-log or camera the well of interest.

(2) The District must be notified 24 hours in advance of drilling operations to occur.

(3) District staff may be onsite for any stage of well construction, plugging, repair, or enhancement.

(4) If determined by the District, the driller must notify the District in advance prior to setting casing of the well and sealing of the annular space for District onsite verification.

(5) If determined by the District, well development operations may be required to occur during regular District operation hours for District onsite verification.

RULE 14. HEARINGS

14.1. TYPES OF HEARINGS

The District conducts two general types of hearings: (1) hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after notice and an opportunity for an adjudicative hearing, and (2) rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. The District, however, may use its discretion to conduct a hearing on other relevant subject matters. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner, at the Board's discretion.

(a) Permit Hearings:

(1) 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 involving permit matters may be scheduled before the Board or a Hearing Examiner, at the Board's discretion. 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 under Rule 14.3. The Board may grant the application, in whole or in part, or refer the application to the Hearings Examiner for a hearing. If a Person requests a contested case hearing, the Board shall proceed under Rules 14.2-14.5.

(2) Hearings on Motions for Rehearing: Motions for Rehearing will be heard by the Board pursuant to Rule 14.4(o).

(b) Rulemaking Hearings:
District Management Plan: as required by Chapter 36 of the Texas Water Code, the Board will hold hearings to consider amendments to the District's Management Plan and District Rules pursuant to Rule 14.6.

(c) Other Matters:
A public hearing may be held on any matter within the jurisdiction of the Board if the

Board determines a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District.

14.2. NOTICE AND SCHEDULING OF PERMIT-RELATED HEARINGS

(a) The District shall promptly consider and act on each administratively complete application for a permit. If, within 60 days after the date an administratively complete application is submitted, the application has not been acted on or set for a hearing on a specific date, the applicant may petition the District court of 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, as appropriate.

Applications that are not administratively complete will be sent back to the applicant with a list of needed information. If the District does not receive an administratively complete application within 60 days of the District sending the incomplete application notice, then the District may consider the application expired. If an incomplete application expires, the applicant will be required to submit a new application and the deadlines under this Rule will begin again.

For applications requiring a hearing, the initial hearing shall be held within 35 days after the setting of the date, and the District shall act on the application within 60 days after the date the final hearing on the application is concluded. An administratively complete application requires information set forth in accordance with Sections 36.113, 36.1131, and these Rules.

(b) Notice of permit hearing.

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

(2) The notice must include:

(A) the name of the applicant;

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

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

(D) the time, date, and location of the public hearing; and

(E) any other information the general manager or board considers relevant and appropriate.

(3) Not later than the 10th day before the date of a hearing, the general manager or board shall:

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

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

(C) provide notice by:

(i) regular mail to the applicant;

(ii) regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (4); and

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

(4) A person may request notice from the District of a public hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a public hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(5) Failure to provide notice under Subsection (3)(c)(ii) does not invalidate an action taken by the District at the hearing.

(c) The General Manager may schedule as many applications at one hearing as the General Manager deems necessary. The District may require each person who participates in a public hearing to submit a hearing registration form stating:

(1) the person's name;

(2) the person's address; and

(3) whom the person represents, if the person is not there in the person's individual capacity. Hearings will be held in accordance with Section 14.

(d) Hearings may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. All permit hearings will be held at the District Office. However, the Board may from time to time change or schedule additional dates, times, and places for permit hearings by resolution 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 Board meeting.

(e) The District may assess fees to permit applicants for administrative acts of the District relating to a permit application. Fees set by the District may not unreasonably exceed

the cost to the District of performing the administrative function for which the fee is charged.

14.3. BOARD ACTION; CONTESTED CASE HEARING REQUEST; PRELIMINARY HEARING

(a) The board may take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The board may issue a written order to:

(1) grant the application;

(2) grant the application with special conditions; or

(3) deny the application.

(b) The board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted under Section 36.415. The preliminary hearing may be conducted by:

(1) a quorum of the board;

(2) 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

(3) the State Office of Administrative Hearings under Section 36.416.

(c) Following a preliminary hearing, the board 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 the board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the board may take any action authorized under Subsection (a).

(d) An applicant may, not later than the 20th day after the date the board issues an order granting the application, demand a contested case hearing if the order:

(1) includes special conditions that were not part of the application as finally submitted; or

(2) grants a maximum amount of groundwater production that is less than the amount requested in the application.

14.3.5 DETERMINATION OF CONTESTED STATUS OF PERMIT HEARINGS

(a) Written Notice of Intent to Contest. Any person who intends to protest a permit application and request a contested case hearing must provide written notice of the request to the District prior to the day of the public hearing and possible board action on the application.

(b) Participation in a Contested Permit Hearing. The Board or Hearing Examiner may limit participation in a hearing on a contested application to persons who have a

personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.

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

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

(e) Decision to Proceed as Uncontested or Contested Case. If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Board or Hearing Examiner determines these issues will require extensive discovery proceedings, the Board or Hearing Examiner will declare the case to be contested and convene a pre-hearing conference as set forth in Rule 14.4 and 14.5. The Board or Hearing Examiner may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions the Board or 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 Board or Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.

14.4. GENERAL PERMIT-RELATED HEARING PROCEDURES

(a) A hearing must be conducted by:

(1) a quorum of the board; or
(2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
(3) the State Office of Administrative Hearings under Section 36.416 of the Texas Water Code.

(b) Except as provided by Subsection (c), below, the board president or the hearings examiner shall serve as the presiding officer at the hearing.

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

(c-1) Hearings under the State Office of Administrative Hearings

(1) if the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code. The District may adopt rules for a hearing conducted under this section that are consistent with the procedural rules of the State Office of Administrative Hearings.

(2) If requested by the applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct the hearing. The applicant or other party must request the hearing before the State Office of Administrative Hearings not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The hearing must be held in Travis County or at the District office or regular meeting location of the Board, unless the Board provide for hearings to be held at a different location. The District shall choose the location.

(3) The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party. All other costs may be assessed as authorized by this chapter or District rules.

(4) An administrative law judge who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing, but the District deciding the case may not supervise the administrative law judge.

(5) The District shall provide the administrative law judge with a written statement of applicable rules or policies.
The District may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

(c-2) Final Decision; Contested Case Hearings.

(1) In a proceeding for a permit application or amendment in which the District has contracted with the State Office of Administrative Hearings for a contested case hearing, the board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge consistent with.

(2) A board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines:

(A) that the administrative law judge did not properly apply or interpret applicable law, District rules, written policies provided under Section 36.416(e), or prior administrative decisions;

(B) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(C) that a technical error in a finding of fact should be changed.

(d) The presiding officer may:

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

(2) set any necessary additional hearing dates;

(3) designate the parties regarding a contested application;

(4) establish the order for presentation of evidence;

(5) administer oaths to all persons presenting testimony;

(6) examine persons presenting testimony;

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

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

(9) exercise the procedural rules adopted herein; and

(10) determine how to apportion among the parties the costs related to:

(A) a contract for the services of a presiding officer; and
(B) the preparation of the official hearing record.

(e) The District may allow any person registered to speak, including the general manager or a District employee, to provide comments at a hearing on an uncontested application, consisted with these Rules.

(f) The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

(g) If the board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the

10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.

(h) The District may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before the Board takes final actions on a permit application that:

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

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

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

(i) Hearing Registration. The District may require each person who participates in a hearing to submit a hearing registration form stating:

(1) the person's name;

(2) the person's address; and

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

(j) Evidence.

(1) The presiding officer shall admit evidence that is relevant to an issue at the hearing.

(2) The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(k) Recording.

(1) Except as provided by Subsection (b), the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this

subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

(2) If a hearing is uncontested, the presiding officer may substitute minutes or its Report under subsection (m), below, for a method of recording the hearing.

(l) Continuance.

The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 14.2(b). If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.

(m) Proposal for Decision.

(1) Except as provided by Subsection (m)(5), below, the presiding officer shall submit a report to the board not later than the 30th day after the date the evidentiary hearing is concluded.

(2) The proposal for decision must include:

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

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

(C) the presiding officer's recommendations for board action on the subject matter of the hearing.

(3) The presiding officer or general manager shall provide a copy of the proposal for decision to:

(A) the applicant; and

(B) each designated party.

(4) A party may submit to the board written exceptions to the proposal for decision.

(5) If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing as provided by Subsection (k)(1), herein, the presiding officer shall determine whether to prepare and submit a report to the board under this section.

(6) The board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued under subsection (l).

(n) Board Action.

The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded. In deciding whether or not to issue a drilling permit, operating permit, and/or transport permit, and in setting the terms of the permit, the Board will consider the Water Code Ch. 36, the District Act, the District's Rules Certified Management Plan, whether the application is accompanied by prescribed fees, and all other relevant factors.

(o) Requests for Rehearing and or Finding and Conclusions.

(1) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings and conclusions not later than the 20th day after the date of the board's decision.

(2) On receipt of a timely written request, the board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35th day after the date the board receives the request. A party to a contested hearing may request a rehearing not later than the 20th day after the date the board issues the findings and conclusions.

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

(4) If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.

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

(p) Decision; When Final.

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

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

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

(i) the board denies the request for rehearing; or

(ii) the board renders a written decision after rehearing.

(2) Except as provided by Subsection (3), below, an applicant or a party to a contested hearing may file a suit against the District under Section 36.251 of the Texas Water Code to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.

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

(q) Consolidated Hearing on Applications.

(1) Except as provided by Subsection (2), below, the District shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the District requires a separate permit or permit amendment application for:

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

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

(C) transferring groundwater out of the District under Section 36.122, Texas Water Code;.

(2) The District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.

(r) Hearings Conducted by State Office of Administrative Hearings.

If the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.

(s) Alternative Dispute Resolution.

The District use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

14.5. ADDITIONAL CONTESTED PERMIT HEARINGS PROCEDURES

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

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

(A) the designation of parties;
(B) the formulation and simplification of issues;
(C) the necessity or desirability of amending applications or other pleadings;
(D) the possibility of making admissions or stipulations;
(E) the scheduling of discovery;
(F) the identification of and specification of the number of witnesses;
(G) the filing and exchange of prepared testimony and exhibits; and
(H) the procedure at the hearing.

(2) Notice. A pre-hearing conference may be held at a date, time, and place stated in a separate notice, and may be continued from time to time and place to place, at the discretion of the Board or Hearing Examiner.

(b) Designation of Parties. Parties to a hearing will be designated on the first day of hearing or at such other time as the Board or Hearing Examiner determines. General Manager 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. The Board or Hearing Examiner may limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Board or Hearing Examiner, there exists good cause and the hearing will not be unreasonably delayed.

(c) Rights of Designated Parties. Subject to the direction and orders of the Board or 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.

(d) Persons Not Designated Parties. At the discretion of the Board or 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 Board or Hearing Examiner as evidence.

(e) Furnishing Copies of Pleadings. After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or 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.

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

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

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

(i) Discovery Sanctions. If the Board or Hearing Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Board or Hearing Examiner may:

(1) suspend processing of the application for a permit if the applicant is the offending party;

(2) disallow any further discovery of any kind or a particular kind by the offending party;

(3) rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;

(4) limit the offending party's participation in the proceeding;

(5) disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and

(6) recommend to the Board that the hearing be dismissed with or without prejudice.

(j) Ex Parte Communications. The Board and the Hearing Examiner, if appointed, may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or representative, except with 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.

(k) Compelling Testimony; Swearing Witnesses and Subpoena Power. The Board or Hearing Examiner may compel the testimony of any person that is necessary, helpful, or appropriate to the hearing. The Board or 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 Board or 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.

(l) 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.

(m) 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.

(n) 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.

(o) Abstracts of Documents. When documents are numerous, the Board or Hearing Examiner may receive in evidence only those that are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

(p) Introduction and Copies of Exhibits. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Board or Hearing Examiner and to each of the parties, unless the Board or Hearing Examiner Rules otherwise.

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

(r) Official Notice. The Board or 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.

(s) 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.

(t) Oral Argument. At the discretion of the Board or Hearing Examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Board or Hearing Examiner may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, further oral arguments may be heard by the Board.

14.6. RULEMAKING HEARING PROCEDURES

(a) General Procedures for amending District Rules. The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time. The presiding officer will conduct the rulemaking hearing in the manner the presiding officer determines most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The presiding officer may follow the guidelines of "Robert's Rules of Order," 10th Edition, General Henry M. Robert, 2000 Revised Edition, or as amended.

(b) Notice of a Rulemaking Hearing.

(1) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:

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

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

(C) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located;

(D) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (6), below; and

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

(2) The notice provided under Subsection (1), above, must include:

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

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

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

(3) The presiding officer shall conduct a rulemaking hearing in the manner the

presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.

(4) The District may require each person who participates in a rulemaking hearing to submit a hearing registration form stating:

(A) the person's name;

(B) the person's address; and

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

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

(6) A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(7) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the District about contemplated rules.

(8) Failure to provide notice under Subsection (b)(1)(D), above, does not invalidate an action taken by the District at a rulemaking hearing.

(c) Emergency Rules.

(1) A board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

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

(B) prepares a written statement of the reasons for its finding under Subdivision (a), above.

(2) Except as provided by Subsection (3), herein, a rule adopted under this section

may not be effective for longer than 90 days.

(3) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

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

(d) 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 14.1(b)(3); provided, however, that the presiding officer may grant additional time for the submission of documents.

(e) 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.

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

(g) Exceptions to the Hearing Examiner's Report; Reopening the Record. Any interested person may make exceptions to the Hearing Examiner's report, and the Board may reopen the record, in the manner prescribed in Rule 14.6(b).

(h) Decision; Appeal regarding District Rules.

(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. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.

(2) Requests for Rehearing. Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within twenty (20) calendar days of

the Board's decision. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within forty-five (45) calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within ninety (90) calendar days of submission will be deemed to be a denial of the request.

RULE 15. INVESTIGATIONS AND ENFORCEMENT

15.1. NOTICE AND ACCESS TO PROPERTY

Board Members and District agents, engineers, attorneys, operators, and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District agents, engineers, attorneys, operators, and employees who are attempting to conduct an investigation under the District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code Chapter 36.102.

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. The District employees or agents may inspect any well to insure compliance with District Rules.

15.3. RULE ENFORCEMENT

If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Act, Water Code Chapter 36, District permit, District Rules, the Board of Directors may assess a civil penalty or file for an injunction or other appropriate remedy in a court of competent jurisdiction, as authorized by Chapter 36.102 of the Texas Water Code. The General Manager has the authority to require remediation of well construction that violates District and/or TDLR rules within a designated time period, no more than six months, or require plugging or capping of the well, if the well construction is not appropriately remediated. The District may prohibit the drilling of any new wells in the

District by a well driller or owner until pending enforcement actions on the well driller or owner are addressed and satisfied.

15.3.5 ABANDONED OR DETERIORATED WELL

A well identified as an abandoned or deteriorated well, or a borehole, must be plugged, capped or re-completed in accordance with the requirements of the District and of any statewide law, agency or political subdivision having jurisdiction including, but not limited to, the Texas Water Well Drillers Act, and the Texas Commission on Environmental Quality.

(a) The District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must remain capped until such time as the conditions that led to the capping requirement are eliminated. If well pump equipment is removed from a well and the well will be re-equipped at a later date, the well must be capped, provided however that the casing is not in a deteriorated condition that would permit co-mingling of water strata, in which case the well must be plugged. The cap must be capable of sustaining a weight of at least four hundred (400) pounds and must be constructed with a water tight seal to prevent entrance of surface pollutants into the well itself, either through the well bore or well casing.

(b) A deteriorated or abandoned well must be plugged in accordance with the Texas Department of License and Regulation, Water Well Drillers and Pump Installers Rules (16 TAC Chapter 76). It is the responsibility of the landowner to see that such a well is plugged to prevent pollution of the underground water and to prevent injury to persons and animals. Registration of the well is required prior to, or in conjunction with, well plugging.

(1) When an open or uncovered, deteriorated, or abandoned well is found by District personnel or brought to the District's attention by a constituent, a letter will be sent to the owner of the property upon which the open or uncovered, deteriorated, or abandoned well exists, notifying the property owner of his responsibility to cap or plug the well. The property owner will also be provided with an information brochure on the proper closing of abandoned wells.

(2) The property owner will be notified in the letter that the District may contribute up to 50% of the cost of the capping or plugging of the open or uncovered, deteriorated, or abandoned well, not to exceed $300 contribution by the District per well, on a first come – first served basis, as long as money remains in the budget for that purpose. If the well owner plugs or caps his own well, he may be reimbursed up to 50% of his out of pocket expenses, not to exceed $300 contribution by the District per well, on a first come – first served basis, as long as money remains in the budget for that purpose, and provided he can supply sufficient written evidence of payment of those expenses. District contributions and reimbursements do not apply to wells exempt under 9.1(a)(2-3). **Lack of District funds does not preclude the landowner's responsibility, both under the State of Texas' Water Well Drillers and Pump Installers Rules and the District's Rules, to cap or plug the open or uncovered, deteriorated, or**

abandoned well. Water wells used for oil and gas operations are required to comply with District Rule 9.2.5. A driller who knows of an abandoned or deteriorated well shall notify the District and the landowner or person who possesses the well that the well must be plugged or capped to avoid injury or pollution.

(3) Not later than the 180th day after the date a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person shall have the well plugged or capped under standards and procedures adopted by the commission. The District may require the well to be plugged prior to 180 days if it presents a dangerous situation to the aquifer or to human safety.

15.4. SEALING OF WELL

(a) Following due-process, the District may, upon orders from the judge of the courts, seal wells that are prohibited from withdrawing groundwater within the District by the District Rules to ensure that a well is not operated in violation of the District Rules. A well may be sealed when:

(1) no application has been granted for a permit to drill a new water well which is not excluded or exempted from obtaining a permit; or

(2) no application has been granted for an operating permit to withdraw groundwater from an existing well that is not exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or

(3) the Board has denied, canceled, or revoked a drilling permit or an operating permit.

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

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

15.5. CIVIL PENALTIES

(a) The District may enforce Chapter 36 of the Texas Water Code and its Rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) The Board by rule may set reasonable civil penalties for breach of any Rule of the District not to exceed $10,000 per day per violation, and each day of a continuing violation constitutes a separate violation. All civil penalties recovered by the District shall be paid to the Rusk County Groundwater Conservation District.

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

(d) If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court, pursuant to §36.066, Texas Water Code. The amount of the attorney's fees shall be fixed by the court.

15.6. FAILURE TO REPORT PUMPAGE AND/OR TRANSPORTED VOLUMES

The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources. Failure of the permittee to submit complete, accurate, and timely pumpage, transport and water quality reports, as required by District Rule, may result in late payment fees, forfeiture of the permit, or payment of increased meter reading and inspection fees as a result of District inspections to obtain current and accurate pumpage and/or transported volumes and water quality reports.

15.7. EMERGENCY ORDERS

The District may develop Emergency Contingency Plans to deal with water quality or water quantity emergencies. Public hearings on Emergency Contingency Plans shall be conducted by the Board prior to adoption. To implement Emergency Contingency Plans, the Board, or the General Manager if specifically authorized by an Emergency Contingency Plan, may adopt emergency orders of either a mandatory or prohibitory nature, requiring remedial action by a permittee or other party responsible for the emergency condition.