

RULES OF THE LIVE OAK UNDERGROUND CONSERVATION DISTRICT

Notice of the Rules of the Live Oak Underground Water Conservation District was published on ___November 16 and 30, 2011____.

In accordance with Section 59 of Article XVI of the Texas Constitution, Acts of the 71st Legislature (1989), Ch. 673, S.B. 1777, and the non-conflicting provisions of Chapter 36, Texas Water Code the following Rules are hereby ratified and adopted as the Rules of this District by its Board. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended.

The Rules, regulations, and modes of procedure herein contained are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State and the Rules of this District. To the end that these objectives are attained, these Rules will be so construed.

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 may these Rules be construed as a limitation or restriction upon the exercise of powers, duties, and jurisdiction conferred by law. These Rules will not limit or restrict the amount and accuracy of data or information that may be required for the proper administration of the law.

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

**RULES OF THE LIVE OAK
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**RULES OF THE LIVE OAK
UNDERGROUND CONSERVATION DISTRICT**

RULE 1. DEFINITIONS

The District is authorized under § 36.101 of the Texas Water Code to make and enforce Rules, including Rules limiting groundwater production and the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by Chapter 36 of the Texas Water Code. The District incorporates by reference all authorities granted to the District by the District Act and Chapter 36 of the Texas Water Code into its District Rules. These Rules are effective as of March 22, 2012.

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

- (1) "Abandoned well" means a well that is not in use. A well is considered to be in use if:
 - (a) the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;
 - (b) the well is not a deteriorated well and has been capped;
 - (c) the water from the well has been put to an authorized beneficial use, as defined by the Water Code;
 - (d) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or
 - (e) the owner is participating in the Conservation Reserve Program authorized by Sections 1231-1236, Food Security Act of 1985 (16 U.S.C. Sections 3831-3836), or a similar governmental program.
- (2) "Acre-foot" means the amount of water necessary to cover one acre of land one foot deep, or about 325,000 gallons of water.
- (3) "Agriculture" means any of the following activities:
 - (a) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
 - (b) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

- (c) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
 - (d) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
 - (e) wildlife management; and
 - (f) raising or keeping equine animals.
- (4) "Agricultural use" means any use or activity involving agriculture, including irrigation.
 - (5) "Board" means the Board of Directors of the Live Oak Underground Water Conservation District.
 - (5) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.
 - (6) "Contiguous acreage" means land with the same continuous boundary within the District that is owned or legally controlled for the purpose of groundwater withdrawal by the well owner or operator. A majority of the contiguous acreage assigned to the well shall bear a reasonable reflection of the cone of depression impact near the pumped well, as based on the best available science. Land that is owned or legally controlled by the well owner or operator that is separated only by a road, highway or river from other land owned or controlled by the well owner or operator is contiguous.
 - (7) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.
 - (8) "Deteriorated well" means a well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.
 - (9) "De-watering Well" means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.
 - (10) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.
 - (11) "District" means the Live Oak Underground Water Conservation District.
 - (12) "District Office" means the office of the District as established by resolution of the Board.

- (13) “Drilling Permit” means a permit for a water well issued or to be issued by the District allowing a water well to be drilled.
- (14) “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.
- (15) “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.
- (16) “Hearing Examiner” means a person appointed by the Board of Directors to conduct a hearing or other proceeding.
- (19) "Inflows" means the amount of water that flows into an aquifer from another formation.
- (20) “Injection well” includes:
- (a) an air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;
 - (b) a cooling water return flow well used to inject water previously used for cooling;
 - (c) a drainage well used to drain surface fluid into a subsurface formation;
 - (d) a recharge well used to replenish the water in an aquifer;
 - (e) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;
 - (f) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
 - (g) a subsidence control well used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; or
 - (h) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.
- (21) “Landowner” means the person who bears ownership of the land surface.
- (22) “Leachate Well” means a well used to remove contamination from soil or groundwater.
- (23) "Modeled available groundwater" means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108.
- (24) "Management Area" means an area designated and delineated by the Texas Water

Development Board under Chapter 35 as an area suitable for management of groundwater resources.

- (25) “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.
- (26) “Open Meeting Law” means Chapter 551, Texas Government Code.
- (27) “Operating Permit” means a permit issued by the District for a water well, allowing groundwater to be withdrawn from a water well for a designated period.
- (30) “Property legally assigned to a well” is property owned or legally controlled for purposes of groundwater withdrawal by a well owner or operator and assigned to a well by the owner or operator.
- (31) “Public Information Act” means Chapter 552, Texas Government Code.
- (32) "Public water supply well" means a well that produces the majority of its water for use by a public water system.
- (33) “Person” includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- (34) “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.
- (35) “Produce or Production” means extracting groundwater by pumping or by another method.
- (36) “Rate of Production” means the amount of groundwater that is stated in the District’s operating permits that limits the number of gallons of groundwater produced per minute (“gpm”), with a maximum annual cap of overall groundwater production specified in acre-feet. For example, a District operating permit could state that the authorized rate of production is 1000 gpm, not to exceed a total amount of 5000 acre-feet of groundwater production per year.
- (37) "Recharge" means the amount of water that infiltrates to the water table of an aquifer.
- (38) “Rules” means the Rules of the District compiled in this document and as may be supplemented or amended from time to time.
- (39) “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.

- (40) "Transport" means transferring or moving groundwater outside the District.
- (41) "Transport Permit" means an authorization issued by the District allowing the transport of a specific quantity of groundwater outside the District's boundaries for a designated time period. All applicable permit Rules apply to transport permits.
- (42) "Use for a Beneficial Purpose or Beneficial Use" means:
 - (a) Agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, 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 and that does not cause waste.
- (43) "Waste" means any one or more of the following:
 - (a) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
 - (b) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
 - (c) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
 - (d) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
 - (e) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality under Chapter 26, Texas Water Code;
 - (f) groundwater pumped for irrigation that escapes as irrigation tail water onto land other than that of the owner of the well unless permission has been granted by the

occupant of the land receiving the discharge; or

- (g) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Texas Water Code.
- (44) "Water Meter" means a water flow measuring device that can accurately record the amount of water produced during a measured time.
- (45) "Well" means any facility, device, or method used to withdraw groundwater from within the District's boundaries.
- (46) "Well Owner" or "Well Operator" means the person who owns a possessory interest in: (1) the land upon which a well or well system is located or to be located; (2) the well or well system; or (3) the legal right to occupy the property and to capture groundwater withdrawn from a well or well system located on the property. The term "well owner" includes but is not limited to a person that holds a well permit for the well.
- (47) "Well System" means a well *or* group of wells tied to the same distribution or transportation system.
- (48) "Withdraw or Withdrawal " means extracting groundwater by pumping or by another method.
- (49) "Windmill" means a wind-driven or hand-driven device that uses a piston pump to remove groundwater.

RULE 2. WASTE PROHIBITED

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

RULE 3. WELL REGISTRATION

- (a) Registration is required for all exploratory holes, exempt wells and wells in the District, and shall be filed with the District on a form and in a manner required by the District. Nonexempt wells meet the registration requirement by filing an application to either drill or operate the well. All well drillers or well owners must seek and receive either a well registration or permit, as applicable, from the District prior to drilling the well.
- (b) **Exempt Wells** that require registration prior to drilling are:
 - (1) any well that is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

- (2) an oil or gas rig supply well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; or
 - (3) a mining well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.
- (c) The District may cancel a previously granted exemption, and may require an operating permit for or restrict production from a well if:
 - (1) the groundwater withdrawals that were exempted under Subsection (b)(2) are no longer used solely as a rig supply water well for an oil or gas well permitted by the Railroad Commission of Texas; or
 - (2) the groundwater withdrawals that were exempted under Subsection (b)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.
- (d) The District may require compliance with the District's well spacing rules for the drilling of any well, except a well exempted under Subsection (b)(3).
- (e) Registrants shall equip and maintain exempt wells to conform to the District's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.
- (f) An exemption provided under Subsection (b) does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.
- (g) Groundwater withdrawn under an exemption provided in accordance with this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 and 36.205.
- (h) Wells that were drilled and in existence prior to the effective date of the District's Enabling Act, 1989, should be registered with the District. These registered existing wells will be required to apply for a District permit and comply with the Rule 11, if the well changes in the future to change the existing use status of the well or the amount of production is increased for the well, and is not exempt from permitting under Rule 3.

RULE 4. DEPOSITS

- (a) Each application for a permit or permit amendment shall be accompanied by a \$100 application fee that covers administrative expenses related to the application. Permit renewals do not require the application fee, unless permit amendments are sought with the renewal.
- (b) Each application for a permit to drill a well must be accompanied by a **\$ 100 deposit**. Said deposit shall be returned to the applicant by the District if:
 - (1) the application is denied;
 - (2) the application is granted but only upon receipt of a correctly completed registration and log of the well; or
 - (3) the permit location is abandoned without having been drilled, but only upon return and surrender of the Permit marked abandoned.

In event neither the registration and log of the well nor abandoned permit is returned to the District office within one hundred eighty (180) days after the date the permit was approved, or after any extension granted by the District, the deposit shall become the property of the District.

RULE 5. PERMIT REQUIRED

- (a) A permit is required prior to drilling or operating a well, or increasing the size or capacity of a well such that the well could reasonably be expected to produce in excess of 25,000 gallons of water per day. A permit is required for drilling all wells that are not exempt, including but not limited to, agricultural irrigation, industrial, public water supply, and hydraulic fracturing wells.
- (b) Applications for permits to drill or operate a well must be filed at the office of the District in George West, Texas. The General Manager shall publish a Notice of Application in a paper of general circulation within the District stating the name of the applicant, the location of the well and the requested production amount.
- (c) If no protest is filed within ten (10) days of publication of the notice of application, the General Manager may issue the permit without action by the Board. The board of directors will approve or deny the application at a meeting of the Board of Directors following notice and hearing, if a hearing is required.
- (d) If a protest is filed the Board shall conduct a hearing. Notice shall be given to all interested parties. The Board may convene a preliminary hearing to establish parties, to narrow the issues, and to schedule a full contested case trial if necessary. The Board may vote to issue a permit or deny the application if it determines the application may be decided by summary disposition. If the matter is not settled by summary disposition the board shall schedule a contested case hearing to hear evidence and receive argument to determine the outcome of the contest. Following the contested case hearing the Board shall issue a final decision stating the findings of fact, conclusions of law, and the

disposition of the application.

- (e) A protest shall be deemed filed when written notification is filed with the Board. The protest must include evidence as to why the particular application should be denied, including evidence as to the effect on the water reservoir, the conservation and preservation of water, the prevention of waste, the protection of property rights, and other pertinent matters, which evidence shall be taken into consideration by the Board. Where there are competing applications, the Board shall also take into consideration which of the applicants filed an application first.
- (f) If the Board determines the applicant has provided substantial evidence that the permit meets all the requirements of these rules, the Board shall issue the permit.
- (g) If the application is denied, the applicant may file a motion for rehearing before the Board. A motion for rehearing must be filed with the Manager of the District or written notice by registered mail given twenty (20) days, from the date the application is denied. If no such motion is filed, the application shall be deemed to have been abandoned by the applicant. If a motion for rehearing is filed, the Board shall set a time and place for a hearing and notify the necessary parties thereof in accordance with Rule 19. At least 72 hours notice shall be given by the Board to the necessary parties for said hearing. If the Board does not set a hearing on the motion within ninety (90) days of receipt, the motion shall be deemed denied.
- (h) On approval of an application, the District shall issue a permit to the applicant. The permittee's right to produce shall be limited to the extent and purposes stated in the permit. Operating permits shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed. A permit shall not be transferable except when an application has been made to amend the permit to change the name of the permittee. The General Manager may grant such an amendment without notice, hearing, or further action by the Board.

RULE 6. ISSUANCE OF PERMITS

- (a) The board may issue the following types of permits:
 - (1) **Drilling Permit**, which allows drilling a new well, expanding an existing well, redrilling or re-equipping an existing well, or plugging a well;
 - (2) **Production Permit**, which allows water to be withdrawn from a nonexempt well;
 - (3) **Transport Permit**, which allows groundwater to be transported outside the boundaries of the District.

- (b) The Board shall issue or cause to be issued a drilling permit for a well upon proper application executed and filed by the owner if that application meets all the requirements of these rules. An application shall be considered filed if it is administratively complete and accompanied by the required deposit.
- (c) Applications must be on forms provided by the District, in writing and prepared in accordance with and contain the information called for on the form of application. The application will be considered administratively complete if it is properly completed following all instructions issued by the Board with respect to the filing of an application. Administratively incomplete applications will not be considered.
- (d) Rules for the filing of applications:
 - (1) If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent. The agent must present Power of Attorney as authority to represent the applicant.
 - (2) If the application is by a partnership, the applicant must be designated by the firm name followed by the words "a Partnership" and the application must be signed by at least one of the general partners duly authorized to bind all of the partners.
 - (3) In the case of a corporation, government agency, county, municipality or any other body politic and corporate, the application shall be signed by a duly authorized official. A copy of the resolution or authorization to make the application may be.
 - (4) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.
- (e) Applications must set forth the following:
 - (1) the name and address of the fee owner of the contiguous acreage upon which the well is to be drilled or the well is located, and the owner of the water rights, if separate;
 - (2) if the applicant is not the owner of the property, legal and notarized documentation establishing the applicable authority to construct and operate a well for the proposed use;
 - (3) a map showing the proposed location of the well to be drilled as provided in the application including the County, the section, block, survey and township; labor and league; and exact number of yards to the nearest nonparallel property lines; or other adequate legal description;

- (4) the proposed use of the well, whether municipal, industrial, irrigation, agricultural or other;
 - (5) the size of the pump;
 - (6) the approximate date drilling or operation is to begin;
 - (7) the location of all wells within a quarter mile on the proposed location, if any;
 - (8) an agreement by the applicant that a complete well registration and log will be furnished to the District (on forms furnished by the District) upon completion of this well and prior to producing any water (except for such production as may be necessary to the drilling and testing of the well);
 - (9) any additional data as may be required by the Board and included on the form; and
 - (10) a water conservation plan and a declaration that the applicant will comply with the district's management plan.
- (f) All legal documents that sell or lease water rights shall be recorded with the County Clerk with the deed of record for the related surface acreage.

(g) **Aggregation of Production**

In issuing an operating permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District, at the discretion of the District. Applicable spacing requirements and production allowances will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production. This will allow a well owner, with a number of water wells that supply a single well system, to apply for an operating permit for the well system without being required to apply for a separate operating permit for each individual well.

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

Complete records shall be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled. Such records shall include an accurate driller's log required by Section 1901.251, Occupations Code, and any geophysical log and electric log made and any additional data concerning the description of the well and its maximum rate of production.

Drilling records must be filed with the District within 90 days after completion of the well. A well log and well registration form must be provided to the District prior to any production from the well except for production necessary to drilling, completing and testing the well.

RULE 8. PERMIT TERMS AND RENEWAL

(a) Drilling and Production Permits.

- (1) A drilling permit for a well or well site will automatically expire within one year from its issuance if the permitted well(s) has not been completed or is not significantly under development. The Board may grant one extension for a period of up to six (6) months.
- (2) Production permits shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed. The General Manager may renew a production permit for the same amount of withdrawal, point of withdrawal, place of use, and purpose of use without hearing or notice except that upon renewal, production permits shall be subject to any new criteria or pumping limitations established by these rules.

(b) Transportation Permits.

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

RULE 9. PERMIT AMENDMENTS

- (a) Permits may be amended by filing an amendment application with the board. Amendments shall be granted or denied following the same procedure and requirements of an original application.
- (b) The District may amend permits that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

RULE 10. WELL LOCATION, SPACING, AND COMPLETION

- (a) After an application for a well permit or well registration for a water well related to oil and gas exploration has been granted, the well, if drilled, must be drilled within **thirty (30) feet** of the location specified in the permit. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board.

- (b) All well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of this Rule prescribing the location of wells and proper completion.
- (c) Wells may not be drilled within one hundred (100) feet of any property line. In addition, well must be located so that the distance to any other existing well is at least one foot for each gallon-per-minute of production capacity of the new well. If the capacity of the well exceeds one-thousand (1000) gallons-per- minute then the minimum spacing distance must be an additional one-half (1/2) foot for each gallon-per-minute in excess of one-thousand.

EXAMPLES:

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

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

RULE. 11. PRODUCTION LIMITATIONS

- (a) In no event may a new well or well system be operated such that the total annual production exceeds two (2) acre foot of water per contiguous surface acre owned or operated.
- (b) In no event may a well or well system be operated such that the total instantaneous production exceeds a maximum production limit of 10 gallons/minute/acre.
- (c) All production permits are issued subject to future changes in the Desired Future Conditions of GMA 16 and the Modeled Available Groundwater determined by the Texas Water Development Board.
- (d) The District, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition.
- (e) In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:
 - (1) the modeled available groundwater determined by the Texas Water Development Board;

- (2) the Texas Water Development Board's estimate of the current and projected amount of groundwater produced under exemptions granted by District rules and Section 36.117;
 - (3) the amount of groundwater authorized under permits previously issued by the District;
 - (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and
 - (5) yearly precipitation and production patterns.
- (f) Existing well permits and registrations that were in existence prior to December 15, 2011, will be required to comply with the Rule 11(a) - (e) if the permit is amended in the future to change the existing use status of the permitted well or the permitted amount of production is increased for the well, and is not exempt from permitting under Rule 3.

RULE 12. EXCEPTIONS TO SPACING AND PRODUCTION RULES

- (a) In order to protect rights of owners of interests in groundwater or to prevent waste, the Board may grant exceptions to the above spacing and production limitation rules. This rule may not be construed to limit the power of the Board, and the powers stated are cumulative of all other powers possessed by the Board.
- (b) Application for an exception to the spacing or production limitation rule must be submitted in writing to the District office on forms furnished by the District. The application must be accompanied by a plat or sketch, drawn to scale of one (1) inch equaling two thousand (2000) feet. The plat or sketch must show thereon the property lines of the lot where the well is located the location of any wells within one-half (1/2) mile of the well location. The application must also contain the names and addresses of all property owners adjoining the tract on which the well is located, and the owners of the wells within one-half (1/2) mile of the well location. The application and plat must be attested to by some person actually acquainted with the facts who subscribe and swear or affirm under oath before any person entitled to administer oaths, who must also sign and apply the seal of office to the attestation, that all the facts set out in the application are true and correct.
- (c) If the applicant presents waivers signed by the landowners and/or registration/permit holders that are located within the spacing-requirement circumference of the applied-for well(s), stating that they have no objection to the proposed location of the well site, a waiver to the spacing requirements may be granted for the new proposed well location.

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

requirements.

- (d) 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, the issue of spacing requirements will be considered during the permitting process. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board may limit the production of the well(s) to minimize injury to existing wells or the aquifer.
- (e) The Board or General Manager, if authorized by the Board, may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing spacing requirements.
- (f) Hearing notices shall state that the application does not meet spacing requirements of the District, and an exception is requested by the applicant.

RULE 13. REWORKING OR REPLACING OF WELL

- (a) A permit is not required to rework, redrill, or replace an existing well in a manner that will not change the existing well production status.
- (b) A permit is required to replace an exempt well, or to rework, redrill, or reequip an exempt well in a manner that would increase the rate of production of the well to a rate of production capability greater than 25,000 gallons per day, consistent with Rule 3.

RULE 14. FINAL ORDERS OF THE BOARD

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

- (1) if a request for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing; or
- (2) if a request for rehearing is filed on time, on the date:
 - (A) the board denies the motion for rehearing or the motion for rehearing is denied by operation of law; or
 - (B) the board renders a written decision after rehearing.

RULE 15. MEASURING AND REPORTING REQUIREMENTS

- (a) All groundwater production that has the capability of producing more than 25,000 gallons per day shall be metered or accurately measured by a District-approved method.
- (b) The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources. The permittee

shall submit complete, accurate, and timely metered pumpage and transport reports as required by the District.

1. A registrant holding a mining permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:
 - (A) the total amount of water withdrawn during the month;
 - (B) the quantity of water necessary for mining activities; and
 - (C) the quantity of water withdrawn for other purposes.
2. A water well used for hydraulic fracturing or other oil and gas production shall report the metered amount of permitted groundwater used within 30 days of each hydraulic fracturing incident.
3. Exempt wells that are solely used for oil and gas rig supply wells under Rule 3(b)(2) shall report usage within 30 days of the rig leaving the site.
4. All other permitted wells shall report metered usage annually to the District, by December 1st of each year.

RULE 16. RIGHT TO INSPECT AND TEST WELLS

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

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

RULE 17. OPEN WELLS TO BE CAPPED

Abandoned and/or deteriorated wells serve as direct conduits to your groundwater or aquifer. The contamination can affect water wells in the area including those used for drinking water, as well as serve as potential hazards for humans and animals. The capping or plugging of abandoned and/or deteriorated wells shall comply with the Texas Department and Licensing and Regulation's Rules for Well Driller's in Title 16 of the Texas Administrative Code Chapter 76.

- (a) The District may require the owner or lessee of land on which an open, uncovered, abandoned or deteriorated well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.
- (b) As used in this section, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required by Chapter 36 of the Texas Water Code and Chapter 756 of the Health and Safety Code.
- (c) If the owner or lessee fails or refuses to close or cap the well; any person, firm, or corporation employed by the District may go on the land and close or cap the well safely and securely.
- (d) Reasonable expenses incurred by the District in closing or capping a well constitute a lien on the land on which the well is located, which shall comply with § 36.118 of the Texas Water Code.

RULE 18. CONTESTED CASE HEARINGS

(a) Pre-hearing Conference

A pre-hearing conference may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process.

(b) Matters considered

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

- (1) designation of parties;
- (2) consolidation of other applications pertinent to this application or hearing;
- (3) additional formulation and simplification of issues;
- (4) referral of parties to an alternative dispute resolution procedure;
- (5) the necessity or desirability of amending applications or other pleadings;
- (6) possibility of making admissions or stipulations;
- (7) establishing a Discovery Control Plan;
- (8) identifying and specifying of the number of witnesses;
- (9) filing and exchange of prepared testimony and exhibits; and
- (10) establishing procedure at the hearing.

(c) Notice.

A pre-hearing conference may be held at a date, time, and place stated in the notice provided to those persons entitled to notice and may be continued from time to time and place to place, at the discretion of the presiding officer.

(d) Conference Action.

Action taken at a pre-hearing conference may be reduced to writing and made a part of the record, or may be stated on the record at the close of the conference.

(e) Assessing Reporting and Transcription Costs.

Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may assess reporting and transcription costs to one or more of the parties. The presiding officer will consider the following factors in assessing reporting and transcription costs:

- (1) the party who requested the transcript;
- (2) the financial ability of the party to pay the costs;
- (3) the extent to which the party participated in the hearing;
- (4) the relative benefits to the various parties of having a transcript;
- (5) the budgetary constraints of a governmental entity participating in the proceedings; and
- (6) any other factor that is relevant to a just and reasonable assessment of costs.

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

(f) Designation of Parties

Parties to a hearing may be designated on the first day of hearing, or at such other time as the presiding officer determines. The General Manager and any person specifically named in a matter are automatically designated parties. Only persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the district's regulatory authority and affected by a permit or permit amendment application may be admitted as parties. Persons that only have an interest common to members of the public may not be admitted as parties.

(g) Rights of Designated Parties

Subject to the direction and orders of the presiding officer, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.

(h) Persons Not Designated Parties

At the discretion of the presiding officer, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record to inform the Board regarding various concerns or issues related to the application and may be considered as evidence if corroborated by sworn testimony or exhibits properly admitted into evidence by a party.

(i) 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.

(j) Interpreters for Deaf Parties and Witnesses

If a party or subpoenaed witness in a contested case is deaf, the party who subpoenaed the witness will provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person.

(k) Agreements to be in Writing

No agreement between parties or their representatives affecting any pending matter will be considered by the presiding officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered of record.

(l) Discovery

Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the presiding officer. Unless specifically modified by these Rules or by order of the presiding officer, discovery will be governed by, and subject to the limitations set forth in, the Administrative Procedure Act (APA), Texas Government Code §2001.001 et seq., as amended, and the State Office of Administrative Hearings (SOAH) Rules of Procedure, as amended. In addition to the forms of discovery authorized under the APA and SOAH Rules, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer. Discovery commences at the time indicated in the Discovery Control Plan as approved by the presiding officer.

(m) Subpoenas

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

(n) Ex Parte Communications

During a contested case, neither the presiding officer nor any member of the Board may 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 District staff not directly involved in the hearing in order to utilize the special skills and knowledge of

the District in evaluating the evidence and does not apply to proceedings other than a contested permit hearing.

(o) Compelling Testimony; and Swearing Witnesses

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

(p) 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.

(q) Written Testimony

Testimony may be received in written form if the proceeding will be expedited and the interests of the parties not substantially prejudiced by doing so. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.

(r) Requirements for Exhibits

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

(s) Abstracts of Documents

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

(t) Introduction and Copies of Exhibits

Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the presiding officer and to each of the parties, unless the presiding officer rules otherwise.

(u) Excluding Exhibits

In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn,

the exhibit shall be included in the record for the purpose of preserving the objection to excluding the exhibit.

(v) Official Notice

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

(w) 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.

(x) Oral Argument

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

(y) Closing the Record

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

RULE 19. REHEARING

The decision of the Board on any matter contained herein may be reconsidered by it on its own motion or upon receiving a motion for rehearing, or upon receiving a motion showing changed or new conditions. If the Board should decide to reconsider a matter it shall give notice to persons who were parties to the original action. Conduct of the hearing shall be in the same manner and procedure as a contested case hearing.

RULE 20. WATER RIGHTS

Permits represent permission to drill a well or produce a set amount of water over the term of the permit. A permit does not represent a permanent water right nor may any water rights be permanently severed from the land.

RULE 21. TRANSPORTATION OF WATER FROM THE DISTRICT

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

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

- (1) be in writing and sworn to;
 - (2) contain the name, post-office address and place of residence or principal office of the applicant;
 - (3) identify the location of the well from which the water to be transported is produced or to be produced;
 - (4) describe specifically the proposed transportation facilities;
 - (5) state the nature and purposes of the proposed use and the amount of water to be used for each purpose;
 - (6) state the time within which the proposed construction or alteration is to begin;
 - (7) state the length of time required for the proposed use of water, and the amount of water to be used;
 - (8) provide information showing the effect of the proposed transportation on the quantity and quality of water available within the District;
 - (9) provide information on the method or methods of transportation; and
 - (10) identify any other liquids that could be substituted for the fresh groundwater and possible sources of such liquid including quantity and quality.
- (c) The application must be accompanied by a map or plat drawn to a scale not less than one inch equals 4,000 feet, showing substantially:
- (1) the location of the existing or proposed well; and
 - (2) the location of the place of use.
- (d) The District shall determine whether the application, maps, and other materials comply with the requirements of these rules, the District Management Plan, the State Water Plan, and State law. The District may require amendment of the application, maps, or other materials to achieve necessary compliance.
- (e) The District shall conduct a public hearing on each application within ninety (90) days of the filing of the complete application.
- (f) Notice of the public hearing shall include the following:
- (1) the name and address of the applicant;
 - (2) the date the application was filed;
 - (3) the location and purpose of the well from which the water to be transported is produced or to be produced;
 - (4) the time and place of the hearing; and
 - (5) any additional information the District considers necessary.
- (g) At the time and place stated in the notice, the District shall hold a public hearing on the application. The hearing may be held in conjunction with any regular or special meeting of the District or a special meeting may be called for the purpose of holding a hearing. Any person may appear at the hearing, in person or by attorney, or may enter his appearance in writing. The District may receive evidence, orally or by affidavit, in

- support or in opposition to the issuance of the permit, and it may hear arguments.
- (h) After the hearing, the Board may determine if the application is going to be contested and schedule a contested case hearing. If no protests are filed against the application the board may approve the application as filed.
 - (i) An application for a Transportation Permit shall be approved if the Board of Directors finds:
 - (1) that the applicant has a legitimate need for the amount of water to be transported as evidenced by inclusion of the proposed project in the approved regional water plan and the current State Water Plan;
 - (2) that the permit will not substantially affect the availability of water in the district;
 - (3) that the permit will not have a substantially negative effect on aquifer conditions or cause excessive aquifer depletion;
 - (4) that the permit will not have a substantially negative impact on existing permit holders or other groundwater users within the district; and
 - (5) that the method of transportation will not result in waste.
 - (j) In considering the permit, the Board shall consider the following:
 - (1) the quantity of water proposed to be transported;
 - (2) the requested term; and
 - (3) the approved District Management Plan.
 - (k) On approval of an application, the District shall issue a permit to the applicant. The applicant's right to transport shall be limited to the extent and purposes stated in the permit. A transportation permit is transferable.
 - (l) The permittee shall file with the District quarterly reports describing the amount of water transported and used for the permitted purpose. Such report shall be filed on the appropriate form or forms provided by the District within ten (10) days of the March 31, June 30, September 30, and December 31 next following the commencement of transporting of water, and within ten (10) days of each such quarterly date thereafter.

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

- (m) All permitted transportation facilities must be equipped with flow monitoring devices approved by the District and available for District inspection at any time.
- (n) Any permit granted under this Subsection shall be subject to revocation for nonuse or waste by the permittee, or for substantial deviation from the purposes or other terms stated in the permit. Revocation of a permit for nonuse shall require that no water is transported under the permit for a period of five years.

RULE 22. REQUEST FOR INJUNCTIVE RELIEF AND ASSESSMENT OF PENALTIES

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

RULE 23. GENERAL RULES

(a) Computing Time

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

(b) Time Limit

Applications, requests, or other paper or documents required or permitted to be filed under these rules or by law must be received for filing at the Board's offices at George West, Texas, within the time limit, if any, for such filing. The date of receipt and not the date of posting is determinative.

(c) Show Cause Orders and Complaints

The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite any person operating within the District to appear before it in a public hearing and require him to show cause why operating authority or permit should not be suspended, canceled, or otherwise restricted and limited, for failure to comply with the orders or rules of the board or the relevant of the State, or for failure to abide by the terms and provisions of the permit or operating authority itself. The matter of evidence and all other matters of procedure at any such hearing will be conducted in accordance with these rules of procedures and practice.

RULE 24. RULEMAKING HEARINGS PROCEDURES

(a) General Procedures for amending District Rules

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

(b) Notice of a Rulemaking Hearing

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

- (A) post notice in a place readily accessible to the public at the District office;
- (B) provide notice to the county clerk of each county in the district;
- (C) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located;
- (D) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (6), below; and
- (E) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on a generally accessible Internet site.

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

- (A) the time, date, and location of the rulemaking hearing;
- (B) a brief explanation of the subject of the rulemaking hearing; and
- (C) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

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

- (4) The District may require each person who participates in a rulemaking hearing to submit a hearing registration form stating:
 - (A) the person's name;
 - (B) the person's address; and
 - (C) whom the person represents, if the person is not at the hearing in the person's individual capacity.
- (5) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
- (6) A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.
- (7) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the District about contemplated rules.
- (8) Failure to provide notice under Subsection (b)(1)(D), above, does not invalidate an action taken by the District at a rulemaking hearing.

(c) Emergency Rules

- (1) A board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:
 - (a) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
 - (b) prepares a written statement of the reasons for its finding under Subdivision (a), above.
- (2) Except as provided by Subsection (3), herein, a rule adopted under this section may not be effective for longer than 90 days.
- (3) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.
- (4) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

(d) Submission of Documents

Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 14.1(b)(3); provided, however, that the presiding officer may grant additional time for the submission of documents.

(e) Oral Presentations

Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

(f) Conclusion of the Hearing; Closing the Record; Hearing Examiner's Report

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

(g) Exceptions to the Hearing Examiner's Report; Reopening the Record

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

(h) Decision; Appeal regarding District Rules

(1) Board Action. After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.

(2) Requests for Rehearing. Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within twenty (20) calendar days of the Board's decision. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the

rehearing request is granted by the Board, the date of the rehearing will be within forty-five (45) calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within ninety (90) calendar days of submission will be deemed to be a denial of the request

RULE 25. JOINT PLANNING IN MANAGEMENT AREA

- (a) Upon completion and approval of the District's comprehensive Management Plan, as required by §§36.1071 and 36.1072, Texas Water Code, the District shall forward a copy of the new or revised Management Plan to the other groundwater districts in its Texas Commission on Environmental Quality designated Management Area. The Board shall consider the plans of the other districts individually and shall compare them to other management plans then in force in the Management Area.
- (b) The presiding officer, or the presiding officer's designee, of the District shall meet at least annually to conduct joint planning with the other districts in the Management Area and to review the management plans and accomplishments for the Management Area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:
 - (1) the goals of each management plan and its impact on planning throughout the Management Area;
 - (2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the Management Area generally;
 - (3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the Management Area; and
 - (4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.
- (c) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area. Before voting on the proposed desired future conditions of the aquifers under the districts shall consider:
 - (1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
 - (2) the water supply needs and water management strategies included in the state water plan;
 - (3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
 - (4) other environmental impacts, including impacts on spring flow and other

- interactions between groundwater and surface water;
 - (5) the impact on subsidence;
 - (6) socioeconomic impacts reasonably expected to occur;
 - (7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;
 - (8) the feasibility of achieving the desired future condition; and
 - (9) any other information relevant to the specific desired future conditions.
- (d) The districts may establish different desired future conditions for:
- (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
 - (2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.
- (e) The desired future conditions must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a).
- (f) The desired future conditions proposed must be approved by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered and groundwater availability model run results. After the public hearing, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.
- (g) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period, the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

- (1) identify each desired future condition;
 - (2) provide the policy and technical justifications for each desired future condition;
 - (3) include documentation that the factors under Subsection (c) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;
 - (4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and
 - (5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.
- (h) As soon as possible after a district receives the desired future conditions resolution and explanatory report, the district shall adopt the desired future conditions in the resolution and report that apply to the district. Except as provided by this section, a joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of a joint meeting must be provided at least 10 days before the date of the meeting by:
- (1) providing notice to the secretary of state;
 - (2) providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and
 - (3) posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.
- (i) The secretary of state and the county clerk of each county shall post notice of the meeting in the manner provided by Section 551.053, Government Code.
- (j) Notice of a joint meeting must include:
- (1) the date, time, and location of the meeting;
 - (2) a summary of any action proposed to be taken;
 - (3) the name of each district located wholly or partly in the management area; and
 - (4) the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.
- (k) The failure or refusal of one or more districts to post notice for a joint meeting does not invalidate an action taken at the joint meeting.

(l) Petition for Inquiry

- (1) In this section, "affected person" means, with respect to a management area:
 - (A) an owner of land in the management area;
 - (B) a district in or adjacent to the management area;
 - (C) a regional water planning group with a water management strategy in the management area;
 - (D) a person who holds or is applying for a permit from a district in the management area;
 - (E) a person who has groundwater rights in the management area; or
 - (F) any other person defined as affected by commission rule.

- (2) An affected person may file a petition with the commission requesting an inquiry for any of the following reasons:
 - (A) a district fails to submit its management plan to the executive administrator;
 - (B) a district fails to participate in the joint planning process under Section 36.108;
 - (C) a district fails to adopt rules;
 - (D) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;
 - (E) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;
 - (F) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;
 - (G) the rules adopted by a district are not designed to achieve the desired future conditions adopted by the management area during the joint planning process;
 - (H) the groundwater in the management area is not adequately protected by the rules adopted by a district; or
 - (I) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

- (m) Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:
 - (1) dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or
 - (2) select a review panel as provided in Subsection (k).

- (n) If the petition is not dismissed under Subsection (j), the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall

appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

- (o) Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.
- (p) In its report, the review panel shall include:
 - (1) a summary of all evidence taken in any hearing on the petition;
 - (2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and
 - (3) any other information the panel considers appropriate.
- (q) The review panel shall submit its report to the commission. The commission may take action under Section 36.3011.
- (r) **Appeal of Desired Future Conditions**
 - (1) In this section, "development board" means the Texas Water Development Board.
 - (2) A person with a legally defined interest in the groundwater in the management area, a district in or adjacent to the management area, or a regional water planning group for a region in the management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the management area.
 - (3) The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.
 - (4) The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.

- (s) Districts located within the same Management Areas or in adjacent Management Areas may contract to jointly conduct studies or research, or to construe projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities.
- (t) **Notice of Meetings**
- (1) Except as provided by Subsections (2) and (3), notice of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.
- (2) At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:
- (A) the proposed desired future conditions and a list of any other agenda items;
 - (B) the date, time, and location of the meeting or hearing;
 - (C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
 - (D) the names of the other districts in the district's management area; and
 - (E) information on how the public may submit comments.
- (3) Except as provided by Subsection (b), notice of a hearing described by Subsection (b) must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).
- (u) **Modeled Available Groundwater**
- (1) The Texas Water Development Board shall require the districts in a management area to submit to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):
- (A) the desired future conditions adopted under Section 36.108;
 - (B) proof that notice was posted for the joint planning meeting; and
 - (C) the desired future conditions explanatory report.
- (2) The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the modeled available groundwater in the management area based upon the desired future conditions adopted by the districts.

RULE 26. REPEAL OF PRIOR REGULATIONS

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

RULE 27. SAVINGS CLAUSE

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