

# **RULES OF THE REEVES COUNTY GROUNDWATER CONSERVATION DISTRICT**

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## **INTRODUCTION**

The Reeves County Groundwater Conservation District (“District”) was created by the 83rd Texas Legislature, Regular Session, in 2013 with the enactment of Senate Bill 890 (now codified as Chapter 8876 Texas Special District Local Laws Code) (“District Act”). The creation of the District was confirmed by the citizens located within the District’s boundaries in Reeves County at an election held in November 2015.

The District’s boundaries consist of the entire territory within Reeves County.

The District strives to preserve and protect the groundwater resources within its boundaries. The District recognizes that groundwater conservation districts are the state’s preferred method of groundwater management in order to protect private property rights, balance the conservation and development of groundwater to meet the needs of this state and use the best available science in the conservation and development of groundwater. The District will work with local stakeholders towards achieving its objectives. The District will accomplish its objectives by working to lessen interference between water wells, minimize drawdown of groundwater levels, prevent the waste of groundwater, and reduce the degradation of groundwater quality within the District while helping the local economies maintain and improve their current condition. The District will also use the authority granted it in Water Code Chapter 36, the District Act, and applicable state laws to protect and maintain the groundwater resources of the District.

## **RULE 1. DEFINITIONS AND GENERAL PROVISIONS**

### **RULE 1.1. DEFINITIONS**

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

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 Texas 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 326,000 gallons of water.
3. “Agricultural use” means any use or activity involving agriculture, including irrigation.
4. “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; and
  - E. Raising or keeping equine animals.
5. “Best available science” means conclusions that are logically and reasonable derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.
6. “Board” means the board of directors of the district.
7. “Commission” means the Texas Commission on Environmental Quality or TCEQ.
8. “Contiguous acreage” means an acre of land upon which a well that is the subject of an Operating or Historic Use Permit or permit application is located, and each additional acre of land:
  - A. for which the applicant has a legal right to produce groundwater;
  - B. believed to be located over the same aquifer as the aquifer from which the well will be producing groundwater, and
  - C. either:
    - i. located within the perimeter of the same surface estate plat, deed, or other legally recognized surface estate property description filed in the deed records of Reeves County as the acre on which the well is located

(including tracts of land listed in a single deed all of which adjoin each other and are within the same perimeter);

- ii. located within the perimeter of a tract of land on which the well is located that is under the same right to produce and use groundwater, as established by deed, lease, or otherwise as the land upon which the well is located, although the property may be described in separate plats or deeds; or
- iii. contiguous to acreage described under (A) and (B), but on a different tract of land that does not meet the description of acreage under (C)(i) or (C)(ii).

Acreage on separate tracts of land that would otherwise be contiguous under this definition but for the need to cross over to the other side of a strip or easement for roads, railroads, pipelines, or utilities or similar long, but narrow, strips shall be considered contiguous for the purposes of this definition. Separate tracts of land must share a common boundary for the acreage on the separate tracts to be considered contiguous to the well. Separate tracts of land that share only a corner-to-corner connection are not considered contiguous acreage. The acreage of the strip or easement for roads, railroads, pipelines, or utilities or similar long, but narrow, strips itself shall not be included for purposes of calculating the amount of total contiguous acreage unless the permit applicant has the right to produce groundwater from the strip or easement for roads, railroads, pipelines, or utilities or similar long, but narrow, strips. However, acreage on two otherwise non-contiguous tracts of land shall not be considered contiguous simply because they are joined by the length of a strip or easement for roads, railroads, pipelines, or utilities or similar long, but narrow, strips. An acre of land may not be assigned as Contiguous Acreage to more than one well, well system, or permit holder.

- 9. “Desired future condition” means a quantitative description, adopted in accordance with Water Code Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.
- 10. “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.
- 11. “Director” means a member of the board.
- 12. “Discharge” means the amount of water that leaves an aquifer by natural or artificial means.
- 13. “District” means the Reeves County Groundwater Conservation District created under Section 59, Article XVI, Texas Constitution.
- 14. “District Act” means the District’s enabling legislation now codified as Chapter 8876, Texas Special District and Local Laws Code.

15. “Domestic use” means:
- A. The use of groundwater by an individual or a household to support domestic activities, including the use of groundwater for:
    - 1. Drinking, washing, or culinary purposes;
    - 2. Irrigating a lawn or a family garden or orchard;
    - 3. Watering domestic animals; or
    - 4. Water recreation, including aquatic and wildlife enjoyment.
  - B. Does not include the use of water:
    - 1. To support an activity for which consideration is given or received or for which the product of the activity is sold; or
    - 2. By or for a public water system.
16. “Drilling Permit” means a permit issued by the District authorizing the drilling, and installation of a non-exempt well.
17. “Executive administrator” means the executive administrator of the Texas Water Development Board.
18. “Exempt well” means a water well that is not required to obtain an operating permit.
19. “Existing Well” means any well in the District that was drilled or properly completed on or before the adoption of the Reeves County Groundwater Conservation District Rules.
20. “Federal conservation program” means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.
21. “Groundwater” means water percolating below the surface of the earth.
22. “Groundwater reservoir” means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.
23. “Historic use” means production and beneficial use of groundwater from an aquifer during the period of time before the Effective Date of the rules.
24. “Historic use permit” means a permit required by the District for the operation of any existing well or well system that is completed and not abandoned prior the Effective Date of the Rules.

25. “Livestock use” means the use of groundwater for the open-range watering of livestock, exotic livestock, game animals, or fur-bearing animals. For purposes of this subdivision, “livestock” and “exotic livestock” have the meanings assigned by Sections 1.003 and 142.001, Agriculture Code, respectively, and “game animal” and “fur-bearing animal” have the meanings assigned by Sections 63.001 and 71.001, Parks and Wildlife Code, respectively. Livestock use does not include use by or for a public water system.
26. “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.
27. “Non-Exempt Well” means a water well that is required to obtain an operating permit.
28. “Nursery grower” means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, “grow” means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.
29. “Owner” means any person, firm partnership or corporation that has the right to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.
30. “Person” means any individual, partnership, firm, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, association, or any other legal entity.
31. “Production Limit” means a numerical limitation on the annual amount of Groundwater authorized to be produced under an Operating Permit. The Production Limit is generally expressed in acre-feet per year or gallons per year.
32. “Operating Permit” means a permit issued by the District authorizing the operation of and production from a non-exempt well.
33. “Public water supply well” means a well that produces the majority of its water for use by a public water system.
34. “Recharge” means the amount of water that infiltrates to the water table of an aquifer.
35. “Small commercial well” means a well equipped with a pump rated at 1.5 horsepower or less used for commercial purposes.
36. “Small privately-owned water system” means a system that is privately-owned, located on private property that has not been subdivided, and that is used to supply water service

to the landowner, the landowner's family, employees, or invitees solely for domestic and livestock purposes.

37. "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.
38. "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.
39. "Transport" means transferring or exporting out of the District Groundwater that is authorized by a District Permit. The Terms "transfer" or "export" of groundwater are used interchangeably within Chapter 36 and these Rules.
40. "Use for a beneficial purpose" means use described in Rule 2.2.
41. "Variance" means an authorized exception to requirements or provisions of the Rules that is approved by the District in accordance with Rule 1.2.
42. "Verification Period" means September 1, 2027 to September 1, 2028.
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 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; or
  - G. For water produced from an artesian well, “waste” has the meaning assigned by Section 11.205.
44. “Water” means groundwater.
45. “Water Well” or “Well” means an artificial excavation constructed to explore for or produce groundwater. It also includes an abandoned oil or gas well that can be conditioned for usable quality groundwater production. The term does not include a test or blast hole in a quarry or mine or a well or excavation constructed to explore for or produce oil, gas, or other minerals or an injection water source well associated with permitted oil and gas or other mineral extraction activities that penetrates the base of usable quality water.
46. “Effective Date” or “Effective Date of these Rules” means September 1, 2019.

## **RULE 1.2. VARIANCE**

Any exceptions or variances to the requirements imposed by District Rules shall be considered on a case-by-case basis. A request for variance shall be submitted in writing and include reasons for the request. A variance from any requirements contained in a permit requires a permit amendment. A variance will not be granted unless approved by a two-thirds vote of the full membership of the Board.

## **RULE 2. WASTE AND BENEFICIAL USE**

### **RULE 2.1. WASTE PREVENTION**

- A. Groundwater shall not be produced within, or used within or outside of the District, in such a manner as to constitute waste as defined in these Rules.
- 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 1.1(42).

### **RULE 2.2. USE FOR A BENEFICIAL PURPOSE**

- 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.
- C. Any other purpose that is nonspeculative, useful and beneficial to the user and approved by the board.

### **RULE 2.3. ORDERS TO PREVENT WASTE/POLLUTION**

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

### **RULE 3. RULEMAKING**

- A. The district may make and enforce rules, including rules limiting groundwater production based on tract size or 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 this chapter. In adopting a rule, the district shall:
  - 1. Consider all groundwater uses and needs;
  - 2. Develop rules that are fair and impartial;
  - 3. Consider the groundwater ownership and rights;
  - 4. Consider 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;
  - 5. Consider the goals developed as part of the district's management plan; and

6. 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.
- B. Any rule of the district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.
  - C. Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:
    1. Post notice in a place readily accessible to the public at the district office;
    2. Provide notice to the county clerk of each county in the district;
    3. Publish notice in one or more newspapers of general circulation in the counties in which the district is located;
    4. Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (H); and
    5. 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.
  - D. The notice provided under Subsection (C) must include:
    1. The time, date, and location of the rulemaking hearing;
    2. A brief explanation of the subject of the rulemaking hearing; and
    3. A location or Internet site at which a copy of the proposed rules may be reviewed or copied.
  - E. The Board President, or in his absence, a person appointed by the Board shall serve as the presiding officer who 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 within any deadline established by the District. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.
  - F. Each person who participates in a rulemaking hearing to submit a hearing registration form stating:

1. The person's name;
  2. The person's address; and
  3. Whom the person represents, if the person is not at the hearing in the person's individual capacity.
- G. 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.
- H. 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.
- I. 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.
- J. Failure to provide notice under Subsection (C)(4) does not invalidate an action taken by the District at a rulemaking hearing.
- K. The presiding officer shall close the hearing record at the conclusion of the hearing.

#### **RULE 4. EMERGENCY RULES**

- A. The board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:
1. Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
  2. Prepares a written statement of the reasons for its finding under Subsection A. 1.
- B. Except as provided by Subsection (C), a rule adopted under this rule may not be effective for longer than 90 days.

- C. 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.

#### **RULE 4.1 PETITION FOR ADOPTION OR MODIFICATION OF RULES.**

- A. A person with a real property interest in groundwater located within the District may petition the District to request the adoption or modification of a rule.
- B. Petitions shall be submitted in writing to the General Manager, and shall comply with the following requirements:
  - 1. each rule requested must be submitted by separate petition;
  - 2. each petition must be signed and state the name and address of the petitioner(s) and identify with a brief written description and drawing the petitioner's real property interest in groundwater within the District;
  - 3. each petition shall include:
    - a. a brief explanation of the proposed rule;
    - b. the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;
    - c. a statement of the statutory or other authority under which the proposed rule is to be promulgated; and
    - d. an allegation of injury or inequity that could result from the failure to adopt the proposed rule.
- C. The General Manager may reject a petition for failure to comply with the requirements of subsection (B) of this section.
- D. Not later the 90<sup>th</sup> day after the date the District receives the petition that complies with this section, the Board shall either deny the petition and provide an explanation for the denial in the minutes of the Board meeting or in a letter, or engage in rulemaking consistent with the granted petition as provided by Section 36.101 of the Water Code.
- E. There is no private cause of action for a decision to accept or deny a petition.

#### **RULE 5. ENFORCEMENT OF RULES, ORDERS, PERMITS**

- A. The district may enforce its rules, orders and permits against any person by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- B. Any person who breaches any rule, order or permit of the District is subject to civil penalties not to exceed \$25,000 per day per violation, and each day of a continuing violation constitutes a separate violation.
- C. A penalty under this rule is in addition to any other penalty provided by the law of this state and may be enforced against any person by complaints filed in the appropriate court of jurisdiction in Reeves County.
- D. If the district prevails in any suit to enforce its rules, orders, and permits, the District may seek and the court shall grant against any person, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court in accordance with Section 36.066 Texas Water Code. The amount of the attorney's fees shall be fixed by the court.
- E. In an enforcement action by the district against any person that is a governmental entity for a violation of district rules, the limits on the amount of fees, costs, and penalties that a district may impose under Sections 36.102, 36.122, or 36.205, Texas Water Code, or under the District Act, constitute a limit of liability of the governmental entity for the violation. This subsection shall not be construed to prohibit the recovery by a district of fees and costs in an action against any person that is a governmental entity.

#### **RULE 6. REGISTRATION, RECORDS, AND REPORTS**

- A. All water wells within the District must be registered. There is no fee for registering existing wells. Upon receipt of a completed application, the District will determine if the well is exempt or non-exempt. A non-exempt well shall not be drilled or operated prior to District approval of an operating permit, except as provided under Rule 9.
- B. Accurate drillers' logs must be kept of water wells and copies of drillers' logs and electric logs, if such a log was conducted on the well, must be filed with the District. A District-approved Operating Permit will not be issued until the General Manager receives a copy of the driller's log.
- C. Registration shall include the following information, submitted on forms provided by the District, and any other information the General Manager may determine to be needed.
  - 1. Name, address, phone number, email, and fax number of the well owner. If the applicant is not the landowner, include the name, address, phone

number, email and fax number of the landowner and documentation establishing the authority of the applicant to drill and operate the well;

2. If known, the latitude and longitude of the well;
3. Casing size, well depth, depth to screen bottom, pump size, and production capability; and
4. Proposed use of well.

## **RULE 7. PERMIT REQUIRED, PERMIT AMENDMENTS, APPLICATION**

- A. No person, firm, or corporation may drill a non-exempt well without first obtaining a drilling permit from the District.
- B. No person, firm, or corporation may alter the size of a non-exempt well or well pump such that it would bring that well under the jurisdiction of the district without first obtaining a permit from the District.
- C. No person, firm, or corporation may operate a non-exempt well without first obtaining an operating or historic use permit from the District.
- D. A violation occurs on the first day the drilling, alteration, or operation begins and continues each day thereafter until the appropriate permits are approved.
- E. Except as exempted under the rules, the District requires a permit for:
  - 1. Drilling, which allows drilling a new well, expanding an existing well, redrilling or re-equipping an existing well, or plugging a well;
  - 2. Operating or historic use, which allows water to be withdrawn from a non-exempt well;
  - 3. Multiple wells that are part of an aggregate system that are owned and operated by the same permittee and serve the same subdivision, facility, oil and gas production operation, mining operation, or area served by a TCEQ issued Certificate of Convenience and Necessity may be authorized under a single permit. Separate drilling authorization applications shall be submitted for each well and the District will require separate records of each well's location and characteristics. Geographic location of wells and integrated distribution systems will be considered in determining whether or not to allow aggregation. For the purpose of categorizing wells by the amount of groundwater production, when wells are permitted with an aggregate withdrawal, the aggregate value shall be assigned to the group, rather than allocating to each well its prorated share or estimated production;
  - 4. Transport, which allows groundwater to be transported outside the boundaries of the District; and,
  - 5. ASR recovery wells that are associated with an aquifer storage and recovery project if the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project.

- F. Permit Amendments are classified as minor amendments or major amendments. Minor amendments include the type of permit amendment applications listed in Rule 13.C. A minor amendment may be processed in accordance with Rule 13.C without notice and hearing. All other amendments are major amendments and may be processed in accordance with Rule 13.D with notice and opportunity for hearing.
- G. The District does not require a permit or a permit amendment for maintenance, replacement, or repair of a well if the maintenance, replacement or repair does not increase the production capabilities of the well to more than its authorized or permitted production rate and for a replacement well, the existing well to be replaced is properly plugged and the replacement well is drilled and completed within 100 feet of the well being replaced.
- H. An application for a permit or a permit amendment must be in writing in a form provided by the District and sworn to.
- I. The following shall be included in the permit or permit amendment application:
  - 1. The name, mailing address, phone and fax numbers, and email address of the applicant (if other than the owner) and the owner of the land on which the well will be located;
  - 2. If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
  - 3. Nature, purpose and location of use. Provide a detailed statement describing:
    - a. The nature and purpose of the proposed use including the amount of water to be used for each purpose and any proposed uses by persons other than the well owner;
    - b. The well location and the proposed receiving area for groundwater produced from the well (note any proposed transfer);
    - c. The location, purpose of any water to be resold, leased, or transported;
    - d. A breakdown by types of use (domestic, commercial, irrigation, industrial, etc.); and
    - e. Conservation practices in effect or proposed.

4. A water conservation plan or a declaration that the applicant will comply with the District's management plan;
5. The location of each well, including latitude and longitude, address, and the estimated rate at which water will be withdrawn;
6. A water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District and all other appropriate agencies;
7. A drought contingency plan, if required by the Board; and
8. A statement of the projected effect of the proposed withdrawal on the aquifer or aquifer conditions, depletions, subsidence, or effects on existing permit holders or other groundwater users in the District.
  - a. If the Board or the General Manager, subject to the review and direction of the Board, deems it necessary based upon the location of and the number of wells and the volume of requested pumpage, the applicant must submit a hydrogeological investigation and report conducted in accordance with the requirements of the District's Hydrogeologic Investigation and Report (Appendix A to these Rules) prepared by a licensed geoscientist or engineer that evaluates the following parameters: rate of yield and drawdown, specific capacity, well efficiency, transmissivity, hydraulic conductivity, recharge or barrier boundaries, aquifer thickness, and any other information required by the District;
  - b. If a hydrological report is required, the following calculations will be included:
    - i. Time drawdown at the property boundary at five year intervals for a 30 year period;
    - ii. Distance drawdown. The distance from the pumped well to the outer edges of the cone of depression; and
    - iii. Well interference.
9. Pumpage Volume. Provide a detailed statement describing:
  - a. The estimated pumping rate at which water will be withdrawn from each well; and,

- b. The requested pumpage volume and how the volume was determined. The requested volume should demonstrate reasonable non-speculative demand.
- 10. If the groundwater is to be resold, leased, or otherwise transferred to others, provide the location to which the groundwater will be delivered, the purpose for which the groundwater will be used.
- 11. If known, the name, mailing address, phone and fax numbers, and email of the drilling company and the name and license number of the driller who drilled the well.
- 12. A copy of all well logs, if available.
- 13. If known, the existing or proposed well depth, the aquifer in which the well is completed, the anticipated date the well will be drilled, the existing or proposed casing size and type, the proposed casing depth, the type of pump and pump size in horse power.
- 14. The power supply to the well.
- 15. The water bearing formation, maximum production capacity, estimated rate of withdrawal, estimated annual water production, and, if a meter is installed, meter type.
  - a. Applications for Historic Use Permit for volumes greater than 6 AF/acre shall include the information required under Rule 11.A.1.a. or 11.A.1.b, as applicable.
  - b. Applications for Operating Permit for volumes greater than 6 AF/acre shall include the information required under Rule 11.A.2.
- 16. Number of contiguous acres associated with the well.
- 17. A declaration that the applicant will comply with the District rules and all groundwater use permits and plans promulgated pursuant to District rules.
- 18. A plat map showing location of the property and location of the well, all existing wells within ½ mile of the proposed or existing well to be modified, and the property owners within ½ mile as found in the records of the Reeves County Appraisal District.
- 19. The names, mailing address, and physical address of the property owners within ½ mile radius as found in the records of the Reeves County Appraisal District if such landowners are not served by a retail public water utility.

20. If property owners within  $\frac{1}{2}$  mile radius of the well are served by a retail public water utility, the mailing address of retail public water utility.
21. For new wells or well modifications, a proposed well design schematic to include: total depth, borehole diameter, casing diameter and depth, annular seal interval(s), annular sealing method, surface completion specifications, and any other pertinent well construction information.
22. In addition to the above information, the following information is required for transport permit applications:
  - a. Information describing the availability of water in the proposed receiving area during the period for which the water transport is requested;
  - b. Information describing the projected effect of the proposed transporting of water on aquifer conditions, including depletion, subsidence or effects on existing permit holders or other groundwater users within the District;
  - c. A description of how the proposed transport is addressed in any approved regional water plan(s) and the certified District Management Plan;
  - d. A technical description of the facilities to be used for transportation of water and a time schedule for any construction thereof; and
  - e. A detailed statement of the nature and purpose of the various proposed uses in the proposed receiving area, the amount of groundwater to be used for each purpose, and the requested annual volume to be transported outside the District.
23. All applications shall contain the following certification by the applicant:
  - a. For a new well, this well will be drilled within 30 feet of the location specified and not elsewhere;
  - b. I will furnish the District with a copy of the completed driller's log, any electric log, the well completion report and any water quality test report within 60 days of completion of this well and prior to production of water there from (other than such production as may be necessary to the drilling and testing of such well);

- c. In using this well, I will avoid waste, achieve water conservation, protect groundwater quality and the water produced from this well will be for a beneficial use;
  - d. I will comply with all District and State well plugging and capping guidelines in effect at the time of well closure;
  - e. I agree to abide by the terms of the District Rules, the District Management Plan and orders of the District Board of Directors currently in effect and as they may be modified, changed, and amended from time to time; and
  - f. I hereby certify that the information contained herein is true and correct to the best of my knowledge and belief.
- J. Notice of application is governed as provided within these Rules. Applicants must provide notice for any application described under Rule 13.D for which the District provides an opportunity for a hearing. Applicants may not provide notice until the Board or the General Manager, subject to the review and direction of the Board, determines the application is administratively complete.
- 1. Such notices, except for notices of a drilling permit application, shall be published by the Applicant, when directed by the District, in a newspaper designated by the District for the publication of legal notices in Reeves County in a form and content approved by the District.
  - 2. All permit applications described under Rule 13.D for which the District provides an opportunity for a hearing must provide notice by certified mail, return receipt requested, to all property owners within a half (1/2) mile radius of the well that is the subject of the application. Notification of any property owner served by a retail public water utility is not required of any applicant if notice is provided to the retail public water utility.

## **RULE 8. CRITERIA FOR ISSUANCE AND ELEMENTS OF PERMIT**

- A. Before granting or denying a permit or permit amendment, the District shall consider whether:
  - 1. The application conforms to the requirements prescribed by these rules and is accompanied by the prescribed fees;
  - 2. The proposed use of water unreasonably affects existing groundwater and surface water resources, existing permit holders, or wells that are registered with the District and exempt from requirement to obtain a permit under Rule 15;

3. The proposed use of water is dedicated to beneficial use at all times including whether there are reasonable assurances of definite, non-speculative plans and intent to use the water for specific beneficial uses during the permit term;
  4. The proposed use of water is consistent with the District's approved management plan;
  5. The amount requested is consistent with allowable production;
  6. The well meets applicable spacing requirements;
  7. The applicant has agreed to avoid waste and achieve water conservation; and
  8. The applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.
- B. A permit issued by the District to the applicant under these rules shall state the terms and provisions prescribed by the District.
- C. The permit will include:
1. The name and address of the person to whom the permit is issued;
  2. The location of the well;
  3. The date the permit is to expire if no well is drilled;
  4. A statement of the purpose for which the well is to be used;
  5. A requirement that the water withdrawn under the permit be put to beneficial use at all times;
  6. The location of the use of the water from the well;
  7. A water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District and other appropriate agencies;
  8. The conditions and restrictions, if any, placed on the rate and amount of withdrawal;

9. Any conservation-oriented methods of drilling and operating prescribed by the district;
10. Any maximum allowable production;
11. A drought contingency plan prescribed by the district; and
12. Other terms and conditions as provided by the District rules.

#### **RULE 9. PERMITS FOR EXISTING WELLS**

- A. Any existing nonexempt well completed and not abandoned on or before the effective date of these rules September 1, 2019 is entitled to obtain a Historic Use Permit from the District in the manner provided by this Rule.
- B. Applications for a Historic Use Permit for existing nonexempt wells must be filed with the District by September 1, 2028 (nine years after Effective Date of Rules). Failure of an owner of an existing nonexempt well to apply for an Historic Use Permit on or before September 1, 2028 (nine years after Effective Date of Rules) shall preclude the owner from making any future claim or application to the District for an historic use under these rules. The failure of the well owner to file an application for an Historic Use Permit on or before September 1, 2028 (nine years after Effective Date of Rules) shall cause the owner to forfeit the well owner's rights and ability to operate the well under these rules, unless the owner thereafter applies for and obtains an Operating Permit that authorizes production from the well. A well that meets the requirements for an Historic Use Permit is granted interim production authorization from the Effective Date of these Rules until September 1, 2028 or the date the District grants an Historic Use Permit, whichever occurs first.
- C. For good cause shown, including a showing that the applicant did not have notice of the filing requirement of this Rule 9, the Board may grant an extension of the filing deadline.
- D. A sworn application for an Historic Use Permit shall include the well drilling and completion date, capacity, location, water use, legal description of the tract of land associated with the past production of the well, the maximum amount of water beneficially used without waste from the well in any twelve-month period before the Effective Date of the Rules, and such other information as may be required by the District under Rule 7.

#### **RULE 10. OPERATING PERMITS**

- A. An Operating Permit is required for the operation of or production from any new, nonexempt well drilled after September 1, 2019 (the Effective Date of the Rules) and for any existing well with no Historic Use Permit. An Operating Permit is required for an amendment to increase a Historic Use Permit.
- B. A well drilled after March 19, 2020 pursuant to a District-approved drilling permit is granted temporary authorization to produce groundwater under the following conditions:
  - 1. The production is 100 gallons per minute or less;
  - 2. An operating permit application for the well has been filed with the District; and,
  - 3. The temporary production authorization is limited to sixty (60) days from the date of well completion.

#### **RULE 11. MAXIMUM ALLOWABLE PRODUCTION**

- A. Unless a smaller amount is requested, the amount of annual maximum production specified in the Historic Use or Operating Permit from all aquifers shall not exceed in any calendar year 6 acre feet per contiguous acres of land from all non-exempt wells owned or operated by the applicant as designated in the permit application. In establishing the maximum allowable production for a retail public water utility, the District will consider the service needs and service area within Reeves County of the retail public water utility in addition to or in lieu of surface area owned or operated by the retail public water utility. Notwithstanding the 6 acre-feet per acre per year maximum allowable production, the maximum annual quantity of groundwater that may be withdrawn under an Historic Use or Operating permit shall be no greater than the amount the well(s) subject to the permit are capable of producing.
  - 1. Historic Use Well(s) may be permitted for greater than 6 AF/acre up to maximum amount of water beneficially used without waste in any 12-month period before the Effective Date of the Rules.
    - a. To obtain greater than 6 AF/acre for an Historic Use Permit, the applicant must show historic data of maximum beneficial use greater than 6 AF/acre during any 12-month period before the Effective Date of the Rules through one of the following:
      - i. Water meter measurements
      - ii. Energy consumed producing groundwater (e.g. fuel or electric meter records)

- iii. Irrigation nozzle packages/flow rates
  - iv. Number/type of annual cropping
  - v. FSA records
  - vi. Other methodology approved by the Board
- b. In lieu of historic data, applicant may confirm metered volume during a 12-month Verification Period. A well must have produced water for a beneficial use without waste during a 12-month period before the Effective Date of these rules to obtain greater than 6 AF/acre using a Verification Period.
- i. Verification period is a one-year period after an application is filed beginning no later than September 1, 2028 (deadline for filing an application) and ending no later than September 1, 2029 (one year after deadline for filing application). The applicant must provide the District with monthly meter readings from the well(s) for each month during the Verification Period.
  - ii. Applicant is granted interim production authorization to withdraw and beneficially use an annual volume of water not to exceed the volume requested in the application from the beginning of the Verification Period until final issuance or denial of the Historic Use Permit. Any Historic Use Permit issued using the verification period will be limited to the volume determined during the Verification Period even if it is less than 6 AF/acre.
  - iii. The Board may limit the interim authorization as provided under subsection F of this section.
2. New wells drilled after Effective Date of the Rules or any existing nonexempt well completed and not abandoned on or before the Effective Date that has not produced water for a beneficial use without waste during a 12-month period before the Effective Date may be permitted for greater than 6 AF/acre if the applicant can demonstrate to the satisfaction of the District through a hydrological investigation and report conducted in accordance with the requirements of the District's Hydrogeologic Investigation and Report (Appendix A to these Rules) that the proposed production will not unreasonably affect existing groundwater resources and existing permittees.
3. In connection with any well(s) permitted for greater than 6 AF/acre, the District may require monitor well(s) (new monitor wells drilled by applicant or use existing wells) to monitor drawdown and aquifer levels.

4. Meter(s) are required and monthly production must be reported for any well(s) authorized to produce greater than 6 AF/acre.
  5. When considering issuing any permit for production greater than 6 AF/acre, the Board may restrict production in excess of 6AF/acre to a management zone designated by District rule. The production from the management zone will be limited so that there is not unreasonable impact to the goals and objectives of the District Management Plan, the attainment of desired future conditions, other groundwater production hydrologically connected to the proposed zone, or production from exempt use.
- B. In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve the desired future condition and the District will also consider:
1. The modeled available groundwater determined by the executive administrator of the Texas Water Development Board;
  2. The executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules;
  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.
- C. In order to protect the public health and welfare and to conserve and manage the groundwater resources in the District during times of drought, the District may pro-rate groundwater use, place special requirements on, modify, delay, or deny a permit for a new well during a District-declared drought.
- D. The District may impose more restrictive permit conditions on new permit applications and increased use by historic users if the limitations:
1. Apply to all subsequent new permit applications and increased use by historic users, regardless of type or location of use;
  2. Bear a reasonable relationship to the existing District Management Plan; and
  3. Are reasonably necessary to protect existing use.

- E. If necessary, after notice and hearing the Board may adjust downward the maximum allowable production to achieve the desired future conditions. If the total amount of production for any aquifer or its subdivisions in the District, as applicable, is more than the total volume of exempt and permitted groundwater that exceeds the Model Available Groundwater associated with the desired future condition for an aquifer, then production amounts may be reduced proportionally among all holders of Historic Use and Operating Permits from such aquifer, if necessary to avoid the impairment of the desired future condition. Any necessary reductions will first be applied to Operating Permits, and subsequently, if production still exceeds the Modeled Available Groundwater associated with the desired future condition for an aquifer after reducing Operating Permits in their entirety, to Historic Use Permits.
- F. If the General Manager determines that production from a permitted well is unreasonably affecting an existing permitted well or groundwater resources, then the General Manager may, after notice and hearing, initiate a permit amendment before the Board for the Board to reduce the permit volume to a level that will reasonably avoid the recurrence of the unreasonable affect.

## **RULE 12. PERMIT TERM**

- A. A drilling permit for a well will automatically expire with one year from its issuance if the well is not significantly under development.
- B. Unless otherwise specified by the Board of Directors or these rules, an operating permit is effective for a period of five years from the issue date. An operating permit shall expire for a well, if within 24 months of the date the permitted well is completed, the permittee has not used the water from the permitted well for a purpose authorized in the operating permit. Before an operating permit automatically terminates under this rule, the operating permit holder may request in writing to the Board a 24-month extension of the time to operate the well. The request must include the reasons for the extension and the Board will take action under subsection D of this Rule 12. If renewed, operating permits shall thereafter be effective for five year terms from the initial expiration date unless otherwise specified by the Board. The permit terms will be shown in the permit. A permit applicant requesting a permit term longer than five years must substantiate its reason for the longer term and its need to put groundwater to beneficial use throughout the proposed permit term.
- C. The Board or General Manager, subject to the review and direction of the Board, will normally renew a permit for wells without an application for renewal or a hearing if:
  - 1. The terms and conditions of the permit (including maximum authorized withdrawal) are not changed in a manner that requires a permit amendment under these rules;

2. The permittee is in compliance or has a compliance agreement with all terms of the permit and paid any required civil penalties;
3. The permittee has resolved all enforcement actions, if any, for the permit and the permit is not subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; and
4. the permittee is not delinquent in paying any required fees in accordance with District rules.

Notwithstanding the above, all renewals remain subject to any new criteria or pumping limitations established by the Board of Directors.

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

- D. After notice and an opportunity for a hearing, the Board may renew the permit with a reduced amount of the authorized production if the authorized withdrawal volume is no longer commensurate with reasonable non-speculative demand or actual production from a well is substantially less than the authorized permit amount for multiple years without any rationale that reasonably relates to efforts to utilize alternative water supplies, conserve, or improve water use efficiency.
- E. Changes in Permits.
  1. If the holder of an operating or historic use permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District rules, the permit as it existed before the permit amendment process remains in effect until the later of:
    - a. The conclusion of the permit amendment or renewal process, as applicable; or
    - b. Final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.
  2. If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Subsection C above without penalty, unless Subsection C(3) above applies to the applicant.
  3. A district may initiate an amendment to an operating or historic use permit, in connection with the renewal of a permit or otherwise, in

accordance with the District rules. If the District initiates an amendment to an operating or historic use permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

### **RULE 13. TIMING OF ACTION ON APPLICATION**

- A. An administratively complete application requires information set forth in accordance with these rules. The General Manager or Board will determine administrative completeness and an applicant will be notified when a well is administratively complete. The General Manager may withhold a determination of administrative completeness for a Historic Use Well until the applicant has completed and submitted reports required under Rule 11.A.1.b.i for groundwater produced during the Verification Period. The application will expire if the information requested in the application is not provided to the District within 60 days of written request.
- B. The District shall promptly consider and act on each administratively complete application for a permit or permit amendment or, if within 60 days after the date an administratively complete application is submitted, the application has not been acted on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application, as appropriate.
- C. The following permit or permit amendment applications shall be approved by the Board without notice and hearing under Rule 21 or further action by the Board:
  - 1. Non-substantive corrections or administrative amendments to any permit;
  - 2. Applications requesting maximum production rate for a well of 100 gallons per minute or less;
  - 3. Change in the name or address of the well owner or well operator;
  - 4. Decrease the maximum authorized withdrawal;
  - 5. Increase the maximum authorized withdrawal by ten percent or less of the total permitted production for users permitted for more than 100 gallons per minute so long as there have not been similar amendments in the past two years;
  - 6. Increase the maximum authorized withdrawal by up to 5 gallons per minute for users permitted for 100 gallons per minute or less;
  - 7. Convert two or more wells individually permitted by the same permittee into an aggregate system under one permit so long as production amounts are not increased above the total volumes authorized under the individual permits;

8. Change the depth of a water well;
  9. Change the depth of the bottom of the screen of a water well;
  10. Change the well pump if the change results in an increase in the production rate less than or equal to amounts described in Rule 13.C.(5) and (6) above;
  11. Change in purpose of use and no change in withdrawal amount or in connection with a change in withdrawal within the amounts described under Rule 13.C.(5) and (6) above; and,
  12. Permit an existing well under Rule 9.
- D. The following permit or permit amendment applications require notice and an opportunity for a hearing:
1. Drilling permit and operating permit applications requesting a withdrawal rate of more than 100 gpm, except for applications to permit existing wells under Rule 9;
  2. Transport of water outside of the District in connection with a new well;
  3. Increase the maximum authorized withdrawal by ten percent or more of the total permitted production for users permitted for more than 100 gallons per minute;
  4. Applications requesting a variance from these Rules;
  5. Change in purpose of use in connection with a change in withdrawal within the amounts described under Rule 13D. (1) and (3) above;
  6. ASR recovery wells that are associated with an aquifer storage and recovery project if the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project; and,
  7. Any other application the Board determines should have an opportunity for a hearing.
- E. For permit and permit amendment applications requiring an opportunity for a hearing and the Board grants a hearing, the initial hearing shall be held within 35 days after the date the hearing is granted.
- F. The Board shall act on the application within 60 days after the date the final hearing on the application is concluded.

- G. The hearing shall be conducted in accordance with Rule 21.
- H. The Board may approve an application that has been properly noticed under Rules 7J and 13D at a meeting as defined by Section 551.001, Government Code if, following such notice, the District did not receive a timely request for a contested hearing and a hearing has not been requested by the General Manager or the Board .
- I. The General Manager may approve a drilling permit application if, following the notice required under Rule 7J.2., the District has not received a timely request for a contested hearing.

#### **RULE 14. REGULATION OF SPACING**

- A. In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, the District regulates well spacing.
- B. All wells drilled prior to the effective date of these Rules, shall be drilled in accordance with state law in effect, if any, on the date such drilling commenced.
- C. All new wells drilled after the effective date of these rules must comply with the construction, spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administration Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant.
- D. In addition to the requirements of Rule 14C above, all nonexempt wells drilled after September 1, 2019 and all exempt wells drilled after September 1, 2021 except a well exempt under Rule 15A.3. shall meet the following minimum spacing requirements:
  - 1. Well and Property Line Spacing

| <b>Well pumping rate</b> | <b>Spacing from existing wells completed within the same aquifer</b> | <b>Minimum distance from property line</b> |
|--------------------------|----------------------------------------------------------------------|--------------------------------------------|
| 20 gpm or less           | Exempt                                                               | 10 feet                                    |
| 21 gpm – 50 gpm          | 100                                                                  | 50 feet                                    |

|                      |      |         |
|----------------------|------|---------|
| 51 gpm – 75 gpm      | 150  | 50 feet |
| 76 gpm or 100 gpm    | 200  | 50 feet |
| 101 gpm – 150 gpm    | 300  | 50 feet |
| 151 gpm – 300 gpm    | 500  | 50 feet |
| 301 gpm – 600 gpm    | 900  | 50 feet |
| Greater than 600 gpm | 1200 | 50 feet |

- E. After authorization to drill a well has been granted under a registration or a permit, the well, if drilled, must be drilled within ten (10) yards (30 feet) of the location specified in the permit, and not elsewhere. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code, and these Rules.
- F. The Board may grant an exception to the spacing requirements of the District.
1. A person desiring an exception to the spacing requirements shall submit a written request explaining the circumstances justifying an exception.
    - a. The request shall include a plat or sketch, drawn to scale, one inch equaling 600 feet.
    - b. The plat or sketch must show the property lines of all lands that abut the land proposed for the well site within a distance of the proposed well equal to the minimum well spacing requirements for the projected maximum allowable production from which the well is to be permitted (Area Affected).
    - c. The plat or sketch must also show all registered and permitted wells within the Area Affected.
    - d. The written request shall also contain the names and addresses of landowners and owners of registered and permitted wells within the Area Affected.
  2. Notice and an opportunity for a hearing before the Board for the variance shall be as follows:

- a. The District shall mail notice to the applicant and to landowners and owners of registered and permitted wells within the Area Affected at least 10 days prior to the Board meeting at which the Board will consider the variance.
  - b. The notice shall provide the proposed well location, the applicant's name and address, and the date, time, and location of the hearing.
  - c. The Board meeting at which the variance will be considered shall serve as the hearing on the variance.
  - d. The Board shall consider all relevant comments, including but not limited to the shape of the property, the local geology and hydrology, and any other information presented. The Board may require the applicant to demonstrate through a hydrogeological investigation and report conducted in accordance with the requirements of the District's Hydrogeologic Investigation and Report (Appendix A to these Rules) that local hydrogeological conditions will allow wells to be drilled that do not meet the spacing requirements without negatively affecting water levels or interfering with adjoining landowner's wells.
  - e. If an applicant presents waivers signed by all adjoining landowners and owners of registered and permitted wells within the Area Affected stating that they have no objection to the new well site location, the Board may act on the variance upon notice to the applicant only.
3. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board may require a meter and monitor production of the well and limit production to an amount necessary to avoid negatively affecting water levels or adjoining landowners or otherwise interfering with an adjacent landowner's ability to withdraw and use groundwater.

#### **RULE 15. EXEMPT WELLS**

- A. The District provides an exemption from the District requirement to obtain a permit for:
  1. Drilling or operating a well that produces 20 gallons per minute or less and the well is used exclusively for domestic use or for providing water for livestock or poultry;

2. Drilling or operating a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig.
    - a. For purposes of this exemption, the District may require:
      1. The person holding the RCT permit to provide the District a copy of the RCT permit and documentation showing the same person will drill or operate the water well;
      2. The person claiming the exemption to provide the RCT order designating the field where the water well is located and documentation that the water well will be used with the oil or gas well located in the same field; and,
      3. Documentation that the water well is located on the same lease associate with the oil or gas well.
    - b. A rig that is actively engaged in drilling or exploration operations for purposes of this exemption includes well completion and workover, hydraulic fracturing, hydrostatic testing, tank and cellar cleaning and dust suppression.
  3. Drilling or operating a water well authorized under a permit issued by the Railroad Commission of Texas (RCT) 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;
  4. Drilling or operating a small commercial well;
  5. Drilling or operating a well used for a privately-owned small water system;
  6. A water well drilled and completed solely for the purposes of aquifer testing or for monitoring water levels or water quality; or,
  7. A well for temporary use to supply water for a rig that is actively engaged in drilling a groundwater production well permitted by the District. An exemption for such a well may not exceed 180 days without an extension granted by the District.
- B. The District may not restrict the production of water from any well described by Subsection (A)(1).

- 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 (A)(2) are no longer used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas;
  - 2. The groundwater withdrawals that were exempted under Subsection (A)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code; or
  - 3. The groundwater withdrawals that were exempted under Subsection (A)(1) are no longer used solely for domestic use or to provide water for livestock or poultry.
- D. An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code that authorizes the drilling of water well shall report monthly to the District:
  - 1. The total amount of water withdrawn during the month;
  - 2. The quantity of water necessary for mining activities; and
  - 3. The quantity of water withdrawn for other purposes.
- E. The owner or operator of a well that is exempt from permitting under Subsection (A)(2) shall report monthly to the District:
  - 1. The total amount of water withdrawn during the month;
  - 2. The quantity of water necessary to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas; and,
  - 3. The quantity of water withdrawn for other purposes.
- F. The District requires compliance with the District's well spacing rules for the drilling of any well except a well exempted under Subsection (A)(1).
- G. The District may not deny an application for a permit to drill and produce water for hydrocarbon production activities if the application meets all applicable rules as promulgated by the District.

- H. The district shall require the owner of a water well to:
  - 1. Register the well in accordance with rules promulgated by the District;
  - 2. Equip and maintain the well to conform to the District's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir; and
- I. The driller of a well shall file with the District the well log required by Section 1901.251, Occupations Code, and, if available, the geophysical log.
- J. An exemption provided under Subsection (A) does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.
- K. Groundwater withdrawn under an exemption provided in accordance with this rule and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees provided under these rules and established by Board resolution. This provision does not apply to a well described by Subsection (A)(1) where water is transported outside the District for use on land owned by the same landowner who owns and operates the well located within the District.
- L. This rule applies to water wells, including water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals. This rule does not apply to production or injection wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluids, under permits issued by the Railroad Commission of Texas.

#### **RULE 16. OPEN OR UNCOVERED WELLS**

- A. The owner or lessee of land on which an open or uncovered well is located is required 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 rule, "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 this rule.
- C. If the owner or lessee fails or refuses to close or cap the well in with District rules, 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.
- E. The lien arises and attaches upon recordation in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:
  - 1. The existence of the well;
  - 2. The legal description of the property on which the well is located;
  - 3. The approximate location of the well on the property;
  - 4. The failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;
  - 5. The closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
  - 6. The expense incurred by the district in closing the well.
- F. Nothing in this rule affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

#### **RULE 17. TRANSFER OF GROUNDWATER OUT OF DISTRICT**

- A. If an application for a permit or an amendment to a permit under Rule 7 proposes the transfer of groundwater outside of the district's boundaries, the District may also consider the provisions of this rule in determining whether to grant or deny the permit or permit amendment.
- B. The District may impose a reasonable fee, set by resolution, for processing an application under this rule. The fee may not exceed fees that the District imposes for processing other applications for a permit. An application filed to comply with this rule shall be considered and processed under the same procedures as other applications for permits and shall be combined with applications filed to obtain a permit for in-district water use from the same applicant.
- C. The District may impose a fee or surcharge for an export fee pursuant to Water Code section 36.122, as set by resolution.
- D. Except as provide in Subsection (E) below, the District may not impose more restrictive permit conditions on transporters than the District imposes on existing in-district users.

- E. In reviewing a proposed transfer of groundwater out of the District, the District shall determine whether the proposed transfer would have a negative effect on:
  - 1. The availability of water in the District and the proposed receiving area during the period for which the water supply is requested;
  - 2. The projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and,
  - 3. Any applicable approved regional water plan and approved District management plan.
- F. The District may not deny a Transport Permit based upon the fact that the applicant seeks to transfer groundwater outside the District but may limit a Transport Permit issued under this section if the conditions in Subsection E warrant the limitation, subject to Subsection D.
- G. In addition to conditions provided by Rule 8, the permit shall specify:
  - 1. The amount of water that may be transferred out of the District; and
  - 2. The period for which the water may be transferred.
- H. The period specified in Subsection (G)(2) above shall be:
  - 1. At least three years if construction of a conveyance system has not been initiated prior to issuance of the permit; or,
  - 2. At least 30 years if construction of a conveyance system has been initiated prior to issuance of the permit.
- I. A term under Subsection H (1) shall automatically be extended to the terms agreed to under Subsection H (2) if construction of a conveyance system is begun before the expiration of the initial term
- J. The District may periodically review the amount of water that may be transferred under the permit and may limit the amount if additional factors considered in Subsection E warrant the limitation subject to Subsection C. The review described by this subsection may take place not more frequently than the period provided for the review or renewal of regular permits issued by the District. In its determination of whether to renew a permit issued under this rule, the District shall consider relevant and current data for the conservation of groundwater resources and shall consider the permit in the same manner it would consider any other permit in the District.

- K. The District is prohibited from using revenues obtained under Subsection C to prohibit the transfer of groundwater outside of a District. The District is not prohibited from using revenues obtained under Subsection C for paying expenses related to enforcement of Water Code Chapter 36 or District rules. The District may use the funds revenues obtained under Subsection C for costs relating to assessing and addressing impacts associated with groundwater development including for maintaining operability of wells significantly affected by groundwater development, including wells located outside the District if the District has entered into an interlocal contract under Chapter 791, Government Code with the other district authorizing the funds to be used for that purpose, developing or distributing alternative water supplies, and conducting aquifer monitoring , data collection, and aquifer science.
- L. In applying this rule, a district must be fair, impartial, and nondiscriminatory.

#### **RULE 18. METERS**

- A. A meter is not required to be installed on any well except as described herein.
  - 1. All nonexempt well owners must install a type of meter approved by the District within 60 days of written notice if the District is required to implement proportionate reductions as provided under Rule 11 E.
  - 2. The Board may require any permittee who is granted a variance under these rules to install a meter on the well for which the District grants a variance. The type of meter must be approved by the General Manager.
  - 3. The Board may require a meter on any well that the General Manager concludes, based upon a reasonable investigation, is exceeding the maximum authorized production under Rule 11. The type of meter must be approved by the General Manager.
  - 4. The Board may require a meter on any well that is within a localized area that the General Manager concludes, based upon a reasonable investigation, is experiencing an unacceptable level of decline in water levels or water quality. The type of meter must be approved by the General Manager.
  - 5. A meter is required to measure the amount of water transferred outside the district when transfer is authorized by the District under Rule 17.
  - 6. A meter is required on any well authorized by the District to pump more than 6 AF/acre
- B. The meter shall be read, and the meter reading and actual amount of pumpage recorded and reported each month on a form provided by the District. The permit

holder subject to this reporting requirement shall keep accurate records of the amount of groundwater withdrawn and the purpose of the withdrawal, and such records shall be available for inspection by the District or its representatives.

- C. When meters are required, the owner of the non-exempt well may apply to the District for approval of an alternative measuring method of determining the amount of groundwater withdrawn. The District General Manager may authorize the alternative measuring method if the applicant well owner demonstrates that the alternative measuring method can accurately measure the groundwater withdrawn. Reporting shall still be required by an owner of a well who is using a District-approved alternative measuring method.

#### **RULE 19. RIGHT TO ENTER LAND**

- A. The directors, engineers, attorneys, agents, operators, and employees of the District may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the District.
- B. District employees and agents are entitled to enter any public or private property within the boundaries of the District or adjacent to any reservoir or other property owned by the District at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the District. The District shall notify, coordinate, and schedule property access in advance with the consent of the property owner, his Agent, tenant, or other local contact. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

#### **RULE 20. DISTRICT FEES**

- A. The district may set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged. Administrative fees will be set by resolution.
- B. The District shall set and collect fees for all services provided outside the boundaries of the district. The fees may not unreasonably exceed the cost to the District of providing the services outside the district. Fees for services provided outside the District will be set by resolution.

## **RULE 21. NOTICE AND HEARING PROCESS**

### **RULE 21.1. SCHEDULE OF HEARING**

- A. If after consideration of a request for hearing using the factors under Rule 21.13, the Board denies a hearing requested or a hearing is not requested on an application noticed under Rule 7.J., the Board, at a meeting as defined by Section 551.001, Government Code, or the General Manager, subject to the review and direction of the Board, will grant the application and issue the permit or permit amendment.
- B. If the Board grants a hearing requested under an application noticed under Rule 7.J., the Board will notice the hearing in accordance with Rule 21.2.
- C. The general manager or board may schedule more than one permit or permit amendment application for consideration at a hearing.
- D. A hearing must be held at the District office or regular meeting location of the board unless the board provides for hearings to be held at a different location. For a hearing conducted by SOAH, the District may hold the hearing in Travis County.
- E. A hearing may be held in conjunction with a regularly scheduled board meeting.

### **RULE 21.2. NOTICE FOR HEARINGS SCHEDULED BY THE BOARD**

- A. If the general manager or board schedules a hearing on an application for a permit or permit amendment, the general manager or board shall give notice of the hearing as provided by this rule.
- B. The notice must include:
  - 1. The name of the applicant;
  - 2. The address or approximate location of the well or proposed well;
  - 3. A brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
  - 4. The time, date, and location of the hearing; and

5. Any other information the general manager or board considers relevant and appropriate.
- C. Not later than the 10th day before the date of a hearing, the general manager or board shall:
1. Post notice in a place readily accessible to the public at the District office;
  2. Provide notice to the county clerk of each county in the District; and
  3. Provide notice by:
    - a. Regular mail to the applicant;
    - b. Regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection D below; and
    - c. Regular mail to any other person entitled to receive notice under the rules of the District.
- D. A person may request notice from the District of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a 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.
- E. Failure to provide notice under Subsection C(3)(b) does not invalidate an action taken by the District at the hearing.

### **RULE 21.3. HEARING REGISTRATION**

The District requires each person who participates in a 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 there in the person's individual capacity.

#### **RULE 21.4. HEARING PROCEDURES**

- A. A hearing must be conducted by:
  - 1. A quorum of the board;
  - 2. An individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
  - 3. The State Office of Administrative Hearings under Rule 21.14.
- B. Except as provided by Subsection C or Rule 21.14, the board president or the hearings examiner shall serve as the presiding officer at the hearing.
- C. If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.
- D. The presiding officer may:
  - 1. Convene the hearing at the time and place specified in the notice;
  - 2. Set any necessary additional hearing dates;
  - 3. Designate the parties regarding a contested application;
  - 4. Establish the order for presentation of evidence;
  - 5. Administer oaths to all persons presenting testimony;
  - 6. Examine persons presenting testimony;
  - 7. Ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
  - 8. Prescribe reasonable time limits for testimony and the presentation of evidence;
  - 9. Exercise the procedural rules adopted by the District;
  - 10. Determine how to apportion among the parties the costs related to:
    - a. A contract for the services of a presiding officer; and
    - b. The preparation of the official hearing record.

- E. Except as otherwise provided, the District may allow any person, including the general manager or a district employee, to provide comments at a hearing on an uncontested application.
- F. The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
- G. If the board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.
- H. The presiding officer, at the presiding officer's discretion, may, but is not required to, issue an order at any time before board action on a permit application that:
  - 1. Refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
  - 2. Determines how the costs of the procedure shall be apportioned among the parties; and
  - 3. Appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.
- I. In general, the burden of proof is on the moving party by a preponderance of the evidence, except in an enforcement proceeding, the General Manager has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions. The respondent in an enforcement proceeding has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. The permit applicant bears the burden of proof by a preponderance of the evidence in an application proceeding.

#### **RULE 21.5. EVIDENCE**

- A. The presiding officer shall admit evidence that is relevant to an issue at the hearing.
- C. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

#### **RULE 21.6. RECORDING**

- A. Except as provided by Subsection B, the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.
- B. If a hearing is uncontested, the presiding officer may substitute minutes or the proposal for decision required under Rule 21.8 for a method of recording the hearing provided by Subsection A.

#### **RULE 21.7. CONTINUANCE**

The presiding officer may continue a hearing from time to time and from place to place without providing notice. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties. A continuance may not exceed the time limit for a final decision under Rule 21.11.1.

#### **RULE 21.8. PROPOSAL FOR DECISION**

- A. Except as provided by Subsection E, the presiding officer shall submit a proposal for decision to the board not later than the 30th day after the date the evidentiary hearing is concluded.
- B. The proposal for decision must include:

1. A summary of the subject matter of the hearing;
  2. A summary of the evidence or public comments received; and
  3. The presiding officer's recommendations for board action on the subject matter of the hearing.
- C. The presiding officer or general manager shall provide a copy of the proposal for decision to:
1. The applicant; and
  2. Each designated party.
- D. A party may submit to the board written exceptions to the proposal for decision.
- E. If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing, the presiding officer shall determine whether to prepare and submit a proposal for decision to the board under this rule.
- F. The board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Rule 21.7.

#### **RULE 21.9. BOARD ACTION**

- A. The board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded. For a hearing conducted by the State Office of Administrative Hearings, the final hearing on the application concludes on the date the SOAH proposal for decision, exceptions and replies to exceptions to the proposal for decision are presented the Board of Directors. In a proceeding for a permit application or amendment in which a district has contracted with the State Office of Administrative Hearings for a contested case hearing, the board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge consistent with Section 2001.058, Government Code.
- B. The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines:

1. That the administrative law judge did not properly apply or interpret applicable law, district rules, written policies provided under District Rule 21.14 E, or prior administrative decisions;
  2. That a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
  3. That a technical error in a finding of fact should be changed.
- C. The Board may take action on an uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The public hearing may be held in conjunction with a regularly scheduled or special called board meeting. The Board action may occur at the same board meeting as the public hearing. The board may issue a written order to grant an application, grant the application with special conditions or deny the application.
- D. Following an uncontested hearing, an applicant may, not later than the 20<sup>th</sup> day after the date the board issues an order granting the application, demand in writing a contested case hearing if the order:
1. Includes special conditions that were not a part of the application as finally submitted; or,
  2. Grants a maximum amount of groundwater production that is less than the amount requested in the application.

**RULE 21.10. REQUEST FOR REHEARING OR FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- A. An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by requesting written findings of fact and conclusions of law not later than the 20th day after the date of the board's decision unless the Board issued findings of fact and conclusions of law as part of the final decision.
- B. On receipt of a timely written request, the board shall make written findings of fact and conclusions of law regarding a decision of the board on a permit or permit amendment application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35th day after the date the board receives the request. A party to a contested hearing may request a rehearing before the board not later than the 20th day after the date the board issues the findings of fact and conclusions of law.

- C. The Board shall consolidate requests for rehearing filed by multiple parties to the contested case hearing, but only one rehearing may be considered per matter.
- D. A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing.
- E. If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- F. If a motion for rehearing is filed and granted by the Board, the Board shall make a final decision on the application not later than the 90<sup>th</sup> day after the date of the decision by the Board that was subject to the motion for rehearing.
- G. The failure of the board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

**RULE 21.11. DECISION; WHEN FINAL**

- A. A decision by the board on a permit or 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 request for rehearing; or
  - 2. If a request for rehearing is filed on time, on the date:
    - a. The board denies the request for rehearing; or
    - b. The board renders a written decision after rehearing.
- B. Except as provided by Subsection C, an applicant or a party to a contested hearing may file a suit against the District to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.
- C. An applicant or a party to a contested hearing may not file suit against the District under if a request for rehearing was not filed on time.

**RULE 21.11.1 DECISION; WHEN FINAL AFTER A CONTESTED CASE BEFORE SOAH**

- A. A final decision of the Board after a contested case before SOAH must be in writing and must either adopt the proposed findings of fact and conclusions of law as proposed by the ALJ or include revised findings of fact and conclusions of law consistent with Subsection 21.9 B.
- B. Notwithstanding any other provision of these rules, the Board shall issue a final decision after a contested case before SOAH not later than the 180th day after the date of receipt of the final proposal for decision from SOAH. The deadline may be extended if all parties agree to the extension.
- C. The Board is considered to have adopted a final proposal for decision of the ALJ as a final order on the 181st day after the date the ALJ issued the final proposal for decision if the Board has not issued a final decision by:
  - 1. adopting the findings of fact and conclusions of law as proposed by the ALJ; or
  - 2. issuing revised findings of fact and conclusions of law as provided by Subsection 21.9 B.
- D. A proposal for decision adopted under Subsection C is final, immediately appealable, and not subject to a request for rehearing.

#### **RULE 21.12. CONSOLIDATED HEARING ON APPLICATIONS**

- A. Except as provided by Subsection B, the District shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the district requires a separate permit or permit amendment application for:
  - 1. Drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump;
  - 2. The spacing of water wells or the production of groundwater; or
  - 3. Transferring groundwater out of a district.
- B. The District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the board cannot adequately evaluate one application until it has acted on another application.

#### **RULE 21.13. CONTESTED CASE HEARING REQUEST AND AFFECTED PERSON DETERMINATION**

- A. Hearing Requests. The following may request a contested case hearing under these Rules:
1. The Board;
  2. The General Manager;
  3. The applicant; and
  4. Affected persons (as determined in Subsection F below).
- B. Form of Request. A request for a contested hearing by an affected person (as determined in Subsection F below) must be in writing and be filed by United States mail, facsimile, e-mail, or hand delivery with the District within the time provided by subsection D. of this section.
- C. Requirements for Request. A contested case hearing request by an affected person (as determined in Subsection F below) must substantially comply with the following:
1. Give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
  2. Identify the person's personal justiciable interest affected by the application, or District action including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application or District action and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
  3. Request a contested hearing;
  4. If the party requesting a hearing desires for the hearing to be referred to and conducted by the State Office of Administrative Hearings, then the hearing request must include a statement "I/we request that the State Office of Administrative Hearings conduct the hearing." A party requesting a contested case hearing before SOAH shall pay all costs associated with the contract for a SOAH hearing in accordance with Rule 21.14; and,

5. If applicable, provide any other information specified in the public notice of application.
- D. Deadline for hearing requests. A hearing request by an affected person (as determined in F. below) must be filed with the District within 20 days after the last publication of the notice of application or, for a drilling permit application, 10 days after notice is mailed as required under Rule 7J.2.
- E. A request for a contested hearing:
1. May be granted by the Board if the request is made by the General Manager; and
  2. Shall be granted by the General Manager, if the request is made by the Board, and shall be granted by the Board, the Presiding Officer or hearings examiner, if the request is made by an affected person (as determined in Subsection F below). For a request by an affected person other than the applicant, the request must also satisfy the following:
    - a. Is based solely on concerns within the authority of the District;
    - b. Is supported by competent showing that the person requesting a hearing is likely to be impacted by the proposed regulated activity in a manner described under Subsection F. below;
    - c. Complies with all of the requirements of A through D above; and,
    - d. Is timely filed with the District.
- F. Determination of Affected Person and a Party's Right to participate in a Hearing to be made by the Presiding Officer in a preliminary hearing.

At a preliminary hearing conducted before the commencement of an evidentiary hearing, the Presiding Officer shall determine whether any person requesting a contested case hearing has standing to make the request, whether a personal justiciable issue related to an application has been raised, and a party's right to participate in a hearing. The preliminary hearing may be conducted as specified in accordance with Rule 21.4.A. Any "affected person," as determined under this section, may participate in a hearing.

1. For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is within the District's regulatory authority. An interest common to members of the general public does not qualify as a personal justiciable interest;

2. Governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons;
  3. Relevant factors shall be considered, including, but not limited to, the following:
    - a. Whether the interest claimed is one protected by the Act or Texas Water Code Chapter 36;
    - b. Distance between the regulated activity and the affected interest;
    - c. Whether a reasonable relationship exists between the interest claimed and the activity regulated;
    - d. Likely impact of the regulated activity on the use of groundwater interests of the person; and
    - e. For governmental entities, their statutory authority over or interest in the issues relevant to the application.
  4. An applicant is an affected person.
- G. If it is determined at the preliminary hearing that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the board may treat the matter as uncontested as described by Rule Bylaw 19.9.

**RULE 21.14. HEARINGS CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS**

- A. If requested by an applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct a hearing. A person opposing an application who requests a contested hearing under Rule 21.13 C must include in a timely hearing request the statement “I/we request that the State Office of Administrative Hearings conduct the hearing” in order for the hearing to be referred to and conducted by SOAH.
- B. An applicant desiring that the District refer a contested case to SOAH must make a written request for the SOAH referral at the same time that applicant requests a hearing or, when a hearing has been requested by a person other than the applicant, and the applicant desires for the District to contract with SOAH to conduct the contested case, the applicant must request a SOAH hearing in writing within no later than 5 business days after the determination that the District will grant a hearing under rule 21.13 E.

- C. A party requesting a hearing before SOAH shall pay all costs associated with the contract for a SOAH hearing and shall deposit with the District an amount determined by the District to pay the contract amount before the hearing begins. A party's SOAH hearing request will be deemed withdrawn if the party fails to provide the required deposit within 5 days of the District's request for the deposit. At the conclusion of the hearing, the District shall refund any excess money to the paying party.
- D. If the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.
- E. An administrative law judge who conducts a contest case hearing shall consider applicable district rules or policies in conducting the hearing, but the district deciding the case may not supervise the administrative law judge. The District shall provide the SOAH administrative law judge with a written statement of applicable rules and policies. The district may not attempt to influence the findings of fact or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

#### **RULE 21.15. DISCOVERY**

The presiding officer may issue subpoenas, require deposition and order other discovery consistent with the authority granted to a state agency under Subchapters C, D, and F, Chapter 2001, Texas Government Code.

#### **RULE 21.16. RULES; ALTERNATIVE DISPUTE RESOLUTION**

A district by rule may develop and use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

#### **RULE 21.17. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT**

Except as provided by these rules and Water Code Sections 36.416 and 36.4165, Chapter 2001, Government Code, does not apply to a hearing under these Rules.

#### **RULE 21.18. NOTICE AND HEARING IN AN APPEAL OF DESIRED FUTURE CONDITIONS; JUDICIAL APPEAL OF DESIRED FUTURE CONDITIONS**

- A. An affected person may file a petition with the District requiring that the District contract with the SOAH to conduct a hearing appealing the reasonableness of the desired future condition. The petition must be filed not later than the 120<sup>th</sup> day after the date on which the District adopts a desired future condition under Water

Code Section 36.108(d-4). The petition must provide evidence that the District did not establish a reasonable desired future condition of the groundwater resources in the management area.

- B. In this Rule, “affected person” means:
1. An owner of land in Ground Water Management Area 3;
  2. A groundwater conservation district or subsidence district in or adjacent to Ground Water Management Area 3;
  3. A regional water planning group with a water management strategy in Ground Water Management Area 3;
  4. A person who holds or is applying for a permit from a district in Ground Water Management Area 3;
  5. A person with a legally defined interest in groundwater in Ground Water Management Area 3; or
  6. Any other person defined as affected by Texas Commission on Environmental Quality rule.
- C. Not later than the 10<sup>th</sup> day after receiving a petition, the District shall submit a copy of the petition to the Texas Water Development Board. The Texas Water Development Board shall conduct an administrative review and study required by Water Code section 36.1083(e), which must be completed and delivered to SOAH not later than 120 days after the date the Texas Water Development Board receives the petition. SOAH shall consider the study described and the desired future conditions explanatory report submitted to the development board under Water Code section 36.108(dd)(3) to be part of the administrative record in the SOAH hearing; and the Texas Water Development Board shall make available relevant staff as expert witnesses if requested by SOAH or a party to the hearing.
- D. Not later than 60 days after receiving a petition appealing the reasonableness of the desired future conditions filed under Water Code section 36.1083(b), the District will submit to SOAH a copy of the petition and contract with SOAH to conduct a contested case hearing.
- E. The petitioner shall pay the costs associated with the contract with SOAH and shall deposit with the District an amount determined by the District, after consultation with SOAH, that is sufficient to pay the contract amount. The deposit must be received within 15 days of written notification by the District to the petitioner specifying the amount of the deposit. Failure to timely pay the deposit may result in dismissal of the petition. After the hearing is completed and all costs paid to SOAH, the district shall refund any excess money to the petitioner.

- F. Unless provided by SOAH, the District shall provide notice of a hearing appealing the reasonableness of the desired future conditions. Not later than the 10th day before the date of a hearing the general manager or board shall provide notice as follows (unless notice provide by SOAH):
1. General Notice:
    - a. Post notice in a place readily accessible to the public at the District office;
    - b. Provide notice to the county clerk of each county in the District; and
  2. Individual notice by regular mail, facsimile, or electronic mail to:
    - a. The petitioner;
    - b. Any person who has requested notice;
    - c. Each nonparty district and regional water planning group located in Groundwater Management Area 3;
    - d. The Texas Water Development Board; and
    - e. The Texas Commission on Environmental Quality.
- G. After the hearing and within 60 days of receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter and the District's findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, as provided by Section 2001.058(e), Government Code.
- H. If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the administrative law judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.
- I. If the District in its final order finds that a desired future condition is unreasonable, not later than the 60<sup>th</sup> day after the date of the final order, the District shall reconvene in a joint planning meeting with the other districts in Groundwater Management Area 16 for the purpose of revising the desired future

condition. The District and other districts in Groundwater Management Area 3 shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the District.

- J. A final order by the District finding that desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this Rule.
- K. A final District order issued under this Rule may be appealed to a district court with jurisdiction over any part of the territory of the District. An appeal under this subsection must be filed with the district court not later than the 45<sup>th</sup> day after the date the District issues the final order. The case shall be decided under the substantial evidence standard of review as provided by Section 2001.174, Government Code. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the Groundwater Management Area 16 to reconvene not later than the 60<sup>th</sup> day after the date of the court order in a joint planning meeting for the purpose of revising the desired future condition. The District and other districts in the management area shall follow the procedures in Water Code Section 36.108 to adopt new desired future conditions applicable to the District. A court's finding under this Rule does not apply to a desired future condition that is not a matter before the court.

## **RULE 22. AQUIFER STORAGE AND RECOVERY PROJECTS**

### **22.1. DEFINITIONS**

In this Rule, "aquifer storage and recovery project," "ASR injection well," "ASR recovery well," and "project operator" have the meanings assigned by Water Code Section 27.151.

### **22.2. REGISTRATION AND REPORTING OF WELLS**

- A. A project operator shall:
  - 1. Register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with the District;
  - 2. Each calendar month by the deadline established by the Texas Commission on Environmental Quality (TCEQ) for reporting to the TCEQ, provide the District with a copy of the written or electronic report required to be provided to the TCEQ under Water Code Section 27.155; and

3. Annually by the deadline established by the TCEQ for reporting to the TCEQ, provide the District with a copy of the written or electronic report required to be provided to the TCEQ under Section 27.156.
- B. If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by the TCEQ to be recovered under the project, the project operator shall report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection A.2.

### **22.3. PERMITTING, SPACING, AND PRODUCTION REQUIREMENTS**

- A. Except as provided by Subsection B, the District may not require a permit for the drilling, equipping, operation, or completion of an ASR injection well or an ASR recovery well that is authorized by the TCEQ.
- B. The ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project. A project operator must submit an operating permit application with the District in accordance with Rule 7 within 60 days of the time that the amount of groundwater recovered from the wells exceeds the volume authorized by the TCEQ to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by the TCEQ to be recovered.
- C. A project operator may not recover groundwater by an aquifer storage and recovery project in an amount that exceeds the volume authorized by the TCEQ to be recovered under the project unless the project operator complies with the applicable requirements of the District as described by this section.

### **22.4. FEES AND SURCHARGES**

- A. The District may not assess a production fee or a transportation or export fee or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by the commission to be recovered.
- B. The District may assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that the District assesses such a fee for other wells registered with the District.

## **22.5. CONSIDERATION OF DESIRED FUTURE CONDITIONS**

The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an aquifer storage and recovery project in the planning for and monitoring of the achievement of a desired future condition for the aquifer in which the wells associated with the project are located.

## Appendix A

### Hydrogeologic Investigation and Report

A hydrogeologic investigation and report is generally designed to help the District objectively evaluate applications. Depending on the circumstances, the General Manager may request the following types of information and other items as deemed necessary to complete the evaluation. The information is to be provided in report form and signed and sealed by a professional geoscientist or professional engineer licensed in the State of Texas.

1. Maps containing existing wells within 1-mile radius indicating the aquifer screened by the well, proposed well(s), and property boundaries or plats.
2. Table of well information for wells within a 3-mile radius of the proposed well(s). Table should include the following information if available: well location, total depth, screened interval, casing and screen material, casing and screen diameter, pumping equipment and capacity, date drilled, any historic water level data,
3. Hydrogeologic cross-sections, geophysical logs and other information helpful in establishing the geologic setting and geologic features within a reasonable distance from the proposed well(s);
4. Discussions of proposed uses of the groundwater and the land involved in production and use;
5. Discussions of likely effects on other users and appropriate notice to and consideration of the other users;
6. Results of aquifer testing from pumping one or more wells under the supervision of the General Manager and following an aquifer test plan approved by the General Manager. Multiple tests may be necessary to calculate transmissivity, hydraulic conductivity, storage coefficient, appropriate solution method, and effects on other wells. The rates of pumping, measurement periods for static water levels and recoveries after pumping to be determined by the General Manager. A water sample shall be collected at the end of the pumping test and analyzed to determine total dissolved solids. The applicant (and permit holder) may be required to use monitoring wells to verify the reliability of the models used and the effect on other registered wells;
7. Discussion of likely lateral and vertical recharge for the aquifer under proposed pumping conditions;
8. Using an appropriate and reliable groundwater model, calculate water level decline in wells located in the same aquifer within three miles of the proposed well. Provide predictions of water level decline after one month, six months, and one year from:
  - proposed application,
  - proposed application volume in conjunction with other historical and permitted pumping within three miles.
9. Provision for the cost and operation of monitoring wells and flow meters over the term of the permit.