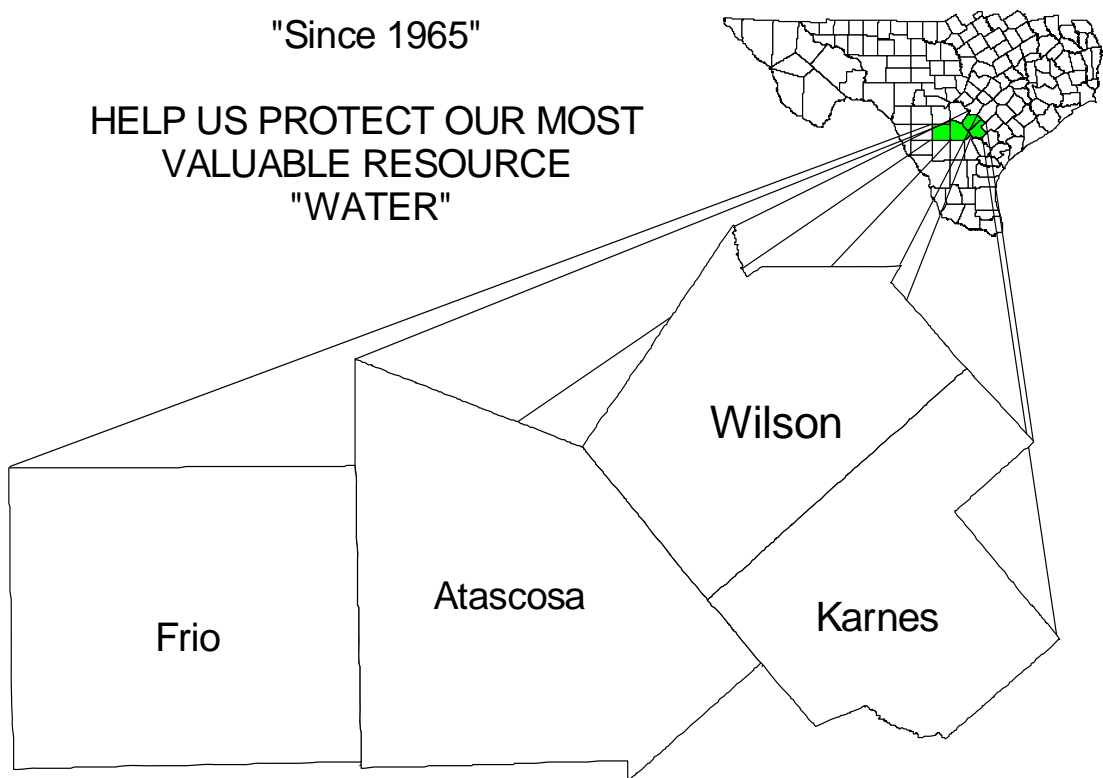


THE EVERGREEN UNDERGROUND WATER  
CONSERVATION DISTRICT

"Since 1965"

HELP US PROTECT OUR MOST  
VALUABLE RESOURCE  
"WATER"



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EVERGREEN UNDERGROUND WATER  
CONSERVATION DISTRICT  
DISTRICT RULES

**SECTION 1. DEFINITIONS AND CONCEPTS**

**RULE 1.1 DEFINITIONS OF TERMS:** In the administration of its duties, the Evergreen Underground Water Conservation District follows the definitions of terms set forth in Chapter 36, Water Code, and other definitions as follows:

- a. **“Aquifer”** means a geologic formation, or group of formations capable of yielding a significant amount of water to a well or spring.
- b. **“ASR”** means Aquifer Storage and Retrieval Project, which is a project with two phases that anticipates the use of a class V aquifer storage well for injection into a geologic formation, group of formations, or part of a formation that is capable of underground storage of appropriated surface water or groundwater for subsequent retrieval and beneficial use.
- c. **“Aquifer Storage Well”** means a class V injection well designed and used expressly for the injection of water into a geologic formation, group of formations, or part of a formation that is capable of underground storage of water for later retrieval and beneficial use.
- d. **“Artesian Well”** means a water well completed in the confined portion of an aquifer such that, when properly cased, water will rise in the well, by natural pressure, above an overlying impermeable stratum.
- e. **“Beneficial Use” or “Beneficial Purpose”** means use for:
  - 1. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational or pleasure purposes;
  - 2. exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
  - 3. any other economically beneficial purpose that is useful and beneficial to the users that does not commit waste.
- f. **“Board”** means the Board of Directors of the District.
- g. **“Casing”** means a tubular watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the groundwaters to their zones of origin and prevent the entrance of surface pollutants.
- h. **“Cement”** means a neat Portland or construction cement mixture of not more than seven gallons of water per ninety-four (94) pound sack of dry cement, or a cement slurry, which contains cement along with bentonite, gypsum, or other additives. All manufacturers’ recommendations regarding water content for the mix must be strictly adhered to.
- i. **“Deteriorated Well”** means a well, the condition of which will cause, or is likely to cause,
  - 1. pollution of any water in the District; or
  - 2. groundwater to escape the well to the surface, another aquifer or any other geologic formation.
- j. **“District”** means the Evergreen Underground Water Conservation District.
- k. **“District Act”** means the Evergreen Underground Water Conservation District enabling legislation, including Acts of May \_\_\_\_, 1965, 59<sup>th</sup> Leg. R.S., ch. 197, 1965 Tex. Gen. Laws 398; as amended by Acts of May 25, 1967, 60<sup>th</sup> Leg., R.S. ch. 1272, 1967 Tex. Gen. Laws 1676; Acts of May 30, 1983, 68<sup>th</sup> Leg., R.S., ch. 484, 1983 Tex. Gen. Laws 2852; and Acts of May 17, 1985, 69<sup>th</sup> Leg., R.S., ch 438, 1985 Tex. Gen. Laws 2984.
- l. **“District Office”** means the official office of the District as determined from time to time by resolution of the Board.

- m. **“District Water Purveyor”** means any person, corporation, water supply Corporation, municipality, political subdivision or agency with no less than 95% of its total monthly water volumes supplied within the boundaries of the District.
- n. **“Emergency Multiple System Interconnects”** means a District Water Purveyor with lines that are interconnected with a system or systems outside of the District for the sole purpose of temporary water service outside the District during an emergency situation. Emergency assistance to any entity outside of the District that this is supplied more than 5% of its total monthly water volume from within the District is subject to District Transportation Permitting Requirements and Fees.
- o. **“Groundwater”** means water located beneath the earth’s surface within the District but does not include water produced with oil in the production of oil and gas.
- p. **“Hearing Body”** means the Board, any committee of the Board, or a Hearings Examiner at any hearing held by the District.
- q. **“Hearing Examiner”** means a person appointed to conduct a hearing or other proceeding.
- r. **“Drilling Permit”** means a permit issued or to be issued by the District for the drilling of a water well.
- s. **“New Well Application”** means an application for a permit for a well that has not been drilled.
- t. **“Open Meeting Law”** means Chapter 551, Government Code.
- u. **“Public Information Act”** means Chapter 552, Government Code.
- v. **“Production Permit”** means a permit for a water well issued or to be issued by the District allowing the withdrawal of a specified amount of groundwater for a designated period.
- w. **“Person”** includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- x. **“Pollution”** means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the District, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose
- y. **“Presiding Officer”** means the Chair, Vice-Chair, Secretary, or other Board member presiding at any hearing or other proceeding, or a Hearings Examiner conducting any hearing or other proceeding.
- z. **“Rules”** means the rules of the District compiled in this document as it may be supplemented or amended from time to time.
- aa. **“Mud”** means a relatively homogeneous, relatively viscous fluid produced by the suspension of clay-size particles in water. Specifically, it must be a nine and two-tenths pound per gallon mud or heavier, with a marsh funnel viscosity of fifty seconds or equivalent.
- ab. **“Texas Rules of Civil Procedure” and “Texas Rules of Civil Evidence”** means the civil procedure and evidence rules as amended and in effect at the time of the action or proceeding. Except as modified by the Rules of the District, the rights, duties, and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure or the Texas Rules of Evidence are the same as a court acting under those rules.
- ac. **“Transportation Facility”** means any facility constructed for the purpose of transporting groundwater out of the District.
- ad. **“Future Condition of the Aquifer”** means the static water levels, potentiometric levels, water quality and other aquifer conditions desired for each aquifer over a 50 year planning period.
- ae. **“Waste”** as used herein shall mean any one or more of the following:
  1. The withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

2. The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
  3. The escape of underground water from an underground water reservoir to any other reservoir that does not contain underground water;
  4. The pollution or harmful alteration of groundwater in the aquifer;
  5. Willfully or negligently causing, suffering, or permitting 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; or
  6. Groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge.
- af. **“Well”** means any facility, device, or method used to withdraw groundwater from the groundwater supply within the district.
- ag. **“Well Owner”** means the person who owns the land upon which a well is located or is to be located.
- ah. **“Well Operator”** means the person who operates a well or a water distribution system supplied by a well.
- ai. **“Withdraw”** means an act or failure to act that results in taking groundwater by or through man-made facilities, including wells, excavations and free-flowing artesian wells.
- aj. **“Sustainable Yield”** means the amount of groundwater available within the District on a long term basis without significantly depleting the aquifer, after taking into account historic data reflecting groundwater in storage, groundwater usage, and groundwater recharge on a District wide basis. Sustainable yield applies to pumping of the aquifer within the District as a whole, or may be applied on a county by county basis or other appropriate subdivision.
- ak. **“Contiguous”** means a continuous perimeter boundary situated within the District whether or not that property is divided by a road or highway as long as the properties border one another.
- al. **“Brackish Groundwater”** means groundwater that contains 1,000 milligrams per liter or greater of total dissolved solids.

**RULE 1.2 PURPOSE OF RULES:** These rules are adopted pursuant to the directive of Section 11 of the District Act for the purpose of conserving, preserving, protecting and recharging the groundwater in the District, and these rules are adopted under the District’s statutory authority to prevent waste and protect rights of owners of interest in groundwater.

**RULE 1.3 USE AND EFFECT OF RULES:** These Rules are used by the District as a guide in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They may not be construed as a limitation or restriction on the exercise of any discretion nor may they be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law, nor may they be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act.

**RULE 1.4 AMENDING OF RULES:** The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time.

**RULE 1.5 HEADINGS AND CAPTIONS:** The section and other headings and captions contained in these Rules are for reference purposes only and do not affect in any way the meaning or interpretation of these Rules.

**RULE 1.6 CONSTRUCTION:** A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the Water Code. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Government Code.

**RULE 1.7 METHODS OF SERVICE UNDER THE RULES:** Except as otherwise expressly provided in these Rules, any notice or document required by these Rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. shall be deemed complete the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed period of time after service, three days will be added to the prescribed period. Where service by other methods has proved impossible, the service may be complete upon publication of the notice in a newspaper with general circulation in the District.

**RULES 1.8 SEVERABILITY:** If any one or more of the provisions contained in these Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other Rules or provisions of these Rules and these Rules will be construed as if such invalid, illegal or unenforceable rule or provision had never been contained in these Rules.

## **SECTION 2. BOARD**

**RULE 2.1 PURPOSE OF BOARD:** The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District, and to exercise its rights, powers, and duties in a manner that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules, policy and orders.

**RULE 2.2 BOARD STRUCTURE, OFFICERS:** The Board consists of the members elected, or appointed, and qualified as required by the District Act. Each year at its regular February meeting, and if there is no February meeting, at its next regular meeting, the Board will select one of its members to serve as President to preside over Board meetings and proceedings, one to serve as Vice-President to preside in the absence of the Chair, and one to serve as Secretary to keep a true and complete account of all meetings and proceedings of the Board. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these rules.

**RULES 2.3 MEETINGS:** The Board will hold a regular meeting each month on a day the Board may establish from time to time. At the request of the Chair, or by written request of at least two members, the Board may hold special meetings. All Board meetings will be held in accordance with the Texas Open Meetings Law.

**RULE 2.4 COMMITTEES:** The President may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees.

## **SECTION 3. GENERAL MANAGER**

**RULE 3.1 GENERAL MANAGER:** The person employed by the Board as General Manager is the chief administrative officer of the District, pursuant to the District Act, and shall have full authority to manage and operate the affairs of the District, subject only to Board orders. After consultation and

authorization of the Board, the General Manager is responsible for employing all persons necessary for the proper handling of the business and operation of the District and determining their compensation.

**RULE 3.2 DELEGATION OF AUTHORITY:** The Board may delegate to the General Manager ministerial acts of the Board, actions on uncontested permit applications, and any financial transactions. The General Manager may delegate duties as may be necessary to effectively and expeditiously accomplish those duties, provided that no such delegation may ever relieve the General Manager from responsibilities under the District Act or Board orders.

#### **SECTION 4. DISTRICT**

**RULE 4.1 MINUTES AND RECORDS OF THE DISTRICT:** All documents, reports, records, and minutes of the District will be available for public inspection and copying in accordance with the Public Information Act. Upon written application of any person, the District will furnish copies of its public records. Persons who are furnished copies may be assessed a copying charge, pursuant to policies established by the Board. A list of the charges for copies will be furnished by the District.

**RULE 4.2 CERTIFIED COPIES:** Requests for certified copies must be in writing. Certified copies will be made under the direction of the General Manager and will be affixed with the seal of the District. Persons furnished certified copies may be assessed a certification charge, in addition to the copying charge, pursuant to policies established by the board.

#### **SECTION 5. PERMITS**

**RULE 5.1 STANDARD PERMIT PROVISIONS:** All permits are granted subject to the District Act, these Rules, the District Management Plan, orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit, each permit issued shall contain the following standard permit provisions:

- a. This permit is granted in accordance with the provisions of the District Act, Water Code, and the Rules, Management Plan, and orders of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with the Texas Water Code, the District Act, the District Rules, Management Plan, orders of the District Board, and all the terms, provisions, conditions, requirements, limitations and restrictions embodied in this permit.
- b. This permit confers no vested rights in the holder, and it may be revoked or suspended, or its terms may be modified or amended pursuant to the provisions of the District Act.
- c. The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner. In the event that groundwater is to be transported a distance greater than one-half (1/2) mile from the well, it must be transported by a pipeline to prevent waste caused by evaporation and percolation.
- d. The permittee must keep records of the amount of groundwater produced and the purpose of the production, and such records shall be available for inspection by District representatives. Immediate written notice must be given to the District in the event production exceeds the quantity authorized by this permit, or the well is either polluted or causing pollution of the aquifer.
- e. The well site must be accessible to District representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.
- f. The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application and in any amendments to the application. A finding that false information has been supplied is grounds for immediate revocation of the permit. In the

event of conflict between the provisions of this permit and the contents of the application, the provisions of this permit shall control.

- g. Suspension or revocation of a permit may require immediate cessation of all activities granted by permit.
- h. Violation of this permit's terms, conditions, requirements, or special provisions, is punishable by civil penalties as provided by the District Rules.
- i. Wherever special provisions are inconsistent with other provisions or District Rules, the special provisions prevail.

## **RULES 5.2 GENERAL PERMITTING POLICIES AND PROCEDURES:**

- a. **Notice of Preliminary Hearing:** Once the District receives a completed original application for a water well permit, or application for a permit renewal or amendment, the General Manager will issue written notice indicating a date and time for a preliminary hearing on the application in accordance with these Rules, except that no notice or hearing is required for permit amendments granted by the General Manager in accordance with Rule 5.9, or temporary or emergency permits granted in accordance with Rule 5.10. Any person may appear at the preliminary hearing to protest the application by providing evidence that the protestant would be personally affected if the application is granted and that there is sufficient evidence to contest the application. Following the hearing the board may:
  - 1. grant the application if it determines that no contest exists or that any protest filed should not be heard; or
  - 2. set the application for a contested case hearing.
- b. **Permit Hearing:** If the Board sets the application for a contested case hearing, any person that wishes to be heard as a potential party to a hearing must, at least 5 business days prior to the hearing date, provide the General Manager with written notice of that person's intent to appear at the hearing. Hearings will be held in accordance with Section 7 of this Rule.
- c. **Decision and Issuance of Permit:** In deciding whether or not to issue a permit, and in setting the terms of the permit, the Board will consider the purpose of the District Act and all other relevant factors, including, but not limited to;
  - 1. the District Management Plan;
  - 2. the proposed use of the water is dedicated to beneficial use,
  - 3. the sustainable yield of the aquifer;
  - 4. the impact on other landowners rights in groundwater from grant or denial of the permit, or the terms prescribed by the permit; and
  - 5. whether the applicant has agreed to avoid waste, and take reasonable diligence to protect groundwater quality, and to follow well plugging guidelines at the time of well closure. If no person notifies the General Manager of their intent to contest the application and if the General Manager does not contest the application, the application will be presented directly to the Board for a final decision.

## **RULE 5.3 WELL PERMIT EXEMPTION:**

- a. Wells used to produce water for exempt purposes are not required to obtain a well drilling permit or an operating permit. "Exempt purposes" means water to be used by an individual, a family, or household for:
  - 1. Drinking water and cooking;
  - 2. washing;
  - 3. Irrigating a garden or orchard, if the produce of the garden or orchard is to be consumed by the individual, family, or household;
  - 4. Watering animals used in operating a farm or animals being raised as food for the individual, household or family; and

5. Wells drilled, completed, equipped and used in accordance with Section 36.117, Texas Water Code shall be exempt from the spacing, drilling and production permit requirements.

#### **RULE 5.4 WELL DRILLING AND PRODUCTION PERMIT:**

##### **a. Permits Required:**

1. Every person, unless exempted by Rule 5.3, must obtain a permit from the District for the drilling of a water well and production of up to 652,000 gallons of water per acre of water rights per calendar year. Production limits for brackish groundwater shall be set by rule 6.10, however if fresh groundwater and brackish groundwater are to be produced from the same tract, or contiguous tracts of land in conjunction, no more than one (1) acre foot per acre may be produced from fresh groundwater for a combined total of no more than four (4) acre feet per acre, and must be produced from separate wells that do not allow comingling of the fresh and brackish groundwater.
2. Production permit applications for new wells must be accompanied by well registration application(s) for any unregistered exempt well(s), or production permit application(s) for any non-exempt, un-permitted well(s) on any land within the District that is owned by the applicant.
3. Upon change of ownership, if there are existing wells on the property that have not been either registered or permitted for production, the new owner of the property shall be required to register existing exempt wells, and file application(s) for production Permits for any non-exempt wells with the District.

##### **b. Permit Application:**

1. The permit application provided for herein must be filed with the District in the form or forms promulgated by the District and such permit must be obtained from the District prior to the drilling of a water well and proposed production of water, all in accordance with the provisions of this rule.
2. An application for the production of water for which a permit is required under this rule shall:
  - (a) be in writing and sworn to;
  - (b) contain the name, post-office address and place of residence or principal office of the applicant;
  - (c) identify the actual or anticipated location, pump size, and production capacity of the well from which the water is to be produced;
  - (d) identify the total number of acres of land contiguous in ownership with the land where the well is to be located;
  - (e) state the nature and purpose of the proposed use and the anticipated amount of water to be used;
  - (f) state the anticipated time within which the proposed construction or alteration is to begin;
  - (g) state the presently anticipated duration required for the proposed use of the water;
  - (h) provide information showing the anticipated effect of the proposed production on the quantity and quality of water available for future use both inside and outside the District,
  - (i) provide information showing what water conservation measures permittee has adopted, what water conservation goals permittee has established, and what measures and time frames are necessary to achieve the permittee's established water conservation goals;
  - (j) If the water is to be resold, provide a description of:
    - 1) the service area,

- 2) the metering and leak detection and repair program,
  - 3) the drought or emergency water management plan, and
  - 4) information on each customer's water demands, including population and customer data, water use data, water supply system data, wastewater data, water conservation measures and goals, and the means for implementation and enforcement;
- (k) Identify well(s) producing from the same formation on land adjacent to the property where the well is located or where the proposed well is to be located;
  - (l) describe the location and use of existing wells on the property where the well is located or where the proposed well is to be located; and
  - (m) state the depth of the water-bearing formation which the applicant proposes to utilize for the well.
3. The application must be accompanied by a map or plat drawn on a scale that adequately details the proposed project, showing;
    - (a) the location of the existing or proposed well(s);
    - (b) the location of the existing or proposed production monitoring device(s);
    - (c) the location of the existing or proposed water use facilities; and
    - (d) the location of the proposed or increased use or uses.
  4. The Rule 5.4 permit application must be accompanied by an application fee.
  5. The District shall determine whether the application, maps, and other materials comply with the requirements of this rule. If the application does not comply with the requirements of these rules it shall be deemed administratively incomplete and returned to the applicant.
  6. Separate applications must be filed for drilling permits and production permits. Drilling may not begin until both applications are granted.

**c. Permit Limitations:**

On approval of an application, the District shall issue the appropriate Permit to the applicant. The permittee's right to produce groundwater shall be limited to the extent and purposes stated in the permit. A production permit shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed. A production permit shall be considered for renewal if; the permittee has been in compliance with the conditions of the permit, the District's Rules and Regulations, has timely submitted a groundwater production renewal application with the appropriate fee, agrees to comply with the District's current groundwater production allowance, and District Rules and Regulations. A permit that is not renewed expires according to its terms and withdrawals made following expiration are prohibited. Production permits are site specific and a permitted groundwater production allowance is restricted to production from the well for which it is permitted and the contiguous acreage of water rights assigned to the well. A permit shall not be transferable except as provided in Rule 5.8.

**d. Permit Information:**

The permit shall be in writing and attested by the seal of the District and it shall contain substantially the following information:

1. the name of the person to whom the permit is issued;
2. the date the permit is issued;
3. the term for which the permit is issued;
4. the date the original application was filed;
5. the actual or anticipated number, location, pump size and production capacity of the wells from which water is to be produced;
6. the total number of acres of land contiguous in ownership with the land where the well is to be located.
7. The destination and use or purpose for which the water is to be produced;

8. The maximum quantity of water to be produced annually. In the event of drought, a permittee may produce additional groundwater above permitted amount equal to the balance of groundwater permitted but not used in previous 2 years such that the rolling three-year average use never exceeds the annual maximum amount allowed on the permit;
9. Any other information the District prescribes.

**RULE 5.5 SPACING AND PRODUCTION REQUIREMENTS:**

- a. With the exception of monitor wells that are used solely for measuring water levels and/or water quality, wells may not be drilled within one hundred (100) feet of any property line. New wells shall be spaced a minimum of one foot for each gallon per minute of production capability from existing wells producing from the same aquifer. For example: a proposed new well capable of producing one thousand (1,000) gallons per minute must be spaced one thousand (1,000) feet from an existing well producing from the same aquifer.
- b. Subject to limitations imposed upon withdrawals as specified under these rules, a person may be permitted to produce wells on their property, or property for which person can show possession of groundwater rights, up to a maximum production of 652,000 gallons per acre per year. The cumulative annual production allowance shall be computed by District personnel and may be assessed according to historical use, acreage to be irrigated, or service connections, however the allowance shall not exceed 75 percent of the annual production capability of the well, or the annual production allowance based upon the acres of groundwater rights owned or leased by the applicant, at the time the application is filed. Entities that use groundwater for municipal supply to the public may claim acreage within their CCN, or service area if:
  1. the well is located or to be located within their CCN or service area;
  2. the well meets the District's spacing rules; and
  3. there are no other wells within the claimed acreage and none of the water rights within the claimed acreage is leased to another permittee, or the total annual production of all wells within the CCN or service area plus all the leased water rights within the claimed acreage do not exceed the maximum production limitation. The total annual production and leased water rights from all wells within the CCN or service area shall be recalculated at the time the permit is considered for renewal, and the permit amount shall be adjusted accordingly.

**RULE 5.6 EXCEPTION TO SPACING AND PRODUCTION RULE:**

- a. In order to protect property rights or to prevent waste, the Board may grant exceptions to the above spacing and production rules. This rule shall not be construed so as to limit the power of the Board, and the powers stated are cumulative only of all other powers possessed by the Board.
- b. An exception to the spacing or production limitations must be requested in writing prior to a final decision on the application.
- c. Hearing notices shall state that the application does not meet the spacing requirements of the District, and an exception is requested by the applicant.
- d. The board may grant exceptions to allow drilling within shorter distances than above described when the Board determines that such exceptions are necessary to prevent waste or where conditions require such an exception to allow any well on the property as long as there are no protests filed against the exception.
- e. For the purpose of preventing waste, the Board reserves the right in particular subterranean water zones or reservoirs to enter special orders increasing or decreasing distances provided by this requirement.

- f. Exceptions will not be granted for property subdivisions made subsequent to the adoption of the original spacing requirement.

**Rule 5.7 Large Scale Groundwater Pumping Projects:**

- a. An entity with permitted groundwater pumping wells located within the District capable of yielding greater than 5,000 acre/feet of groundwater annually from 2,500 acres or more of contiguous property shall, prior to the production of groundwater, the entity shall install and maintain at least three (3) monitor wells within 50 feet of the subject property boundaries, the location of which are subject to approval by the District. Within 30 days following completion of the monitoring wells, the District will record baseline static water level (BSWL) within the wells.
- b. An entity with two or more groundwater pumping well fields located within the District within a ten (10) mile radius of each other, and combined are capable of yielding greater than 7,500 acre/feet of groundwater annually. Prior to the production groundwater, the entity shall install and maintain at least two (2) monitor wells on each of the properties, within 50 feet of each of the subject property boundaries, the location of which are subject to approval by the District. Within 30 days following completion of the monitoring wells, the Evergreen District will record an baseline static water level (BSWL) within the wells at each of the various properties.
- c. On such projects located within the District, as described above, at the beginning of each month following initiation of groundwater pumpage, the District will record the static water level in each of the monitor wells. If at anytime following the determination of the BSWL the average static level in all monitoring wells falls 50 feet below the BSWL for three (3) consecutive months, the District may temporarily suspend a pumping permit or reduce the permitted production amount until such time that the water level rises back to or above the BSWL.
- d. If at anytime during the permitted activities the average static level in all monitoring wells falls 75 feet below the BSWL, the District may suspend the permitted pumping throughout the remainder of the permit period.

**RULE 5.8 REWORKING OR REPLACING EXISTING WELLS:**

- a. **Reworking, Re-drilling, Re-equipping Wells or Changes to the Intended Use of a Well:** A permit is required to rework, re-drill, or re-equip a well in a manner that would increase the maximum rate of production, or change the intended use of a well. The District may grant an amendment without notice or hearing if the subject well is sufficiently spaced to comply with existing spacing and production rules for new wells of the desired capacity. If the well is not sufficiently spaced to comply with existing spacing and production rules for new wells of the desired capacity, such permit may be granted only after notice and hearing in accordance with Rule 5.6 as an exception to the spacing and production limitations.
- b. Replacement wells must first obtain a drilling permit in accordance with Rule 5.4. The location of the well being replaced shall be protected in accordance with the spacing and production rules of the District until the replacement well is drilled and tested. The owner must, within sixty (60) days of the issuance of the permit, indicate in writing to the District which of the wells will be used, and must submit a completed registration form and driller's log, and any mechanical log which may have been made, on the replacement well. Immediately after determining which well will be retained for production, the other well shall be:
  - 1. plugged according to Rule 6.4 herein;
  - 2. If the well is not deteriorated, as defined in Rule 1.1 herein, the well may be capped according to rule 6.4 herein; or

3. properly equipped in such a manner that it cannot produce more than 25,000 gallons per day, or 17.5 gallons per minute.

**RULE 5.9 PERMIT AMENDMENTS:**

Transfer Ownership of a Permit: An application to amend any permit to change the name of the permittee must be made within 90 calendar days of the change in ownership of the permitted well. The General Manager may grant such an amendment without notice, hearing, or further action by the Board. Failure to amend the permit shall invalidate the permit on the 91<sup>st</sup> day after transfer of the property.

**RULE 5.10 TEMPORARY OR EMERGENCY PERMITS:**

**a. Basis for Temporary or Emergency Permits:**

Upon application, the General Manager may grant a Temporary or Emergency Permit that authorizes the withdrawal of water from a well not currently drilled or permitted.

1. An application for a Temporary Permit must present sufficient evidence that:

- (a) no suitable alternative water supply is immediately available to the applicant; and
- (b) the well usage will not impair the rights of any other owner of interest in the groundwater.

2. An applicant for Emergency Permit must present sufficient evidence that:

- (a) no suitable alternative water supply is immediately available to the applicant; and
- (b) an emergency need for the groundwater exists.

**b. Action on Requests:** The General Manager may grant any application for a Temporary or Emergency Permit without notice, hearing, or further action by the Board. The General Manager may deny an application for a Temporary or Emergency Permit on any reasonable ground including, but not limited to, a determination that the applicant is currently in violation of the District Act or these rules, or that the applicant has a previous unresolved violation on record with the District. Any affected party may appeal the General Manager's action by filing, within twenty business days of that action, a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next available regular Board meeting. The General Manager must inform the Board of any Temporary or Emergency Permits granted. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager.

**c. Term of Temporary or Emergency Permit:** No Temporary or Emergency Permit may be issued unless an application for a permit issued under Rule 5.1 has been filed with the District. The term of any Temporary or Emergency Permit granted by the General Manager under this Rule extends only until the Board makes a final decision on the application for the permit under Rule 5.2. Emergency permits for replacement wells may not require a hearing if there is substantial proof that the replacement well will have a reduced impact upon the aquifer than the well it is to replace.

**RULE 5.11 REPORTING:**

A permittee authorized to produce water for an agricultural or livestock use shall file with the District annual reports describing the amount of water produced and used for the permitted purpose. Such report shall be filed on the appropriate form or forms provided by the district within fifteen (15) days of December 31, next following commencement of production and annually thereafter. Permittee's authorized to produce water for other purposes of use shall file with the District monthly reports describing the amount of water produced and used for the permitted purpose. Such report shall be filed on the appropriate form(s) provided by the District within fifteen (15) days of the first of each month.

## **RULE 5.12 MONITORING DEVICES:**

All production facilities or wells subject to the requirements of this Subsection shall be equipped with production monitoring devices approved by the District and available for District inspection at any time during normal business hours. An hour meter may be considered as a production monitoring device on the well, if the well output (gpm) can be accurately determined.

## **SECTION 6. OTHER DISTRICT ACTIONS AND DUTIES**

### **RULE 6.0 ANNUAL REPORTING FOR UN-PERMITTED, NON-EXEMPT WELLS:**

- a. **Reporting:** Within 15 days of December 31, 2003, and annually thereafter, the owners or operators of all non-exempt wells shall file a report to the District the volume of groundwater produced for the previous calendar year, the use of the groundwater, and the aquifer from which the water was produced. The report shall be filed on the appropriate form(s) provided by the District.
- b. **Monitoring Devices:** All production facilities or wells subject to the requirements of this Subsection shall be equipped with production monitoring devices approved by the District and available for District inspection at any time during normal business hours. An hour meter may be considered as a production monitoring device on the well, if the well output (gpm) can be accurately determined.
- c. **Non-compliance of Reporting:** Failure to file the required reports shall result in forfeiture of withdrawal rights. The Board may, at its discretion, require a non-compliant well owner to apply for a permit for the well or prohibit further withdrawals from the well.

**RULE 6.1 DISTRICT MANAGEMENT PLAN:** The District Plan specifies the acts, procedures, and performance necessary to prevent waste and protect rights of owners or interest in groundwater, and forms the basis of these rules and permit requirements imposed by the Board. The Board will review and amend the plan as necessary, and when the Board considers a new plan necessary or desirable, a new plan may be adopted.

### **RULE 6.2 REGISTRATION OF NEW WELLS:**

- a. It is a violation of these rules for a well owner, well operator, or water well driller to drill any well without an approved registration form filed with the District.
- b. All new wells must be registered by the well owner, well operator, or water well driller prior to being drilled. Registration may be by mail or telephonic document transfer, using a form provided by the District. The District staff will review the registration and make a preliminary determination on whether the well meets drilling and production permit exclusions or exemptions provided in Rule 5.3, and must inform the registrant of their determination within five business days. If the preliminary determination is that the well is excluded or exempt from requiring a drilling and operating permit, the registrant may begin drilling immediately upon receiving the approved registration.

### **RULE 6.3 LOCATIONS OF WELLS:**

- a. After an application for a well permit has been granted, the well, if drilled must be drilled within thirty (30) feet of the location specified in the permit.
- b. A well shall be located a minimum horizontal distance of fifty (50) feet from any water-tight sewage or liquid-waste collection facility.
- c. A well shall be located a minimum horizontal distance of one hundred and fifty (150) feet from any concentrated sources of contamination, such as existing or proposed livestock or poultry yards, privies, underground storage tanks, and septic system absorption fields. If this distance can not be accommodated within the limits of the applicant's property, the

applicant may apply for a spacing exception in accordance with Rule 5.6. In no case may a well be located less than fifty (50) feet from any concentrated sources of contamination.

- d. A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal and steel casing extending a minimum of twenty-four (24) inches above flood level.
- e. No well shall be located within five-hundred (500) feet of a sewage treatment plant, solid waste disposal site or land irrigated by sewage plant effluent, or within three-hundred (300) feet of a sewage wet well, sewage pumping station or drainage ditch which contains industrial waste discharges or wastes from sewage treatment systems.

#### **RULE 6.4 MINIMUM STANDARDS OF WELL COMPLETION:**

- a. The annular space between the borehole and the casing shall be filled from ground level to a minimum depth of twenty (20) feet with cement.
- b. A concrete slab or sealing block shall be placed above the cement around the casing at the ground surface.
  - 1. The slab or block shall extend at least two (2) feet from the well in all directions, have a minimum thickness of four (4) inches, and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.
  - 2. The surface of the slab shall be sloped to drain away from the well.
- c. The top of the casing shall extend a minimum of one (1) foot above the ground surface.
- d. If a well is to be completed with polyvinyl chloride (PVC) casing, in lieu of placing A concrete slab around the casing at the ground surface as provided for in section (2) of this rule, a steel sleeve may be used to protect the casing from breakage. The steel sleeve shall be a minimum of three-sixteenths (3/16) inches in thickness and eighteen (18) inches in length, shall extend six (six) inches into cement, and shall be two (2) inches larger in diameter than the polyvinyl chloride (PVC) casing being used.
- e. All wells that are to be completed in the artesian or confined portion of an aquifer shall be completed so that waters from other strata or zones are not allowed to commingle through the borehole-casing annulus. Therefore, one of the following shall apply:
- f. If the well is to be completed with steel casing, the annular space between the borehole and the casing shall be filled with cement from the top of the water-bearing formation to be produced from to the land surface. If the well is to be completed with polyvinyl chloride (PVC) casing, the Borehole-casing annulus shall be filled with cement, palletized bentonite, mud, or other suitable material if specifically approved by the Board, from the top of the water-bearing formation to be produced from to the land surface, provided that if cement is not used, a cement plug will be installed as required in section (a) of this rule.
- g. If a well is to be gravel packed the full length of the casing, it shall be completed with double string of casing. The outside string of casing must be set to the top of the desired aquifer formation so as to seal off all water bearing strata above the formation, and extend one foot above land surface. The annulus between the outside casing and the borehole shall be completed according to subsection (e.1). The second string of casing may then be set at the desired depth in the aquifer, and the annulus between the two casings shall contain gravel.
- h. If a gravel packed well is to be drilled in the unconfined portion of an aquifer, it shall be completed with a double string of casing. The outside string of casing shall be set at depth of 20 feet below land surface, extend one foot above land surface, and shall be completed according to subsection (a). The second string of casing may then be set inside of the first string of casing at the desired depth in the aquifer, and the annulus between the two casings shall contain gravel.

- i. If a well penetrates any undesirable water zones, or zones containing waters that differ significantly in chemical quality, the undesirable water zone shall be sealed off and confined to its zone of origin.
  - 1. When undesirable water is encountered in a zone overlying fresh water, the well shall be cased from the top of the fresh water zone to the land surface and the annular space between the casing and the wall of the borehole shall be cemented to the land surface.
  - 2. When undesirable water is encountered in a zone underlying a fresh water zone, the portion of the well bore opposite the undesirable water zone shall be filled with cement to a height that will prevent the entrance of the undesirable water into the well.
- j. The well casing shall be capped or completed in a manner that will prevent Pollutants from entering the well as provided for in Rule 6.7 herein.

**RULE 6.5 PERSONS AUTHORIZED TO DRILL:** Only licensed water well drillers, in good standing with the Texas Department of Licensing and Regulation, may drill water wells within the District.

**RULE 6.6 AQUIFER STORAGE AND RECOVERY (ASR):** ASR projects shall be limited to the injection and storage of compatible groundwater and must meet all requirements of these rules.

- a. **Permits are required on all new, and existing ASR projects:**
  - 1. ASR projects are required to obtain an injection permit and a recovery permit prior to the injection or retrieval of water.
  - 2. Well(s) to be used for injection and retrieval in an ASR project must have class V injection well approval by the Texas Commission on Environmental Quality prior to application submission.
  - 3. An ASR permit application must be accompanied by applications for production permits for each well to be used for injection or retrieval of water.
- b. **Permit Application:**
  - 1. The permit application provided for herein must be filed with the District in the form or forms promulgated by the District and such permit must be obtained from the District prior to the injection and retrieval of water.
  - 2. An application for the production of water for which a permit is required under this Rule shall:
    - (a) be in writing and sworn to;
    - (b) contain the name, post-office address and place of residence or principal office of the applicant;
    - (c) proposed injection rates and volumes;
    - (d) proposed frequency of injection periods;
    - (e) proposed retrieval rates and volumes;
    - (f) proposed frequency of retrieval periods;
    - (g) estimated radial distances of travel from the injection wells on an annual basis;
    - (h) estimated maximum extent of travel for the life of the project;
    - (i) location of all injection, retrieval and monitoring wells
    - (j) identify the actual or anticipated location, pump size, and production and injection capacity of the well from which the water is to be injected into and retrieved from;
    - (k) the total number of acres of land contiguous in ownership with the land where the well is to be located.
    - (l) state the source of the water to be injected, the quality of the water and a chemical analysis of the water;
    - (m) state the anticipated time within which the proposed construction is to begin;
    - (n) state the presently anticipated duration required for the proposed use of the project.

- (o) Provide information showing the anticipated effect of the ASR project on groundwater quality;
- (p) A report identifying any potential impacts to artificial penetrations within one-half mile of the perimeter of the buffer zone, and identify well(s) producing from the same formation within one-half (1/2) mile of the proposed well and the owner(s) of said well(s).
- (q) Other information as determined by the District as necessary for the protection of underground sources of drinking water.

**c. Map Requirements:**

1. An overall plan of the project area showing the locations and extent of the proposed works and the locations of all pertinent features, including structures, pipelines, roads, natural springs, artesian wells, and property lines. Also, such plan shall include all proposed or existing injection and retrieval wells associated with the aquifer storage and retrieval project by latitude and longitude;
2. Name(s) and location(s) of the underground formation(s) in which water will be stored for later retrieval and the general direction of flow indicated;
3. Cross sections and profiles of the underground formation(s) into which water will be injected and stored, any underground formation which confines the injection interval, any underground formation(s) located between the storage area and the land surface and the actual and/or proposed operating depths of all planned injection and retrieval facilities;
4. The location of a buffer zone surrounding the land surface area under which the underground storage of water will occur and beyond which pumpage by other wells will not interfere or significantly affect the movement or storage of the water;
5. The location and ownership of all existing domestic, public water supply, Irrigation, or commercial wells within one-half (1/2) mile of the perimeter of the buffer zone described in this subsection, indicated by appropriate symbols to differentiate these works from the proposed works;
6. All elevations shall be referred to mean sea level datum; and
7. Any additional information the District may require to determine the feasibility of the project.

**d. Well Construction:**

1. All ASR wells shall be constructed to meet the standards as set forth in Title 30, Part 1, Chapter 331 Subchapter H, Rule §331.132, and Subchapter K, Rule §331.183 of the Texas Administrative Code.
2. Upon completion of the aquifer storage well, the following information shall be obtained and submitted to the District;
  - (a) as-built drilling and completion data on the well(s);
  - (b) all logging and testing data on the well(s);
  - (c) formation fluid analysis;
  - (d) injection fluid analysis;
  - (e) injectivity and pumping tests determining well capacity and reservoir characteristics;
  - (f) hydrogeologic modeling, with supporting data, predicting mixing zone characteristics and injection fluid movement and quality; and
  - (g) other information as determined by the District as necessary for the protection of underground sources of drinking water.

**e. Operating and Reporting:**

1. All Class V aquifer storage wells shall be operated in such a manner that they do not present a hazard to or cause pollution of an underground source of drinking water.

2. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure the pressure in the injection zone does not cause movement of fluid out of the injection zone.
3. The owner or operator of an aquifer storage well that has ceased operations for more than two years shall notify the District 30 days prior to resuming operation of the well.
4. The owner or operator shall maintain the mechanical integrity of all wells operated under this section.
5. The quality of water to be injected must meet the quality criteria prescribed by the commission's drinking water standards. The following must be monitored at the required frequency, and reported to the District on a monthly basis:
  - (a) monthly average injection rates;
  - (b) monthly injection and retrieval volumes;
  - (c) monthly average injection pressures;
  - (d) monthly water quality analyses of injected water; and
  - (e) other information as determined by the District as necessary for the protection of underground sources of drinking water.

**f. Permit Requirements and Limitations:**

1. District employees shall have access to the ASR facility for inspection and Data collection at any time during regular District business hours.
2. Any of the following conditions shall require a permit amendment prior to implementation:
  - (a) changes or additions to injection or retrieval sites;
  - (b) changes in source water or changes in the chemical constituents of the source water; or
  - (c) changes in the annual injection and retrieval rate. The permittee must prepare and submit a plan to monitor the quality of water injected and retrieved, and the water levels of the receiving body of groundwater within one half (1/2) mile of the perimeter of the buffer zone. In addition, the proposed monitoring plan shall describe how waters injected and retrieved will be measured and reported. In the event that water quality is being affected outside of the ASR buffer zone, the Board following notice and hearing, may order the permittee to suspend operations or revoke the permits.
3. Retrieval of stored water may not exceed 90% of the total amount of water actually injected.

**RULE 6.7 SEALING, CAPPING AND PLUGGING OF WELLS:**

- a. **Sealing Wells.** The General Manager may seal wells that are in violation of the District Act, these Rules or Board orders. A well may be sealed when: (1) the well has not been properly permitted; or (2) continued operation of the well will result in waste or pollution. The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District, and other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well. Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a sealed well constitutes a separate violation of these Rules and will subject the person performing that action, as well as the well owner and primary operator who authorizes or allows that action to such penalties as provided by the District Act and these Rules.
- b. **Capping Wells.** The District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must remain capped until such time as the conditions that led to the capping requirement are eliminated. If well

pump equipment is removed from a well and the well will be re-equipped at a later date, the well must be capped.

- c. Plugging Wells.** It is the responsibility of the landowner to plug a well that is deteriorated or abandoned. A deteriorated or abandoned well must be capped immediately in accordance with Rule 6.4 if the well casing deteriorates to a point where commingling of water strata is either possible or occurring, within 30 calendar days the well must be plugged to prevent the commingling.
1. For a deteriorated or abandoned well that does not penetrate any undesirable water zone, all removable casing must be removed and the well plugged as follows:
    - (a) the well bore must be filled with cement to the land surface; or
    - (b) the well bore must be filled with mud followed by a cement plug not less than ten feet long extending downward from a point four feet below land surface.
  2. For a deteriorated or abandoned well that penetrates any undesirable water zone, all removable casing must be removed from the well and the well plugged as follows;
    - (a) filled with cement to the land surface; or
    - (b) either the zone(s) contributing undesirable water or the fresh water zone(s) must be isolated with cement plugs and the remainder of the well bore filled with mud to form a base for a cement plug not less than ten feet long extending down from the land surface; or
    - (c) the well must be filled as provided in subsection (2) above, except the cement plug may extend downward from a point-four feet below the land surface.
  3. Any person that plugs a well in the District must, within sixty (60) days after plugging is complete, submit a copy of the plugging report to the District. A copy of the plugging report furnished to the Texas Commission on Environmental Quality will suffice as proper notice to the District.

**RULE 6.8 DRILLER'S LOG, CASING AND PUMP DATA:** Complete records must be kept and reports made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled in the District. Such records must include an accurate Driller's log, any mechanical log that may have been made and a registration of the well correctly furnishing all available information required on the forms furnished by the District or on forms furnished by the Texas Commission on Environmental Quality. Such reports must be filed within 60 calendar days after completion of the well.

**RULE 6.9 TRANSPORTATION OF WATER FROM THE DISTRICT:**

- a. A permit is required to transport groundwater beyond the boundaries of the District. A person desiring a transportation permit must file an application prior to beginning construction of any transportation facilities. Such applications shall be on forms provided by the District and shall be in accordance with and contain the information called for in the application form or in these rules. If the application does not contain all the required information it will be returned as administratively incomplete. Water wells used or to be used for the transportation of water out of the District shall be subject to permitting requirements as described in Section 5 herein. The Board reserves the right to approve a transportation permit application at reduced rate based upon consideration of:
  1. The projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the District; and
  2. The approved regional water plan, certified District Management plan, and the approved future condition of the aquifer.

3. A permit application to transport groundwater out of the District shall be accompanied with a production permit application or production permit amendment for each well that is used to produce groundwater that is proposed to be transported out of the District.
  4. Applications may only be approved for an amount below the sustainable yield of the aquifer and that the proposed use will not constitute waste.
- b. In evaluating an application to transport water, the District will:
1. Evaluate the projected total supply and demand of usable groundwater within the District, including managed groundwater available and the desired future condition of the aquifer;
  2. the amount of water that may be transferred out of the District; and
  3. the period proposed for transport.
- c. **EXCEPTIONS:**  
A transportation facility permit is not required for transportation of water begun prior to September 1, 1997. To claim this exemption the transporter must register the project with the District and provide evidence of the project completion date. District Water Purveyors that have customers both inside and outside the district are not required to obtain a transportation permit if no more than five percent (5%) of their monthly water volume is delivered outside the boundaries of the District.
- d. **INFORMATION TO BE PROVIDED IN APPLICATION:**  
The following information shall be provided in or be submitted with an application:
1. The name and address of the applicant.
  2. The legal description of the exact location of the well(s) from which water to be transported is to be produced.
  3. The name and address of the fee owner(s) of the land upon which is located the well(s) which is to produce water to be transported.
  4. The names and addresses of the property owners within one-half (1/2) mile of the location of the well(s) from which water to be transported is to be produced, and the location of any wells on these properties.
  5. The time schedule for construction and/or operation of the facility.
  6. A complete construction and operations plan that will include, but is not limited to, information as to:
    - (a) A technical description of the proposed well(s) and production facility, including depth of the well, the casing diameter, type and setting, the perforated interval, and the size of the pump;
    - (b) A technical description of the facilities to be used for transportation of water.
  7. The use of water to be transported.
  8. The volume of water to be transported annually.
  9. Scientific evidence showing that the proposed operation will not:
    - (a) Cause pollution, as defined in Rule 1 herein; and
    - (b) Cause waste, as defined in Rule 1 herein.
  10. Provide information showing the effect of the proposed transportation on the quantity and quality of water available within the District.
  11. Provide information showing the effect of the proposed transportation on existing wells in the District.
  12. A water conservation plan and a drought management plan for the end-user of the water to be transported.
  13. Additional information that may be required by the Board.
  14. Any mitigation plan developed by the applicant to offset adverse social economic or hydrologic impacts within the District.
- e. **NOTICE OF HEARING:**
1. The District shall provide notice of a hearing on a transportation application as follows:.

- (a) By first class mail to the applicant and any person who owns property adjacent to or within one-half (1/2) mile of the applicant's property; and
- (b) by publication in a newspaper of general circulation in each of the counties of the District.

2. The notice shall contain the following:

- (a) the name and address of the applicant;
- (b) the date the application was filed;
- (c) the time and place of the hearing;
- (d) the location of the proposed well(s) from which water to be transported is to be produced;
- (e) a description of the transportation facility; and
- (f) a brief summary of the information in the application.

f. **HEARING:**

A hearing on an application shall be heard without the necessity of issuing further notice other than the time and place where the Board meeting is to take place after the expiration of the time limits set forth herein above. Hearings shall be conducted in accordance with provisions stipulated in these rules.

g. **MONITORING AND REPORTING:**

1. All transportation facilities subject to registration or permitting shall be equipped with flow monitoring devices approved by the District and shall be available at all reasonable times for inspection by District personnel.
2. The operator of a transportation facility must keep records and make reports to the District as to the operation of the transportation facility.
3. Registered transportation facilities shall submit reports to the District on a monthly basis, beginning at the time of registration. Each report shall state the volume of water transported during the preceding month.
4. Permitted transportation facilities shall submit reports to the District on a monthly basis, beginning at the time a permit is issued to operate. Each report shall state the volume of water transported during the preceding month.

h. **RESPONSIBILITY:** The owner of a transportation facility shall be responsible for the prevention of pollution and waste.

i. **TRANSPORTATION FEES:** The District shall assess a fee of \$0.025 (2.5 cents) per one thousand (1000) gallons of groundwater transported out of the District.

**RULE 6.10 PERMIT FOR PRODUCTION OF BRACKISH GROUNDWATER:**

**Permit Application:**

- a. Permit application for a Brackish Groundwater Production Permit(s) of five (5) thousand acre feet or more annually, must meet all the requirements of this rule and Rule 5.4 except as noted below.
  1. Subsections (h), (i), (j) and (k) of Rule 5.4(b)(2) do not apply to an application for a Brackish Groundwater Permit.
- b. The application must also include a disposal plan detailing how and where the concentrated brine reject will be disposed and evidence that the plan meets all applicable state laws for brine disposal. This rule does not apply to a brackish test well; however, a disposal plan is required at the time an application is submitted to the district to convert the test well.
- c. The applicant shall provide a report with the application which is based upon the best available data and science that reasonably substantiates that the proposed production of brackish groundwater will not have an adverse affect on any fresh groundwater zone.

1. **Permit Information:** The permit shall include all the information required by Rule 5.4(d) except subsections (7), (8) and (9), which do not apply.
2. **Well Construction:** In addition to the standards required by Rule 6.4, any well that is to be drilled to a depth of 1,500 feet or more that requires penetration through a fresh groundwater zone into a pressurized brackish groundwater zone, containing water with a Total Dissolved Solids of 3,000 milligrams per liter or greater, and that has sufficient artesian pressure to invade any fresh water zone, shall be cased and cemented to isolate the fresh water zone. The casing and cement must be in place prior to penetration of the brackish groundwater zone.
3. **Permit production and spacing limitations:** The provisions of Rule 5.5 do not apply to the production of brackish groundwater pursuant to a Brackish Groundwater Production Permit issued by the District. Well spacing and brackish groundwater production allotments shall be determined by the Board based upon, but not limited to, the hydrologic model, the location of the proposed well field, distance of the proposed well field from any wells producing from the same formation, the requested amount of annual brackish groundwater production, and the report required by Rule 6.10(c).
4. **Hearings:** A well owner located within 500 feet of a proposed Brackish Groundwater Well or a petition signed by 100 landowners within the District may request the District hold a public hearing on the application for a Brackish Groundwater Production Permit. If no such request is filed, no hearing is required.
5. **Large Scale Groundwater Pumping Projects:** Rule 5.7 does not apply to brackish groundwater production Permit.

d. All brackish groundwater extraction/recovery wells must have a dedicated 4-inch diameter Carrizo Aquifer monitoring well located within 100 feet of the well.

1. The dedicated Carrizo Aquifer monitoring well must be equipped with a water level data logger to continuously monitor the water level of the Carrizo Aquifer in close proximity to the brackish groundwater well. During all periods of sustained brackish groundwater production, the permittee shall record daily water levels of the Carrizo Aquifer well and report the daily levels to the District in a monthly report. If water level changes indicate a connection between the Carrizo Aquifer and the brackish groundwater zone the District may either temporarily or permanently suspend the Brackish Groundwater Production Permits, or add additional permit conditions to ensure production of brackish groundwater has no impact on Carrizo Aquifer water levels.

After six months of sustained operation of a brackish well the permit holder shall perform a fluorescent dye tracer study using the Carrizo Aquifer monitoring well and the brackish groundwater extraction well. Upon identification of an anomaly in either the water level in a Carrizo monitor well or a 15% reduction of the Total Dissolved Solids in a Brackish Groundwater production well, the District may require additional dye tracer studies. The test period will be determined based upon the planned periods of sustained pumping; ideally the test period will be for at least 6 months. The purpose of this test will be to evaluate possible hydrologic communication between the brackish groundwater and the overlying Carrizo Aquifer within the “center” of the concentrated pumping area. If the Dye Tracer studies indicate a connection between the Carrizo Aquifer and the brackish groundwater zone the District may either temporarily or permanently suspend the Brackish Groundwater Production Permits, or add additional permit conditions to ensure production of brackish groundwater has no impact on Carrizo Aquifer water levels.

3. Chemical analysis reports of samples take from both the monitor well and the production well of the groundwater constituents shall be submitted to the District each month the brackish groundwater well is operated. The analysis shall be performed at the permit holders expense, and provide a comprehensive list of chemical constituents including, but not limited to, the milligrams per liter of total dissolved solids. The report is due no less than 10 days after the end of the month during which the brackish groundwater well was operated. In the event that the total dissolved solids of the brackish groundwater become equal to or less than 1,000 milligrams per liter for three consecutive months, production from the well shall cease until such time that a production permit application for fresh groundwater receives Board approval.

## **SECTION 7. HEARINGS**

**RULE 7.1 TYPES OF HEARINGS:** The District conducts two general types of hearings: hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing, and rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearings Examiner.

**Permit Hearings: Permit Applications, Amendments and Revocations:**

The District may hold hearings on original permit applications, applications for permit renewals or amendments and permit revocations or suspensions. Hearings involving permit matters must be scheduled before a Hearings Examiner.

**RULE 7.2 NOTICE AND SCHEDULING OF RULE MAKING HEARINGS:**

The General Manager is responsible for giving notice of all hearings in the following manner:

- a. Written notice of a hearing will be given to each county, rural water supply corporation, and municipal government within the District. Notice must also be given to each person who has previously requested copies of hearing notices pursuant to the procedures set forth in subsection (b). A copy of the notice must be posted at the county courthouse of each county within the District in the place where notices are usually posted as prescribed by law. The General Manager may also give notice to any other person the General Manager deems appropriate. The date of delivery or mailing of notice may not be less than 10 business days before the date set for the hearing.
- b. Notice of hearing must be published at least one time a week for two weeks in a newspaper of general circulation within the District. A rule or amendment to a rule may be adopted by the Board on the fourteenth (14<sup>th</sup>) day after the second publication.

**RULE 7.3 GENERAL PROCEDURES:**

- a. **Authority of Presiding Officer:** The presiding officer may conduct the hearing or other proceeding in the manner the presiding officer deems most appropriate for that particular proceeding. The presiding officer has the authority to:
  1. set hearing dates, other than the initial hearing date for permit matters set by the General Manager in accordance with Rule 7.1;
  2. convene the hearing at the time and place specified in the notice for public hearing;
  3. establish the jurisdiction of the District concerning the subject matter under consideration;
  4. rule on motions and on the admissibility of evidence and amendments to pleadings;
  5. designate and align parties and establish the order for presentation of evidence;
  6. administer oaths to all persons presenting testimony;

7. examine witnesses;
  8. issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
  9. require the taking of depositions and compel other forms of discovery under these Rules;
  10. ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
  11. conduct public hearings in an orderly manner in accordance with these Rules;
  12. recess any hearing from time to time and place to place;
  13. reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
  14. exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of presiding officer.
- b. **Registration Forms:** Each individual attending a hearing or other proceeding of the District must submit a form providing the person's name and address, whether the person plans to testify; and any other information relevant to the hearing or other proceeding.
  - c. **Appearance; Representative Capacity:** Any interested person may appear in person or may be represented by counsel, engineer, or other representative, provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.
  - d. **Alignment of Parties; Number of Representatives Heard:** Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The presiding officer may require the participants of an aligned class to select one or more persons to represent them in the proceeding or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or any particular matter or ruling.
  - e. **Appearance by Applicant or Movant:** The applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the presiding officer deems it necessary in order to fully develop the record.
  - f. **Reporting:** Hearings and other proceedings will be recorded on audio cassette tape or, at the discretion of the presiding officer, may be recorded by a certified shorthand reporter. The district does not prepare transcriptions for the public of hearings or other proceedings recorded on audio cassette tape on District equipment, but will arrange for a party of interest to have access to the recording. Subject to availability of space, any party at interest may, at its own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 7.5 (b). If a proceeding other than a permit hearing is recorded by a reporter, and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original transcript filed with the papers of the proceeding at the expense of the person requesting the transcript filed with the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.

- g. **Continuance:** The presiding officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District Office) for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding and by the presiding officer before it is recessed, a notice of any further setting of the hearing or other proceeding must be delivered at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Rule 7.1, and any other person the presiding officer deems appropriate, but it is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.
- h. **Filing of Documents; Time Limit:** Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these Rules or by law must be received in hand at the District's office within the time limit, if any, set by these Rules or by the presiding officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.
- i. **Computing Time:** In computing any period of time specified by these Rules, by a presiding officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next business day.
- j. **Affidavit:** Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This Rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.
- k. **Broadening the Issues:** No person will be allowed to appear in any hearing or other proceeding that in the opinion of the presiding officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
- l. **Conduct and Decorum:** Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and will exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If in the judgment of the presiding officer, a person is acting in violation of this provision, the presiding officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.

**RULE 7.4 UNCONTESTED PERMIT HEARINGS PROCEDURES:**

- a. **Informal Hearings:** Permit hearings may be conducted informally when, in the judgment of the Hearings Examiner, the conduct of a proceeding under informal procedures will result in a savings of time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- b. **Agreement of Parties:** If all parties reach a negotiated or agreed settlement that settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the General Manager will summarize the evidence, including findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.
- c. **Decision to Proceed as Uncontested or Contested Case:** If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests staff recommendations, and the Hearings Examiner determines these issues will require extensive discovery proceedings, the Hearing Examiner may declare the case to be contested and convene a prehearing conference as set forth in Rule 7.5. The Hearings

Examiner may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions the Hearings Examiner deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision will be an uncontested case.

#### **RULE 7.5 CONTESTED PERMIT HEARING PROCEDURES:**

- a. **Prehearing Conference:** A prehearing conference may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process.
  1. **Matters Considered:** Matters that may be considered at a prehearing conference include, but are not limited to, (1) designation of parties; (2) formulation and simplification of issues; (3) necessity or desirability of amending applications or other pleadings; (4) possibility of making admissions or stipulations; (5) scheduling discovery; (6) identification of and specification of the number of witnesses; (7) filing and exchange of prepared testimony and exhibits; and (8) procedure at the hearing.
  2. **Notice:** A prehearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 7.1, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the Hearings Examiner.
  3. **Conference Action:** Action taken at a prehearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.
- b. **Assessing Reporting and Transcription Costs:** Upon the timely request of any party, or at the discretion of the Hearings Examiner, the Hearings Examiner may assess reporting and transcription costs to one or more of the parties. The Hearings Examiner will consider the following factors in assessing reporting and transcription costs:
  1. the party who requested the transcript;
  2. the financial ability of the party to pay the costs;
  3. the extent to which the party participated in the hearing;
  4. the relative benefits to the various parties of having a transcript;
  5. the budgetary constraints of a governmental entity participating in the proceeding; any other factor that is relevant to a just and reasonable assessment of costs.
  6. In any proceeding where the assessment of reporting or transcription costs is an issue, the Hearings Examiner will provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs will be included in the Hearings Examiner's report to the Board.
- c. **Designation of Parties:** Parties to a hearing may be designated on the first day of hearing or at such other time as the Hearings Examiner determines. The General Manager and any person specifically named in a matter are automatically designated parties. Persons other than the General Manager or a person specifically named must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Hearings Examiner, there exists good cause and the hearing will not be unreasonably delayed.
- d. **Rights of Designated Parties:** Subject to the direction and orders of the Hearings Examiner, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notice issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.

- e. **Persons Not Designated Parties:** At the discretion of the Hearings Examiner, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Hearings Examiner as evidence.
- f. **Furnishing Copies of Pleadings:** After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or the party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.
- g. **Interpreters for Deaf Parties and Witnesses:** If a party of subpoenaed witness in a contested case is deaf, the District will provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceeding or communication with others.
- h. **Agreements to be in Writing:** No agreement between parties or their representatives affecting any pending matter will be considered by the Hearings Examiner unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered of record.
- i. **Discovery:** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Hearings Examiner. Unless specifically modified by these Rules or by order of the Hearings Examiner, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Hearings Examiner.
- j. **Discovery Sanctions:** If the Hearings Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Hearings Examiner may:
  1. suspend processing of the application for a permit if the applicant is the offending party.
  2. disallow any further discovery of any kind or a particular kind by the offending party;
  3. rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
  4. limit the offending party's participation in the proceeding;
  5. disallow the offending party's presentation of evidence on issues that were subject of the discovery request; and
  6. recommend to the Board that the hearing be dismissed with or without prejudice.
- k. **Ex Parte Communications:** The Hearings Examiner may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing in order to utilize the special skills and knowledge of the District in evaluating the evidence.
- l. **Compelling Testimony; and Swearing Witnesses:** The Hearings Examiner may compel any person to testify who is necessary, helpful, or appropriate to the hearing. The Hearings Examiner shall administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth.
- m. **Evidence:** Except as modified by these Rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.

- n. **Written Testimony:** When a proceeding will be expedited and the interests of the parties not substantially prejudiced, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- o. **Requirements for Exhibits:** Exhibits of a documentary character must be of a size that will not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8 ½ by 11 inches in size.
- p. **Abstracts of Documents:** When documents are numerous, the Hearings Examiner may receive in evidence only those that are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.
- q. **Introduction and Copies of Exhibits:** Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the Hearings Examiner and to each of the parties, unless the Hearings Examiner rules otherwise.
- r. **Excluding Exhibits:** In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to excluding the exhibit.
- s. **Official Notice:** The Hearings Examiner may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- t. **Documents in District Files:** Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.
- u. **Oral Agreement:** At the discretion of the Hearing Examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Hearings Examiner may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, further oral arguments may be heard by the Board.

#### **RULE 7.6 CONCLUSION OF THE HEARING; REPORT:**

- a. **Closing the Record; Final Report:** At the conclusion of the presentation of evidence and any oral argument, the Hearings Examiner may either close the record or keep it open and allow submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs or proposed findings and conclusions may be filed unless permitted or requested by the Hearings Examiner. After the record is closed, the Hearings Examiner shall prepare a report to the Board. The report will include a summary of the evidence, together with the Hearings Examiner's findings and conclusions and recommendations for action. Upon completion and issuance of the Hearings Examiner's report, a copy will be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties will be by certified mail.
- b. **Exceptions to the Hearings Examiner's Report; Reopening the Record:** Prior to Board action any party in a contested case may file written exceptions to Hearings Examiner's report, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board upon review of the report and exceptions, the

Hearings Examiner may reopen the record for the purpose of developing additional evidence, or may deny the evidence, or may deny the exceptions and submit the report and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the Hearings Examiner for further proceedings.

- c. **Time for Board Action on Certain Permit Matters:** In the case of hearings involving original permit applications, or applications for permit renewals or amendments, the Hearings Examiner's report should be submitted, and the Board should act, within 60 calendar days after the close of the hearing record.

#### **RULE 7.7 RULEMAKING HEARING PROCEDURES**

- a. **General Procedures:** The presiding officer will conduct the rulemaking hearing in the manner the presiding officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible.
- b. **Submission of Documents:** Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 7.2; provided, however, that the presiding officer may grant additional time for the submission of documents.
- c. **Oral Presentations:** Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer will establish the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- d. **Conclusion of the Hearing; Closing the Record; Hearings Examiner's report:** At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the presiding officer is a Hearings Examiner, the Hearings Examiner will, after the record is closed, prepare a report to the Board. The report will include a summary of the subject of the Hearing and the public comments received, together with the Hearings Examiner's recommendations for action. Upon Completion and issuance of the Hearings Examiner's report, a copy will be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.
- e. **Exceptions to the Hearings Examiner's Report; Reopening the Record:** Any interested person may make exceptions to the Hearings Examiner's report, and the Board may reopen the record, in the manner prescribed in Rule 7.6 (b).

#### **RULE 7.8 FINAL DECISION; APPEAL:**

- a. **Board Action:** After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.
- b. **Requests for Rehearing:** Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within 20 calendar days of the Board's decision. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with the respect to any decision or action of the Board before any appeal to State District Court. The

Board's decision is final if no request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within 45 calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within 90 calendar days of submission will be deemed to be a denial of the request.

### **SECTION 8. PROHIBITIONS**

**RULE 8.1 WASTING GROUNDWATER PROHIBITED:** Operating a well in way that results in waste is prohibited. Withdrawing more groundwater than is reasonably necessary for a particular beneficial purpose is wasteful and prohibited.

**RULE 8.2 WASTEFUL TRANSPORTATION PROHIBITED:** Groundwater transported a distance greater than one-half (1/2) mile from the well must be transported by a pipeline to prevent waste caused by evaporation and percolation.

**RULE 8.3 DRILLING OR OPERATING A WELL WITHOUT A PERMIT PROHIBITED:** Non-exempt wells may not be drilled or operated without first obtaining a permit from the District. Exempt wells may not be operated without first registering the well with the District.

### **SECTION 9. INVESTIGATIONS AND ENFORCEMENT**

**RULE 9.1 NOTICE AND ACCESS TO PROPERTY:** Board Members, the General Manager, and District agents and employees are entitled to access to property within the District to carry out technical and other investigations necessary to the implementation of the District Act and these Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access shall give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information in file with the District. Notice is not required if prior permission has been granted to enter without notice. Inhibiting or prohibiting access to any Board Member, the General Manager, or District agents or employees who are attempting to conduct an investigation under the District Act or these Rules shall constitute a violation and shall subject the person who is inhibiting or prohibiting access, as well as any other person who authorized or allows such action, to the penalties set forth in the District Act.

**RULE 9.2 LIMITATIONS OF DISTRICT EMPLOYEE ACTIVITIES:** District employees may not gather information not specifically related to the purposes of the District, the District Act, these Rules, or District Policy.

**RULE 9.3 REQUEST FOR INJUNCTIVE RELIEF AND ASSESSMENT OF PENALTIES:** If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Act or any Board order, rule or permit, the Board may authorize the General Manager to institute and conduct a suit in the name of the District for injunctive relief, or to recover a civil penalty of up to ten thousand dollars (\$10,000.00) per day per violation, and each day of a continuing violation constitutes a separate violation, or for both injunctive relief and civil penalties. A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the District's principal office or meeting place is located. If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, in the same action, recovery for attorney's fees, cost for expert witnesses, and other costs incurred by the District before the court. The amount of the attorney's fees shall be fixed by the court.

## **SECTION 10. FEES**

**RULE 10.1 APPLICATION, REGISTRATION, AND OTHER FEES:** The Board shall establish a schedule of fees. District Monitor Wells are exempt from all fees.

**RULE 10.2 APPLICATION PROCESSING FEE:** The Board may adopt a processing fee for drilling and production permits and transportation permits. The fee shall be sufficient to cover actual costs incurred by the District for activities associated with processing the application including, as appropriate: hydrogeological studies and modeling, field inspections, cost benefit analysis and economic modeling, professional fees, and cost of a contested case hearing including costs incurred by the District for a hearings examiner, expert witnesses, attorneys and transcript costs. In any case in which a contested hearing is anticipated, the Board may require the applicant to post a deposit, in an amount established by the District's schedule of fees, to cover anticipated processing costs. As costs are incurred by the District in processing the application, those costs may be reimbursed from funds deposited by the applicant. The applicant shall be provided an accounting of billings against the application processing deposit. Any funds remaining on deposit after the conclusion of application processing shall be returned to the applicant. If initially deposited funds are determined to be insufficient to cover costs incurred by the District in processing the application, an additional deposit may be required. If the applicant fails to deposit funds as required by the District, the application may be dismissed.

**RESOLUTION ADOPTING RULES OF THE  
EVERGREEN UNDERGROUND WATER CONSERVATION DISTRICT**

**WHEREAS**, The Rules of the Evergreen Underground Water Conservation District, attached hereto as Attachment A, have been developed for the purpose of conserving, preserving, protecting and recharging the underground water in the District, and this action is taken under the District's statutory authority to prevent waste and protect rights of owners of interest in groundwater;

**WHEREAS**, In accordance with Section 59, Article 16 of the Constitution of the State of Texas, and in accordance with the Evergreen Underground Water Conservation District Act, 59<sup>th</sup> Leg., R.S., ch. 197, 1965 Tex. Gen. Laws 398 (Vernon); as amended by Act of May 25, 1967, 60<sup>th</sup> Leg., R.S., ch. 1272, 1967 Tex. Gen. Laws 1676 (Vernon); Act of May 30, 1983, 68<sup>th</sup> Leg., R.S., ch. 484, 1983 Tex. Gen. Laws 2852 (Vernon); and Act of May 17, 1985, 69<sup>th</sup> Leg., R.S., ch. 438, 1985 Tex. Gen. Laws 2984 (Vernon); the following rules are hereby ratified and adopted as the rules of the Evergreen Underground Water Conservation District by its Board of Directors;

**WHEREAS**, The rules, regulations and modes or procedure contained are adopted for the purpose of simplifying procedure, avoiding delays, saving expense and facilitating the administration of this District and these rules shall be so construed; and

**WHEREAS**, Under no circumstances, and in no particular case will these Rules, or any part of them, be construed as a limitation or restriction upon the exercise of any discretion, where such exists; nor may they in any event be construed to deprive the Board of an exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount and character of data or information which may be required for the proper administration of the law.

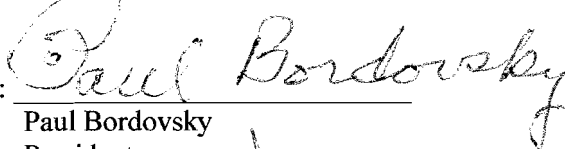
**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE EVERGREEN UNDERGROUND WATER CONSERVATION DISTRICT THAT;**

1. The "Rules of the Evergreen Underground Water Conservation District" contained in attachment A are hereby adopted.
2. All prior rules are hereby repealed.
3. The General Manager is hereby authorized to take any and all action necessary to implement this resolution.
4. These rules take effect January 23, 2009.

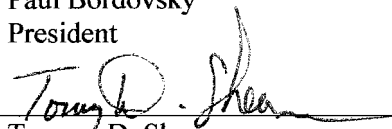
**AND IT IS SO ORDERED**

**PASSED AND ADOPTED ON THIS 23<sup>RD</sup> DAY OF JANUARY, 2009.**

SIGNED:

  
Paul Bordovsky  
President

ATTEST:

  
Tommy D. Shearer  
Secretary/Treasurer