

BEE
GROUNDWATER
CONSERVATION
DISTRICT
RULES

AMENDED
OCTOBER 18, 2012

**BEE GROUNDWATER CONSERVATION DISTRICT
RULES OF THE DISTRICT**

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RULE 1 DEFINITIONS

Definitions of Terms: In the administration of its duties, the Bee Groundwater Conservation District follows the definitions of terms set forth in Chapter 36, Water Code, and other definitions as follows:

"Agriculture" means any of the following activities:

- (1) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (2) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
- (3) 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;
- (4) 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;
- (5) wildlife management; and
- (6) raising or keeping equine animals.

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

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

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

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"Authorized Well Site" means:

- (1) The location of a proposed well on an application duly filed until such application is denied; or
- (2) The location of a proposed well on a valid permit. An authorized well site does not act as a permit to drill.

"Available Groundwater" means the allocation provided by the Texas Water Development Board based on the desired future condition adopted for groundwater management areas 15 and 16.

"Beneficial Use" or **"Beneficial Purpose"** means using groundwater for:

- (1) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational or pleasure purposes;
- (2) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
- (3) any other nonwasteful purpose that is economically necessary for a purpose authorized by law.

"Board" means the Board of Directors of the Bee Groundwater Conservation District.

"Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, Water Code, of the desired condition of the groundwater resources in a management area at one or more specified future times as adopted by Groundwater Management Areas 15 and 16.

"District" means the Bee Groundwater Conservation District, maintaining its principal office in Beeville, Texas. Where applications, reports and other papers are required to be filed with or sent to **"the District"**, this means the District headquarters in Beeville, Texas.

"Exploratory Hole" means any hole drilled to a depth below the top of any stratum containing groundwater for the purpose of testing well capacity, water quantity and water

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quality. An excavation ceases to be an exploratory hole and becomes a well that may require a permit if any pumping occurs after the well is completed with casing and a pump, or if production occurs in excess of an amount to complete the tests listed above.

"Groundwater" means water percolating below the surface.

"Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries and containing groundwater.

"Irrigation" means the artificial application of water to land to assist in the production of crops.

"Modeled Available Groundwater" or **"MAG"** means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve the adopted desired future condition.

"Open or Uncovered Well" means any artificial excavation drilled or dug for the purpose of exploring for or producing water from an underground reservoir, if that well is not capped, covered or plugged as required by these rules.

"Owner" means any person, firm, partnership or corporation that has the right to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.

"Person" means any individual, partnership, firm, corporation, organization, government, agency, business trust, estate, trust, association or any other legal entity.

"Party" means any person, whether as an owner, lessor, lessee, tenant or operator, who operates a water well within the boundaries of the District, or who is or may be affected by either granting or denying an application. The following persons shall be automatically designated parties in any contested case:

- (1) the General Manager of the District;
- (2) the applicant;

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- (3) any other person who timely files an objection to an application; and
- (4) any other person designated by the Board or Presiding Officer at a contested case hearing.

"Plugging" means sealing a well bore by any method that meets the requirements of these rules.

"Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or any water in the District that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful purpose.

"Undesirable Water" means water that is injurious to vegetation, to land, or to fresh water, or water that can cause pollution.

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

- (1) 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;
- (2) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose or in an amount in excess of the amount reasonably needed for that beneficial purpose;
- (3) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
- (4) 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;
- (5) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake,

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reservoir, drain, sewer, street, highway, road or road ditch, or onto any land other than that of the owner unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality under Chapter 26, Water Code;

- (6) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or
- (7) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Water Code.

"**Water**" means groundwater.

"**Well**" or "**Water Well**" means any artificial excavation constructed, fitted or equipped to produce groundwater.

RULE 2 WASTE PROHIBITED

Wasting water is prohibited. Any person producing or using groundwater shall use every possible precaution, in accordance with the latest approved methods, to stop and prevent wasting water.

Polluting water or allowing water to be polluted is prohibited.

Transporting water for a distance greater than 1/4 mile in an open ditch, canal or other man-made water course is per se wasteful and prohibited.

RULE 3 WELL REGISTRATION

Registration is required for all exploratory holes and wells in the District, and shall be filed with the District on a form and in a manner required by the District.

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RULE 4 FEES AND DEPOSITS

Each application for a permit to drill a well must be accompanied by an application fee and a deposit. The amount of the application fee and deposit shall be set by the Board.

RULE 5 PERMIT REQUIRED

A permit is required prior to drilling or operating a well, or increasing the size or capacity of a well such that the well is capable of producing in excess of 27.78 gallons per minute.

Applications for permits to drill or operate a well must be filed at the office of the District in Beeville, Texas. An application shall be considered administratively complete if it includes all required information; is signed; is accompanied by payment of all applicable fees, including any penalties or past due fees; and includes any maps, documents, or supplementary information requested by the Rules, the Board or the staff. A determination of administrative completeness will be made by the General Manager.

The District will not take action on an application that is not administratively complete or has not proceeded in a manner consistent with District Rules. An application may be rejected as not administratively complete if the District finds that substantive information required by the application or District staff is missing, false, or incorrect. Incomplete applications will be returned to the applicant with a list of deficiencies and may be reconsidered once the deficiencies are corrected.

The General Manager shall publish a Notice of Application in a paper of general circulation within the District for each administratively complete application stating the name of the applicant, the location of the well and the requested production amount.

If no protest is filed within ten (10) days of publication of the notice of application, the General Manager may issue the permit without action by the Board. The board of directors will approve or deny the application at a meeting

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of the Board of Directors following notice and hearing, if a hearing is required.

If a protest is timely filed the Board shall conduct a pre-hearing conference in accordance with Rule 19.

A protest shall be deemed filed when written notification is filed with the Board. The protest must include evidence as to why the particular application should be denied, including evidence as to the effect on the water reservoir, the conservation and preservation of water, the prevention of waste, the protection of property rights, and other pertinent matters, which evidence shall be taken into consideration by the Board. A protest must be verified by an affidavit. A protest must be served on the applicant at or before the time the protest is filed with the district. The protest must include a certificate of service indicating the date and manner of service and the name and address of all persons served. If a person is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

Where there are competing applications, the Board shall also take into consideration which of the applicants filed an application first.

On approval of an application, the District shall issue a permit to the applicant. The permittee's right to produce shall be limited to the extent and purposes stated in the permit. Production permits shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed. A permit shall not be transferable except when an application has been made to amend the permit to change the name of the permittee. The General Manager may grant such an amendment without notice, hearing, or further action by the Board.

RULE 6 ISSUANCE OF PERMITS

- (a) The board may issue the following types of permits:
 - (1) **Drilling Permit**, which allows drilling a new well, expanding an existing well, re-drilling or re-equipping an existing well, or plugging a well;

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- (2) **Production Permit**, which allows water to be withdrawn from a well;
- (3) **Transportation Permit**, which allows groundwater to transported outside the boundaries of the District.

The Board shall issue or cause to be issued a drilling permit for a well upon proper application executed and filed by the owner if that application meets all the requirements of these rules. An application shall be considered filed if it is administratively complete and accompanied by the required deposit.

Applications must be on forms provided by the District, in writing and prepared in accordance with and contain the information called for on the form of application. The application will be considered administratively complete if it is properly completed following all instructions issued by the Board with respect to the filing of an application. Administratively incomplete applications will not be considered.

(b) Rules for the filing of applications:

- (1) If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent. The agent must present Power of Attorney as authority to represent the applicant.
- (2) If the application is by a partnership, the applicant must be designated by the firm name followed by the words "a Partnership" and the application must be signed by at least one of the general partners duly authorized to bind all of the partners.
- (3) In the case of a corporation, government agency, county, municipality or any other body politic and corporate, the application shall be signed by a duly authorized official. A copy of the resolution or other authorization to make the application may be.

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- (4) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.

(c) Applications must set forth the following:

- (1) the name and address of the fee owner of the land upon which the well is to be drilled or the well is located;
- (2) a map showing the proposed location of the well to be drilled as provided in the application including the County, the section, block, survey and township; labor and league; and exact number of yards to the nearest nonparallel property lines; or other adequate legal description;
- (3) the proposed use of the well, whether municipal, industrial, irrigation, agricultural or other;
- (4) the size of the pump;
- (5) the approximate date drilling or operation is to begin;
- (6) the location of all wells within a quarter mile on the proposed location, if any;
- (7) an agreement by the applicant that a complete well registration and log will be furnished to the District (on forms furnished by the District) upon completion of this well and prior to producing any water (except for such production as may be necessary to the drilling and testing of the well);
- (8) any additional data as may be required by the Board and included on the form; and
- (9) a water conservation plan and a declaration that the applicant will comply with the district's management plan.

(d) In determining whether to issue a permit, and in setting the terms and provisions of the permit including the maximum authorized withdrawal, the District shall consider the purposes of the District

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and all other relevant factors, including, but not limited to:

- (1) the amount and purposes of use for which water is needed;
- (2) whether the proposed use of water is dedicated to a beneficial, non-wasteful use and whether the applicant has direct evidence that the groundwater will be put to a beneficial use by providing either:
 - (i) a statement of the beneficial use by the applicant or,
 - (ii) if the final user is a person other than the applicant, a contract with the final user;
- (3) whether the proposed use of water is consistent with the District's certified groundwater management plan and any applicable spacing requirements, production limits, and drought restrictions;
- (4) the projected effect of the proposed use on aquifer conditions, including depletion, subsidence, spring flow, impacts on groundwater quality, or effects on existing permit holders or other groundwater users within the District;
- (5) whether the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
- (6) whether 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;
- (7) whether the applicant has agreed to avoid waste and achieve water conservation; and
- (8) whether the applicant is in compliance with all applicable District rules and is current with all fees due and payable to the District.

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- (e) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:
 - (1) the modeled available groundwater determined by the executive administrator;
 - (2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117, Water Code;
 - (3) the amount of groundwater authorized under permits previously issued by the district;
 - (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
 - (5) yearly precipitation and production patterns.

- (f) Historical User status.
 - (1) An owner or operator of an existing, well that was completed and operational prior to the date this rule is adopted may request historical user status by indicating the request on a permit application for the well and including the information listed in Subsection (2) of this subsection along with any applicable fee.
 - (2) A request for historical user status must be filed no later than six months after this rule is adopted. The application must include the following information to the extent the information exists and is available to the applicant through the exercise of reasonably diligent efforts:
 - (i) the year in which the well was drilled;
 - (ii) the purpose for which the well was drilled and the types of subsequent use of the groundwater;
 - (iii) all the information required on an application for a production permit; and

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- (iv) any other information deemed necessary by the Board.
- (3) Well owners or operators who meet the requirements of this section and submit the appropriate information with their permit application will be granted historical user status and classified as historical users.
- (4) If the District adopts rules limiting groundwater production, the District may preserve groundwater use by historical users to the maximum extent practicable.
- (g) Historical user status is granted conditionally and is dependent on the specific owner, amount of production, place of use and purpose of use. Historical user status is not a vested right of the permittee and may not be transferred by the permittee. The Board will transfer a historical user status designation to a replacement well or to a person who purchases or otherwise receives ownership of a well owned by a historical user provided that the new owner or operator does not exceed the historic withdrawal amount and maintains the same purpose of use and place of use. Historical user status may be revoked by the Board for violation of any terms or conditions of the permit, obtaining the permit by misrepresentation or failure to disclose relevant facts, or failure to comply with any applicable rules, regulations, fee schedule, special provisions, requirements or orders of the District. The District reserves the right to amend this section to expand the historical user classification to include additional permittees based on the hydrogeological conditions of the aquifer and other data and information collected by the District.
- (h) Hydrogeological Assessment and Aquifer Test Report.
 - (1) The following permit applications shall be accompanied by a current hydrogeological assessment of the projected effects of the requested groundwater use and an aquifer test report:

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- (i) An application for a new well or an amendment for an existing well that involves the production of more than 1000 acre-feet of groundwater annually; and
 - (ii) An application for a new well or an amendment for an existing well that will be aggregated by the District with other new or existing wells that involves the aggregate production of more than 1000 acre-feet of groundwater annually.
- (2) The hydrogeological assessment must address the area of influence, drawdown, projected subsidence and other pertinent information required by the District. The assessment must address the ultimate planned use of the well and the impacts of that use. The assessment shall be prepared by a Professional Geoscientist. The assessment shall include hydrogeologic information addressing and specifically related to the proposed water pumpage levels at the proposed pumpage site. Applicants may not rely solely on assessments or reports previously filed with or prepared by the District. The Board shall make the final determination of whether a hydrogeological assessment meets the requirements of this subsection. An application will not be considered administratively complete unless the assessment is approved by the Board.
- (3) An aquifer test report must be submitted within 60 days of the date the well construction is completed. The well must be equipped for the test to produce water at a rate similar to its ultimate planned use, and the report must address the impacts of that use including the area of influence, drawdown, recovery time, and other pertinent information required by the District. The report must address the ultimate planned use of the well and the impacts of that use. The report shall be prepared by a Professional Geoscientist. Applications may not rely solely on studies or reports previously filed with or prepared by the District. The Board shall make the final determination of whether an aquifer test report meets the requirements of the

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subsection. Failure to submit an aquifer test report is a violation of these Rules and shall be grounds for cancellation of the permit.

- (4) The Board may add special provisions requiring the permittee to install monitoring wells or limit production to a level that will not cause unreasonable off-site impacts. "Unreasonable off-site impacts" include significant, sustained aquifer drawdown that may impact neighboring wells, result in subsidence, or cause significant impact on stream flows.
- (5) The requirements of this subsection do not apply to a permit application for a replacement well.

**RULE 7 REQUIREMENTS OF DRILLER'S LOG, CASING
AND PUMP DATA**

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 made and any additional data concerning the description of the well, its maximum rate of production. Drilling records must be filed with the District within 90 days after completion of the well.

A well log and well registration form must be provided to the District prior to any production from the well except for production necessary to drilling, completing and testing the well.

RULE 8 PERMIT TERMS AND RENEWAL

- (a) **Drilling Permits.** A drilling permit shall be valid for 180 days.
- (b) **Production Permits.** Production permits shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed. The General Manager may renew a production permit for the same amount of withdrawal, point of withdrawal, place of use, and purpose of use without hearing or notice except that upon renewal, production permits shall be subject to

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any new criteria or pumping limitations established by these rules.

- (c) **Transportation Permits.** Transportation permits shall be valid for three (3) years from the date of issuance if construction of the conveyance system has not been initiated prior to the issuance of the permit. Transportation permits shall be valid for thirty (30) years if construction of the conveyance system has been initiated prior to issuance of the permit or if construction of the conveyance system begins during the term of the initial 3 year permit.

RULE 9 PERMIT AMENDMENTS

Permits may be amended by filing an amendment application with the board. Amendments shall be granted or denied following the same procedure and requirements of an original application.

RULE 10 WELL LOCATION AND COMPLETION

After an application for a well permit has been granted, the well, if drilled, must be drilled within **thirty (30) feet** of the location specified in the permit. 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.

All well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of this Rule prescribing the location of wells and proper completion.

Wells may not be drilled within one hundred (100) feet of any property line. In addition, wells must be located so that the distance to any other existing well is at least one foot for each gallon-per-minute of production capacity of the new well. If the capacity of the well exceeds one-thousand (1000) gallons-per-minute then the minimum spacing distance must be an additional one-half (1/2) foot for each gallon-per-minute in excess of one-thousand.

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EXAMPLES:

500 gallons per minute=500 feet
750 gallons per minute=750 feet
1000 gallons per minute=1000 feet
1250 gallons per minute=1375 feet
1500 gallons per minute=1750 feet
1750 gallons per minute=2125 feet

Any well capacity greater than 1750 gallons per minute must be located at least one-half mile from the nearest property line and one-mile from the nearest well.

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

RULE 11 PRODUCTION LIMITATIONS

- (a) A well or well system may only be permitted to be drilled and equipped for production of a cumulative total of ten (10) gallons per minute per contiguous acre owned or operated.
- (b) In no event may a well or well system be operated such that the total annual production exceeds one (1) acre foot of water per acre owned or operated. The maximum capacity of any new well shall be 640 acre feet per year.
- (c) All production permits are issued subject to future changes to these rules mandated by a determination by the Texas Water Development Board setting the modeled available groundwater in the District. Under no circumstances may the aggregate total of all production permits exceed the modeled available groundwater in the District.

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RULE 12 EXCEPTIONS TO SPACING AND PRODUCTION RULES

In order to protect rights of owners of interests in groundwater or to prevent waste, the Board may grant exceptions to the above spacing and production limitation rules. This rule may not be construed to limit the power of the Board, and the powers stated are cumulative of all other powers possessed by the Board.

Application for an exception to the spacing or production limitation rule must be submitted in writing to the District office on forms furnished by the District. The application must be accompanied by a plat or sketch, drawn to scale of one (1) inch equaling two thousand (2000) feet. The plat or sketch must show thereon the property lines of the lot where the well is located the location of any wells within one-half (1/2) mile of the well location. The application must also contain the names and addresses of all property owners adjoining the tract on which the well is located, and the owners of the wells within one-half (1/2) mile of the well location. The application and plat must be attested to by some person actually acquainted with the facts who subscribe and swear or affirm under oath before any person entitled to administer oaths, who must also sign and apply the seal of office to the attestation, that all the facts set out in the application are true and correct.

The hearing notice shall state that the application does not meet spacing requirements of the District, and an exception is requested by the applicant.

RULE 13 REWORKING OR REPLACING OF WELL

A permit is not required to rework, redrill, or replace an existing well in a manner that will not change the existing well.

A permit is required to replace a well, or to rework, redrill, or reequip a well in a manner that would increase the rate of production of the well to a rate of production greater than 27.78 gallons per minute.

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RULE 14 EXEMPTIONS; EXCEPTION; LIMITATIONS

- (a) A well drilled, completed, or equipped so that it is incapable of producing more than 27.78 gallons per minute is exempt from the requirement to obtain a drilling or production permit.

- (b) Except as provided by this section, a well owner is exempt from the requirement to obtain a permit for:
 - (1) drilling 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 water well is located on the same lease or field associated with the drilling rig; or

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

- (c) A previously granted exemption will be canceled and a well owner is required to obtain an operating permit if:
 - (1) the groundwater withdrawals that were exempted under Subsection (b)(1) are 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

 - (2) the groundwater withdrawals that were exempted under Subsection (b)(2) 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.

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- (d) An entity holding a 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:
 - (1) the total amount of water withdrawn during the month;
 - (2) the quantity of water necessary for mining activities; and
 - (3) the quantity of water withdrawn for other purposes.
- (e) All wells, including those exempt from the requirement to obtain a drilling permit except those exempted under Subsection (b)(2), must be drilled in compliance with the district's well spacing rules.
- (f) The district may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the district.
- (g) As required by Section 36.117(h), Water Code, a well owner is required to:
 - (1) register the well; and
 - (2) equip and maintain the well to conform to the district's rules 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.
- (h) The driller of a well shall file with the district the well log required by Section 1901.251, Occupations Code, and, if available, the geophysical log.
- (i) An exemption provided under Subsection (a) 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.

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- (j) Groundwater withdrawn under an exemption provided in accordance with this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees.

RULE 15 REPEALED

RULE 16 RIGHT TO INSPECT AND TEST WELLS

Upon approval by well owner, any authorized officer, employee, agent, or representative of the District shall have the right at all reasonable times to enter upon the lands where a well or wells may be located within the boundaries of the District. District staff may inspect any well or wells on the property, and may read any meter, weir box or other instrument for the purpose of measuring production of water from any well or wells on the property. District staff may take any necessary action to determine the pumping capacity of any well or wells on the property.

Any authorized officer, employee, agent, or representative of the District shall have the right at reasonable times to enter upon any land upon which a well or wells may be located within the boundaries of the District for the purposes of testing the pump and the power unit of the well or wells, or making any other reasonable and necessary inspections and tests that may be required or necessary for enforcement of these rules.

RULE 17 REPEALED

RULE 18 OPEN WELLS TO BE CAPPED

Abandoned wells must be permanently plugged. It shall be the responsibility of the land owner to ensure every abandoned well on that person's property is properly plugged. Officers, agents and employees of the District are authorized to serve or cause to be served written notice upon any owner or operator of a well in violation of this rule, thereby requesting such owner or operator to permanently plug the well. In the event any owner or operator fails to comply within ten (10) days, any officer,

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agent or employee of the District may any abandoned well in a manner complying with this rule, and all expenditures incurred shall constitute a lien upon the land where the well is located.

RULE 19 RULES GOVERNING CONTESTED CASE HEARINGS

(a) **Applicability.** Contested case hearings may be requested in connection with the following applications:

- (1) drilling permits;
- (2) production permits;
- (3) transportation permits; and
- (4) amendment to any existing permit.

(b) **Pre-hearing Conference.** The Board will process a protest against an application by first determining if the protestant is entitled to a contested case hearing. Persons have a personal justiciable interest in and are entitled to a contested case hearing on applicable applications if that person owns a registered or permitted well that may be adversely impacted if the protested application is granted. A pre-hearing conference may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process.

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

- (1) designation of parties;
- (2) consolidation of other applications pertinent to this application or hearing;
- (3) additional formulation and simplification of issues;
- (4) referral of parties to an alternative dispute resolution procedure;

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- (5) the necessity or desirability of amending applications or other pleadings;
 - (6) possibility of making admissions or stipulations;
 - (7) establishing a Discovery Control Plan;
 - (8) identifying and specifying of the number of witnesses;
 - (9) filing and exchange of prepared testimony and exhibits; and
 - (10) establishing procedure at the hearing.
- (c) **Notice.** A pre-hearing conference may be held at a date, time, and place stated in the notice provided to those persons entitled to notice and may be continued from time to time and place to place, at the discretion of the presiding officer.
- (1) After a hearing request is timely filed the District staff will schedule a preliminary hearing to consider the request.
 - (2) At least 20 days prior to the preliminary hearing the District staff will provide notice to the applicant, general manager and any persons who timely filed a hearing request.
 - (3) Affected persons may submit a written response to the hearing request no later than 10 days before a Board meeting at which the Board will evaluate that request. Responses must be filed with the District and served on the general manager, the applicant and any other persons who timely filed a hearing request in connection with that matter.
 - (4) The person requesting a hearing may submit a written reply to a response no later than 5 days before the scheduled Board meeting at which the Board will evaluate the hearing request. All replies shall be filed with the District and served on the same day on the general manager, the applicant, and any other person who timely filed a hearing request.

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- (5) The Board may refer the hearing request to SOAH instead of scheduling the hearing before the Board. Following the hearing, SOAH will provide a proposal for decision to the Board of Directors for action by the Board.

(d) Action by Board.

- (1) The determination of whether a hearing request should be granted is not a contested case hearing.
- (2) The Board will evaluate the hearing request at a scheduled Board meeting and may determine that the person requesting the hearing:
 - (i) does not have a personal justiciable interest related to the application and deny the hearing request; or
 - (ii) has a personal justiciable interest relating to the application and schedule the application to a contested case hearing.
- (3) If the Board grants the request for a contested case hearing, the Board shall assign a Hearings examiner or delegate the matter to SOAH. The Hearings examiner shall:
 - (i) schedule a preliminary hearing;
 - (ii) at least 21 days after the preliminary hearing, schedule an evidentiary hearing; and
 - (iii) following the evidentiary hearing, prepare a proposal for decision including proposed findings of fact and conclusions of law, and transmit that proposal to the Board.
- (4) The Board shall schedule a final hearing where it will consider the evidence and testimony presented during the evidentiary hearing and the hearings examiner's proposal for decision.

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- (5) Following the final hearing, the Board may:
- (i) grant the application;
 - (ii) grant the application with conditions; or
 - (iii) deny the application.

(e) **Delegation to SOAH.**

- (1) By order, the Board may delegate to SOAH the authority to conduct hearings designated by the Board.
- (2) If the Board refers a contested case hearing to SOAH, then the applicable rules of practice and procedure of SOAH (1 TEX. ADMIN. CODE Ch. 155) govern any contested case hearing of the District, as supplemented by this subchapter.
- (3) If the Board refers a contested case hearing to SOAH, the administrative law judge who conducts the contested case hearing shall serve as the hearings examiner and consider applicable District rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.
- (4) If the Board refers a contested case hearing to SOAH, the District may not attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.
- (5) If requested by the applicant or other party to a contested case, a district shall contract with the State Office of Administrative Hearings to conduct the hearing. The party must file such a request not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by SOAH. The party requesting the hearing before the SOAH shall pay all costs associated with the

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contract for the hearing and shall, before the hearing begins, deposit with the district an amount sufficient to pay the contract amount. At the conclusion of the hearing, the district shall refund any excess money to the paying party.

(f) Conducting a Contested Case Hearing by SOAH.

- (1) When an application is referred to contested case hearing by the Board, the District will file all applicable documents to have the matter referred to SOAH.
- (2) In referring the case to contested case hearing, the District will:
 - (i) notify the administrative law judge of the applicable burden of proof for the applicant to establish all of the prima facie elements;
 - (ii) identify for the administrative law judge any additional issues that have been raised in the request(s) for contested case hearing; and
 - (iii) provide the administrative law judge with a written statement of applicable rules and policies of the District.

(g) Service of Documents.

- (1) For any document filed with the District or the hearings examiner in a contested case, the person filing that document must serve a copy on all parties at or before the time that the request is filed.
- (2) A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The District may authorize a document to be filed without a certificate of service but will require the certificate be served within three days thereafter.

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- (h) **Assessing Reporting and Transcription Costs.** Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may assess reporting and transcription costs to one or more of the parties. The presiding officer will consider the following factors in assessing reporting and transcription costs:
- (1) the party who requested the transcript;
 - (2) the financial ability of the party to pay the costs;
 - (3) the extent to which the party participated in the hearing;
 - (4) the relative benefits to the various parties of having a transcript;
 - (5) the budgetary constraints of a governmental entity participating in the proceedings; and
 - (6) any other factor that is relevant to a just and reasonable assessment of costs.

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

- (i) **Designation of Parties.** Parties to a hearing may be designated on the first day of hearing, or at such other time as the presiding officer determines. Only 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 may be admitted as parties. Persons that only have an interest common to members of the public may not be admitted as parties. The following are parties in all contested cases:
- (1) the general manager;
 - (2) the applicant; and

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- (3) a person who is granted a contested case hearing by Board action.
- (j) **Rights of Designated Parties.** Subject to the direction and orders of the presiding officer, 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.
- (k) **Persons Not Designated Parties.** At the discretion of the presiding officer, 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 to inform the Board regarding various concerns or issues related to the application and may be considered as evidence if corroborated by sworn testimony or exhibits properly admitted into evidence by a party.
- (l) **Interpreters for Deaf Parties and Witnesses.** If a party or subpoenaed witness in a contested case is deaf, the party who subpoenaed the witness will provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person.
- (m) **Agreements to be in Writing.** No agreement between parties or their representatives affecting any pending matter will be considered by the presiding officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered of record.
- (n) **Discovery.** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the presiding officer. Unless specifically modified by these Rules or by order of the presiding officer, discovery will be governed by, and subject to the limitations set forth in, the Administrative Procedure Act (APA), Texas Government Code §2001.001 et seq., as amended, and the State Office of Administrative Hearings (SOAH) Rules of Procedure, as

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amended. In addition to the forms of discovery authorized under the APA and SOAH Rules, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer. Discovery commences at the time indicated in the Discovery Control Plan as approved by the presiding officer.

(o) **Subpoenas.** Requests for issuance of subpoenas or commissions in a contested case shall be in writing and directed to the Board. A party requesting the issuance of a subpoena shall file an original and one copy of the request with the General Manager, which shall arrange for the request to be presented to the Board at a regular or special meeting of the Board, in compliance with the Open Meetings Act and other applicable law. If good cause is shown for the issuance of a subpoena, the Board shall issue the subpoena or request that the Hearings Examiner issue the subpoena, in compliance with §2001.089 of the Texas Government Code.

(p) **Ex Parte Communications.**

(1) For applications for which there is a right to a contested case hearing, a member of the Board may not, at any time after the application has been filed and before the Board has taken final action, communicate, directly or indirectly, about any issue of fact or law with any representative of the District or other designated party to the application, except on notice and opportunity for all parties to participate.

(2) Subsection (a) does not apply if:

(i) the Board member abstains from voting on a matter in which he or she engaged in ex parte communications;

(ii) the communications are by and between members of the Board consistent with the Texas Open Meetings Act;

(iii) the communications are with District staff who have not participated in any hearing in

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the contested case for the purpose of using the special skills or knowledge of the staff in evaluating the evidence; or

(iv) the communications are with legal counsel representing the Board of Directors.

(q) **Compelling Testimony; and Swearing Witnesses.** Except where expressly limited by statute, such as under Government Code Section 2009.054, the presiding officer may compel any person to testify who is necessary, helpful, or appropriate to the hearing. The presiding officer shall administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth.

(r) **Evidence.**

(1) 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. Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded. The rules of privilege recognized by law shall be given effect. An objection to an evidentiary offer may be made and shall be noted in the record.

Evidence may be received in writing if:

(i) it will expedited the hearing; and

(ii) the interests of the parties will not be substantially prejudiced.

(2) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document. A party may conduct cross-examination required for a full and true

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disclosure of the facts. Witnesses may be sworn and their testimony taken under oath.

(3) Official notice may be taken of:

(i) all facts that are judicially cognizable; and

(ii) generally recognized facts within the area of the District's specialized knowledge. Each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledge of District staff may be used in evaluating the evidence.

(s) **Written Testimony.** Testimony may be received in written form if the proceeding will be expedited and the interests of the parties not substantially prejudiced by doing so. 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.

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

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

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- (v) **Introduction and Copies of Exhibits.** Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the presiding officer and to each of the parties, unless the presiding officer rules otherwise.

- (w) **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 shall be included in the record for the purpose of preserving the objection to excluding the exhibit.

- (x) **Official Notice.** The presiding officer may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.

- (y) **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.

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

- (aa) **Continuances.**
 - (1) The Board may continue a hearing related to a contested case under the jurisdiction of the Board from time to time and from place to place.

 - (2) The notice of the hearing must indicate the times and places at which the hearing may be continued.

 - (3) If a hearing is not concluded on the day it begins, the Board shall, to the extent possible,

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proceed with the hearing on each subsequent working day until the hearing is concluded.

(bb) **Expenses of Witness or Deponent.**

- (1) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or a proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary or proper for the purposes of the contested case, is entitled to receive:
 - (i) 10 cents for each mile for going to and returning from the place of the hearing or deposition if the place is more than 25 miles from the person's place of residence and the person uses the person's personally owned or leased motor vehicle for the travel;
 - (ii) reimbursement of the transportation expenses of the witness or deponent for going to and returning from the place where the hearing is held or the deposition is taken, if the place is more than 25 miles from the person's place of residence and the person does not use the person's personally owned or leased motor vehicle for the travel;
 - (iii) reimbursement of the meal and lodging expenses of the witness or deponent while going to and returning from the place where the hearing is held or deposition is taken, if the place is more than 25 miles from the person's place of residence; and
 - (iv) \$10 for each day or part of a day that the person is necessarily present.
- (2) Amounts required to be reimbursed or paid shall be reimbursed or paid by the party at whose request the witness appears or the deposition is taken.

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- (3) The District may directly pay a commercial transportation company for the transportation expenses or a commercial lodging establishment for the lodging expenses of a witness or deponent if this section otherwise requires the District to reimburse the witness or deponent for those expenses.
- (4) The District may not pay a commercial transportation company or commercial lodging establishment or reimburse a witness or deponent for transportation, meal, or lodging expenses at a rate that exceeds the maximum rates provided by law for state employees. The District may not adopt rules that provide for payment or reimbursement rates that exceed those maximum rates.
- (5) In this section:
 - (i) **"Commercial lodging establishment"** means a motel, hotel, inn, apartment, or similar entity that offers lodging to the public in exchange for compensation.
 - (ii) **"Commercial transportation company"** means an entity that offers transportation of people or goods to the public in exchange for compensation.

(cc) Depositions and Subpoenas

- (1) On its own motion, or on the written request of a party, and on deposit of an amount that will reasonably ensure payment of the estimated total amount, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested matter pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case will be in writing and directed to the Board.
- (2) A party requesting the issuance of a commission requiring deposition or a subpoena will file an original of the request with the District.

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District staff will arrange for the request to be presented to the Board at its next meeting.

- (3) In the case of a deposition, the Board will issue a commission addressed to the officer authorized by statute to take a deposition, requiring that the deposition of a witness be taken. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers or other objects that may be necessary and proper for the purpose of the proceeding. Additionally, the commission will require the officer to whom it is addressed to examine the witness before the officer on the date and at the place named in the commission; and take answers under oath to questions asked the witness by a party to the proceeding, the District, or an attorney for a party or the District. The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.

- (4) In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the District will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers or other objects that may be necessary or proper for the purpose of the proceeding.

(dd) Remand to Board

- (1) A hearings examiner may remand an application to the Board as follows:
 - (i) all timely hearing requests have been withdrawn;
 - (ii) all parties to a contested case reach a settlement so that no facts or issues remain controverted; or
 - (iii) the party or parties requesting the hearing defaults.

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- (2) After remand, the application will be uncontested, and the applicant will either be deemed to have agreed to the action proposed by the general manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration. District staff will set the application for consideration at a Board meeting.

(ee) Informal Dispositions and Alternative Dispute Resolution

- (1) An informal disposition of a contested case may be made by:
 - (i) stipulation;
 - (ii) agreed settlement;
 - (iii) consent order; or
 - (iv) default.
- (2) The hearings examiner may require the parties enter into mediation or other alternative dispute resolution process. The hearings examiner may also determine how the costs of the alternative dispute procedure shall be apportioned among the parties, appoint an impartial third party as provided by Section 2009.053, GOVERNMENT CODE, to facilitate that procedure.

(ff) Certified Questions

- (1) At any time during a contested case proceeding, on a motion by a party or on the hearings examiner's own motion, the hearings examiner may certify a question to the Board.
- (2) Issues regarding District policy, jurisdiction, or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are appropriate for certification. Policy questions for certification purposes include, but are not limited to:

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- (i) the District's interpretation of its rules and applicable statutes;
 - (ii) the portion of the Act, the District rules, or other statutes that are applicable to a proceeding; and
 - (iii) whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
- (3) If a question is certified, the hearings examiner shall submit the certified issue to the District. District staff will place the certified issue on the agenda of a meeting of the Board. The District will give the hearings examiner and parties 30 day notice of the meeting at which the certified question will be considered. Within ten days after the certified question is filed with the District, parties to the proceeding may file briefs. Within ten days of the filing of such briefs, parties may file responses. Briefs and responses shall be filed with the District with copies served on the hearings examiner. The District will provide copies of the certified questions and any briefs and responses to the Board. The hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.
- (4) The Board will take action and issue a written decision on the certified issue and provide copies to the parties and the hearings examiner. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

(gg) Scheduling of a Meeting of the Board

- (1) After receiving the proposal for decision or other disposition from the hearings examiner, District staff shall schedule the presentation of

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the proposal to the Board. The District shall provide 10 day notice to the parties of the date of the final hearing before the Board at which the proposal will be presented and considered. The Board may reschedule the presentation of the proposal. The District will send notice of the rescheduled meeting date to the parties no later than 10 days before the rescheduled meeting.

(2) Any party to the contested case hearing may make an oral presentation at the Board meeting in which the proposal for decision in that case is presented to the Board.

(3) On the written request of a party to a contested case, the oral proceedings before the Board at which the proposal for decision is presented and oral presentations are made, may be transcribed by a court reporter. A party that desires a transcript of the proceedings shall bear the cost, or the costs will be equally divided between all parties requesting a transcript. If the District desires a transcript it will bear the costs.

(hh) **Closing the Record.** At the conclusion of the presentation of evidence and any oral argument the presiding officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer.

(ii) **Reopening the Record.** The Board, on the motion of any party to a contested case or on its own motion, may order the hearings examiner to reopen the record for further proceedings on specific issues in dispute. The order shall include instructions as to the subject matter of further proceedings and the hearings examiner's duties in preparing supplemental materials or revised proposals based upon those proceedings for the Board's adoption.

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(jj) Decision.

- (1) The decision, if adverse to any party, must be in writing or stated in the record and will include findings of fact and conclusions of law separately stated.
- (2) Findings of fact may be based only on the evidence and on matters that are officially noticed. If set forth in statutory language, findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (3) If a party submits proposed findings of fact, the decision will include a ruling on each proposed finding.
- (4) If a contested case is presided over by a majority of the Board, then the Board's decision shall be rendered not later than the 60th day after the date on which the hearing is finally closed. If the Board refers a contested case to a hearing examiner, then the Board's decision will be rendered no more than 120 days after the date that the proposal for decision is presented at a final hearing, unless the Board determines that there is good cause for extending the deadline.

(kk) Notification of Decisions.

- (1) District staff will notify all parties in a contested case of any decision or order.
- (2) District staff will send a copy of the decision in a contested case to attorneys of record, or the parties.
- (3) A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the notice is mailed.

- (ll) Agreement to Modify Time Limits.** The parties to a contested case hearing, with the approval of the hearing examiner, may agree to modify any time limit prescribed by these rules related to conducting contested case hearings.

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(mm) **Decision Final and Appealable.** In the absence of a timely motion for rehearing, a decision or order of the Board is final on the expiration of the period for filing a motion for rehearing. If a party files a timely motion for rehearing, a decision or order of the Board is final and appealable on the date:

- (1) the Board denies the motion for rehearing, including a denial by operation of law; or
- (2) the Board renders a written decision after rehearing.

(nn) **Appeal of Final Decision**

- (1) Not later than the 60th day after the date on which the decision became final and appealable, parties affected by the final decision of the Board in a contested case may file suit under TEX. WATER CODE § 36.251, to appeal the decision. A party may not file suit if a motion for rehearing was not timely filed.
- (2) The record in a contested case hearing shall include the following:
 - (i) all pleadings, motions and intermediate rulings;
 - (ii) evidence received or considered;
 - (iii) a statement of matters officially noticed;
 - (iv) questions and offers of proof, objections and rulings on them;
 - (v) summaries of the results of any conferences held before or during the hearing;
 - (vi) proposed findings, exceptions and briefs;
 - (vii) any decision, opinion or report issued by the hearings examiner;
 - (viii) pre-filed testimony;

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- (ix) all memoranda or data submitted to or considered by the hearings examiner; and
 - (x) the final order and all interlocutory orders.
- (oo) **Costs of Record on Appeal.** A party who appeals a final decision in a contested case shall pay all costs of preparation of the record of the proceeding that is required to be transmitted to the reviewing court. A charge imposed is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

RULE 20 REHEARING

The decision of the Board on any matter contained herein may be reconsidered by it on its own motion or upon receiving a motion for rehearing, or upon receiving a motion showing changed or new conditions. If the Board should decide to reconsider a matter it shall give notice to persons who were parties to the original action. Conduct of the hearing shall be in the same manner and procedure as a contested case hearing. For any matter considered during a contested case hearing, only a party to the contested case proceeding may file a motion for rehearing. The motion shall be filed with the District by no later than the 20th day after the date of the Board's decision. On or before the date of filing of a motion for rehearing, the party filing the motion shall mail or deliver a copy of the motion to all parties with a certificate of service furnished to the District. The motion shall contain:

- (1) the name and representative capacity of the person filing the motion;
- (2) the style and official docket number assigned by the hearings examiner;
- (3) the date of the decision or order; and
- (4) the grounds for the motion, including a concise statement of each allegation of error.

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Only a party to the contested case proceeding may reply to a motion for rehearing. A reply must be filed with the District within 20 days after the date the motion for rehearing is filed.

The motion for rehearing may be scheduled for consideration during a Board meeting. A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The Board may reopen the hearing to the extent it deems necessary. If the Board grants a motion for rehearing, District staff shall schedule the rehearing not later than the 45th day after the date the motion is granted. Thereafter, the Board shall render a decision or order.

The failure of the Board to grant or deny a motion for rehearing before the 91st day after the date the motion is submitted constitutes a denial of the motion by operation of law.

RULE 21 WATER RIGHTS

Permits represent permission to drill a well, produce a set amount of water over the term of the permit, or transport a certain amount of water annually during the term of the permit. A permit does not represent a permanent water right.

RULE 22 TRANSPORTATION OF WATER FROM THE DISTRICT

A Transportation Permit is required to transport water outside the boundaries of the District. The application for a Transportation permit must be filed with the District on forms promulgated by the District.

An application for the transportation of water for which a permit is required under this Rule must:

- (1) be in writing and sworn to;
- (2) contain the name, post-office address and place of residence or principal office of the applicant;

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- (3) identify the location of the well from which the water to be transported is produced or to be produced;
- (4) describe specifically the proposed transportation facilities;
- (5) state the nature and purposes of the proposed use and the amount of water to be used for each purpose;
- (6) state the time within which the proposed construction or alteration is to begin;
- (7) state the length of time required for the proposed use of water, and the amount of water to be used;
- (8) provide information showing the effect of the proposed transportation on the quantity and quality of water available within the District;
- (9) provide information on the method or methods of transportation; and
- (10) identify any other liquids that could be substituted for the fresh groundwater and possible sources of such liquid including quantity and quality.

The application must be accompanied by a map or plat drawn to a scale not less than one inch equals 4,000 feet, showing substantially:

- (1) the location of the existing or proposed well;
and
- (2) the location of the place of use.

The District shall determine whether the application, maps, and other materials comply with the requirements of these rules, the District Management Plan, the State Water Plan, and state law. The District may require amendment of the application, maps, or other materials to achieve necessary compliance.

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The District shall conduct a public hearing on each application within ninety (90) days of the filing of the complete application.

Notice of the public hearing shall include the following:

- (1) the name and address of the applicant;
- (2) the date the application was filed;
- (3) the location and purpose of the well from which the water to be transported is produced or to be produced;
- (4) the time and place of the hearing; and
- (5) any additional information the District considers necessary.

At the time and place stated in the notice, the District shall hold a public hearing on the application. The hearing may be held in conjunction with any regular or special meeting of the District or a special meeting may be called for the purpose of holding a hearing. Any person may appear at the hearing, in person or by attorney, or may enter his appearance in writing. The District may receive evidence, orally or by affidavit, in support or in opposition to the issuance of the permit, and it may hear arguments.

After the hearing, the Board may determine if the application is going to be contested and schedule a contested case hearing. If no protests are filed against the application the board may approve the application as filed.

An application for a Transportation Permit shall be approved if the Board of Directors finds:

- (1) that the applicant has a legitimate need for the amount of water to be transported as evidenced by inclusion of the proposed project in the approved regional water plan and the current State Water Plan;
- (2) that the permit will not substantially affect the availability of water in the district;

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- (3) that the permit will not have a substantially negative effect on aquifer conditions or cause excessive aquifer depletion;
- (4) that the permit will not have a substantially negative impact on existing permit holders or other groundwater users within the district; and
- (5) that the method of transportation will not result in waste.

In considering the permit, the Board shall consider the following:

- (1) the quantity of water proposed to be transported;
- (2) the requested term; and
- (3) the approved District Management Plan.

On approval of an application, the District shall issue a permit to the applicant. The applicant's right to transport shall be limited to the extent and purposes stated in the permit. A transportation permit is transferable.

The permittee shall file with the District quarterly reports describing the amount of water transported and used for the permitted purpose. Such report shall be filed on the appropriate form or forms provided by the District within ten (10) days of the March 31, June 30, September 30, and December 31 next following the commencement of transporting of water, and within ten (10) days of each such quarterly date thereafter.

Each quarterly report shall be accompanied by a fee payment equal to two and one-half cents (\$0.025) per thousand (1000) gallons actually transported during that quarter. In addition to any other remedy provided by law, the District may enforce payment of these fees by suspending the transportation permit and prohibiting further exports until all fees due are paid.

All permitted transportation facilities must be equipped with flow monitoring devices approved by the District and available for District inspection at any time.

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Any permit granted under this Subsection shall be subject to revocation for nonuse or waste by the permittee, or for substantial deviation from the purposes or other terms stated in the permit. Revocation of a permit for nonuse shall require that no water is transported under the permit for a period of five years.

RULE 23 REQUEST FOR INJUNCTIVE RELIEF AND ASSESSMENT OF PENALTIES

- (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Act or any Board order, rule or permit, the Board may authorize the General Manager to institute and conduct a suit in the name of the District for injunctive relief, or to recover a civil penalty of up to ten thousand dollars (\$10,000) for each violation and for each day a violation continues, or for both injunctive relief and civil penalties.

- (b) The District will send a notice of violation (N.O.V.) to a person who is believed to be in violation of District Rules and or Board Orders. The notice shall include information about the violation(s) and may require remedial action and may assess a penalty. The notice shall provide the opportunity for a public hearing under Rule 5.7.

- (c) **Penalty Schedule:**
 - (1) Incomplete or late submission of the State of Texas Well Report (Well Log) or other reports required by District Rules up to \$500.00

 - (2) Failure to obtain a required permit up to \$500.00

 - (3) Failure to register a well prior to December 31, 2013 up to \$500.00

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| (4) Failure to comply with the terms and conditions of an operating permit | up to \$500.00 plus \$100.00 per day of noncompliance after 30 days of receipt of N.O.V. |
| (5) Exceeding production limit of an operating permit | up to \$500.00 plus \$10.00 per 1,000 gallons in excess of the amount permitted based on either meter readings or other reliable evidence of the amount pumped |
| (6) Failure to comply with a Board Order or District Rule | up to \$500.00 plus \$100.00 per day of noncompliance after 30 days of receipt of N.O.V. |

RULE 24 GENERAL RULES

- (a) **Computing Time.** In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday or a legal holiday.
- (b) **Time Limit.** Applications, requests, or other paper or documents required or permitted to be filed under these rules or by law must be received for filing at the Board's offices at Beeville, Texas, within the time limit, if any, for such filing. The date of receipt and not the date of posting is determinative.
- (c) **Show Cause Orders And Complaints.** The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite any person

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operating within the District to appear before it in a public hearing and require him to show cause why operating authority or permit should not be suspended, canceled, or otherwise restricted and limited, for failure to comply with the orders or rules of the board or the relevant of the State, or for failure to abide by the terms and provisions of the permit or operating authority itself. The matter of evidence and all other matters of procedure at any such hearing will be conducted in accordance with these rules of procedures and practice.

RULE 25 REPEAL OF PRIOR REGULATIONS

All of the previous rules and regulations of the District have been revised and amended; and except as they are herein republished, they are repealed. Any previous rule or regulation which conflicts with, or is contrary to, these rules is hereby repealed.

RULE 26 SAVINGS CLAUSE

If any section, sentence, paragraph, clause, or part of these rules and regulations should be held or declared invalid for any reason by a final judgment of the courts of this state or of the United States, such decision or holding shall not affect the validity of the remaining portions of these rules; and the Board does hereby declare that it would have adopted and promulgated such remaining portions of such rules irrespective of the fact that any other sentence, section, paragraph, clause, or part thereof may be declared invalid.