

Red River Groundwater Conservation District

Temporary Rules for Water Wells in Fannin and Grayson Counties, Texas

As Amended on ~~December 12, 2012~~XXXX, 2014

Procedural History of Rules Adoption

These temporary rules of the Red River Groundwater Conservation District were initially adopted by the Board of Directors on August 29, 2011, at a duly posted public meeting in compliance with the Texas Open Meetings Act and following notice and hearing in accordance with Chapter 36 of the Texas Water Code. The temporary rules were subsequently amended, in accordance with all legal requirements on March 21, 2012, ~~and~~ December 12, 2012, and XXXX, 2014.

Red River

Groundwater Conservation District

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Red River Groundwater Conservation District

District Rules

PREAMBLE

The Red River Groundwater Conservation District ("District") was created in 2009 by the 81st Texas Legislature with a directive to conserve, protect and enhance the groundwater resources of Fannin and Grayson Counties, Texas. The District's boundaries are coextensive with the boundaries of Fannin and Grayson Counties, and all lands and other property within these boundaries will benefit from the works and projects that will be accomplished by the District.

The Mission of the Red River Groundwater Conservation District is to develop rules to provide protection to existing wells, prevent waste, promote conservation, provide a framework that will allow availability and accessibility of groundwater for future generations, protect the quality of the groundwater in the recharge zone of the aquifer, insure that the residents of Fannin and Grayson Counties maintain local control over their groundwater, and operate the District in a fair and equitable manner for all residents of the District.

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

SECTION 1. DEFINITION, CONCEPTS, AND GENERAL PROVISIONS

Rule 1.1 Definitions of Terms.

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

- (1) “Agriculture” (or “agricultural”) 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 sod, and the cultivation of plants in containers or non-soil 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.

- (2) “Animal Feeding Operation” (AFO) means: (1) a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and where the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season over any portion of the lot or facility; or (2) any other facility regulated as an AFO or as a Concentrated Animal Feeding Operation by the TCEQ.

- (3) “Aquifer” means a water bearing geologic formation in the District.

- (4) “As equipped” for purposes of determining the capacity of a well means visible pipes, plumbing, and equipment attached to the wellhead or adjacent plumbing that controls the maximum rate of flow of groundwater and that is permanently affixed to the

well or adjacent plumbing by welding, glue or cement, bolts or related hardware, or other reasonably permanent means.

- (5) “Beneficial use” or “beneficial purpose” means use of groundwater for:
1. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes;
 2. exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals; or
 3. any other purpose that is useful and beneficial to the user that does not constitute waste.

(6) “Board” means the Board of Directors of the District.

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

(8) “Closed-loop geothermal well” means a well used for domestic use purposes that recirculates water or other fluids inside a sealed system for heating or cooling purposes, and where no water is produced from the well or used for any other purpose of use.

(9) “Contiguous” means property within a continuous perimeter boundary situated within the District. The term also refers to properties that are divided by a publicly owned road or highway or other easements if the properties would otherwise share a common border.

~~(6)~~(10) “District” means the Red River Groundwater Conservation District created in accordance with Section 59, Article XVI, Texas Constitution, Chapter 36, Texas Water Code, and the District Act.

~~(7)~~(11) “District Act” means the Act of May 25, 2009, 81st Leg., R.S., ch. 884, 2009 Tex. Gen. Laws 2313, codified at Tex. Spec. Dist. Laws Code Ann. ch. 8859 (“the District Act”), as may be amended from time to time.

~~(8)~~(12) “Domestic use” means the use of groundwater by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes; and may be used for irrigation of lawns, or of a family garden and/or family orchard; for watering of domestic animals. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold. Domestic use does not include use by or for a public water system. Domestic use does not include irrigation of crops in fields or

pastures. Domestic use does not include water used for open-loop residential geothermal systems, but does include water for closed-loop residential geothermal systems.

~~(9)~~(13) “Effective date” means August 29, 2011, which was the original date of adoption of these Temporary Rules.

~~(10)~~(14) “Emergency purposes” means the use of groundwater to fight fires, manage chemical spills, and otherwise address emergency public safety or welfare concerns.

~~(11)~~(15) “Exempt well” means a new or an existing well that is exempt under Rule 2.1 from certain regulatory requirements in these rules.

~~(12)~~(16) “Existing well” means a well that was in existence or for which drilling commenced prior to April 1, 2012.

~~(13)~~(17) “General Manager” as used herein is the appointed chief administrative officer of the District, as set forth in the District’s bylaws, or the District staff or other Board designee acting at the direction of the General Manager or Board to perform the duties of the General Manager.

~~(14)~~(18) “Groundwater” means water percolating below the surface of the earth.

~~(15)~~(19) “Groundwater reservoir” means a specific subsurface water-bearing stratum.

~~(16)~~(20) “Landowner” means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on the land surface.

~~(17)~~(21) “Leachate well” means a well used to remove contamination from soil or groundwater

~~(18)~~(22) “Livestock” means, in the singular or plural, grass- or plant-eating, single- or cloven-hooved mammals raised in an agricultural setting for subsistence, profit or for its labor, or to make produce such as food or fiber, including cattle, horses, mules, asses, sheep, goats, llamas, alpacas, and hogs, as well as species known as ungulates that are not indigenous to this state from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families, but does not mean a mammal defined as a game animal in Section 63.001, Parks and Wildlife Code, or as a fur-bearing animal in Section 71.001, Parks and Wildlife Code, or any other indigenous mammal regulated by the Texas Department of Parks and Wildlife as an endangered or threatened species. The term “livestock use” does not include the use of water for any animal that is stabled, confined, or fed at a facility that is defined an Animal Feeding Operation.

~~(19)~~(23) “Maintenance Purposes” means the use of water to flush mains, fire hydrants or tanks as required by TCEQ.

~~(20)~~(24) “Meter” or “measurement device” means a water flow measuring device that can measure within +/- 5% of accuracy the instantaneous rate of flow and record the amount of groundwater produced from a well or well system during a measure of time, as specifically set forth under Section 8.

~~(21)~~(25) “Monitoring well” means a well installed to measure some property of the groundwater or the aquifer that it penetrates, and does not produce more than 5,000 gallons per year.

~~(22)~~(26) “New well” means a well for which drilling commenced on or after April 1, 2012.

~~(23)~~(27) “Nursery grower” means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, “grow” means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

~~(24)~~(28) “Penalty” means a reasonable civil penalty set by rule under the express authority delegated to the District through Section 36.102(b) of the Texas Water Code.

~~(25)~~(29) “Person” means an individual, corporation, Limited Liability Company, organization, government, governmental subdivision, agency, business trust, estate, trust, partnership, association, or other legal entity.

~~(26)~~(30) “Poultry” means chickens, turkeys, nonmigratory game birds, and other domestic nonmigratory fowl, but does not include any other bird regulated by the Parks and Wildlife as an endangered or threatened species. The term does not include any animal that is stabled, confined, or fed at a facility that is defined by Texas Commission on Environmental Quality rules as an Animal Feeding Operation or a Concentrated Animal Feeding Operation.

~~(27)~~(31) “Production” or “producing” means the act of extracting groundwater from an aquifer by a pump or other method.

~~(28)~~(32) “Public Water System” or “PWS” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for "drinking water" in 30 Texas Administrative Code, Section 290.38. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a

potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

~~(29)~~(33) “Pump” means any facility, device, equipment, materials, or method used to obtain water from a well.

~~(30)~~(34) “Registrant” means a person required to submit a registration.

~~(31)~~(35) “Registration” means a well owner providing certain information about a well to the District, as more particularly described under Section 3.

~~(32)~~(36) “Rule” or “Rules” or “Temporary Rules” means these Temporary Rules of the District regulating water wells, which shall continue to be effective until amended or repealed.

~~(33)~~(37) “Substantially alter” with respect to the size or capacity of a well means to increase the inside diameter of the pump discharge column pipe size of the well in any way or to increase the size of the pump on the well.

(38) “TCEQ” means the Texas Commission on Environmental Quality.

(39) “Tract” means a contiguous parcel of land under the ownership of a single entity, such as a corporation, partnership or trust, or an individual or individuals holding as joint owners or tenants in common.

~~(34)~~(40) “Transfer” means a change in a registration as follows, except that the term “transfer” shall have its ordinary meaning as read in context when used in other contexts:

- (a) ownership; or
- (b) the person authorized to exercise the right to make withdrawals and place the groundwater to beneficial use.

~~(35)~~(41) “Waste” means one or more of the following:

- (a) withdrawal of groundwater from the aquifer at a rate and in an amount that causes or threatens to cause an intrusion into the aquifer unsuitable for agriculture, gardening, domestic, stock raising, or other beneficial purposes;

- (b) the flowing or producing of water from the aquifer by artificial means if the water produced is not used for a beneficial purpose;
- (c) the escape of groundwater from the aquifer to any other underground reservoir or geologic stratum that does not contain groundwater;
- (d) pollution or harmful alteration of groundwater in the aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
- (e) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or other order issued by the Texas Commission on Environmental Quality under Chapters 11 or 26 of the Texas Water Code;
- (f) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge;
- (g) for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205, Texas Water Code;
- (h) operating a deteriorated well; or
- (i) producing groundwater in violation of any District rule governing the withdrawal of groundwater through production limits on wells, managed depletion, or both.

~~(36)~~(42) “Well” means any artificial excavation located within the boundaries of the District dug or drilled for the purpose of exploring for or withdrawing groundwater from the aquifer.

~~(37)~~(43) “Well owner” means the person who owns a possessory interest in: (1) the land upon which a well or well system is located or to be located; (2) the well or well system; or (3) the groundwater withdrawn from a well or well system.

~~(38)~~(44) “Well system” means a well or group of wells ~~that are~~ connected by piping, storage, or that share or are tied to the same distribution system. Examples of a well system include, but are not limited to, a well or group of wells connected to the same ground storage tank, pond, or swimming pool.

~~(39)~~(45) “Withdraw” means the act of extracting or producing groundwater by pumping or other method.

~~(40)(46)~~ “Year” means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.

Rule 1.2 Authority of District.

The Red River Groundwater Conservation District is a political subdivision of the State of Texas organized and existing under Section 59, Article XVI, Texas Constitution, Chapter 36, Texas Water Code, and the District Act. The District is a governmental agency and a body politic and corporate. The District was created to serve a public use and benefit.

Rule 1.3 Purpose of Rules.

These Temporary Rules are adopted under the authority of Sections 36.101 and 36.1071(f), Texas Water Code, and the District Act for the purpose of conserving, preserving, protecting, and recharging groundwater in the District in order to prevent subsidence, prevent degradation of water quality, prevent waste of groundwater, and to carry out the powers and duties of Chapter 36, Texas Water Code, and the District Act.

Rule 1.4 Use and Effect of Rules.

These rules are used by the District in the exercise of the powers conferred on the District by law and in the accomplishment of the purposes of the law creating the District. These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case will they or any part therein, be construed as a limitation or restriction upon the District to exercise powers, duties and jurisdiction conferred by law. These rules create no rights or privileges in any person or water well, and shall not be construed to bind the Board in any manner in its promulgation of the District Management Plan, amendments to these Temporary Rules, or promulgation of permanent rules.

Rule 1.5 Purpose of District.

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

Rule 1.6 Construction.

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

Rule 1.7 Methods of Service Under the Rules.

Except as provided in these rules, any notice or document required by these rules to be served or delivered may be delivered to the recipient or the recipient's authorized representative in person, by agent, by courier receipted delivery, by certified or registered mail sent to the recipient's last known address, by fax transfer to the recipient's current fax number or by e-mail and shall be accomplished by 5:00 p.m. on the date which it is due. Service by mail is complete upon deposit in a post office depository box or other official depository of the United States Postal Service. Service by fax transfer is complete upon transfer, except that any transfer completed after 5:00 p.m. shall be deemed complete the following business day. If service or delivery is by mail and the recipient has the right or is required to do some act within a prescribed period of time after service, three days will be added to the prescribed period. If service by other methods has proved unsuccessful, service will be deemed complete upon publication of the notice or document in a newspaper of general circulation in the District.

Rule 1.8 Severability.

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

Rule 1.9 Regulatory Compliance; Other Governmental Entities.

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

Rule 1.10 Computing Time.

In computing any period of time prescribed or allowed by these Rules, order of the Board, or any applicable statute, the day of the act, event, or default from which the designated period of time begins to run is not included, but the last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

Rule 1.11 Time Limits.

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

Rule 1.12 Amending of Rules.

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

SECTION 2. APPLICABILITY OF REGULATORY REQUIREMENTS; EXEMPTIONS

Rule 2.1 Wells Exempt from Certain Fee Payment, Metering, and Reporting Requirements of These Temporary Rules.

- (a) The requirements of these Temporary Rules relating to the payment of Water Use Fees and Groundwater Transport Fees under Section 7, the requirement to install and maintain a meter under Section 8, and the requirement to report to the District the amount of water produced from a well under Section 3 do not apply to the following types of wells:
 - 1. A well used solely for domestic use.
 - 2. An existing well or new well that does not have the capacity, as equipped, to produce more than 40,000 gallons per day and is used in whole or in part for and of the following: commercial, industrial, municipal, manufacturing, or public water supply use, use for oil or gas or other hydrocarbon exploration or production, agricultural use, including without limitation the irrigation of crops or livestock or poultry use, or any other purpose of use other than solely for domestic use, except as provided by Subsection (b) of this rule.
 - 3. Leachate wells, monitoring wells, and piezometers.
- (b) For purposes of determining whether the exemption set forth under Subsection (a)(2) applies, the capacity of a well that is part of a well system shall be determined by taking the sum of the capacities of each of the individual wells, as equipped, in the system. If the total sum of the capacities is greater than 40,000 gallons per day, the well system and the individual wells that are part of it are not exempt from the fee payment, metering, and reporting requirements of these rules.
- (c) A well exempted under Subsection (a) will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt under Subsection (a)(2).
- (d) A well exempted under Subsection (a)(2) will lose its exempt status if, while the well was registered as an exempt well, the District determines that the well had the capacity, as equipped, to produce more than 40,000 gallons per day. Such wells are subject to the fee payment, metering, reporting, and other requirements of these Temporary Rules, and may be subject to enforcement under Section 8.

- (e) The owner of an existing well that is exempt under this rule should nonetheless register the well with the District, as specifically described under Section 3. All new wells, whether exempt or not under this rule, are required to be registered with the District prior to drilling as set forth under Section 3.

Rule 2.2 Wells Subject to Fee Payment, Metering, and Reporting Requirements of These Temporary Rules.

All wells not described as exempt under Rule 2.1 are subject to the Water Use Fee and Groundwater Transport Fee payment (addressed in Section 7 of the Temporary Rules), metering, reporting, registration, and other requirements of these Temporary Rules. Such wells include all wells or well systems with a capacity, as equipped, to produce more than 40,000 gallons per day that are used in whole or in part for any purpose of use other than solely for domestic use.

Rule 2.3 Exemption from Certain Fees for Groundwater Used for Certain Emergency Purposes.

- (a) Groundwater produced within the boundaries of the District is exempt from the assessment of applicable Water Use Fees and Groundwater Transport Fees otherwise required by Section 7 if the groundwater is used by a fire department or an emergency services district solely for emergency purposes and the use is qualified under Subsection (b).
- (b) To qualify for the exemption provided for in Subsection (a), a fire department for emergency services district that uses groundwater produced from within the District, or a person that supplies groundwater produced from within the District to a fire department or emergency services district, shall submit to the District a Water Production Report that complies with Rule 3.10.

Rule 2.4 Exemption from Production Fees for Groundwater Used for Maintenance Purposes.

Groundwater used for the purposes of flushing lines, tanks or fire hydrants as required by TCEQ are exempt from fees if an approved metering device or an alternative measuring method approved by the District is used. These amounts shall be noted on the water production report and subtracted from the total amount pumped.

Rule 2.5 Exemption from Production Fees, Metering, and Reporting Requirements for Groundwater Used for Well Development.

Groundwater produced from a well during its development or rehabilitation, including groundwater used in pump tests, is exempt from the requirements relating to the payment of fees under Section 7, the requirement to install and maintain a meter under Section 8, and the requirement to report to the District the amount of water produced from a well under Section 3.

However, use of the well must comply with those requirements before being placed into operation unless otherwise exempt under these rules.

SECTION 3. REGISTRATIONS, RECORDS, REPORTS, AND LOGS; PERMIT NOT REQUIRED

Rule 3.1 Purpose and Policy.

The accurate and timely reporting to the District of activities governed by these Rules is a critical component to the District's ability to effectively and prudently manage the groundwater resources that it has been charged by law with regulating. The purpose of Section 3 is to require the submission, by the appropriate person or persons, of complete, accurate, and timely registrations, records, reports, and logs as required throughout the District Rules. Because of the important role that accurate and timely reporting plays in the District's understanding of past, current and anticipated groundwater conditions within the District, the failure to comply with these rules may result in the assessment of additional fees, civil penalties, or other enforcement action by the District, as specifically set forth under Section 9.

Rule 3.2 Permit Not Required Under Temporary Rules.

No permit of any kind is required under these Temporary Rules. Notwithstanding Chapter 36, Water Code, a permit is not required under these Temporary Rules to drill, equip, operate, or complete a well, produce water from a well, or to substantially alter the size or capacity of a well. Permitting requirements will be developed and adopted by the District in the future after it has had a sufficient opportunity to develop a management plan and carefully consider various regulatory approaches and how such approaches may impact landowners and other water users in the District while achieving proper management of the groundwater resources. Permitting rules will be adopted only after ample opportunity has been afforded the public to participate in the development of such rules.

Rule 3.3 Well Registration.

(a) The following wells must be registered with the District:

1. all new wells drilled on or after April 1, 2012, including new wells exempt under Rule 2.1;
2. all existing wells not exempt under Rule 2.1.

(b) Test holes must be registered with the District in accordance with the terms of this rule. Test holes are not subject to registration fees charged by the District. A plugging report shall be submitted to the District within 30 days of the date the test hole is plugged in accordance with Rule 3.7(c).

(bc) Existing exempt wells should be registered to limit the location of future wells that could reduce the capacity of the existing exempt wells.

(ed) A person seeking to register a well shall provide the District with the following information in the registration application on a form provided by the District:

1. the name and mailing address of the registrant and the owner of the property, if different from the registrant, on which the well is or will be located;
2. if the registrant is other than the owner of the property, documentation establishing the applicable authority to file the application for well registration, to serve as the registrant in lieu of the property owner, and to construct and operate a well for the proposed use;
3. a statement of the nature and purpose of the existing or proposed use of water from the well;
4. the location or proposed location of the well, identified as a specific point measured by latitudinal, longitudinal, and elevation coordinates;
5. the location or proposed location of the use of water from the well, if used or proposed to be used at a location other than the location of the well;
6. the production capacity or proposed production capacity of the well, as equipped, in gallons per day, and the horsepower rating of the pump, as assigned by the pump manufacturer;
7. a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
8. a statement that the water withdrawn from the well will be put to beneficial use; and
9. any other information deemed reasonably necessary by the Board.

(de) The timely filing of an application for registration shall provide the owner of a well described under Subsection (a)(2) with evidence that a well existed before April 1, 2012, for purposes of grandfathering the well from the requirement to comply with any well location or spacing requirements of the District, and any other entitlements that existing wells may receive under these Temporary Rules or under permanent rules adopted by the District. A well that is required to be registered under this Rule and that is not exempt under Rule 2.1 shall not be operated after April 1, 2012, without first complying with the metering provisions set forth under Section 8.

(ef) Once a registration is approved as administratively complete by the District under Rule 3.6(b) and the well registration is completed, which for new wells also includes receipt by

the District of the well report required by Rule 3.7, the registration shall be perpetual in nature, subject to being amended or transferred and subject to enforcement for violations of these Rules.

Rule 3.4 Time Period for Registration of Existing Non-Exempt and Exempt Wells.

- (a) The owner of an existing well described under Rule 3.3(a)(2) must register the well with the District between April 1 and June 30, 2012, and must install a meter on the well as set forth under Section 8 of these rules before July 1, 2012. Failure of the owner of such a well to timely register or install a meter on the well under this Rule shall subject the well owner to enforcement under these Rules.
- (b) The owner of an existing well exempt under Rule 2.1 may register the well with the District after April 1, 2012, to provide the owner with evidence that the well existed before the adoption of these Temporary Rules for purposes of grandfathering the well from the requirement to comply with any well location or spacing requirements of the District and any other entitlements that existing wells may receive under these Temporary Rules or under permanent rules adopted by the District.

Rule 3.5 Registration of New Wells or Alterations to Existing Wells Required Prior to Drilling or Alteration.

- (a) An owner or well driller, or any other person legally authorized to act on their behalf, must submit and obtain approval of a registration application and submit a well report deposit with the District before any new well, except leachate wells or monitoring wells, may be drilled, equipped, or completed, or before an existing well may be substantially altered with respect to size or capacity, beginning on or after April 1, 2012.
- (b) A registrant for a new exempt well has 360 days from the date of approval of its application for well registration to drill and complete the new well, and must file the well report with the District within 60 days of completion. However, such a registrant may apply for an extension not to exceed 12 months at no additional cost.
- (c) A registrant for a new non-exempt well may submit an application for well registration to drill and complete the new well for a period of time based on the size and complexity of the well not to exceed two (2) years from the date of approval of the application as administratively complete under Rule 3.6(b). The General Manager may approve, deny, or adjust the time period requested based on the size and complexity of the well as part of the General Manager's review of administrative completeness under Rule 3.6(b). The registrant must then drill and complete the well within the time period set forth in the well registration application. If more time is necessary to drill and complete the well than the time period set forth in the well registration application, the registrant may apply to the District for an extension of one (1) year for a fee of \$100 payable to the District.

- (d) If the well report is timely submitted to the District, the District shall return the well report deposit to the owner or well driller. In the event that the well report required under this rule and Rule 3.7 is not filed within the applicable deadlines set forth under Subsection (b) and (c) of this rule, the driller or owner shall forfeit the well report deposit and shall be subject to enforcement by the District for violation of this rule.
- (e) Notwithstanding any other rule to the contrary, the owner and driller of a new well are jointly responsible for ensuring that a well registration required by this section is timely filed with the District and contains only information that is true and accurate. Each will be subject to enforcement action if a registration required by this section is not timely filed by either, or by any other person legally authorized to act on the behalf of either.

Rule 3.6 *General Provisions Applicable to Registrations.*

- (a) Registration applications may be submitted to the District in person, by mail, by fax, or by internet when available by the District, using the registration form provided by the District.
- (b) A determination of administrative completeness of a registration application shall be made by the General Manager within five business days after the date of receipt of an application for registration, which for new wells must include receipt of the well report deposit and well registration fee. If an application is not administratively complete, the District shall request the applicant to complete the application. The application will expire if the applicant does not complete the application within 120 days of the date of the District’s request. An application will be considered administratively complete and may be approved by the General Manager without notice or hearing if:

- (1) it substantially complies with the requirements set forth under Rule 3.3(c**b**), including providing all information required to be included in the application that may be obtained through reasonable diligence; and

- (2) if it is a registration for a new well:

- (A) includes the well report deposit and well registration fee; and
- (B) proposes a well that complies with spacing, location, and well completion requirements of Section 4.

A person may appeal the General Manager’s ruling by filing a written request for a hearing before the Board. The Board will hear the applicant’s appeal at the next regular Board meeting. The General Manager may set the application for consideration by the Board at the next available Board meeting or hearing in lieu of approving or denying an application.

- (c) Upon approval or denial of an application, the General Manager shall inform the registrant in writing by regular mail of the approval or denial, as well as whether the well

meets the exemptions provided in Rule 2.1 or whether it is subject to the metering, fee payment, and reporting requirements of these Rules.

- (d) An application pursuant to which a registration has been issued is incorporated in the registration, and the registration is valid contingent upon the accuracy of the information supplied in the registration application. A finding that false information has been supplied in the application may be grounds to refuse to approve the registration or to revoke or suspend the registration.
- (e) Submission of a registration application constitutes an acknowledgment by the registrant of receipt of the rules and regulations of the District and agreement that the registrant will comply with all rules and regulations of the District.
- (f) The District may amend any registration, in accordance with these Rules, to accomplish the purposes of the District Rules, management plan, the District Act, or Chapter 36, Texas Water Code.
- (g) If multiple wells have been aggregated under one registration and one or more wells under the registration will be transferred, the District will require separate registration applications from each new owner for the wells over 40,000 gallons per day retained or obtained by that person.
- (h) No person shall operate or otherwise produce groundwater from a well required under this section to be registered with the District before:
 - (1) timely submitting an accurate application for registration, or accurate application to amend an existing registration as applicable, of the well to the District; and
 - (2) obtaining approval from the District of the application for registration or amendment application, if such approval is required under these Rules.

Rule 3.7 *Records of Drilling, Pump Installation and Alteration Activity, ~~and Plugging, and Capping.~~*

- (a) Each person who drills, deepens, completes, or otherwise alters a well shall make, at the time of drilling, deepening, completing, or otherwise altering the well, a legible and accurate well report recorded on forms prescribed by the District or by the Texas Department of Licensing and Regulation. As part of the well report, an accurate drillers' log shall be kept of the water well in accordance with the rules of the Texas Department of Licensing and Regulation, and a copy of the log must be included with the well report and submitted to the District under the terms of this section.
- (b) The person who drilled, deepened, completed or otherwise altered a well pursuant to this rule shall, within 60 days after the date the well is completed, file the well report described in Subsection (a) with the District. If a registrant fails to timely submit the well

report within 60 days as required by this subsection, then the well registration will not be considered complete.

- (c) Not later than the 30th day after the date a well is plugged, a driller, licensed pump installer, or well owner who plugs the well shall submit a plugging report to the District, which shall be substantially similar form to the Texas Department of Licensing and Regulation Form a004WWD (Plugging Report) and shall include all information required therein.
- (d) The District requires wells to be capped under certain conditions to prevent waste, prevent pollution, or prevent further deterioration of well casing. The well must remain capped until such a time as the condition that led to the capping requirement is eliminated or repaired. A well must be capped in accordance with this rule if the well pump equipment is removed from a well with the intention of re-equipping the well at a later date for future use; provided, however that the casing is not in a deteriorated condition that could result in the commingling of water strata and degradation of water quality, in which case the well must be plugged in accordance with this rule. The cap must be capable of sustaining a weight of at least 400 pounds when installed on the well and must be constructed in such a way that the covering cannot be easily removed by hand. The driller, licensed pump installer, or well owner who caps a well shall submit to the District a well capping notice on a form provided by the District.

Rule 3.8 *Transfer of Well Ownership.*

- (a) Within 90 days after the date of a change in ownership of a well exempt under Rule 2.1, the new well owner shall notify the District in writing of the effective date of the change in ownership, the name, daytime telephone number, and mailing address of the new well owner, along with any other contact or well-related information reasonably requested by the General Manager. The new well owner may, in addition, be required to submit an application for registration of an existing well if a registration does not yet exist for the well.
- (b) Within 90 days after the date of a change in ownership of a well that is not exempt under District Rule 2.1 from the fee payment, metering, and reporting requirements of these rules, the new well owner (transferee) shall submit to the District, on a form provided by the District staff, a signed and sworn-to application for transfer of ownership.
- (c) If a registrant conveys by any lawful and legally enforceable means to another person the real property interests in one or more wells or a well system that is recognized in the registration so that the transferring party (the transferor) is no longer the “well owner” as defined herein, and if an application for change of ownership under Subsection (b) has been approved by the District, the District shall recognize the person to whom such interests were conveyed (the transferee) as the legal holder of the registration, subject to the conditions and limitations of these District Rules.

- (d) The burden of proof in any proceeding related to a question of well ownership or status as the legal holder of a registration issued by the District and the rights there under shall be on the person claiming such ownership or status.
- (e) Notwithstanding any provision of this Rule to the contrary, no application made pursuant to Subsection (b) of this Rule shall be granted by the District unless all outstanding fees, penalties, and compliance matters have first been fully and finally paid or otherwise resolved by the transferring party (transferor) for all wells included in the application or existing registration, and each well and registration made the subject of the application is otherwise in good standing with the District.
- (f) The new owner of a well that is the subject of a transfer described in this rule (transferee) may not operate or otherwise produce groundwater from the well after 90 days from the date of the change in ownership until the new owner has:
 - (1) submitted written notice to the District of the change in ownership, for wells described in Subsection (a); or
 - (2) submitted to the District a completed application for transfer of ownership, for wells described in Subsection (b).

A new well owner that intends to alter or use the well in a manner that would constitute a substantial change from the information in the existing registration or that would trigger the requirement to register the well under these Rules must also submit and obtain District approval of a registration application or registration amendment application, as applicable, prior to altering or operating the well in the new manner.

Rule 3.9 Amendment of Registration.

A registrant shall file an application to amend an existing registration and obtain approval by the District of the application prior to engaging in any activity that would constitute a substantial change from the information in the existing registration. For purposes of this rule, a substantial change includes a change that would substantially alter the size or capacity of a pump or well, a change in the type of use of the water produced, the addition of a new well to be included in an already registered aggregate system, a change in location of a well or proposed well, a change of the location of use of the groundwater, or a change in ownership of a well. A registration amendment is not required for maintenance or repair of a well if the maintenance or repair does not increase the designed production capabilities of the pump.

Rule 3.10 Water Production Reports.

- (a) Beginning in 2013, the owner of any non-exempt well within the District must submit, on a form provided by the District, a quarterly report, or an annual report for the system loss report required under Subsection (a)(7) only, containing the following:
 - (1) the name of the registrant;

- (2) the well numbers of each registered well within the District owned or operated by the registrant;
- (3) the total amount of groundwater produced by each well or well system during the immediately preceding reporting period;
- (4) the total amount of groundwater produced by each well or well system during each month of the immediately preceding reporting period;
- (5) the purposes for which the water was used;
- (6) for water used at a location other than the property on which the well is located, and that is not used by a fire department or emergency services district for emergency purposes or by a public water system:
 - (A) the location of the use of the water; and
 - (B) if the water was sold on a retail or wholesale basis, the name of the person to whom it was sold and the quantity sold to each person.
- (7) for water used at a location other than the property on which the well is located and that is used by a public water system, a description of identified system losses, including:
 - (A) an estimate of the total quantity, reported in gallons or in percentages of total annual production, of water lost to system loss, if known;
 - (B) the sources of system losses reported under Subpart (A); and
 - (C) the methods, if any, employed to address the system losses reported under this subsection;
- (8) the amount of groundwater produced for which a fee exemption is sought, if any, under Rule 2.4 for flushing lines, tanks, or fire hydrants, and the metering method(s) employed to determine the amount; and
- (9) additionally, for fire departments, emergency services districts, and any person that provides groundwater produced from within the District to a fire department or emergency services district and that seeks a fee payment exemption under Rule 2.3:
 - (A) the total amount of groundwater produced or used, as applicable, solely for emergency purposes during each month of the reporting period provided under this Rule; and

- (B) the total amount of groundwater produced or used, as applicable, for any purpose other than emergency purposes during each month of the reporting period provided under this Rule.
- (b) There shall be four quarterly reporting periods each year: January 1 to March 31, April 1 to June 30, July 1 to October 31, and November 1 to December 31. The report for each quarter shall be due ~~the last day of the month immediately following the last month of the applicable quarterly reporting period~~ no later than 30 days after the last day of the applicable quarterly reporting period. To comply with this rule, the registrant of a well shall read each water meter associated with a well within 15 days before or after March 31, within 15 days before or after June 30, within 15 days before or after September 30, and within 15 days before or after December 31 each year and report the readings to the District on the form described in Subsection (a). Additionally, to comply with this rule, all applicable information required under Subsection (a) must be contained in the water production report filed with the District.
- (c) The report required by Subsection (a) must also include a true and correct copy of the meter log required by District Rule 8.5. Once the District makes on-line submission of water production reports and meter logs available by internet to well owners, all such reports and logs may be submitted via internet.

SECTION 4. SPACING AND LOCATION OF WELLS; WELL COMPLETION

Rule 4.1 Spacing and Location of Existing Wells.

Wells drilled prior to April 1, 2012, shall be drilled in accordance with state law in effect, if any, on the date such drilling commenced and are exempt from the spacing, location, and completion requirements of these rules to the extent that they were drilled lawfully.

Rule 4.2 Spacing and Location of New Wells.

- (a) All new wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant, and must be drilled and located in compliance with applicable rules and regulations of other political subdivisions.
- (b) After authorization to drill a new well has been granted by the District, the well may only be drilled at a location that is within ten (10) feet of the location specified in the registration.

- ~~(e) Replacement wells must be actually drilled and completed so that they are located no more than 25 feet from the well being replaced for exempt wells or 50 feet for non-exempt wells.~~
- (dc) New exempt wells must be spaced a minimum of 100 feet from existing wells registered with the District at the time the new exempt well registration is administratively complete.
- (ed) All new non-exempt wells must provide sufficient hydrogeologic information to the District to demonstrate that the new well will not unreasonably impact exempt or non-exempt wells in the vicinity of the proposed well that are registered with the District at the time the new non-exempt well registration is administratively complete. The District's Board will adopt hydrogeologic criteria for use by well registration applicants in the implementation of this subsection no later than ~~April 1, 2014~~December 31, 2016.
- (fe) Compliance with the spacing and location requirements of these rules does not necessarily authorize a person to drill a well at a specified location in the District. Agencies or other political subdivisions of the State of Texas that are located in whole or in part within the boundaries of the District may impose additional requirements related to the drilling or completion of water wells.
- (gf) The owner and driller of a well are jointly responsible for ensuring that the well is drilled at a location that strictly complies with the location requirements of Subsection (b). If the board determines that a well is drilled at a location that does not strictly comply with the location requirements of Subsection (b), the Board may, in addition to taking all other appropriate enforcement action, require the well to be permanently closed or authorize the institution of legal action to enjoin any continued drilling activity or the operation of the well.

Rule 4.3 Replacement Wells.

- ~~(a) No person may replace an existing well without first having obtained authorization from the District. Authorization for the construction of a replacement well may only be granted following the submission to the District of an application for registration of a replacement well on a form provided by the District. The application for registration of a replacement well shall include a diagram of the property that depicts both the proposed replacement well and the well being replaced, and any other existing structures on the property.~~
- ~~(b) Applications for registration of replacement wells submitted under this rule may be granted by the General Manager without notice or hearing. An applicant may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board will hear such an appeal at the next available regular Board meeting or hearing called for that purpose.~~

(c) A replacement well must be actually drilled and completed so that it meets the spacing requirement set forth in Rule 4.2(c) and is located on the same tract of land as the well being replaced. The replacement well and pump must not be larger in designed production capacity than the well and pump being replaced, unless the replacement well is exempt under Rule 2.1.

(d) The well owner must cease all production from the well being replaced immediately upon commencing production from the replacement well, and must plug the well being replaced within 90 days from the date that the replacement well is completed.

SECTION 5. REGULATION OF PRODUCTION; WASTE PROHIBITED

Rule 5.1 Temporary Production Limitations.

The maximum quantity of water that a person may withdraw from a well that is not exempt under Rule 2.1(a) is the amount of water the person produces and timely:

- (1) submits payment to the District for in accordance with the fee rate adopted by the District under Section 7; and
- (2) reports pumpage volumes to the District under Rule 3.10.

Rule 5.2 Regular Production Limitations.

In order to accomplish the purposes of Chapter 36, Texas Water Code, and the District Act, and to achieve the goals of the District Management Plan, the District may, after notice and hearing, establish groundwater production limitations for all wells when it adopts permanent rules for the District.

Rule 5.3 Waste Prohibited.

No person shall engage in any conduct subject to the District's regulatory jurisdiction that constitutes waste, as that term is defined herein.

A retail public utility that owns and operates a water pipeline from which groundwater escapes is not engaged in conduct subject to the District's regulatory jurisdiction so long as the retail public utility is pursuing in good faith a maintenance plan to discover and repair leaks and to identify and replace deteriorated waterlines consistent with the accepted standards of retail public water utilities located within the District.

SECTION 6.

TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT

Rule 6.1 General Provisions.

- (a) A person who produces or wishes to produce water from a well not exempt under Rule 2.1(a) that is located or is to be located within the District and transport such water for use outside of the district must register the well and submit timely payment of the Groundwater Transport Fee to the District under Rule 7.2 for any water transported out of the District. The District may require the person to install any meters necessary to report the total amount of groundwater transported outside of the District for reporting purposes and for purposes of calculating the Groundwater Transport Fee.
- (b) The District may not, in a manner inconsistent with rules and fees applied to production and use occurring wholly within the boundaries of the District, regulate production of groundwater or assess fees against the transport of water produced in an area of a retail public utility that is located inside the district boundaries and transported for use to an area that is within the same retail public utility but that is located outside the district boundaries.

Rule 6.2 Reporting.

A person transporting groundwater for use outside of the District and subject to the requirement to pay the Groundwater Transport Fee shall file period reports with the District describing the amount of water transported and used outside the District. The report shall be filed with the District in the same manner, for the same reporting periods, and by the same deadlines set forth for Water Production Reports under Rule 3.10. The report for groundwater transported shall be on the appropriate form provided by the District and shall state the following: (1) the name of the person; (2) the well registration numbers of each well from which the person has produced groundwater transported for use outside the District; (3) the total amount of groundwater produced from each well or well system during the immediately preceding reporting period; (4) the total amount of groundwater transported outside of the District from each well, well system or surface impoundment containing produced groundwater during each month of the immediately preceding reporting period; (5) the purposes for which the water was transported; and (6) any other information requested by the District.

SECTION 7.

FEEES AND PAYMENT OF FEES

Rule 7.1 Water Use Fees.

- (a) A water use fee rate schedule shall be established by Board resolution annually at least 60 days before the end of the calendar year. The Board may adopt a different water use fee rate for water used for agricultural purposes than for water used for non-agricultural

purposes. The rate shall be applied to the groundwater pumpage in the ensuing calendar year for each well not exempt under Rule 2.1. The District will review the account of any person changing the use of a well from non-exempt to exempt or vice versa to determine if additional water use fees are due or if a refund of water use fees is warranted.

- (b) Wells exempt under Rule 2.1 shall be exempt from payment of water use fees. However, if exempt well status is withdrawn, the District may assess fees and penalties in accordance with the District Rules.
- (c) No later than 30 days prior to the end of the calendar year, beginning with calendar year 2012, the District shall send by regular mail or e-mail to the owner or operator of each registered well that is required to pay the Water Use Fee a reminder statement setting forth the water use fee rate applicable to the water produced in the ensuing year, setting forth deadlines for submission of fee payments and production reports of meter readings, and other information deemed appropriate by the District. The initial Water Use Fee for production during the period from July 1, 2012, to December 31, 2012, will be established by the Board no later than January 1, 2012.

Rule 7.2 Groundwater Transport Fees.

The District shall impose a Groundwater Transport Fee of 1.5 times the District's Water Use Fee rate for in-District use for groundwater produced in the District that is transported for use outside of the District, except as provided by Rule 6.1(b). The procedures, requirements, and penalties related to payment of the Water Use Fee shall apply to payment of the Groundwater Transport Fee.

Rule 7.3 Payments of Water Use and Groundwater Transport Fees.

- (a) All fees for groundwater production or transport in a calendar year must be paid to the District based on quarterly production. All water production reports, monthly logs, and groundwater transport reports will be due no later than 30 days from the end of the applicable quarterly reporting period in accordance with Rule 3.10(b). The District will generate and mail all invoices for fee payment not later than the 45th day after the end of the quarterly reporting period. All payments that are due to the District must be paid no later than 75 days from the end of the applicable quarterly reporting period. Fees for water produced or transported for each quarter shall be due the last day of the month immediately following the last month of the applicable quarterly reporting period. Fee payments shall be submitted in conjunction with the Water Production Reports, monthly logs, and groundwater transport reports if applicable.
- (b) Any well that is subject to fee payment under this Rule and that provides water for both agricultural and non-agricultural purposes shall pay the water use fee rate applicable to non-agricultural purposes for all water produced from the well, unless the applicant can demonstrate through convincing evidence to the satisfaction of the District that a system is or will be in place so as to assure an accurate accounting of water for each purpose of use.

- (c) Notwithstanding anything to the contrary in these rules, the initial Water Use Fees and Groundwater Transport Fees to be submitted under Rules 7.1 and 7.2 shall be for groundwater produced or transported during the period of July 1 to December 31, 2012, which shall be due to the District no later than January 31, 2013. This subsection shall expire without need for further action by the Board on December 31, 2013.

Rule 7.4 Failure to Make Fee Payments.

- (a) Payments not received within 30 days following the date that Water Use Fees or Groundwater Transport Fees are due and owing to the District pursuant to Rule 7.3(a) will be subject to a late payment fee of fifteen percent (15%) of the total amount of water use fees due and owing to the District. ~~the greater of the following:~~

~~(1) \$25.00; or~~

~~(2) Ten percent (10%) of the total amount of water use fees due and owing to the District.~~

- (b) Persons failing to remit all Water Use Fees or Groundwater Transport Fees due and owing to the District within 60 days of the date such fees are due pursuant to Rule 7.3(a) shall be subject to a civil penalty not to exceed three times the amount of the outstanding fees due and owing, in addition to the late fee penalty prescribed in Subsection (a) of this Rule, and may be subject to additional enforcement measures provided for by these Rules or by order of the Board.

Rule 7.5 Returned Check Fee.

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

Rule 7.6 Well Report Deposit.

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

Rule 7.7 Well Registration Fees.

The owner of any new well shall submit payment to the District of a \$100 non-refundable well registration fee per well, which is due by the same deadline established under these rules for registration of the well. The well registration fee must be received by the District in order for the District to find a registration application administratively complete. The purpose of the well registration fee is to cover the administrative costs to the District associated with registering the

well and administering the rules of the District related to the well. The amount of the well registration fee has been determined by the District to be less than the actual administrative costs to the District of registering the well and administering the rules of the District with respect to the well, even in light of anticipated revenues to be received from other revenue sources.

Rule 7.8 Enforcement.

After a well is determined to be in violation of these rules for failure to make payment of water use fees on or before the 60th day following the date such fees are due pursuant to Rule 7.3, all enforcement mechanisms provided by law and these Rules shall be available to prevent unauthorized use of the well and may be initiated by the General Manager without further authorization from the Board.

Rule 7.9 Meter Sealing Fee.

The Board, by resolution, may establish a fee to recover all or part of its costs for removing and reapplying a District seal and verifying relevant well and meter information in situations where a well owner or operator submits a request to move a meter from one well to another.

**SECTION 8.
METERING**

Rule 8.1 Water Meter Required.

- (a) Except as provided in Rule 8.2, the owner of a well located in the District and not exempt under Rule 2.1 shall equip the well with a flow measurement device meeting the specifications of these Rules and shall operate the meter on the well to measure the flow rate and cumulative amount of groundwater withdrawn from the well. All meters that are existing at the time of the Effective Date of these rules, and at a minimum have the ability to measure the cumulative amount of groundwater withdrawn from the well, shall be considered existing and will not have to be replaced with meters that can also measure the flow rate, provided that the meter meets all other requirements herein. Except as provided in Rule 8.2, the owner of a new or existing well not exempt under Rule 2.1 that is located in the District shall install a meter on the well in compliance with the requirements herein prior to producing groundwater from the well on or after July 1, 2012.
- (b) All meters must be sealed in place by the District with a District seal. Except as provided by Rule 8.4, the meter must remain with the well except in cases where the well is modified or the meter no longer meets the accuracy standards set forth under this rule and Rule 8.3. In the event a well owner wants to move a meter from one well to another, the well owner must submit a request to the District to remove its meter seal and must pay to the District the meter sealing fee established under Rule 7.9. The District shall remove the seal within five business days of receiving a request from the well owner. The District

may seal the well from which the meter was removed to prevent its operation without a meter, in addition to sealing the meter on the new well. The readings on the meter must be recorded immediately prior to removal and at the time of reinstallation.

- (c) A mechanically driven, magnetic, or ultrasonic totalizing water meter is the only type of meter that may be installed on a well registered with the District unless an approval for another type of reliable meter or alternative measuring method is applied for and granted by the District. The totalizer must not be resettable by the registrant and must be capable of a maximum reading greater than the maximum expected annual pumpage. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for cold-water meters as those standards existed on the date of adoption of these Rules. Meters must be able to measure instantaneous flow rate of the groundwater produced from the well, except as follows: a meter that was installed on an existing well before the effective date that is not capable of measuring the instantaneous flow rate will not have to be replaced, provided that the meter has the ability to measure the cumulative amount of groundwater withdrawn from the well and meets all other requirements herein.
- (d) All meters must be installed within 25 feet of the wellhead. The water meter must be installed according to the manufacturer's published specifications in effect at the time of the meter installation, or the meter's accuracy must be verified by the registrant in accordance with Rule 8.3. If no specifications are published, there must be a minimum length of five pipe diameters of straight pipe upstream of the water meter and two pipe diameter of straight pipe downstream of the water meter. These lengths of straight pipe must contain no check valves, tees, gate valves, back flow preventers, blow-off valves, or any other fixture other than those flanges or welds necessary to connect the straight pipe to the meter. In addition, the pipe must be completely full of water throughout the region. All installed meters must measure only groundwater.
- (e) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's standards, instructions, or recommendations, and shall be calibrated to ensure an accuracy reading range of 95% to 105% of actual flow.
- (f) The owner of a well is responsible for the purchase, installation, operation, maintenance, and repair of the meter associated with the well.
- (g) Bypasses are prohibited unless they are also metered. This subsection shall not apply to any unmetered bypasses in existence on the effective date but shall apply to bypasses installed after that date. A person commits a major violation of these rules by using a bypass to avoid recording groundwater production on a well meter, which may also be subject to criminal prosecution by a local prosecuting authority.

Rule 8.2 Water Meter Exemption.

Wells exempt under Rule 2.1 shall be exempt from the requirement to obtain a water meter under Rule 8.1.

Rule 8.3 Accuracy Verification.

- (a) **Meter Accuracy to be Tested:** The General Manager may require the registrant, at the registrant's expense, to test the accuracy of a water meter and submit a certificate of the test results. The certificate shall be on a form provided by the District. The General Manager may further require that such test be performed by a third party qualified to perform such tests. The third party must be approved by the General Manager prior to the test. Except as otherwise provided herein, certification tests will be required no more than once every three years for the same meter. If the test results indicate that the water meter is registering an accuracy reading outside the range of 95% to 105% of the actual flow, then appropriate steps shall be taken by the registrant to repair or replace the water meter within 90 calendar days from the date of the test. The District, at its own expense, may undertake random tests and other investigations at any time for the purpose of verifying water meter readings. If the District's tests or investigations reveal that a water meter is not registering within the accuracy range of 95% to 105% of the actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or wells, the registrant shall reimburse the District for the cost of those tests and investigations within 90 calendar days from the date of the tests or investigations, and the registrant shall take appropriate steps to bring the meter or meters into compliance with these Rules within 90 calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement of accuracy is impaired, the District may require the registrant, at the registrant's expense, to take appropriate steps to remedy the problem and to retest the water meter within 90 calendar days from the date the problem is discovered and reported to the registrant.
- (b) **Meter Testing and Calibration Equipment:** Only equipment capable of accuracy results of plus or minus two percent of actual flow may be used to calibrate or test meters.
- (c) **Calibration of Testing Equipment:** All approved testing equipment must be calibrated every two years by an independent testing laboratory or company capable of accuracy verification. A copy of the accuracy verification must be presented to the District before any further tests may be performed using that equipment.

Rule 8.4 Removal of Meter for Repairs.

A water meter may be removed for repairs and the well remain operational. A water meter may also be removed if necessary to modify the well. A water meter may be removed provided the District is notified prior to the removal, and if the well is to remain operational, the repairs must be completed in a timely manner. If the meter on the well has already been sealed by the District, the District shall remove the seal within five business days of receiving a request from the well owner. The readings on the meter must be recorded immediately prior to removal and at

the time of reinstallation. The record of pumpage must include an estimate of the amount of groundwater withdrawn during the period the meter was not installed and operating.

Rule 8.5 Water Meter Readings.

The registrant of a well not exempt under Rule 2.1 must read each water meter associated with the well and record the meter readings and the actual amount of pumpage in a log at least monthly. The logs containing the recordings shall be available for inspection by the District at reasonable business hours. Copies of the logs must be included with the Water Production Report required by District Rule 3.10, along with fee payments as set forth under Section 7. The registrant of a well shall read each water meter associated with a well within 15 days before or after March 31, within 15 days before or after June 30, within 15 days before or after September 30, and within 15 days before or after December 31 each year, as applicable to the respective immediately preceding quarterly reporting period, and report the readings to the District on a form provided by the District along with copies of the monthly logs and payment of all Water Use Fees by the deadlines set forth for fee payment under Rule 7.3.

Rule 8.6 Installation of Meters.

A meter required to be installed under these Rules shall be installed before producing water from the well on or after July 1, 2012.

Rule 8.7 Enforcement.

- (a) It is a major violation of these Rules to fail to meter a well and report meter readings in accordance with this Section. After a well is determined to be in violation of these rules for failure to meter or maintain and report meter readings, all enforcement mechanisms provided by law and these Rules shall be available to prevent unauthorized use of the well and may be initiated by the General Manager without further authorization from the Board.
- (b) After July 1, 2012, the District shall send owners of new or existing wells not exempt under Rule 2.1 who have failed to comply with the metering requirements set forth in this section a certified letter notifying the well owner of the non-compliance. Within 30 days of the date the certified letter was mailed from the District, the well owner must provide information to the District demonstrating that the well owner has taken steps to comply with the District's registration, metering, and fee payment rules, including past due fee payments under Rules 7.1 through 7.4. If the well owner fails to respond to the District and demonstrate progress towards compliance within 30 days of the date the District mailed the notification letter days, the well owner will receive a major violation according to the terms of the District's Enforcement Policy and Civil Penalty Schedule, Appendix A.

SECTION 9. INSPECTION AND ENFORCEMENT OF RULES

Rule 9.1 Purpose and Policy.

The District's ability to effectively and efficiently manage the limited groundwater resources within its boundaries depends entirely upon the adherence to the rules promulgated by the Board to carry out the District's purposes. Those purposes include providing for the conservation, preservation, protection and recharge of the groundwater resources within the District, to protect against subsidence, degradation of water quality, and to prevent waste of those resources. Without the ability to enforce these rules in a fair, effective manner, it would not be possible to accomplish the District's express groundwater management purposes. The enforcement rules and procedures that follow are consistent with the responsibilities delegated to it by the Texas Legislature through the District Act, and through Chapter 36 of the Texas Water Code.

Rule 9.2 Rules Enforcement.

- (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Rules, the Board may institute and conduct a suit in a court of competent jurisdiction in the name of the District for injunctive relief, recovery of a civil penalty in an amount set by District Rule per violation, both injunctive relief and a civil penalty, or any other appropriate remedy. Each day of a continuing violation constitutes a separate violation.
- (b) Unless otherwise provided in these rules, the penalty for a violation of any District rule shall be either:
 - (1) \$10,000.00 per violation; or
 - (2) A lesser amount, based on the severity of the violation, as set forth in an Enforcement Policy that may include a Civil Penalty Schedule, which is attached to these Rules as Appendix A and adopted as a Rule of the District for all purposes.
- (c) A penalty under this section is in addition to any other penalty provided by law and may be enforced by filing a complaint in a court of competent jurisdiction in the county in which the District's principal office or meeting place is located.
- (d) If the District prevails in a suit to enforce its Rules, the District may seek, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of attorney's fees awarded by a court under this Rule shall be fixed by the court.

Rule 9.3 Failure to Report Pumpage and/or Transported Volumes.

The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources in the District. Failure of a well owner required by these Temporary Rules to submit complete, accurate, and timely pumpage and transportation reports may result in:

- (a) the assessment of any fees or penalties adopted under Rule 9.2 for meter reading and inspection as a result of District inspections to obtain current and accurate pumpage volumes; and
- (b) additional enforcement measures provided by these Rules or by order of the Board.

Rule 9.4 District Inspections.

No person shall unreasonably interfere with the District's efforts to conduct inspections or otherwise comply with the requirements, obligations, and authority provided in Section 36.123 of the Texas Water Code.

Rule 9.5 Notices of Violation.

Whenever the District determines that any person has violated or is violating any provision of the District's Rules, including the terms of any rule or order issued by the District, it may use any of the following means of notifying the person or persons of the violation:

- (a) **Informal Notice:** The officers, staff or agents of the District acting on behalf of the District or the Board may inform the person of the violation by telephone by speaking or attempting to speak to the appropriate person to explain the violation and the steps necessary to satisfactorily remedy the violation. The information received by the District through this informal notice concerning the violation will be documented, along with the date and time of the call, and will be kept on file with the District. Nothing in this subsection shall limit the authority of the District to take action, including emergency actions or any other enforcement action, without first providing notice under this subsection.
- (b) **Notice of Violation:** The District may inform the person of the violation through a written notice of violation issued pursuant to this rule. Each notice of violation issued hereunder shall explain the basis of the violation, identify the rule or order that has been violated or is being violated, and list specific required actions that must be satisfactorily completed—which may include the payment of applicable civil penalties—to address each violation raised in the notice. Notices of violation issued hereunder shall be tendered by a delivery method that complies with District Rule 1.7. Nothing in this rule subsection shall limit the authority of the District to take action, including emergency actions or any other enforcement action, without first issuing a notice of violation.
- (c) **Compliance Meeting:** The District may hold a meeting with any person whom the District believes to have violated, or to be violating, a District Rule or District order to discuss each such violation and the steps necessary to satisfactorily remedy each such

violation. The information received in any meeting conducted pursuant to this rule subsection concerning the violation will be documented, along with the date and time of the meeting, and will be kept on file with the District. Nothing in this rule subsection shall limit the authority of the District to take action, including emergency actions or any other enforcement action, without first conducting a meeting under this subsection.

Rule 9.6 Show Cause Hearing.

- (a) Upon recommendation of the General Manager to the Board or upon the Board's own motion, the Board may order any person that it believes has violated or is violating any provision of the District's Rules a District order to appear before the Board at a public meeting called for such purpose and show cause why an enforcement action, including the initiation of a suit in a court of competent jurisdiction, should not be pursued by the District against the person or persons made the subject of the show cause hearing.
- (b) No show cause hearing under Subsection (a) of this Rule may be held unless the District first serves, on each person to be made the subject of the hearing, written notice not less than 20 days prior to the date of the hearing. Such notice shall include the following:
 - 1. the time and place for the hearing;
 - 2. the basis of each asserted violation; and
 - 3. the rule or order that the District believes has been violated or is being violated; and
 - 4. a request that the person cited duly appear and show cause why enforcement action should not be pursued.
- (c) The District may pursue immediate enforcement action against the person cited to appear in any show cause order issued by the District where the person so cited fails to appear and show cause why an enforcement action should not be pursued.
- (d) Nothing in this rule shall limit the authority of the District to take action, including emergency actions or any other enforcement action, against a person at any time regardless of whether the District holds a hearing under this rule.

SECTION 10. EFFECTIVE DATE

Rule 10.1. Effective Date.

These Rules take effect on August 29, 2011, which was the date of their original adoption. An amendment to these Rules takes effect on the date of its original adoption. It is the District's intention that the rules and amendments thereto be applied retroactively to activities involving

the production and use of groundwater resources located in the District, as specifically set forth in these Rules.

APPENDIX A. Enforcement Policy and Civil Penalty Schedule.

Red River Groundwater Conservation District **ENFORCEMENT POLICY AND CIVIL PENALTY SCHEDULE**

General Guidelines

When the General Manager discovers a violation of the District Rules that either (1) constitutes a Major Violation, or (2) constitutes a Minor Violation that the General Manager is unable to resolve within 60 days of discovering the Minor Violation, the General Manager shall bring the Major Violation or the unresolved Minor Violation and the pertinent facts surrounding it to the attention of the Board. Violations related to water well construction and completion requirements shall also be brought to the attention of the Board.

The General Manager shall recommend to the Board of Directors an appropriate settlement offer to settle the violation in lieu of litigation based upon the Civil Penalty Schedule set forth below. The Board may instruct the General Manager to tender an offer to settle the violation or to institute a civil suit in the appropriate court to seek civil penalties, injunctive relief, and costs of court and expert witnesses, damages, and attorneys' fees.

I. Minor Violations

The following acts each constitute a minor violation:

1. Failure to timely file a registration on a new well that qualifies for an exemption under Rule 2.1.
2. Failure to conduct a meter reading within the required period.
3. Failure to timely notify District regarding change of ownership.
4. Failure to timely file a Well Report.
5. Failure to timely submit required documentation reflecting alterations or increased production.
6. Operating a meter that is not accurately calibrated.
7. Drilling an exempt or non-exempt well with an expired well registration.

CIVIL PENALTY SCHEDULE FOR MINOR VIOLATIONS

First Violation:

\$100.00

Second Violation:

\$200.00

Third Violation:

Major Violation

A second violation shall be any minor violation within 3 years of the first minor violation. A third violation shall be any minor violation following the second minor violation within 5 years of the first minor violation. Each day of a continuing violation constitutes a separate violation.

II. Major Violations

The following acts each constitute a major violation:

1. Failure to register a well not exempt under Rule 2.1 where mandated by rules, including drilling, equipping, completing, altering, or operating a well without a compliant and approved registration.
2. Failure to timely meter a well when required.
3. Failure to submit accurate Water Production Report within the required period.
4. Failure to submit accurate Groundwater Transport Report within the required period.
5. Drilling a well in a different location than authorized or in violation of spacing requirements.*
6. Failure to close or cap an open or uncovered well.
7. Failure to submit Water Use Fees within 60 days of the date the fees are due.**
8. Failure to timely submit Groundwater Transport Fees within 60 days of the date the fees are due.**
9. Committing waste.
10. Tampering with or disabling a required meter or tampering with a District seal.

CIVIL PENALTY SCHEDULE FOR MAJOR VIOLATIONS

First Violation:

\$500.00

Second Violation:

\$1,000.00

Third Violation:

**Civil Suit for injunction, damages, and
escalated penalties**

A second violation shall be any major violation within 3 years of the first major violation of the same level. A third violation shall be any major violation following the second major violation within 5 years of the first major violation. Each day of a continuing violation constitutes a separate violation.

* In addition to the applicable penalty provided for in the Civil Penalty Schedule for Major Violations, persons who drill a well in violation of applicable spacing requirements may be required to plug the well.

** In addition to the applicable penalty provided for in the Civil Penalty Schedule for Major Violations, persons who do not submit all Water Use Fees and Groundwater Transport Fees due and owing within 60 days of the date the fees are due pursuant to Rule 7.3(a) will be assessed a civil penalty equal to three times the total amount of outstanding Water Use Fees that are due and owing.

III. Water Well Construction and Completion Requirements

Failure to use approved construction materials: **\$500 + total costs of remediation**

Failure to properly cement annular space: **\$1,000 + total costs of remediation**

In addition to the civil penalties provided for in this schedule, persons who drill a well in violation of applicable spacing or completion requirements may be required to recomplete or reconstruct the well in accordance with the District's rules, or may be ordered to plug the well.

IV. Other Violations of District Rules Not Specifically Listed Herein

Any violation of a District Rule not specifically set forth herein shall be presented to the Board of Directors for a determination of whether the violation is Minor or Major, based upon the severity of the violation and the particular facts and issues involved, whereupon the procedures and the appropriate civil penalty amount set forth herein for Minor and Major Violations shall apply to the violation.