

# **GATEWAY GROUNDWATER CONSERVATION DISTRICT**

**Hardeman, Foard, Childress, and Cottle  
Counties, Texas**

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## **RULES**

**ADOPTED July 1, 2003**

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## **SECTION 1. DEFINITIONS AND CONCEPTS**

### **RULE 1.1 DEFINITIONS OF TERMS**

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

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

**Agricultural crop** means food or fiber commodities grown for resale or commercial purposes that provide food, clothing, or animal feed.

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

**D-watering well** means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.

**District** means the Tri-County Groundwater Conservation District.

**District Act** means House Bill No. 3626 codified as Chapter 1352, Regular Session, 77<sup>th</sup> Legislature (2001) and the non-conflicting provisions of Chapter 36, Water Code.

**District office** means the office of the District as established by resolution of the Board.

**District's territory** means all of the Counties of Foard and Hardeman in the State of Texas.

**Drilling Permit** means a permit for a water well issued by the District allowing a water well to be drilled.

**Exported Water** means any water leaving the District.

**General Manager** means the employee of the District described in Rule 3.1.

**Groundwater** means water located beneath the earth's surface within the District but does not include water produced with oil in the production of oil and gas.

**Groundwater transportation facility** means any means of transporting groundwater out of the District as the term is defined in Rule 8.1.

**Hearing Body** means the Board, any committee of the Board, or a Hearing Examiner at any hearing held under the authority of the District Act.

**Hearing Examiner** means a person appointed by the Board of Directors to conduct a hearing or other proceeding.

**Injection well** includes:

- an air-conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;
- a cooling water return flow well used to inject water previously used for cooling;
- a drainage well used to drain surface fluid into a subsurface formation;
- a recharge well used to replenish the water in an aquifer;
- a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater.
- a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
- a substance control well used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; or
- a closed system, geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

**Landowner** means the person who bears ownership of the land surface.

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

**Management Plan** means the comprehensive management plan which the District must prepare and submit to the Texas Water Development Board under Section 36.1071, Texas Water Code and as further described in Rule 7.1.

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

**New well** means any well to be drilled in the District's territory on or after February 1, 2003, the date on which the voters of Foard and Hardeman County confirmed the existence of the District.

**New well application** means an application for a permit for a water well that has not yet been drilled.

**Open Meetings Act** means Chapter 551, Texas Government Code, which governs the manner in which the meetings of the District must be conducted.

**Operating Permit** means a permit issued by the District for a water well, allowing groundwater to be withdrawn from a water well from a designated period.

**Public Information Act** means Chapter 552, Texas Government Code, which governs the manner in which the records of the District must be made available to the public. It is sometimes called the Open Records Act.

**Person** includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

**Presiding officer** means the President, Vice-President, Secretary, or other Board member presiding at any hearing or other proceeding or a Hearing Examiner conducting any hearing or other proceeding.

**Rule or Rules** means the rules of the District compiled in this document and as may be supplemented or amended from time to time.

**Section** means the number section of a survey or block as shown in "Foard and Hardeman County Farm Plats."

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

**Waste** means the definitions contained in Section 36.001, Definitions, of the Texas Water Code; and Section 13 herein.

**Water meter** means a water flow measuring device that can accurately record the amount of groundwater produced during a measured time.

**Well** means any facility, device, or method used to withdraw groundwater from the groundwater supply within the District.

**Well owner or well operator** means the person who owns the land upon which a well is located or is to be located or the person who operates a well or a water distribution system supplied by a well.

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

**Withdraw** means extracting groundwater by pumping or by another method.

**Windmill** means a wind-driven or hand-driven device that uses a piston pump to remove groundwater.

## **RULE 1.2 PURPOSE OF RULES**

These rules are adopted to achieve the provisions of the District Act and accomplish its purposes.

## **RULE 1.3 USE AND EFFECT OF RULES**

The District uses these rules as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They may neither be construed as a limitation or restriction on the exercise of any discretion; nor be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law; nor be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act.

## **RULE 1.4 AMENDING OF RULES**

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

## **RULE 1.5 HEADINGS AND CAPTIONS**

The Section and other headings and captions contained in these rules are for reference purposes only. They do not affect the meaning or interpretation of these rules in any way.

## **RULE 1.6 CONSTRUCTION**

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

## **RULE 1.7 METHODS OF SERVICE UNDER THE RULES**

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

and failed, the service is complete upon notice publication in a general circulation newspaper in each of Foard and Hardeman Counties.

#### **RULE 1.8 SEVERABILITY**

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

## **SECTION 2. BOARD**

### **RULE 2.1 PURPOSE OF THE BOARD**

The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District for conserving, preserving, protecting and recharging the groundwater within the District, and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purpose of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.

### **RULE 2.2 BOARD STRUCTURE, OFFICERS**

The Board consists of the members appointed and qualified as required by the District Act. The Board will elect one of its members to serve as President, to preside over Board meetings and proceedings and to serve as the chief executive officer of the District; one to serve as Vice-President to preside in the absence of the President; and one to serve as Secretary to keep a true and complete account of all meetings and proceedings of the Board. The Board, at its discretion, may combine the offices of Secretary and Treasurer into the office of Secretary-Treasurer. The Board will elect officers annually at the regular meeting held in the month of February. Members serve until their successors are appointed and have qualified in office in accordance with Section 36.055, Texas Water Code. Officers serve until their successors are appointed.

### **RULE 2.3 MEETINGS**

The Board will hold a regular meeting once each month on the date the Board may establish from time to time by resolution. At the request of the President, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held in accordance with the Open Meetings Act.

### **RULE 2.4 COMMITTEES**

The President may establish committees for formulation of policy recommendations to the Board, and shall appoint the chair and membership of the committees. Committee members serve at the pleasure of the President.

### **RULE 2.5 EX PARTE COMMUNICATIONS**

Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested case before the Board, with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. A Board member may communicate ex parte with other members of the Board. This rule does not apply to a Board member who abstains from voting on any matter in which ex parte communications have occurred.



## **SECTION 3. DISTRICT MANAGEMENT**

### **RULE 3.1 GENERAL MANAGER**

The Board may employ a person to manage the District and title this person General Manager. The General Manager will have no power, duty or responsibility other than gathering information and performing Water District functions as determined by the Board. The Board will determine the salary and review the position of General Manager each year at the beginning of the third quarter of that fiscal year.

### **RULE 3.2 MANAGEMENT EMPLOYEES OTHER THAN GENERAL MANAGER**

Subject to the provisions of the annual budget, the General Manager may employ those persons for whom positions are specified in the annual budget. Those employees shall serve at the pleasure of the General Manager.

### **RULE 3.3 HOLIDAYS**

Persons employed by the District shall observe the following holidays: New Year's Day, Texas Independence Day (March 2), Good Friday, Memorial Day, Independence Day (July 4), Labor Day, the Thursday and Friday of Thanksgiving, and Christmas Day. If either Christmas Day or New Years Day occurs on either a Saturday or Sunday, the General Manager may elect to set the applicable holiday for either the preceding Friday or the following Monday, provided that the applicable holiday shall not exceed one and one-half days (excluding Saturdays and Sundays).

## **SECTION 4. FINANCIAL MANAGEMENT AND GENERAL ADMINISTRATION**

### **RULE 4.1 FISCAL YEAR**

The District's fiscal year begins on October 1 of each year and ends on September 30 of the following year.

### **RULE 4.2 ANNUAL BUDGET**

The recommended annual budget for the oncoming fiscal year shall be submitted by the President to the Board annually at the regular meeting in the month of August. The Board shall adopt the annual budget for the oncoming fiscal year at its regular meeting in September of each year. During the fiscal year, the Board may amend the annual budget as it deems necessary.

### **RULE 4.3 ANNUAL LEVY OF TAXES**

At its regular meeting in September of each year the Board shall levy taxes to pay the maintenance and operating expenses of the District at a rate not to exceed 50 cents on each \$100 of assessed valuation.

### **RULE 4.4 ANNUAL AUDIT**

At its regular meeting in September of each year the Board shall designate the person or accounting firm to perform the annual audit required by Section 36.153, Texas Water Code. The annual audit report shall be considered and acted upon at the regular meeting in January of each year.

### **RULE 4.5 MINUTES AND RECORDS OF THE DISTRICT**

All documents, reports, records, and minutes of the District are available for public inspection and copying following the Texas Open Records Act. Upon written application of any person, the District will furnish copies of its public records. There will be a copying charge pursuant to policies established by the District. A list of the charges for copies will be furnished by the District.

### **RULE 4.6 CERTIFIED COPIES**

Requests for certified copies must be in writing. Certified copies will be made under the direction of the Board. A certification charge and copying charge may be assessed pursuant to charges established by the Board.

## **SECTION 5. SPACING REQUIREMENTS**

### **RULE 5.1 REQUIRED SPACING**

A new well may not be drilled within fifty (50) feet from the property line of any adjoining landowner.

### **RULE 5.2 EXCEPTIONS TO SPACING**

- A. If the applicant presents waivers signed by the adjoining landowner(s) stating that they have no objection to the proposed location of the well site, the spacing requirements will not apply to the proposed new well location.
- B. Providing an applicant can show, by clear and convincing evidence, good cause why a new well should be allowed to be drilled closer than the required spacing of fifty (50) feet, the issue of spacing requirements will be considered during the contested case process. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board must limit the production of the well to ensure no injury is done to adjoining landowners or the aquifer.
- C. The Board may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing spacing requirements.

## **SECTION 6. PRODUCTION LIMITATIONS**

### **RULE 6.1 MAXIMUM ALLOWABLE PRODUCTION**

- A. Determination of maximum allowable production will always and only be for the tract of land where the well or wells will be permitted. Other acres owned but not contiguous to the tract where a well or wells are being permitted will not be included in the computation for maximum allowable production.
- B. A well or well system may only be permitted to be drilled and equipped for the production of a cumulative total of five (5) gallons per minute (g.p.m.) per contiguous acre owned or operated.
- C. In no event may a well or well system be operated such that the total annual production exceeds two (2) acre feet of water per acre owned or operated within the same Section.
- D. An exception to these production limitations will be considered only ten (10) days after written notice is given by the applicant to all adjacent landowners and all other landowners within one-half mile of the well site. Following proof of written notice, the Board shall call a public hearing to take evidence and testimony on the proposed exception, after which they may grant or deny the request for the exception. If all the landowners required to receive notification by this rule waive in writing their rights to object to the exception, the exception shall be granted.

## **SECTION 7. OTHER DISTRICT ACTIONS AND DUTIES**

### **RULE 7.1 DISTRICT MANAGEMENT PLAN**

The Management Plan specifies the acts, procedures, performance and avoidance necessary to prevent waste, the reduction of artesian pressure, or the draw-down of the water table. The District shall use these Rules to implement the Management Plan. The Board will review the Management Plan at least every fifth year. If the Board considers a new Management Plan necessary or desirable, based on evidence presented at hearing, a new Management Plan will be adopted. A Management Plan, once adopted, remains in effect until the adoption of a new Management Plan. In preparing any Management Plan, the District shall conform to the provisions of Section 36.1071, 36.1072, and 36.1073, Texas Water Code.

### **RULE 7.2 EXTREME DECLINE STUDY AREA**

#### **A. Extreme Decline Study Area (ESDA) Defined:**

An ESDA is naming (designation) and drawing on a map (declination) of a square, nine (9) section area. The purpose for designating an ESDA is to collect hydrological information on all wells in that area. An ESDA may not be any other size or configuration. This size will be large enough to be nondiscriminating and small enough to minimize the number of landowners, well owners/operators, or known water right holders.

#### **B. Board Consideration of an EDSA**

The District will review and study all data obtained from the Annual Water Level Monitoring Reports. If evidence of extreme decline exists, comparable to other monitor wells, the Board shall consider the need for an EDSA.

The only evidence to be considered by the Board will be the data obtained from the Annual Water Level Monitoring Reports reflecting extreme groundwater level declines. This data along with the testimony received from a public hearing may influence the Board to consider creation of an EDSA.

#### **C. Board Procedure Prior to Establishment of an EDSA**

- (1) All known landowners, well owners/operators, and water right holders within the proposed square, nine (9) Sections must be notified of the potential designation.
  - a. The Board will provide notification at least sixty (60) days before the date of public hearing.
  - b. A summary of all available data from the Annual Water Level Monitoring Report concerning the proposed area will be included in the notification.

- (2) The Board shall call a public hearing to consider creation of an EDSA.
  - a. The District will present data from the Annual Water Level Monitoring Report concerning the proposed area.
  - b. The Board will receive testimony from the landowners, well owners/operators, and water right holders within the proposed area.
  - c. The Board will receive testimony from the general public.
- (3) The Board will evaluate the proceedings from the public hearing and may consider a resolution to establish an EDSA.

**Procedure following Establishment of an EDSA**

- (1) Extensive data will be collected:
  - a. The District will measure all available wells to determine the water level for each well to establish a baseline.
  - b. The District will measure the wells at the same time in the following year. The District will compare water level changes with results from the previous year.
  - c. The District will collect data on well depths for all available wells.
- (2) Data will be reviewed and studied:
  - a. The District will compare subsequent changes in water levels on an annual/historical basis for monitoring wells with historical data.
  - b. The District will evaluate climate and environmental events which occurred during the year.
  - c. The District will consider changes in water-use practices.
  - d. The District will consider available information on the use of new technology and/or procedures.
  - e. The District will consider relevant information reflecting extreme declines in the aquifer within the EDSA.
- (3) Each succeeding year after the EDSA has been designated, the District will continue to gather and evaluate the information. The Board will then make one of the following program determinations:

- a. Continue monitoring and evaluating data of the area.
- b. Determine the discontinuation of the EDSA and cancel the program.
- c. Determine convincing data (from evidence gathered in the study area) and from the public hearing that over-mining of the aquifer is occurring within the EDSA.
- d. Begin the process of designating and delineating a Production Use Measurement Area.

### **RULE 7.3 PRODUCTION USE MEASUREMENT AREA**

#### **A. Production Use Measurement Area (PUMA) Defined**

A. Production Use Measurement Area (PUMA) is the succeeding process of protecting and conserving the aquifer. If the results obtained from the EDSA show clear and convincing evidence of possible over-mining of the aquifer, further actions by the District may be necessary to protect and conserve the groundwater. The Board will designate and delineate an area to accurately measure the use of water. The area must be located inside the EDSA, and the size cannot be larger than four (4) contiguous Sections. The designated area will be large enough to be nondiscriminating and will include no less than three (3) different landowners, well owners/operators, or water right holders.

#### **B. Board Consideration of PUMA**

Clear and convincing information, obtained from the EDSA, indicate the possible and probable excessive mining of the aquifer.

Only the statistical data revealed from the EDSA will cause the Board to consider creation of a PUMA.

Under no circumstances will the Board consider hearsay, rumors, or verbal reports as a source of evidence to consider designation of a PUMA.

#### **C. Board Procedure prior to Establishment of PUMA**

- (1) All known landowners, well owners/operators, and water right holders of the EDSA will be notified of the proposed plan:
  - a. The Board will provide notification at least sixty (60) days before the public hearing date.
  - b. The Board shall include in the notice a summary of the factual data obtained from EDSA.

- (2) The Board shall call a public hearing to consider establishing a PUMA:
  - a. The Board will present a summary of the statistical data obtained from the EDSA.
  - b. The Board will receive testimony from landowners, well owners/operators, and water right holders within the proposed area.
  - c. The Board will receive testimony from landowners, well owners/operators, and water right holders within the EDSA.
  - d. The Board will receive testimony from the general public.
- (3) The Board will evaluate the entire proceedings, testimony and evidence and may by resolution create a PUMA.
- (4) Upon creation of the PUMA by the Board, the District will notify the known landowners, well owners/operators, and water right holders of the Board resolution.
  - a. The Board will provide written notice of the PUMA by registered/certified mail.
  - b. Within fourteen (14) days after the Board has designated a PUMA, all the well owners/operators must apply for an operating permit.
  - c. The notice will indicate the last date an operating permit may be applied for to await approval by the Board.
  - d. The Board will include copies of operating permit applications in the notice.
  - e. The Board will include sample copies of completed application forms.
  - f. The Board will include a copy of the District's Rules.
- (5) The well owner, well operator, or any other person acting on behalf of the well owner must file a completed operating permit application prior to operating a well/well system inside a PUMA. After a completed operating permit has been filed with the District, the applicant may then proceed at its own risk to operate such a well/well system.
- (6) The Board will post a notice and follow Rule 10.2 D fourteen (14) days after establishment of PUMA.



**D. Procedure following Establishment of PUMA**

**(1) All well/well systems shall require an operating permit.**

- a. The District will provide and install a water-measuring device to accurately measure the water used in each operating permit.
- b. The District will amend the operating permit to reflect the date of water device installation as the official date on the operating permit.
- c. The District will amend the operating permit to show the beginning numbers recorded on the measuring device.
- d. The District must provide a copy of the amended operating permit to the permit holder by registered mail.
- e. The permit holder will then note and initial the amendments on the amended operating permit and return it to the District office as the official operating permit.

**(2) Operating permit calculations**

- a. The Board will approve operating permits for two (2) acre feet for each acre owned or controlled, not to exceed 1,280 acre feet per numbered Section.
- b. Operating permits will indicate the number of acres for the permit multiplied by the two (2) acre feet to establish the total acre feet for the permit.
- c. Operating permits will include the total acre feet allowed by the permit multiplied by 325,800 gallons to establish the total gallons for the permit.

**(3) District Operations**

- a. The District will read and record the meter readings in the PUMA every other month.
- b. The District will be responsible for maintenance and upkeep of the measuring device for correct calculations.
- c. The District will compare the measuring device readings with the operating permit terms quarterly during the period and at the end of the operating permit period.

- d. The District will prepare renewal permits at the end of the existing operating permit period. The renewals will be mailed to the operators for the well owner's signature and be returned to the District office.
- e. The Board will post notice and approve the renewal applications.

**(4) Enforcement of Rules**

- a. It is a violation of Rule 6.2 to exceed the operating permit.
- b. It is a violation of Rule 10.2 B to operate a well/well system without an operating permit application filed with the District. The operating permit for the well/well system must be approved and remain permitted until an operating permit is no longer required for the well. Rules will be enforced as provided in Rule 15.3.

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

### **RULE 8.1 DEFINITION OF WATER TRANSPORTATION FACILITY**

A groundwater transportation facility is any method used to transport groundwater out of the District in which the groundwater was produced. This rule includes transportation by pipeline, container, channel, ditch, water course or other natural or artificial facilities or any combination of such facilities.

### **RULE 8.2 PERMIT REQUIRED FOR WATER TRANSPORTATION FACILITY; FEES**

For the purpose of conserving the scarce groundwater in this District and to thereby insure the continuing health, welfare and safety of the citizens of the District, applications shall be made and permits must be obtained from the Board before installing and/or operating a groundwater transportation facility to transfer groundwater out of the District (a "groundwater transportation facility"). Such applications shall be on forms provided by the District and shall be in accordance with and contain the information called for in the form of application. Otherwise, the application will not be considered. Water wells to be used for the transportation of groundwater out of the District shall be subject to spacing and production requirements as described herein. The Board reserves the right to approve a groundwater transportation facility permit application at a reduced rate of flow. In order to reduce the economic impact upon agricultural production in the District, at least fifty percent (50%) of the groundwater rights of all property owners must be retained by the property owner for agricultural production. Due to the economic impact that would result from transportation of groundwater out of the District, fees of one dollar (\$1.00) per acre foot for water used in agriculture, and seventeen cents (\$.017) per thousand (1,000) gallons for all other uses, will be assessed by the District to mitigate the economic loss. Fees are due the first of each month, and are to be included with the monthly pumping report. A transportation permit shall be valid for a period of up to five (5) years. Construction of a transportation facility must commence within two (2) years of the issuance of the permit, or the permit will be invalid.

### **RULE 8.3 APPLICATION**

- A. The application shall be executed by a party having knowledge of the facts called for on the form. Knowingly or unknowingly falsifying information on a permit application will invalidate the application and permit.
- B. An application for a groundwater transportation facility permit must be filed in the District office and must include the following information:
  - (1) the name, mailing address, telephone number, and, if available, the e-mail address of the applicant;
  - (2) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

- (3) a water conservation plan;
- (4) the location of the well(s) and rate of withdrawal; and
- (5) proof of notification of all landowners adjacent to the property where the well(s) are located and all well owners within one-half (1/2) mile of any of the proposed production wells.

#### **8.4 HEARING AND PERMIT ISSUANCE**

- A. Applications for groundwater transportation facility permits are subject to the hearing procedures provided by these rules.
- B. In determination whether to issue a permit to transfer groundwater out of the District, the Board shall consider:
  - (1) availability of groundwater in the District and in the proposed receiving area;
  - (2) availability of feasible and practicable alternative supplies to the applicant;
  - (3) the amount and purposes of use for which groundwater is needed in the proposed receiving area;
  - (4) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District;
  - (5) the indirect costs and economic and social impacts associated with the proposed transfer of water from the District;
  - (6) the approved regional and state water plan, and the certified Management Plan;
  - (7) other facts and considerations considered necessary by the District's Board for protection of the public health and welfare and conservation and management of natural resources in the District.

#### **RULE 8.5 MONITORING AND REPORTING**

- A. All groundwater transportation facilities shall be equipped with flow monitoring devices approved by the District and shall be available at all reasonable times for inspection by District personnel.
- B. The operator of a groundwater transportation facility shall be required to keep records and make reports to the District as to the operation of the groundwater transportation facility.

- C. Transportation facilities shall submit reports to the District on a monthly basis, beginning at the time a permit is issued to operate. Those reports shall include, but are not limited to, the volume of water transported during the preceding month.

#### **RULE 8.6 RESPONSIBILITY**

The owner of a groundwater transportation facility shall be charged with strict liability for the prevention of pollution and waste, by reason of the operations of that facility.

## **SECTION 9. NEW WELL APPLICATIONS/PERMITS**

### **RULE 9.1 POLICY**

- A. The District's policy is to be aware of every new well drilled in its territory on and after February 1, 2003 in order (a) to build a data base for groundwater management and (b) to be available to use that data to carry out its groundwater management responsibilities, under Chapter 36, Texas Water Code. The District's application and permit system is the District's means of having knowledge of every new well.
- B. It is a violation of these rules for a well owner, well operator, or water well driller to drill any well without the application for water permit form being filed with the District.

### **RULE 9.2 APPLICATION/PERMIT FORM**

The APPLICATION FOR WATER WELL DRILLING PERMIT appears on the next three (3) pages of these Rules. In preparing an application form, an applicant follows these numbered steps:

<b>Step</b>	<b>Name</b>
1	Well Owner
2	Physical Address of Well
3	Location of Well on Property
4	Well Description
5	Well/Use Purpose
6	Deposit
7	Refund of Deposit
8	Declarations and Agreements
9	Signature

# Application for Water Well Drilling Permit

Tri-County Groundwater Conservation District

P.O. Box 338

Quanah, Texas 79252

Phone: 940-663-5421, Ext. 3 Fax: 940-663-6912

## FOR DISTRICT USE ONLY

Well Permit No. P- \_\_\_\_\_

Application Date \_\_\_\_\_

Date Application Received \_\_\_\_\_

Date Drillers' Log Received \_\_\_\_\_

Date Drillers' Log Approved \_\_\_\_\_

(Since each well requires its own Latitude & Longitude please use a separate form for each well.)

1. Well Owner: _____, Applicant Herein
Mailing Address: _____ City _____
Phone: _____ Zip _____
Fax: _____ E-Mail: _____

I, the above named Applicant, do hereby make application to Tri-County Groundwater Conservation District ("the District"): (a) to drill the hereinafter described water well ("well") according to the District's Rules and the laws of the State of Texas and at the location indicated; and (b) to obtain a permit from the District for this well.

2. Physical Address of Well: \_\_\_\_\_

County: \_\_\_\_\_

A. If within city limits:

Street Address: \_\_\_\_\_ Lot & Block No.: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

B. If outside city limits, complete the following: Circle the directions.

\_\_\_\_\_ miles (N) (S) and \_\_\_\_\_ miles (E) (W) of the town of \_\_\_\_\_ on Hwy. Cr. FM \_\_\_\_\_

\_\_\_\_\_ measured yards from the (N) (S) property or section line, and

\_\_\_\_\_ measured yards from the (E) (W) property or section line.

If would be easier for me to give directions and they are as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Latitude \_\_\_\_\_ Longitude \_\_\_\_\_

Survey Name: \_\_\_\_\_, Section No. \_\_\_\_\_ Tract Acreage: \_\_\_\_\_

3. Location of Well on Property: \_\_\_\_\_ measured feet/yards from (N) (S) and \_\_\_\_\_ measured feet/yards from (E) (W) property line, or section line. (Circle directions and distance as they apply to your well.)

Attention: All permitted wells must be at least 50' off any boundary or property line.

4. Well Description:

Approximate Drill Date \_\_\_\_\_ Pump Size \_\_\_\_\_ Casing Size \_\_\_\_\_

Maximum Yield \_\_\_\_\_ GPM Driller \_\_\_\_\_

5. Well Use/Purpose: \_\_\_\_\_  
(Domestic, stock, watering, irrigation, other)

(Fill in the following only if known)

## 6. Deposit

A \$250.00 deposit is required for each well drilled regardless of size and expected yield.

## 7. Refund of Deposit

Each deposit will be held in escrow by the District until the Applicant's Drillers' Log is returned to the District's office. The deposit will be either totally refunded or partially refunded or not refunded based on the following rules:

- (1) The deposit will be totally refunded within ten (10) business days of receipt of the Drillers' Log if:
  - a. the well is used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
  - b. the well is used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or
  - c. the well is authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.
- (2) \$200.00 of the deposit will be refunded within ten (10) business days of receipt of the Drillers' Log if the well is for all uses other than those specified in paragraph (1), above. The remaining \$50.00 becomes the property of the District.
- (3) If the District does not receive either Form TNRCC-0199 Drillers' Log for the well or this Application marked "ABANDONED" within eight (8) months after the Application date, the deposit is forfeited and the deposit funds become the property of the District.

## 8. Applicant's Declarations and Agreements:

Applicant declares and agrees (1) that Applicant will drill the well within ten (10) yards of the location specified above and not elsewhere; (2) that Applicant will provide to the District immediately upon completion of this well and prior to the production of water the completed Drillers' Log; (3) that Applicant has received a copy of the District's Rules and will comply with those Rules; (4) that Applicant acknowledges that any permit granted by the District is subject to the rules for spacing from existing wells and/or prior permits; (5) that water withdrawn from this well will be put to beneficial use at all times by the Applicant; (6) that Applicant will close the well according to the laws of the State of Texas and report that closure to the District, including compliance with well-plugging guidelines; (7) that, if Applicant is granted a permit, the District will record on the County's deed records a notice of the permit; and (8) that Applicant will comply with the District's Management Plan when it is approved by the Texas Water Development Board. These declarations and agreements are binding on to the Applicant, his heirs, successors and assigns.

## 9. Signature:

APPLICANT:

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_ Title

\_\_\_\_\_ Date

Capacity: ( ) Owner ( ) Employee ( ) Authorized Agent

UNDER THE PENALTIES OF PERJURY, THE SIGNER OF THIS APPLICATION DECLARES THAT HE OR SHE HAS READ AND UNDERSTANDS THE APPLICATION AND THAT THE FACTS AND DECLARATIONS ARE TRUE.



**DISTRICT ACTION: PHASE I**

Date Application Received: \_\_\_\_\_

Disposition:

☐ Permit Granted: P - \_\_\_\_\_

☐ Permit Denied because \_\_\_\_\_  
\_\_\_\_\_

Deposit:

☐ Placed in Escrow Account: \_\_\_\_\_  
Date

☐ Returned \$ \_\_\_\_\_ on \_\_\_\_\_  
Amount Date

Date: \_\_\_\_\_

**Tri-County Groundwater Conservation District**

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: President

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: Director, \_\_\_\_\_ County

**DISTRICT ACTION: PHASE II**

Drillers' Log Received: \_\_\_\_\_  
Date

Actual Location of Well:

☐ Within twenty-five feet (25') of location specified in application.

☐ If more than twenty-five feet (25') of location specified in application, give specific location and directions to the location:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Notice of Permit filed: \_\_\_\_\_

Disposition of Deposit:

☐ Totally Refunded:

- Amount: \$250.00
- District Check No: \_\_\_\_\_
- Date: \_\_\_\_\_

☐ Partially Refunded:

- Amount of Refund: \$ \_\_\_\_\_ (Balance of \$ \_\_\_\_\_ Transferred from Escrow
- District Check No: \_\_\_\_\_ Account to Operating Account)
- Date: \_\_\_\_\_

☐ Forfeited:

- Amount Forfeited: \$250.00
- Funds Transferred from Escrow Account to Operating Account
- Permit Cancelled
- Date: \_\_\_\_\_

**Tri-County Groundwater Conservation District**

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

### **RULE 9.3 LOCATION OF FORMS**

The District will maintain a supply of these forms at these locations:

- A. Foard County:
  - (1) NRCS Office
  - (2) County Agent's Office
- B. Hardeman County
  - (1) NRCS Office
  - (2) County Agent's Office

### **RULE 9.4 DISTRICT ACTION ON APPLICATION**

Upon receipt of an application and deposit, the District will:

- A. **EITHER** grant a permit for drilling, in which case the \$250.00 deposit will be placed in the District's Escrow Account.
- B. **OR** deny the permit for a stated reason. In the case of denial the District will mail by certified mail, return receipt requested, a written notice of denial to applicant and return the application and deposit.

In the event (1) that the permit is denied and (2) that the applicant wishes to appeal the denial decision, the applicant must file a written protest with the District within thirty (30) days of the date that the notice of denial was placed in the mail. Once the written protest has been received, the District will proceed with a Permit Hearing under the provisions of Rule 14.

### **RULE 9.5 DRILLERS' LOG**

Upon receiving a permit and after drilling the new well, it is imperative that the Applicant bring the Drillers' Log to the District's Office.

### **RULE 9.6 GENERAL PERMITTING POLICIES AND PROCEDURES**

- A. **Permit Applications:** Each original application for a water well drilling permit, operating permit, and permit renewal requires a separate application. Application forms will be provided by the District and furnished to the applicant upon request.
- B. **Notice of Permit Hearing:** Once the District has received a complete original application for a water well drilling permit, operating permit, or an operating permit renewal, the President or, if in existence, the General Manager, with Board orders will

issue written notice indicating a date and time for a hearing on the application in accordance with these rules. The District may schedule as many applications at one hearing as deemed necessary.

- C. **Decision and Issuance of Permit:** In deciding whether or not to issue a permit, and in setting the terms of the permit, the Board must consider these Rules.
- D. **Drilling Permits:** Unless specified otherwise by the Board or these Rules, permits are effective for a term ending 120 calendar days after the date the permit was applied for.
- E. **Operating Permits:** Unless specified otherwise by the Board or these Rules, permits are effective until revoked. The permit term will be shown on the permit. Operating permits may be renewed by the Board following application and hearing.
- F. **Permit Provisions:** The permit will contain the standard provisions listed in Rule 10.3. The permit may also contain provisions relating to the means and methods of transportation of water produced within the District.
- G. **Aggregation of Withdrawal:** In issuing an operating permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District. Rules 5 and 6 will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production. This will allow a well owner, with a number of water wells which supply a single well system, to apply for an operating permit for each individual well system; consequently, will not be required to apply for a separate operating permit for each individual well. This provision will allow a well owner to apply for an operating permit for each individual well, in the event a number of wells from more than a single numbered Section may be used to supply a very large single well system.
- H. **Effect of Acceptance of Permit:** Acceptance of the permit by the person to whom it is issued constitutes acknowledgment of and agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions of the permit as imposed by these Rules and the laws of the State of Texas.

#### **RULE 9.7 OPERATING PERMIT PROVISION:**

All permits are granted subject to these Rules, orders of the Board, and the laws of the State of Texas. The permit is granted in accordance with the provisions of these Rules, and the acceptance of the permit constitutes an acknowledgment and agreement that the permit will comply with these Rules. In addition to any special provisions or other requirements incorporated into the permit, each permit issued must contain the following standard permit provisions:

- A. This permit confers only the right to operate the permit under the provisions of Rule 6.1, and its terms may be modified or amended pursuant to the provisions of that Rule. To protect the permit holder from the illegal use of a new landowner, within ten (10) days after the date of sale, the operating permit holder must notify the District in writing the name of the new owner. Any person who becomes the owner of a currently permitted well must, within twenty (20) calendar days from the date of the change in ownership, file an application for a permit amendment to effect a transfer of the permit.
- B. The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.
- C. The well site must be accessible to District representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.
- D. The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application. A finding that false information has been supplied is grounds for immediate revocation of the permit.
- E. Violation of this permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawal, is punishable by civil penalties as provided by the Rule 15.3

**RULE 9.8 OPERATING PERMIT LIMITATIONS:**

- A. **Maximum Authorized Withdrawal:** It is a violation of these rules to pump any amount of water over the authorized permit.
- B. **Operating Permit Required:** It is a violation of these rules to pump a well without an operating permit application being filed with the District awaiting approval by the Board.

## **SECTION 10. DEPOSITS; FULL OR PARTIAL REFUND OF DEPOSITS**

### **RULE 10.1 AMOUNT OF DEPOSIT**

The sum of \$250.00 must be filed with every application.

### **RULE 10.2 ESCROW OF DEPOSIT FUNDS**

All deposit funds shall be deposited in the District's Escrow Account.

### **RULE 10.3 DISPOSITION OF DEPOSIT FUNDS**

When the Applicant's Drillers' Log is returned to the District's office the deposit will be either totally refunded or not refunded based on the following rules:

- (1) The deposit will be totally refunded within ten (10) business days of receipt of the Drillers' Log if:
  - a. the well is used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
  - b. the well is used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or
  - c. the well is authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.
- (2) \$200.00 of the deposit will be refunded within ten (10) business days of receipt of the Drillers' Log if the well is for all uses other than those specified in paragraph (1), above. The remaining \$50.00 becomes the property of the District.
- (3) If the District does not receive either Form TNRCC-0199 Drillers' Log for the well or this Application marked "ABANDONED" within eight (8) months after the Application date, the deposit is forfeited and the deposit funds become the property of the District.

## **SECTION 11. REWORKING AND REPLACING A WELL**

### **RULE 11.1 PROCEDURES:**

- A. An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well status.
- B. A permit must be applied for and the Board will consider approving the permit, if a party wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe and g.p.m. rate by reworking, re-equipping, or redrilling such well.
- C. A permit must be applied for and granted by the Board if a party wishes to replace an existing well with a replacement well.
- D. A replacement well, in order to be considered such, must be drilled within ten (10) yards (30 feet) of the existing well and shall not be drilled near the property line provided the original well was "grandfathered" inside the spacing requirements of Rule 5.1.
- E. In the event the application meets spacing (Rule 5) and production (Rule 6) requirements, the board may grant such application without further notice.

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

### **RULE 12.1 RESPONSIBILITY**

As described in the Texas Water Well Drillers' Rules, all well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of the rules prescribing the location of wells and the proper completion of wells.

### **RULE 12.2 LOCATION OF DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS:**

- A. A well must be located a minimum horizontal distance of fifty (50) feet from any water-tight sewage facility and liquid-waste collection facility.
- B. A well must be located a minimum horizontal distance of 150 feet from any contamination, such as existing or proposed livestock or poultry yards, privies, and septic system absorption fields.
- C. A well must be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it must be completed with a watertight sanitary well sealed and steel casing extending a minimum of twenty-four (24) inches above the known flood level.
- D. No well may be located within five hundred (500) feet of a sewage treatment plant, solid waste disposal site, or land irrigated by sewage plant effluent, or within three hundred (300) feet of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.

### **RULE 12.3 STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS**

Water well drillers must indicate the method of completion performed on the Well Report (TNRCC-0199) Section 10, Surface Completion. Domestic, industrial, injection, and irrigation wells must be completed in accordance with the following specifications and in compliance with local county or incorporated city ordinances:

- A. The annular space between the borehole and the casing shall be filled from the ground level to a depth of not less than ten (10) feet below the land surface or well head with cement slurry.
- B. All wells shall have a concrete slab or sealing block about the cement slurry around the well at the ground surface.

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

#### **RULE 12.4 RE-COMPLETION**

- A. The landowner shall have continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the wellbore to other porous strata.
- B. If a well is allowing the commingling of water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.
- C. The Board may direct the landowners to take steps to prevent commingling of undesirable water and fresh water, or the unwanted loss of water.



## **SECTION 13. WASTE AND BENEFICIAL USE**

### **RULE 13.1 DEFINITION OF WASTE:**

Waste means any one or more of the following:

- A. Withdrawal of groundwater reservoir at a rate in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic or stock watering purposes;
- B. The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
- C. Escape of groundwater from a groundwater reservoir to any other reservoir or geological strata that does not contain groundwater;
- D. Pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
- E. Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;
- 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.

### **RULE 13.2 WASTE PREVENTION**

- A. Underground water shall not be produced within, or used within or without the District, in such a manner as to constitute waste as defined in Rule 1.1.
- B. No person shall pollute or harmfully alter the character of the underground water reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata from the surface of the ground.
- C. No person shall commit waste as that term is defined in Section 13.

### **RULE 13.3 USE FOR A BENEFICIAL PURPOSE**

- A. Agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreation, or pleasure purposes;
- B. exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
- C. any other purpose that is useful and beneficial to the user.

## SECTION 14. HEARINGS

### RULE 14.1 TYPES OF HEARINGS

The District conducts two general types of hearings: hearings involving permit matters, in which the right, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing; and rule-making hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner.

#### A. Permit Hearings:

- (1) **Permit Applications, Amendments and Revocations:** The District will hold hearings on water well drilling permits, operating permits, permit renewals or amendments and permit revocations or suspensions. Hearings involving permit matters may be scheduled before a Hearing Examiner.
- (2) **Hearings on Motions for Rehearing:** Motions for Rehearing will be heard by the Board pursuant to Rule 14.8 B.

#### B. Rule-making Hearings:

- (1) **District Management Plan:** At its discretion, the Board may hold a hearing to consider adoption of the Management Plan or any amendment to or replacement thereof.
- (2) **Other Matters:** A public hearing may be held on any matter within the jurisdiction of the Board, if the Board deems a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District.

### RULE 14.2 NOTICE AND SCHEDULING OF HEARINGS

The President or, if in existence, the General Manager, as instructed by the Board, is responsible for giving notice of all hearings in the following manner:

- A. Notice will be given to each person who requests copies of hearing notices pursuant to the procedures set forth in subsection (b), and any other person the Board of Directors deem appropriate. The date of delivery or mailing of notice may not be less than ten (10) calendar days before the date set for the hearing.

Notice of hearing will be published at least once in newspapers of general circulation in the District. The date of publication may not be less than ten (10) calendar days before the date set for the hearing.

A copy of the notice will be posted at the county courthouse in the place where notices are usually posted. The date of posting may not be less than ten (10) calendar days before the date of the hearing.

In addition to the notices required above, when a hearing involves an operating permit matter, notice of the date, time, and location of the hearing will be given to the applicant at least ten (10) calendar days before the day of the hearing.

In addition to the notice required above, when a hearing involves designation of a Production Limitation Management Area, a copy of the notice must be provided to each landowner, well owner, well operator and known groundwater right holder in the proposed management area.

- B. Any person having an interest in the subject matter of a hearing or hearings may receive written notice of such hearing or hearings by submitting a request in writing. The request must identify with as much specificity as possible the hearing or hearings for which written notice is requested. The request remains valid for a period of one year from the date of the request, after which a new request must be submitted. Failure to provide written notice under this section does not invalidate any action taken by the Board.
- C. Hearings may be scheduled during the District's regular business hours, Monday through Friday each week, except District holidays. All permit hearings will be held at the District Office. However, the Board may from time to time change or schedule additional dates, times, and places for permit hearings by resolution adopted at a regular Board meeting. The President or, if in existence, the General Manager is instructed by the Board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings. Other hearings will be scheduled at the dates, times and locations set at a regular Board meeting.

#### **RULE 14.3 GENERAL PROCEDURES**

- A. **Authority of Presiding Officer:** The presiding officer may conduct the hearing or other proceeding in the manner the presiding officer deems appropriate for the particular proceeding. The presiding officer has the authority to:
  - (1) set hearing dates other than the initial hearing date for permit matters set by the general manager in accordance with Rule 14.2 C;
  - (2) convene the hearing at a time and place specified in the notice for public hearing;
  - (3) establish the jurisdiction of the District concerning the subject matter under consideration;
  - (4) rule on motions and on the admissibility of evidence and amendments to pleadings;

- (5) designate and align parties and establish the order for presentation of evidence;
- (6) administer oaths to all persons presenting testimony;
- (7) examine witnesses;
- (8) issue subpoenas when required to compel the attendance of witness or the production of papers and documents;
- (9) require the taking of depositions and compel other forms of discovery under these rules;
- (10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- (11) conduct public hearings in an orderly manner in accordance with these rules;
- (12) recess any hearing from time to time and place to place;
- (13) reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
- (14) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of presiding officer.

B. **Hearing Registration Forms:** Each individual attending a hearing or other proceeding of the District must submit a form providing the following information: name; address; whether the person plans to testify; and any other information relevant to the hearing or other proceeding.

C. **Appearance; Representative Capacity:** Any interested person may appear in person or may be represented by counsel, engineer, or other representative provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.

D. **Alignment of Parties:** Number of Representatives Heard: Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The

presiding officer may require the participants of an aligned class to select one or more persons to represent them in the proceeding or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.

- E. **Appearance by Applicant or Movant:** The applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to so appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the presiding officer deems it necessary in order to fully develop the record.
- F. **Reporting:** Hearings and other proceedings will be recorded on audio cassette tape or, at the discretion of the presiding officer, may be recorded by a certified shorthand reporter. The District does not prepare transcripts of hearings or other proceedings recorded on audio cassette tape on District equipment for the public, but the District will arrange access to the recording. Subject to availability of space, any party may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 14.5 B. If a proceeding other than a permit hearing is recorded by a reporter, and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original transcript filed with the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.
- G. **Continuance:** The presiding officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District Office) for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the presiding officer before it is recessed, a notice of any further setting of the hearing or other proceeding will be delivered at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Rule 14.2 B, and any other person the presiding officer deems appropriate, but is not necessary to post at the county courthouses or publish a newspaper notice of the new setting. .
- H. **Filing of Documents; Time Limit:** Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these rules or by law must be received in hand at the District Office within the time limit, if any, set by these rules or by the presiding officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.

- I. **Computing Time:** In computing any period of time specified by these rules, by a presiding officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday as specified in Rule 3.3, in which case the period runs until the end of the next day which is neither a Saturday or Sunday nor a legal holiday.
- J. **Affidavit:** Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.
- K. **Broadening the Issues:** No person will be allowed to appear in any hearing or other proceeding that, in the opinion of the presiding officer, is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
- L. **Conduct and Decorum:** Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If in the judgment of the presiding officer, a person is acting in violation of this provision, the presiding officer will first warn the person to refrain from engaging in that conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for the time and under the conditions as the presiding officer deems necessary.

#### **14.4 UNCONTESTED PERMIT HEARINGS PROCEDURES:**

- A. **Written Notice of Intent to Contest:** Any person who intends to contest a permit application must provide written notice of that intent to the District Office. If the Board intends to contest a permit application, the Board must provide the applicant written notice of that intent at least five (5) calendar days prior to the date of the hearing. If no notice of intent to contest is received five (5) calendar days prior to the hearing, the President or, if in existence, the General Manager, as instructed by the Board, will cancel the hearing and the board will consider the permit at the next regular board meeting.
- B. **Informal Hearings:** Permit hearings may be conducted informally when, in the judgment of the Hearing Examiner, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- C. **Agreement of Parties:** If during an informal proceeding, all parties reach a negotiated or agreed settlement which, in the judgment of the Hearing Examiner, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the Hearing Examiner will summarize the evidence, make findings of fact and conclusions of

law based on the existing record and any other evidence submitted by the parties at the hearing.

- D. **Decision to Proceed as Uncontested or Contested Case:** If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Hearing Examiner determines these issues will require extensive discovery proceedings, the Hearing Examiner will declare the case to be contested and convene a prehearing conference as set forth in Rule 14.5. The Hearing Examiner may also recommend issuance of a temporary permit for a period not to exceed four (4) months, with any special provisions the Hearing Examiner deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.

#### **RULE 14.5 CONTESTED PERMIT PREHEARING PROCEDURES:**

- A. **Prehearing Conference:** A prehearing conference may be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process.
- (1) **Matters Considered:** Matters which may be considered at a prehearing conference include, but are not limited to: (1) designation of parties; (2) the formulation and simplification of issues; (3) the necessity or desirability of amending applications or other pleadings; (4) the possibility of making admissions or stipulations; (5) the scheduling of discovery; (6) the identification of and specification of the number of witnesses; (7) the filing and exchange of prepared testimony and exhibits; (8) the procedure at the hearing.
  - (2) **Notice:** A prehearing conference may be held at a date, time, and place stated in separate notice given in accordance with Rule 14.2, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the Hearing Examiner.
  - (3) **Conference Action:** Action taken at a prehearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.
- B. **Assessing Reporting and Transcription Costs:** Upon the timely request of any party, or at the discretion of the Hearing Examiner, the Hearing Examiner may assess reporting and transcription costs to one or more of the parties. The Hearing Examiner must consider the following factors in assessing reporting and transcription costs:
- (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 proceeding;
- 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 Hearing Examiner must provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs must be included in the Hearing Examiner's report to the Board.

- C. **Designation of Parties:** Parties to a hearing will be designated on the first day of hearing or at such other time as the Hearing Examiner determines. The Board and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Hearing Examiner, there exists good cause and the hearing will not be unreasonably delayed.
- D. **Rights of Designated Parties:** Subject to the direction and orders of the Hearing Examiner, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.
- E. **Persons Not Designated Parties:** At the discretion of the Hearing Examiner, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Hearing Examiner as evidence.
- F. **Furnishing Copies of Pleadings:** After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or the party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.
- G. **Interpreters for Deaf Parties and Witnesses:** If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualification are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension.

- H. **Agreement to be in Writing:** No agreement between parties or their representatives affecting any pending matter will be considered by the Hearing Examiner unless it is in writing, signed, and filed as a part of the record, or unless it is announced at the hearing and entered as record.
- I. **Discovery:** Discovery will be conducted upon such terms and condition, and at such times and places, as directed by the Hearing Examiner. Unless specifically modified by these rule or by order of the Hearing Examiner, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Hearing Examiner.
- J. **Discovery Sanctions:** If the Hearing Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Hearing Examiner may:
- (1) suspend processing of the application for a permit if the applicant is the offending party;
  - (2) disallow any further discovery of any kind or a particular kind by the offending party;
  - (3) rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
  - (4) limit the offending party's participation in the proceeding;
  - (5) disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
  - (6) recommend to the Board that the hearing be dismissed with or without prejudice.
- K. **Ex Parte Communications:** The Hearing Examiner may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence.
- L. **Compelling Testimony; Swearing Witnesses and Subpoena Power:** The Hearing Examiner may compel the testimony of any person which is necessary, helpful, or appropriate to the hearing. The Hearing Examiner will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The Hearing Examiner may issue subpoenas to compel the testimony

of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.

- M. **Evidence:** Except as modified by these rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
- N. **Written Testimony:** When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- O. **Requirements for Exhibits:** Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
- P. **Abstracts of Documents:** When the documents are numerous, the Hearing Examiner may receive in evidence only those which are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.
- Q. **Introduction and Copies of Exhibits:** Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Hearing Examiner and to each of the parties, unless the Hearing Examiner rules otherwise.
- R. **Excluding Exhibits:** In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.
- S. **Official Notice:** The Hearing Examiner may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- T. **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.

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

#### **RULE 14.6 CONCLUSION OF THE HEARING; REPORT**

- A. **Closing the Record; Final Report:** At the conclusion of the presentation of evidence and any oral argument, the Hearing Examiner may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Hearing Examiner. After the record is closed, the Hearing Examiner will prepare a report to the Board. The report must include a summary of the evidence, together with the Hearing Examiner's findings and conclusions and recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy must be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties must be by certified mail.
- B. **Exceptions to the Hearing Examiner's Report; Reopening the Record:** Prior to Board action any party in a contested case may file written exceptions to the Hearing Examiner's report, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board. Upon review of the report and exceptions, the Hearing Examiner may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the report and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the Hearing Examiner for further proceedings.
- C. **Time for Board Action on Certain Permit Matters:** In the case of hearings involving new permit applications, original applications for existing wells, or applications for permit renewals or amendments, the Hearing Examiner's report should be submitted, and the Board should act, within sixty (60) calendar days after the close of the hearing record.

#### **RULE 14.7 RULE-MAKING HEARINGS PROCEDURES**

- A. **General Procedures:** The presiding officer will conduct the rule-making hearing in the manner the presiding officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The presiding officer may follow the guidelines of "Parliamentary Procedure at a Glance," New Edition, O. Garfield Jones, 1971 revised edition, or as amended.
- B. **Submission of Documents:** Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. These documents must be submitted no later than

the time of the hearing, as stated in the notice of hearing given in accordance with Rule 14.2; provided, however, that the presiding officer may grant additional time for the submission of documents.

- C. **Oral Presentations:** Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of the testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- D. **Conclusion of the Hearing; Closing the Record; Hearing Examiner's Report:** At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the presiding officer is a Hearing Examiner, the Hearing Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject of the hearing and the public comments received, together with the Hearing Examiner's recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy ....must be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.
- E. **Exceptions to the Hearing Examiner's Report; Reopening the Record:** Any interested person may make exceptions to the Hearing Examiner's report, and the Board may reopen the record, in the manner prescribed in Rule 14.6 B.

#### **RULE 14.8 FINAL DECISION; APPEAL**

- A. **Board Action:** After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.
- B. **Requests for Hearing:** Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within twenty (20) calendar days of the Board's decision. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of rehearing will be within forty-five (45) calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within ninety (90) calendar days of submission will be deemed to be a denial of the request.

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

### **RULE 15.1 NOTICE AND ACCESS TO PROPERTY**

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

### **RULE 15.2 CONDUCT OF INVESTIGATION**

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

### **RULE 15.3 RULE ENFORCEMENT**

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 the name of the District for enforcement of rules through the provisions of Chapter 36.102, Texas Water Code.

### **RULE 15.4 SEALING OF WELLS**

Following due-process, the District may, upon orders from the judge of the courts, seal wells that are prohibited from withdrawing groundwater within the District by these Rules to ensure that a well is not operated in violation of these Rules. A well may be sealed when: (1) no application has been made for a permit to drill a new water well which is not excluded or exempted; or (2) no application has been made for an operating permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or (3) the Board has denied, canceled or revoked a drilling permit or an operating permit.

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

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

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