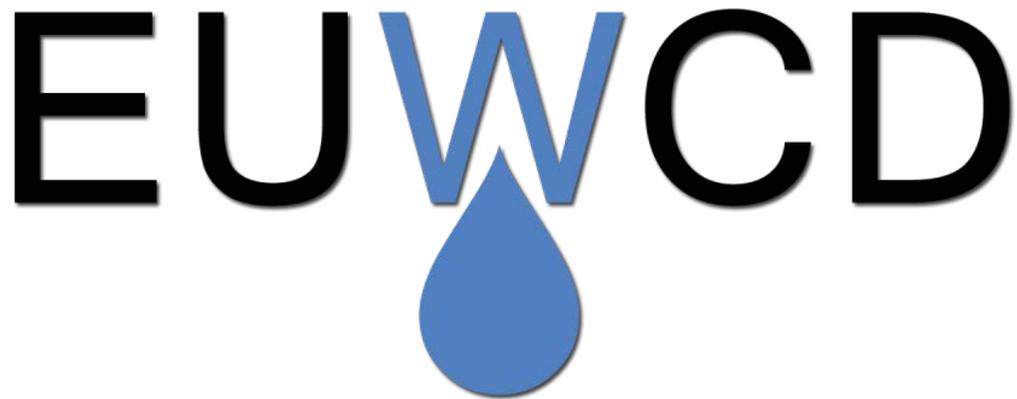


Rules of the Evergreen Underground Water Conservation District



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

Notice of the Rules of the Evergreen Underground Water Conservation District was last amended by Board action on October 27, 2017. In accordance with Section 59 of Article XVI of the Texas Constitution and Acts of May, 1965, 59th Leg. R.S., ch. 197, 1965 Tex. Gen. Laws 398; as amended by Acts of May 25, 1967, 60th Leg., R.S. ch. 1272, 1967 Tex. Gen. Laws 1676; Acts of May 30, 1983, 68th Leg., R.S., ch. 484, 1983 Tex. Gen. Laws 2852; and Acts of May 17, 1985, 69th Leg., R.S., ch 438, 1985 Tex. Gen. Laws 2984 and the non-conflicting provisions of Chapter 36, Texas Water Code the following Rules are hereby ratified and adopted as the Rules of this District by its Board. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended

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

DISTRICT RULES

GENERAL REGISTRATION AND PERMITTING PROCEDURES

The District has the authority to regulate all groundwater wells drilled and operated within the District. A brief summary of the general procedures for the District's regulation over water wells is listed below, with references to the section of the rules that provide more detail. All applicants and permittees shall comply with all of the District's Rules, including but not limited to those listed below.

- (1) **No water well shall be drilled in the District, without first receiving a well registration or well permit from the District.**

All well drillers and well owners intending to drill a new well(s) shall contact the District prior to drilling the well, and the District will assist the applicant to determine if:

- (a) the well will be an exempt well and a registration application must be submitted to the District (see Section 6) or
- (b) the well is a non-exempt well and a permit application must be submitted to the District (Section 7).

Administratively complete well registration and permit applications shall be submitted to and approved by the District, prior to drilling any well within the District's boundaries.

- (2) All wells shall be drilled by a licensed well driller who submits the appropriate well driller's report and other appropriate documentation to the District under Rules 9.3 and 9.5.
- (3) All wells must be drilled to the required specifications of the District and the Texas Department of Licensing and Regulation under Rule 7.9 and Section 9.
- (4) No well owner/driller/operator shall waste groundwater under Section 5.
- (5) All permitted wells and exempt rig supply wells must comply with well spacing rules under Section 7.9(a),(b) and Section 9.
- (6) All exempt wells shall meet minimum well spacing criteria under Rule 7.9(a) and Section 9.
- (7) All permitted wells must comply with the production acreage rules under Rule 7.9(b).
- (8) All permitted well owners and exempt mining rig supply wells must submit well production reports under Section 8.
- (9) Export permit applications for groundwater to be transported out of the District will be processed under Section 11.
- (10) Brackish water permit applications will be processed under Section 10.
- (11) District orders requiring well capping or plugging will be processed under Rule 9.4.
- (12) District inspections and enforcement will be processed under Section 14.
- (13) District hearings will comply with Section 13.
- (14) The District will enforce the Groundwater Management Areas' adopted Desired Future Conditions under Section 16.

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 the District Act, Chapter 36 of the Texas Water Code, and other definitions as follow:

- (1) “**Abandoned well**” means a well that is not in use. A well is considered to be in use if:
 - a. the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;
 - b. the well is not a deteriorated well and has been capped;
 - c. the water from the well has been put to an authorized beneficial use, as defined by the Texas Water Code;
 - d. the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or
 - e. the owner is participating in the Conservation Reserve Program authorized by Sections 1231-1236, Food Security Act of 1985 (16 U.S.C. Sections 3831-3836), or a similar governmental program.
- (2) “**Acre-foot**” means the amount of water necessary to cover one acre of land one-foot deep, or about 326,000 gallons of water.
- (3) “**Agriculture**” means any of the following activities:
 - a. cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
 - b. the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
 - c. raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
 - d. planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
 - e. wildlife management; and
 - f. raising or keeping equine animals.
- (4) “**Administratively Complete Application**” is an application that has been declared administratively complete by the District based on a determination that the application contains the required information set forth in accordance with the District Rules and Sections 36.113, 36.1131 Texas Water Code, as amended, as applicable.
- (5) “**Agricultural use**” means any use or activity involving agriculture, including irrigation.
- (6) “**Aquifer**” means a geologic formation, or group of formations capable of yielding a significant amount of water to a well or spring.

- (7) **“Aquifer Storage and Recovery” or “ASR”** means a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator, as defined by Section 27.151, Water Code.
- (8) **“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.
- (9) **“ASR injection well”** means a Class V injection well used for the injection of water into a geologic formation as part of an aquifer storage and recovery project, as defined by Section 27.151, Water Code.
- (10) **“ASR recovery well”** means a well used for the recovery of water from a geologic formation as part of an aquifer storage and recovery project, as defined by Section 27.151, Water Code.
- (11) An **“authorized well site”** shall be:
 - a. the location of a proposed well on an application duly filed, until such application is denied, or
 - b. the location of a proposed well on a valid permit.
- (12) **“Beneficial Use” or “Beneficial Purpose”** means use for:
 - a. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational or pleasure purposes;
 - b. exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
 - c. any other economically beneficial purpose that is useful and beneficial to the users that does not commit waste.
- (13) **“Best available science”** means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.
- (14) **“Board”** means the Board of Directors of the District.
- (15) **“Brackish Groundwater”** means groundwater that contains 1,000 milligrams per liter or greater of total dissolved solids.
- (16) **“Casing”** A watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.
- (17) **“Conjunctive use”** means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.
- (18) **“Contiguous acreage”** means land and/or water rights with the same continuous boundary within the District that is owned or legally controlled for the purpose of groundwater withdrawal by the well owner or operator. Land and/or water rights that are owned or legally controlled by the well owner or operator that is separated only by a road, highway or river from other land owned or controlled by the well owner or operator is contiguous.

- (19) "**Desired future condition**" means a quantitative description, adopted in accordance with Section 36.108, Water Code, of the desired condition of the groundwater resources in a management area at one or more specified future times.
- (20) "**Deteriorated Well**" means a well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.
- (21) "**Discharge**" means the amount of water that leaves an aquifer by natural or artificial means.
- (22) "**District**" means the Evergreen Underground Water Conservation District.
- (23) "**District Act**" means the Evergreen Underground Water Conservation District enabling legislation, including Acts of May ____, 1965, 59th Leg. R.S., ch. 197, 1965 Tex. Gen. Laws 398; as amended by Acts of May 25, 1967, 60th Leg., R.S. ch. 1272, 1967 Tex. Gen. Laws 1676; Acts of May 30, 1983, 68th Leg., R.S., ch. 484, 1983 Tex. Gen. Laws 2852; and Acts of May 17, 1985, 69th Leg., R.S., ch. 438, 1985 Tex. Gen. Laws 2984.
- (24) "**District Office**" means the official office of the District as determined from time to time by resolution of the Board.
- (25) "**GPM**" means gallons per minute.
- (26) "**Groundwater**" or "**Underground water**" means water percolating below the surface of the earth.
- (27) "**Groundwater Management Area**" or "**GMA**" means an area designated and delineated by the Texas Water Development Board under Chapter 35 as an area suitable for management of groundwater resources.
- (28) "**Groundwater reservoir**" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.
- (29) "**Hearing Body**" means the Board, any committee of the Board, a Hearings Examiner, or the State Office of Administrative Hearings for any hearing held by the District.
- (30) "**Hearing Examiner**" means a person appointed to conduct a hearing or other proceeding.
- (31) "**Inflows**" means the amount of water that flows into an aquifer from another formation.
- (32) "**Landowner**" means the person who bears ownership of the land surface.
- (33) "**Modeled available groundwater**" or "**MAG**" means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108.
- (34) "**Monitoring Well**" means a well installed to measure or monitor some property of the groundwater or aquifer it penetrates, and does not produce more than 5,000 gallons of groundwater per year.
- (35) "**New Well Application**" means an application for a permit for a well that has not been drilled.
- (36) "**Nursery grower**" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose

of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

- (37) **“Open Meeting Law”** means Chapter 551, Government Code.
- (38) **“Person”** includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- (39) **“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.
- (40) **“Presiding Officer”** means the President, Vice-President, Secretary, or other Board member presiding at any hearing or other proceeding or a Hearing Examiner conducting any hearing or other proceeding.
- (41) **“Produce or Production”** means extracting groundwater by pumping or by another method.
- (42) **“Production Permit”** means a permit for a water well issued or to be issued by the District allowing the drilling of and production of a specified amount of groundwater for a designated period.
- (43) **“Project operator of an ASR project”** means a person holding an authorization under this subchapter G, Chapter 27, Water Code, to undertake an aquifer storage and recovery project.
- (44) **“Property legally assigned to a well”** is property owned or legally controlled for purposes of groundwater withdrawal by a well owner or operator and assigned to a well by the owner or operator.
- (45) **“Property Line”** means both surface real property boundary line and/or subterranean groundwater property boundary line when water rights have been severed
- (46) **“Public Information Act”** means Chapter 552, Government Code.
- (47) **“Public water supply well”** means, for purposes of a district governed by this chapter, a well that produces the majority of its water for use by a public water system.
- (48) **“Quorum”** means a majority of the directors of the Board.
- (49) **“Recharge”** means the amount of water that infiltrates to the water table of an aquifer.
- (50) **“Registration”** means a certificate issued by the District for exempt wells.
- (51) **“Rules”** means the rules of the District compiled in this document, as it may be supplemented or amended from time to time.
- (52) **“Subdivision of a groundwater reservoir”** means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

- (53) **“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.
- (54) **"Total aquifer storage"** means the total calculated volume of groundwater that an aquifer is capable of producing.
- (55) **“Transport”** means exporting, transferring, or moving groundwater outside the District.
- (56) **“Transport Permit”** means an authorization issued by the District allowing the transport of a specific quantity of groundwater outside the District’s boundaries for a designated time period. All applicable permit Rules apply to transport permits.
- (57) **“Waste”** as used herein shall mean any one or more of the following:
- a. 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;
 - b. The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
 - c. The escape of underground water from an underground water reservoir to any other reservoir that does not contain underground water;
 - d. The pollution or harmful alteration of groundwater in the aquifer;
 - e. 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
 - f. Groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge.
- (58) **“Water Meter”** means a water flow measuring device that can accurately record the amount of water produced during a measured time.
- (59) **“Water Rights Assigned to the Well”** are water rights owned or legally controlled for purposes of groundwater withdrawal by a well owner or operator and assigned to a specific well by the owner or operator.
- (60) **“Water Right Holder”** the person who has the legal authority to produce the groundwater associated with the land surface and the permit application.
- (61) **“Well”** means any facility, device, or method used to withdraw groundwater from the groundwater supply within the district.

- (62) “**Well Owner**” or “**Well Operator**” shall mean the permit applicant or permittee that has the legal right to produce groundwater from the land, except as those rights may be limited or altered by rules promulgated by the District, and Chapter 36 of the Texas Water Code, as amended, either by ownership, contract, lease, easement, or any other estate in the land or contractual right.
- (63) “**Well System**” means a well or group of wells tied to the same distribution or transportation system.
- (64) “**Windmill**” means a wind-driven or hand-driven device that uses a piston pump to remove groundwater.

RULE 1.2 PURPOSE OF RULES These rules are adopted pursuant to the authority of the District Act and Section 36.101, Texas Water Code, for the purpose of conserving, preserving, protecting, and recharging groundwater in the District, and these rules are adopted under the District’s statutory authority to prevent waste and to protect the rights of owners of interests 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 mail sent to the recipient’s last known address, or by fax or email. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by fax or email 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, permits, and orders

RULE 2.2 BOARD STRUCTURE, OFFICERS The Board consists of the members selected, 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 Act.

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.

RULE 2.5 EX PARTE COMMUNICATIONS Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested case before the Board, with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. A Board member may communicate ex parte with other members of the Board, if a quorum is not present

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.

RULE 3.2 DELEGATION OF AUTHORITY The Board may delegate to the General Manager ministerial acts of the Board, well registrations and ownership transfers or registrations and permits, and any financial transactions. The General Manager may delegate duties as 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. WASTE OF GROUNDWATER

RULE 5.1 WASTE PROHIBITED

- (a) Groundwater shall not be produced or used within or outside of the District in such a manner or under such conditions as to constitute waste as defined in Rule 1.1.
- (b) Any person producing or using groundwater shall use every possible precaution to stop and prevent waste of such water.
- (c) No person shall pollute or harmfully alter the character of a groundwater aquifer of the District by means of salt water or other deleterious matter admitted from other stratum or strata or from the surface of the ground.

RULE 5.2 ORDERS TO PREVENT WASTE/POLLUTION After providing notice to affected parties and an opportunity for a hearing, the Board may adopt orders to prohibit or prevent waste or pollution. If the Board determines that an emergency exists, requiring the immediate entry of an order to prohibit waste or pollution and protect the public health, safety, and welfare, the Board may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of fifteen (15) days or until a hearing can be conducted. Enforcement orders may be adopted under Section 14.

SECTION 6. REGISTRATION OF EXEMPT WELLS

RULE 6.1 EXCLUSIONS AND EXEMPTIONS

- (a) Exempt Water Wells The permit requirements in Section 7 do NOT apply to:
 - (1) all groundwater wells in the District that are either drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons of groundwater per day;
 - (2) the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig; or

- (3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities.
- (b) The District may require a well to be permitted by the District and to comply with all District rules if:
 - (1) a groundwater well exempted under Subsection (a)(1) is altered to be capable of producing more than 25,000 gallons of groundwater per day;
 - (2) the purpose of a well exempted under Subsection (a)(2) is no longer used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or
 - (3) the withdrawals from a well exempted under Subsection (a)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

RULE 6.2 REGISTRATION OF EXEMPT WELLS

- (a) **All exempt water wells, under Rule 6.1, shall be registered with the District.**
 - (1) **All exempt wells, whether new or existing, shall be registered with the District by the well owner or operator on a form(s) prescribed by the General Manager as an application for a Registration.** After review and determination by the General Manager that the well is exempt, the owner or operator shall be issued a Certificate of Registration. A fee may be charged for the registration of exempt wells.
 - (2) **New exempt wells shall obtain a Certificate of Registration from the District prior to the well being drilled.** The applicant and/or the well driller violate the District's Rules and Chapter 36, Texas Water Code, by drilling or causing to be drilled, a well(s) without prior authorization from the District;
 - (3) Exempt wells that are not registered with the District shall be subject to District enforcement for violation of District Rules.
 - (4) Exempt wells that do not have a Certificate of Registration shall not be protected by the District.
- (b) New exempt water wells shall be drilled, equipped and maintained so as to conform with the Texas Department of Licensing and Regulation's requirement, as well as the District's Rule 7.9(a)(1) and Section 9 requiring location spacing and installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.
- (c) A copy of the Driller's Report must be filed with the District within (60) sixty days from well completion.
- (d) Except as provided below, a permit may be required for a Monitor Well or a Remediation Well. A copy of the Driller's Report must be filed with the District within (60) sixty days from well completion. If the use of Monitor Well or Remediation Well is changed to produce

non-contaminated water, it then becomes subject to the permitting or registration requirements of these Rules depending upon use and volume.

- (e) An exemption provided under Rule 6.1 does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.
- (f) A registration for a well or well site will automatically expire within one year from its issuance if the registered well(s) has not been completed or is not under significant development.

SECTION 7. PERMITTING OF NON-EXEMPT WELLS

RULE 7.1. Permit to Produce Groundwater (“Production Permit”)

- (a) **No person, including a well owner or well driller, shall construct or drill a well without first obtaining a production permit from the District, unless the well is exempt under Rule 6.1(a).** An application for a production permit must be completed in accordance with Rule 7.2.
- (b) **All new and existing wells shall be permitted by the District, unless the well is exempt under Rule 6.1.** The permit shall be applied for by the well owner or operator on a form(s) prescribed by the General Manager as an application for a Production Permit.
- (c) Except as provided by Rule 7.12, no person shall modify or alter an existing well or alter the size of a pump without a production permit or permit amendment, unless the well is exempt under Rule 6.1.
- (d) all permitted wells must comply with District Rules, including but not limited to, the District’s Production and Spacing requirements in Rule 7.9, well specification requirements in Section 9, and reporting requirements in Section 8.

RULE 7.2 Permit Application

- (a) The permit application provided for herein must be filed with the District on a form(s) promulgated by the District and such permit application must be granted by the District prior to the drilling of a water well and proposed production of water, all in accordance with the provisions of District Rules.
- (b) An application for a Production Permit is required to have the following information:
 - (1) be in writing and sworn to;
 - (2) contain the name, post-office address and place of residence or principal office of the applicant;
 - (3) state the location of the well(s), with physical address or description and GPS coordinates. The District may access the well location and take GPS coordinates and photographs;
 - (4) the applicant must provide evidence that they have the legal authority to produce the groundwater associated with the land surface and the permit application. The applicant must also provide any documents that transfers that right to own, control, or produce the groundwater rights to another person/entity that are associated with

the land surface and the permit application. A permit may be amended or revoked if the groundwater rights or right to produce are legally transferred to another person/entity. The applicant shall attest to the information required in this rule by a District-provided affidavit form and submit the affidavit with the permit application;

- (5) if the applicant is not the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;
- (6) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose and any evidence supporting the authenticity of the intended beneficial use;
- (7) the estimated rate at which groundwater will be withdrawn and where the water is proposed to be used;
- (8) the total amount of groundwater that will be used annually for the specified beneficial purpose;
- (9) identify the well owner's/operator's total number of acres of land and/or water rights contiguous in ownership with the land where the well is to be located;
- (10) state the anticipated time within which the proposed construction or alteration is to begin;
- (11) state the presently anticipated duration required for the proposed use of the water;
- (12) 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, including but not limited to any studies performed related to the proposed well or general well site within the last five years;
- (13) the District may require a report by a registered professional in hydrogeology be submitted with operating permit applications or amendments to evaluate the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the District.

Depending on the proposed application's potential effect of the withdrawal, the District may require a report by a registered professional in hydrogeology be submitted with the following requirements:

- (A) **Hydrogeological Study Type 1:** an evaluation of the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, or effects on existing permit holders or other groundwater users in the District; The evaluation report shall include the following:
 - (i) The depth interval and water bearing zone proposed to be screened, the anticipated thickness of the water bearing zone, and whether the water bearing zone is anticipated to be in an unconfined or confined condition.
 - (ii) A table giving data on each registered or permitted well located within one mile of the well(s) and screening the same aquifer. The well table shall include the name of the well owner, well registration or permit

number, casing and screen diameters and depth settings, total well depth, and aquifer screened. A map shall be provided showing the location of the well(s) at a scale no greater than one-inch equals 1,000 feet.

- (iii) An estimate of the drawdown that can be caused by pumping the well(s) at the permitted rate for one year and ten years at a distance of up to five miles from the well(s). Water-level drawdown contours shall be shown at ten-foot contour intervals. The estimate can be developed using either a numerical or analytical well solution that adequately represents the well and aquifer configuration. The model aquifer parameters should be developed based on a review of available hydrogeological data including the most recent TWDB approved version of the GAM. Aquifer hydraulic data available from other sources than the TWDB approved GAM and in proximity to the well(s) also can be considered in estimating the water level drawdown effects of pumping.
- (iv) A table giving the estimated drawdown at the locations of existing registered and permitted wells contained in the EUWCD database that screen the same aquifer as the well(s) and are located within one mile of the well(s).

(B) **Hydrogeological Study Type 2:** the study shall be conducted by a registered professional engineer or geologist that has expertise in groundwater hydrology evaluating the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, or effects on existing permit holders or other groundwater users in the District. Five paper copies and a digital copy of the report shall be submitted with the permit application. The evaluation report shall include the following:

- (i) A description of the hydrogeologic conditions in proximity to the well(s) that includes: a. the surface geology b. the depth interval of the proposed water bearing zone c. the anticipated thickness of the water bearing zoned. a statement of whether the water bearing zone is anticipated to be in unconfined or confined condition e. a description of any hydrologic features or geologic features located within one mile of the proposed well(s) site(s),
- ii) A well table giving data on each registered or permitted well located within one mile of the well(s) and screening the same aquifer. The well table shall include the name of the well owner, well registration or permit number, casing and screen diameter and depth settings, total well depth, and aquifer screened. A map shall be provided showing the location of the well(s) at a scale no greater than one-inch equals 1,000 feet.
- (iii) An estimate of the water-level drawdown that can be caused by pumping the well(s) at the permitted rate for one year and ten years at a distance of five miles from the well(s). Water-level drawdown

contours shall be shown at ten-foot contour intervals. The estimate of pumping effects shall be developed using the most recent TWDB approved version of the GAM, as applicable. Aquifer hydraulic data available from other sources for wells located in proximity to the well(s) should be considered in estimating the water-level drawdown effects of pumping. Include in the evaluation an estimate of the drawdown at the locations of existing registered and permitted wells contained in the EUWCD database that screen the same aquifer as the well(s) and are located within one mile of the well(s). This estimate shall be developed using an analytical tool or numerical model approved by the District and the best available science concerning local aquifer properties such as transmissivity and storativity;

- (14) 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;
- (15) if the water is to be resold, provide a description of:
 - (A) the service area, the metering and leak detection and repair program,
 - (B) the drought or emergency water management plan, and
 - (C) 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;
- (16) identify well(s) producing from the same formation on land adjacent to the property where the well is located and where the proposed well is to be located;
- (17) 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;
- (18) state the depth of the water-bearing formation which the applicant proposes to utilize for the well;
- (19) the application may be required to 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;
- (20) the permit application must be accompanied by an application fee;
- (21) a well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the District;
- (22) the identity of the well driller, including the well driller's license number;

- (23) The permit and registration application may also require additional information, including but not limited to: a physical address of the well site location, a legal description of the property (plat or survey); a site map that shows the location and distance of the proposed well to existing wells, property lines, septic tank, drain field, structures, neighboring septic systems if located closer than 100 feet and any other sources of contamination within 50 feet; and a copy of the warranty deed, a construction diagram for well construction and/or plugging, pump specifications (including type, horsepower, and pump curve);
- (24) 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; and
- (25) drilling may not begin until the permit application is granted.

RULE 7.3 DISTRICT CONSIDERATIONS

- (a) Before granting or denying a production permit for a well, or permit amendment under §36.1146, the District shall consider whether:
 - (1) the application conforms to the requirements prescribed by these Rules and Chapter 36, Texas Water Code, and is accompanied by the prescribed fees, and is therefore Administratively Complete;
 - (2) the applicant violated the District's Rules and Chapter 36, Texas Water Code, prior to submitting its application to the District by either drilling or operating a well(s) without a permit;
 - (3) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
 - (4) the proposed use of water is dedicated to a beneficial use and whether sufficient evidence of an intended beneficial use is presented;
 - (5) the proposed use of water is consistent with the District's Certified Water Management Plan, including the District's Availability Goals;
 - (6) the applicant has agreed to avoid waste and achieve water conservation;
 - (7) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure; and
 - (8) would not be otherwise contrary to the public welfare.

This section does not apply to the renewal of a production permit issued under §36.1145.

- (b) The District may impose more restrictive permit conditions on new permit applications and applications for increased use by historic users, provided that:
 - (1) such limitations apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;

- (2) such limitations bear a reasonable relationship to the existing District Management Plan; and
 - (3) such limitations are reasonably necessary to protect existing use.
- (c) Permits and permit amendments may be issued subject to the Rules promulgated by the District and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.
- (d) Changes in the use of groundwater under a District permit may not be made without the prior approval of a permit amendment issued by the District.
- (e) Permits Based on Modeled Available Groundwater
- (1) The District, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.
 - (2) In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:
 - (A) the modeled available groundwater determined by the Texas Water Development Board;
 - (B) the Texas Water Development Board's estimate of the current and projected amount of groundwater produced under exemptions granted by District Rules and Section 36.117;
 - (C) the amount of groundwater authorized under permits previously issued by the District;
 - (D) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and
 - (E) yearly precipitation and production patterns.

RULE 7.4 OPERATING PERMIT TERM AND RENEWAL

- (a) Application Deadline An application to renew permits must be made within fourteen (14) calendar days prior to the last scheduled Board meeting before the expiration of the permit. If an application to renew a permit is not received during this time, the permit may lapse and the well owner may be subject to penalty if the well is operated without a valid permit. Once the permit has lapsed, the landowner or well owner may have to apply for a new operating permit.
- (b) Duration of Permit All operating permits and permit renewals are effective for a term of five (5) years from the date a permit is granted, unless otherwise stated on the permit. Except, a production permit for a well or well site will automatically expire one year from its issuance if the permitted well(s) has not been completed or is not under significant development.
- (c) Processing Fee The application to renew a permit shall be accompanied by payment of the application processing fee established by the Board, if any.

(d) Decision on Renewal Application

- (1) Except as provided by Subsection (2), the District shall, without a hearing, renew or approve an application to renew a production permit before the date on which the permit expires, provided that:
 - (A) the application is submitted in a timely manner and accompanied by any required fees in accordance with District rules; and
 - (B) the permit holder is not requesting a change related to the renewal that would require a permit amendment under District rules.
- (2) The District is not required to renew a permit under this section if the applicant:
 - (A) is delinquent in paying a fee required by the District;
 - (B) is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule, including but not limited to required reporting of production under Section 8, that has not been settled by agreement with the District or a final adjudication; or
 - (C) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or rule.
- (3) If the District is not required to renew a permit under Subsection (2)(B), the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.
- (4) (A) If the holder of a production permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District rules, the permit as it existed before the permit amendment process remains in effect until the later of:
 - (i) the conclusion of the permit amendment or renewal process, as applicable; or
 - (ii) final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.(B) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Section 36.1145 without penalty, unless Subsection (b) of that section applies to the applicant.
(C) The District may initiate an amendment to a production permit, in connection with the renewal of a permit or otherwise, in accordance with the District's rules. If the District initiates an amendment to a production permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

RULE 7.5 AGGREGATION OF WITHDRAWAL

In issuing a production permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District, at the discretion of the District. Applicable spacing requirements and production allowances will be considered in

determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production.

RULE 7.6 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. To protect the permit holder from the illegal use of a new landowner, within ten (10) days after the date of sale of property containing a well having been issued a production permit, the operating permit holder must notify the District in writing of the name of the new owner. Any person who becomes the owner of a currently permitted well must, within forty-five (45) calendar days from the date of the change in ownership, file an application for a permit amendment to affect a transfer of the permit.
- (c) The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.
- (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.
- (j) The permittee will use reasonable diligence to protect groundwater quality and will follow well-plugging guidelines at the time of well closure.

RULE 7.7 OPERATING PERMIT LIMITATIONS

- (a) Maximum Authorized Withdrawal. It is a violation of these Rules to withdraw any amount of water over the authorized permit limits. 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.
- (b) Production Permit Required. It is violation of these Rules to withdraw groundwater from a non-exempt well without a production permit from the District, except as provided by Rule 6.1(a).

RULE 7.8 PERMIT AMENDMENTS

- (a) Permit Amendment Increasing Authorized Production or Change of Use. A written application for a permit amendment to increase the authorized production or to change the use must be filed and an amendment granted before any over pumpage or change of use occurs.
 - (1) Submission of application. An applicant for a permit amendment increasing the authorized production or changing the use must demonstrate that the production will be put to a beneficial use, and is consistent with the District's Rules, including Rule 7.2 regarding permit applications, and the Management Plan.
 - (2) Action on amendment. Applications to increase the authorized production or change of beneficial use shall be considered and acted on by the Board.
- (b) Amendment to Decrease Authorized Production. The General Manager may rule on any application for a permit amendment to decrease the authorized production. The General Manager may grant such amendment without notice, hearing, or further action by the Board.
- (c) Amendment to Transfer Ownership of a Permit. The General Manager may rule on any application for a permit amendment to transfer the ownership of any permit. The written, sworn application shall include a request to make the ownership change and show the authority for requesting the change. The General Manager may grant such an amendment without notice, hearing, or further action by the Board. While the application is pending, the new owner may continue to operate the well.
- (c) District-Initiated Amendments. The District, through its Board, may initiate a permit amendment(s) to Permits with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, including but not limited to enforce the adopted desired future conditions of the aquifer(s), lessen interference between wells, or

control and prevent subsidence. District-initiated permit amendments are subject to notice and hearing under Section 13. If the District initiates an amendment to a production permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

RULE 7.9 SPACING AND PRODUCTION REQUIREMENTS:

(a) Well Spacing

(1) Well Spacing in accordance with the Texas Department of Licensing and Regulation

All registered and permitted wells shall be located in compliance with the Texas Department of Licensing and Regulations rule *16 Texas Administrative Code, Chapter 76.100*:

(A) Siting Method. A well shall be located a minimum horizontal distance of one hundred fifty (150) feet from any concentrated sources of potential contamination such as, but not limited to, existing or proposed livestock or poultry yards, cemeteries, pesticide mixing/loading facilities, and privies, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates. A well shall be located a minimum horizontal distance of one hundred (100) feet from an existing or proposed septic system absorption field, septic system spray area, a dry litter poultry facility and fifty (50) feet from any adjacent property line provided the well is located at the minimum horizontal distance from the sources of potential contamination.

(B) A well shall be located a minimum horizontal distance of fifty (50) feet from any water-tight sewage and liquid-waste collection facility except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates.

(C) Alternative siting methods

(i) The distances given for separation of wells from sources of potential contamination in subsection (a)(1) may be decreased to a minimum of fifty (50) feet provided the well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressure filled to the depth of one hundred (100) feet to the surface provided the annular space is three inches larger than the casing. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the production zone. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the production zone. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata.

(ii) A well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressure filled to the depth of one hundred (100) feet to the surface provided the annular space is three (3) inches larger than the casing may encroach up to five (5) feet of the property line. For wells less than one hundred (100) feet deep, the

cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water production zone.

(2) Well Spacing from other Registered and Permitted Wells

All new permitted wells and registered oil and gas wells shall be spaced a minimum of one foot for each gallon per minute of production capability from all existing permitted and registered 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) Groundwater Production Limits

- (1) 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 (approximately 2 acre-feet/acre).
- (2) The cumulative annual production allowance shall be computed by District personnel and may be assessed according to 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.
- (3) The maximum production rate may be further limited in the Production Permit based on the evaluation of the studies that may be required to be submitted with the application in Rule 7.2 to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, including but not limited to enforce the adopted desired future conditions of the aquifer(s), and lessen interference between wells.
- (4) Retail public water utilities may only claim acreage within their CCN or service area if:
 - (A) the well is located or to be located within their CCN or service area;
 - (B) the well meets the District's spacing rules; and
 - (C) the production limit shall not exceed 600 gallons/service connection/day.

RULE 7.10 EXCEPTION TO SPACING AND PRODUCTION RULE:

- (a) If the applicant presents waivers signed by the landowners and/or registration/permit holders that are located within the spacing-requirement circumference of the applied-for well(s), stating that they have no objection to the proposed location of the well site, a waiver to the spacing requirements may be granted for the new proposed well location.

A waiver may be submitted to the District by a single permit holder to waive the spacing requirements between the permit holder's own wells within in a single well field. The District may waive the spacing requirements on the well field if the applicant submits

adequate evidence showing that the increased cone of depression caused by the well field will not increase the impact on nearby existing wells, or cause an overall reduction in the total amount of groundwater available within the District, any greater than the spacing requirements under Rule 7.9(a)(2).

- (b) Providing an applicant can show, by clear and convincing evidence, good cause why a new well should be allowed to be drilled closer than the required spacing of Rule 7.9(a)(2), the issue of spacing requirements will be considered during the permitting process. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board may limit the production of the well(s) to minimize injury to existing wells or the aquifer.
- (c) The Board or General Manager, if authorized by the Board, may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing spacing requirements.

Rule 7.11 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 a 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 any time 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 any time 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 7.12 REWORKING OR REPLACING EXISTING WELLS:

- (a) Reworking, Re-drilling, Re-equipping Wells or Changes to the Intended Use of a Well
 - (1) An existing well may be reworked, re-drilled, or re-equipped in a manner that will

not change the existing well status without obtaining a permit amendment.

- (2) A permit amendment must be applied for and the Board will consider approving the permit, if a person wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe or gpm rate by reworking, re-equipping, or re-drilling such well as described in this section.

(b) Replacement Well(s) must first obtain a Registration of Production Permit, as applicable

- (1) A permit must be applied for and granted by the Board if a person wishes to replace an existing well with a replacement well.
- (2) A replacement well must be completed in the same aquifer as the well it replaces, and shall not be drilled, equipped, or completed so as to increase the rate of production of water from the well it replaces. A replacement well must not be located closer to any other well or authorized well site unless the new location complies with the minimum spacing requirements of Rule 7.9, otherwise, the well shall be considered a new well for which an application must be made.
- (3) In the event the application meets spacing and production requirements, and satisfies all requirements of these Rules, the Board or General Manager may grant such application without further notice.
- (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 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:
 - (A) plugged according to Rule 9.4 herein;
 - (B) If the well is not deteriorated, as defined in Rule 1.1 herein, the well shall be capped according to rule 9.4 herein; or
 - (C) properly equipped in such a manner that it cannot produce more than 25,000 gallons per day, or 17.5 gallons per minute.

An exception to the required plugging of the well may be granted if, upon coordination with the District, the well is converted to a monitoring well.

SECTION 8 REPORTING

RULE 8.1 REPORTING OF GROUNDWATER PRODUCTION

- (a) The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources.
- (b) The permittee authorized to produce water for an agricultural irrigation 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.

- (c) The following permittees and registrants shall file with the District monthly reports describing the metered amount of water produced and used for the permitted or registered 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:
- (1) permits to produce water for purposes of use other than agricultural irrigation or livestock;
 - (2) permits to produce brackish groundwater under Rule 10.1;
 - (3) exempt registered wells that are solely used for oil and gas rig supply wells under Rule 6.1(a)(2); and
 - (4) exempt registered wells associated with a mining permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, under Rule 6.1(a)(3).

RULE 8.2 MONITORING DEVICES:

All production facilities or wells subject to the requirements of this Section 8.1 (c)-(e) 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.

RULE 8.3 NON-COMPLIANCE OF REPORTING

Failure to file the required reports shall result in forfeiture of withdrawal rights. The Board may require a non-compliant well owner to apply for a permit for the well or prohibit further withdrawals from the well.

SECTION 9. WELL SPECIFICATIONS

RULE 9.1. LOCATIONS OF WELLS:

- (a) After an application for a well permit has been granted, the well must be drilled within thirty (30) feet of the location specified in the permit.
- (b) The location of a well shall meet, at a minimum, the requirements specified in the Administrative Rules of the Texas Department of Licensing and Regulation in *16 Texas Administrative Code, Chapter 76*, as amended, as well as the spacing requirement in Rule 7.9.
- (c) 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, so as to maintain a junction between the casing and pump column, and a steel sleeve extending a minimum of thirty-six (36) inches above ground level and twenty-four (24) inches below the ground surface.

RULE 9.2 MINIMUM STANDARDS OF WELL COMPLETION:

Wells must be completed in accordance with all applicable State and local standards, including but not limited to 31 Texas Administrative Code Chapter 290 (TNRCC Water Hygiene Rules for Public Water Supply Systems) and 16 Texas Administrative Code Chapter 76 (Rules for Water Well Drillers and Water Well Pump Installers).

Water well drillers, who shall be licensed by the State of Texas, must indicate the method of completion performed on the Well Report (TNRCC-0199) Section 10 Surface Completion form, as updated.

RULE 9.3 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 9.4 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 an abandoned 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 wellpump equipment is removed from a well and the well will be re-equipped at a later date, the well must be capped. The cap must be a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least four hundred (400) pounds and constructed in such a way that the covering cannot be easily removed by hand.
- (c) **Plugging Wells.** It is the responsibility of the landowner to plug a well that is deteriorated or abandoned. A deteriorated or abandoned well pursuant to the regulations applying to Water Well Drillers in 16 Texas Administrative Code, Chapter 76.
- (d) 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.
- (e) **Commingling of Undesirable Water**
 - (1) The permit holder shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the well bore to other porous strata.

- (2) If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well recompleted within the applicable Rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.
- (3) The Board may direct the permit holders to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

RULE 9.5 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.

SECTION 10. PERMIT FOR PRODUCTION OF BRACKISH GROUNDWATER:

RULE 10.1 BRACKISH PERMIT APPLICATION

- (a) Subject to limitations imposed upon withdrawals as specified under these rules, a person may be permitted to produce brackish groundwater from a well(s) on their property, or property for which person can show possession of groundwater rights, up to a maximum production of 3 acre-feet/acre/year.
- (b) A permit application for a Brackish Groundwater Production Permit(s) of five thousand (5000) acre-feet or more annually, must meet all the requirements of this rule and Rule 7.2 except as noted below.
 - (1) Certified water quality test results for the groundwater to be produced.
 - (2) 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.
 - (A) **Hydrology Report:** 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 effect on any fresh groundwater zone.
 - (B) **Well Construction:** In addition to the standards required by Section 9, 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.

- (C) **Permit production and spacing limitations:** The provisions of Rule 7.9(b) do not apply to the production of brackish groundwater pursuant to a Brackish Groundwater Production Permit issued by the District. Brackish groundwater production permit amounts 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 10.1(b)(2)(A).
- (D) **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.
- (E) **Large Scale Groundwater Pumping Projects:** Rule 7.11 does not apply to brackish groundwater production Permit.
- (F) All brackish groundwater extraction/recovery wells must have a dedicated 4-inch diameter Carrizo Aquifer monitoring well located within 100 feet of the well.

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 waterlevels.

- (i) 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.

- (ii) Chemical analysis reports of samples taken 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 11 TRANSFER OF GROUNDWATER OUT OF THE DISTRICT

RULE 11.1. Permit Required

Groundwater produced from a well within the District may not be transported outside the District's boundaries unless the Board has issued the well owner or operator a transport permit, except as provided within these Rules.

RULE 11.2. Applicability

- (a) A person proposing to transport groundwater out of the District must obtain a transport permit, in addition to a production permit for a well to:
 - (1) increase, on or after March 2, 1997, the amount of groundwater to be transferred under a continuing arrangement in effect before that date; or
 - (2) transfer groundwater out of the District on or after March 2, 1997, under a new arrangement.
- (b) The District may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.

RULE 11.3. Application

An application for a transport permit must be filed in the District office and must include the information required under Section 7 for a production permit, plus the following information:

- (a) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested, including the:
 - (1) location of the proposed receiving area for the water to be transported;
 - (2) information describing alternate sources of supply that might be utilized by the applicant and the groundwater user, and the feasibility and practicability of utilizing such supplies; and
 - (3) description of the amount and purpose of use in the proposed receiving area for which water is needed.

- (b) the projected effect of the proposed groundwater transport on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District, including:
 - (1) a hydrogeological report by a registered professional in hydrogeology assessing the impact of the proposed well on existing wells and the aquifer from which withdrawals are proposed;
 - (2) information describing the projected effect of the proposed transporting of water on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District;
 - (3) the names and addresses of the landowners and/or registration/permit holders and the location of their water wells, that are located within the spacing-requirement circumference of the applied-for well from which water to be transported to the proposed receiving area is to be produced; and
 - (4) any proposed plan of the applicant to mitigate adverse hydrogeologic impacts of the proposed transport of water from the District.
- (c) the approved Regional Water Plan and certified District Management Plan, including a description of how the proposed transport is addressed in any approved regional water plan(s), and the certified District Management Plan.
- (d) a technical description of the facilities to be used for transportation of water and a time schedule for any construction thereof, that will be used to establish the term of the transport permit, under Section 36.122 (i) of the Texas Water Code.

RULE 11.4. Hearing and Permit Issuance

- (a) Applications for transport permits are subject to the hearing procedures provided by these Rules in Section 13.
- (b) In determining whether to issue a permit to transfer groundwater out of the District, the Board shall be fair, impartial, and nondiscriminatory and shall consider the following factors when deciding whether to issue or impose conditions on a drilling, operating, or transport:
 - (1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
 - (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
 - (3) the approved regional water plan and certified District Management Plan.
- (c) The District may not deny a transport permit based on the fact that the applicant seeks to transport groundwater outside of the District and may not impose more restrictive permit conditions on transporters than the District imposes on existing in-District users, unless:
 - (1) such limitations apply to all subsequent new operating permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use;

- (2) such limitations bear a reasonable relationship to the existing District Management Plan; and
- (3) such limitations are reasonably necessary to protect existing use.
- (d) In addition to conditions provided by Section 36.1131, Texas Water Code, the operating permit to transport water out of the District shall specify:
 - (1) the amount of water that may be transferred out of the District; and
 - (2) the period for which the water may be transferred, which shall be:
 - (A) at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit, and shall be automatically extended to the terms 30 years if construction of a conveyance system is begun before the expiration of the initial term; or
 - (B) at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.
- (e) Periodic Review
 - (1) The District may periodically review the amount of water that may be transferred under a production permit to transport water out of the District and may limit the amount if additional factors considered, related to the factors in Subsection (b), above.
 - (2) After conducting its periodic review, more restrictive permit conditions may only be imposed if the factors in Subsection (c), above, are met

RULE 11.5. Export Fees

- (a) The District shall assess a fee of \$0.025 (2.5 cents) per one thousand (1000) gallons of groundwater transported out of the District. The transport permit application must be accompanied by the application processing fee, inspection fee, or other fees as appropriate. Such fees must be paid before notice is published and mailed. Payment of all fees, including export fees, remain the responsibility of the permit holder.

SECTION 12. AQUIFER STORAGE AND RECOVERY PROJECTS

RULE 12.1

- (a) In this section, "aquifer storage and recovery project," "ASR injection well," "ASR recovery well," and "project operator" have the meanings assigned by Section 27.151.
- (b) Registration and reporting of wells A project operator shall:
 - (1) register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with any district in which the wells are located;
 - (2) each calendar month by the deadline established by the commission for reporting to the commission, provide the District with a copy of the written or electronic report required to be provided to the commission under Section 27.155; and

- (3) annually by the deadline established by the commission for reporting to the commission, provide the District with a copy of the written or electronic report required to be provided to the commission under Section 27.156.
- (c) If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by the commission to be recovered under the project, the project operator shall report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection (1)(b).
- (d) The ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells exceeds the volume authorized by the commission to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by the commission to be recovered.
- (e) A project operator may not recover groundwater by an aquifer storage and recovery project in an amount that exceeds the volume authorized by the commission to be recovered under the project unless the project operator complies with the applicable requirements of the District as described by this section.
- (f) Fees and Surcharges
 - (1) The District may not assess a production fee or a transportation or export fee or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by the commission to be recovered.
 - (2) The District may assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that the District assesses such a fee for other wells registered with the District.
- (g) Desired Future Conditions The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an aquifer storage and recovery project in the planning for and monitoring of the achievement of a desired future condition for the aquifer in which the wells associated with the project are located.
- (h) Aquifer storage and recovery projects in the District are subject to interlocal agreements or other contractual agreements with the District.

SECTION 13 HEARINGS

RULE 13.1. Types of Hearings

The District conducts two general types of hearings: (1) hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after notice and an opportunity for an adjudicative hearing, and (2) 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. The District, however, may use its discretion to conduct a hearing on other relevant subject matters. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner, at the Board's discretion.

(a) Permit Hearings:

- (1) Permit Applications, Amendments, and Revocations: The District will hold hearings on water well drilling permits, operating permits, transport permits, permit renewals or amendments, and permit revocations or suspensions. Hearings involving permit matters may be scheduled before the Board or a Hearing Examiner, at the Board's discretion. 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 under Rule 13.3. The Board may grant the application, in whole or in part, or refer the application to the Hearings Examiner for a hearing. If a Person requests a contested case hearing, the Board shall proceed under Rules 13.2-13.6.
- (2) Hearings on Motions for Rehearing: Motions for Rehearing will be heard by the Board pursuant to Rule 13.5(q).

(b) Rulemaking Hearings:

District Management Plan: as required by Chapter 36 of the Texas Water Code, the Board will hold hearings to consider amendments to the District's Management Plan and District Rules pursuant to Rule 13.6.

(c) Other Matters:

A public hearing may be held on any matter within the jurisdiction of the Board if the Board determines a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District.

RULE 13.2. Notice and Scheduling of Permit-Related Hearings

- (a) The District shall promptly consider and act on each administratively complete application for a permit. If, within 60 days after the date an administratively complete application is submitted, the application has not been acted on or set for a hearing on a specific date, the applicant may petition the District court of the county where the land is located for a writ of mandamus to compel the District to act on the application or set a date for a hearing on the application, as appropriate.

Applications that are not administratively complete will be sent back to the applicant with a list of needed information. If the District does not receive an administratively complete application within 60 days of the District sending the incomplete application notice, then the District may consider the application expired. If an incomplete application expires, the

applicant will be required to submit a new application and the deadlines under this Rule will begin again.

For applications requiring a hearing, the initial hearing shall be held within 35 days after the setting of the date, and the District shall act on the application within 60 days after the date the final hearing on the application is concluded. An administratively complete application requires information set forth in accordance with Sections 36.113, 36.1131, and these Rules.

(b) Notice of permit hearing.

- (1) If the general manager or Board schedules a public hearing on an application for a permit or permit amendment for which a hearing is required, the general manager or Board shall give notice of the public hearing as provided by this section.
- (2) The notice must include:
 - (A) the name of the applicant;
 - (B) the address or approximate location of the well or proposed well;
 - (C) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
 - (D) the time, date, and location of the public hearing; and
 - (E) any other information the general manager or Board considers relevant and appropriate.
- (3) Not later than the 10th day before the date of a hearing, the general manager or Board shall:
 - (A) post notice in a place readily accessible to the public at the District office;
 - (B) provide notice to the county clerk of each county in the District; and
 - (C) provide notice by:
 - (i) regular mail to the applicant;
 - (ii) regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (4); and
 - (iii) regular mail to any other person entitled to receive notice under the rules of the District.
- (4) A person may request notice from the District of a public hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a public hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.
- (5) Failure to provide notice under Subsection (3)(c)(ii) does not invalidate an action taken by the District at the hearing.

- (c) The General Manager may schedule as many applications at one hearing as the General Manager deems necessary. The District may require each person who participates in a public hearing to submit a hearing registration form stating:
 - (1) the person's name;
 - (2) the person's address; and
 - (3) whom the person represents, if the person is not there in the person's individual capacity. Hearings will be held in accordance with Section 13.
- (d) Hearings may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. All permit hearings will be held at the District Office. However, the Board may from time to time change or schedule additional dates, times, and places for permit hearings by resolution adopted at a regular Board meeting. The General Manager is instructed by the Board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings. Other hearings will be scheduled at the dates, times, and locations set at a regular Board meeting.
- (e) The District may assess fees to permit applicants for administrative acts of the District relating to a permit application. Fees set by the District may not unreasonably exceed the cost to the District of performing the administrative function for which the fee is charged.

RULE 13.3. Board Action; Contested Case Hearing Request; Preliminary Hearing

- (a) The Board may take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The Board may issue a written order to:
 - (1) grant the application;
 - (2) grant the application with special conditions; or
 - (3) deny the application.
- (b) The Board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted under Section 36.415. The preliminary hearing may be conducted by:
 - (1) a quorum of the Board;
 - (2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or
 - (3) the State Office of Administrative Hearings under Section 36.415.
- (c) Following a preliminary hearing, the Board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the Board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the Board may take any action authorized under Subsection (a).
- (d) An applicant may, not later than the 20th day after the date the Board issues an order granting the application, demand a contested case hearing if the order:

- (1) includes special conditions that were not part of the application as finally submitted;
or
- (2) grants a maximum amount of groundwater production that is less than the amount requested in the application.

RULE 13.4. Determination of Contested Status of Permit Hearings

- (a) Written Notice of Intent to Contest. Any person who intends to protest a permit application and request a contested case hearing must provide written notice of the request to the District by 5 p.m. the day prior to the public hearing and possible Board action on the permit application.
- (b) Participation in a Contested Permit Hearing. The Board or Hearing Examiner may limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.
- (c) Informal Hearings. Permit hearings may be conducted informally when, in the judgment of the Board or Hearing Examiner, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- (d) Agreement of Parties. If, during an informal proceeding, all parties reach a negotiated or agreed settlement that, in the judgment of the Board or Hearing Examiner, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the Board or Hearing Examiner will summarize the evidence and make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.
- (e) Decision to Proceed as Uncontested or Contested Case. If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Board or Hearing Examiner determines these issues will require extensive discovery proceedings, the Board or Hearing Examiner will declare the case to be contested and convene a pre-hearing conference as set forth in Rule 13.5 and 13.6. The Board or Hearing Examiner may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions the Board or Hearing Examiner deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the Board or Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.

RULE 13.5. General Permit-Related Hearing Procedures

- (a) A hearing must be conducted by:
 - (1) a quorum of the Board; or
 - (2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
 - (3) the State Office of Administrative Hearings under Section 36.416 of the Texas Water Code.
- (b) Except as provided by Subsection (c), below, the Board president or the hearings examiner shall serve as the presiding officer at the hearing.
- (c) If the hearing is conducted by a quorum of the Board and the Board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.
- (d) Hearings under the State Office of Administrative Hearings
 - (1) if the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code. The District may adopt rules for a hearing conducted under this section that are consistent with the procedural rules of the State Office of Administrative Hearings.
 - (2) If requested by the applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct the hearing. The applicant or other party must request the hearing before the State Office of Administrative Hearings not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The hearing must be held in Travis County or at the District office or regular meeting location of the Board, unless the Board provide for hearings to be held at a different location. The District shall choose the location.
 - (3) The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party. All other costs may be assessed as authorized by this chapter or District rules.
 - (4) An administrative law judge who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing, but the District deciding the case may not supervise the administrative law judge.
 - (5) The District shall provide the administrative law judge with a written statement of applicable rules or policies.
 - (6) The District may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

- (e) Final Decision; Contested Case Hearings
 - (1) In a proceeding for a permit application or amendment in which the District has contracted with the State Office of Administrative Hearings for a contested case hearing, the Board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge consistent with.
 - (2) A Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the Board determines:
 - (A) that the administrative law judge did not properly apply or interpret applicable law, District rules, written policies provided under Section 36.416(e), or prior administrative decisions;
 - (B) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
 - (C) that a technical error in a finding of fact should be changed.
- (f) The presiding officer may:
 - (1) convene the hearing at the time and place specified in the notice;
 - (2) set any necessary additional hearing dates;
 - (3) designate the parties regarding a contested application;
 - (4) establish the order for presentation of evidence;
 - (5) administer oaths to all persons presenting testimony;
 - (6) examine persons presenting testimony;
 - (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
 - (8) prescribe reasonable time limits for testimony and the presentation of evidence; and
 - (9) exercise the procedural rules adopted herein; and
 - (10) determine how to apportion among the parties the costs related to:
 - (A) a contract for the services of a presiding officer; and
 - (B) the preparation of the official hearing record.
- (g) The District may allow any person registered to speak, including the general manager or a District employee, to provide comments at a hearing on an uncontested application, consistent with these Rules.
- (h) The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
- (i) If the Board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional

written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.

- (j) The District may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before the Board takes final actions on a permit application that:
 - (1) refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
 - (2) determines how the costs of the procedure shall be apportioned among the parties; and
 - (3) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.
- (k) Hearing Registration. The District may require each person who participates in a hearing to submit a hearing registration form stating:
 - (1) the person's name;
 - (2) the person's address; and
 - (3) whom the person represents, if the person is not there in the person's individual capacity.
- (l) Evidence
 - (1) The presiding officer shall admit evidence that is relevant to an issue at the hearing.
 - (2) The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
- (m) Recording
 - (1) Except as provided by Subsection (b), the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.
 - (2) If a hearing is uncontested, the presiding officer may substitute minutes or its Report under subsection (o), below, for a method of recording the hearing.

- (n) Continuance The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 13.2(b). If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.
- (o) Proposal for Decision
- (1) Except as provided by Subsection (o)(5), below, the presiding officer shall submit a report to the Board not later than the 30th day after the date the evidentiary hearing is concluded.
 - (2) The proposal for decision must include:
 - (A) a summary of the subject matter of the hearing;
 - (B) a summary of the evidence or public comments received; and
 - (C) the presiding officer's recommendations for Board action on the subject matter of the hearing.
 - (3) The presiding officer or general manager shall provide a copy of the proposal for decision to:
 - (A) the applicant; and
 - (B) each designated party.
 - (4) A party may submit to the Board written exceptions to the proposal for decision.
 - (5) If the hearing was conducted by a quorum of the Board and if the presiding officer prepared a record of the hearing as provided by Subsection (m)(1), herein, the presiding officer shall determine whether to prepare and submit a report to the Board under this section.
 - (6) The Board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued under subsection (n).
- (p) Board Action The Board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded. In deciding whether or not to issue a production permit and/or transport permit, and in setting the terms of the permit, the Board will consider the Water Code Ch. 36, the District Act, the District's Rules Certified Management Plan, whether the application is accompanied by prescribed fees, and all other relevant factors.
- (q) Requests for Rehearing and or Finding and Conclusions
- (1) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings and conclusions not later than the 20th day after the date of the Board's decision.

- (2) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35th day after the date the Board receives the request. A party to a contested hearing may request a rehearing not later than the 20th day after the date the Board issues the findings and conclusions.
 - (3) A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing.
 - (4) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.
 - (5) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.
- (r) Decision; When Final
- (1) A decision by the Board on a permit or permit amendment application is final:
 - (A) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
 - (B) if a request for rehearing is filed on time, on the date:
 - (i) the Board denies the request for rehearing; or
 - (ii) the Board renders a written decision after rehearing.
 - (2) Except as provided by Subsection (3), below, an applicant or a party to a contested hearing may file a suit against the District under Section 36.251 of the Texas Water Code to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.
 - (3) An applicant or a party to a contested hearing may not file suit against the District under Section 36.251 if a request for rehearing was not filed on time.
- (s) Consolidated Hearing on Applications
- (1) Except as provided by Subsection (2), below, the District shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the District requires a separate permit or permit amendment application for:
 - (A) drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113, Texas Water Code;
 - (B) the spacing of water wells or the production of groundwater under Section 36.116, Texas Water Code; or
 - (C) transferring groundwater out of the District under Section 36.122, Texas Water Code;.

- (2) The District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.
- (t) Hearings Conducted by State Office of Administrative Hearings If the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.
- (u) Alternative Dispute Resolution The District use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

RULE 13.6. Additional Contested Permit Hearings Procedures

- (a) Pre-hearing Conference A pre-hearing conference may be held to consider any matter that may expedite the contested case hearing or otherwise facilitate the hearing process.
 - (1) Matters Considered Matters that may be considered at a pre-hearing conference include, but are not limited to:
 - (A) the designation of parties;
 - (B) the formulation and simplification of issues;
 - (C) the necessity or desirability of amending applications or other pleadings;
 - (D) the possibility of making admissions or stipulations;
 - (E) the scheduling of discovery;
 - (F) the identification of and specification of the number of witnesses;
 - (G) the filing and exchange of prepared testimony and exhibits; and
 - (H) the procedure at the hearing.
 - (2) Notice A pre-hearing conference may be held at a date, time, and place stated in a separate notice, and may be continued from time to time and place to place, at the discretion of the Board or Hearing Examiner.
- (b) Designation of Parties Parties to a hearing will be designated on the first day of hearing or at such other time as the Board or Hearing Examiner determines. The General Manager and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. The Board or Hearing Examiner may limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Board or Hearing Examiner, there exists good cause and the hearing will not be unreasonably delayed.
- (c) Rights of Designated Parties Subject to the direction and orders of the Board or Hearing Examiner, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the

proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.

- (d) Persons Not Designated Parties At the discretion of the Board or Hearing Examiner, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Board or Hearing Examiner as evidence.
- (e) 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 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.
- (f) Interpreters for Deaf Parties and Witnesses If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose 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 proceedings or communication with others.
- (g) Agreements to be in Writing No agreement between parties or their representatives affecting any pending matter will be considered by the Board or Hearing Examiner unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered as in the record.
- (h) Discovery Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Board or Hearing Examiner. Unless specifically modified by these Rules or by order of the Board or Hearing Examiner, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Board or Hearing Examiner.
- (i) Discovery Sanctions. If the Board or Hearing Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Board or Hearing Examiner may:
 - (1) suspend processing of the application for a permit if the applicant is the offending party;
 - (2) disallow any further discovery of any kind or a particular kind by the offending party;
 - (3) rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
 - (4) limit the offending party's participation in the proceeding;
 - (5) disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
 - (6) recommend to the Board that the hearing be dismissed with or without prejudice.

- (j) Ex Parte Communications. The Board and the Hearing Examiner, if appointed, may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or representative, except with notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence.
- (k) Compelling Testimony; Swearing Witnesses and Subpoena Power. The Board or Hearing Examiner may compel the testimony of any person that is necessary, helpful, or appropriate to the hearing. The Board or Hearing Examiner will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The Board or Hearing Examiner may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.
- (l) 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.
- (m) Written Testimony. When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- (n) Requirements for Exhibits. Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
- (o) Abstracts of Documents. When documents are numerous, the Board or Hearing 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.
- (p) Introduction and Copies of Exhibits. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Board or Hearing Examiner and to each of the parties, unless the Board or Hearing Examiner Rules otherwise.
- (q) Excluding Exhibits. In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.

- (r) Official Notice. The Board or Hearing Examiner may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- (s) 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.
- (t) Oral Argument. At the discretion of the Board or Hearing Examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Board or Hearing Examiner may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, further oral arguments may be heard by the Board.

RULE 13.7. Rulemaking Hearing Procedures

- (a) General Procedures for amending District Rules The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time. The presiding officer will conduct the rulemaking hearing in the manner the presiding officer determines most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The presiding officer may follow the guidelines of "Robert's Rules of Order," 11th Edition, 2011 Revised Edition, or as amended.
- (b) Notice of a Rulemaking Hearing
 - (1) Not later than the 20th day before the date of a rulemaking hearing, the general manager or Board shall:
 - (A) post notice in a place readily accessible to the public at the District office;
 - (B) provide notice to the county clerk of each county in the District;
 - (C) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located;
 - (D) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (6), below; and
 - (E) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on a generally accessible Internet site.
 - (2) The notice provided under Subsection (1), above, must include:
 - (A) the time, date, and location of the rulemaking hearing;
 - (B) a brief explanation of the subject of the rulemaking hearing; and
 - (C) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.
 - (3) The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record

open for a specified period after the conclusion of the hearing to receive additional written comments.

- (4) The District may require each person who participates in a rulemaking hearing to submit a hearing registration form stating:
 - (A) the person's name;
 - (B) the person's address; and
 - (C) whom the person represents, if the person is not at the hearing in the person's individual capacity.
 - (5) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
 - (6) A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.
 - (7) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the District about contemplated rules.
 - (8) Failure to provide notice under Subsection (b)(1)(D), above, does not invalidate an action taken by the District at a rulemaking hearing.
 - (9) The District shall also follow the notice requirements prescribed in the District Act.
- (c) Emergency Rules
- (1) The Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board:
 - (A) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
 - (B) prepares a written statement of the reasons for its finding under Subdivision (a), above.
 - (2) Except as provided by Subsection (3), herein, a rule adopted under this section may not be effective for longer than 90 days.
 - (3) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.
 - (4) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

- (d) Submission of Documents Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 13.1(b)(3); provided, however, that the presiding officer may grant additional time for the submission of documents.
- (e) Oral Presentations Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- (f) Conclusion of the Hearing; Closing the Record; Hearing Examiner's Report At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the presiding officer is a Hearing Examiner, the Hearing Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject of the hearing and the public comments received, together with the Hearing Examiner's recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy must be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.
- (g) Exceptions to the Hearing Examiner's Report; Reopening the Record Any interested person may make exceptions to the Hearing Examiner's report, and the Board may reopen the record, in the manner prescribed in Rule 13.6(b).
- (h) Decision; Appeal regarding District Rules
 - (1) Board Action After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.
 - (2) Requests for Rehearing Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within twenty (20) calendar days of the Board's decision. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within forty-five (45) calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within ninety (90) calendar days of submission will be deemed to be a denial of the request.

SECTION 14 INVESTIGATIONS AND ENFORCEMENT

RULE 14.1 Notice and Access to Property

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

RULE 14.2 Rule Enforcement

If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Act, Water Code Chapter 36, District permit, District Rules, the Board of Directors may assess a civil penalty or file for an injunction or other appropriate remedy in a court of competent jurisdiction, as authorized by Chapter 36.102 of the Texas Water Code. The General Manager has the authority to require remediation of well construction that violates District and/or TDLR rules within a designated time period, no more than six months, or require plugging or capping of the well, if the well construction is not appropriately remediated.

RULE 14.3 Civil Penalties

- (a) The District may enforce Chapter 36 of the Texas Water Code and its Rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- (b) The Board by rule may set reasonable civil penalties for breach of any Rule of the District not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation. All civil penalties recovered by the District shall be paid to the District.
- (c) 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.
- (d) 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, costs for expert witnesses, and other costs incurred by the District before the court, pursuant to §36.066, Texas Water Code. The amount of the attorney's fees shall be fixed by the court.

RULE 14.4 Failure to Report Pumpage and/or Transported Volumes

The accurate reporting and timely submission of pumpage and/or transported volumes is necessary for the proper management of water resources. Failure of the permittee to submit complete, accurate, and timely pumpage, transport and water quality reports, as required by District Rule,

may result in late payment fees, forfeiture of the permit, or payment of increased meter reading and inspection fees as a result of District inspections to obtain current and accurate pumpage and/or transported volumes and water quality reports.

RULE 14.5 Emergency Orders

The District may develop Emergency Contingency Plans to deal with water quality or water quantity emergencies. Public hearings on Emergency Contingency Plans shall be conducted by the Board prior to adoption. To implement Emergency Contingency Plans, the Board, or the General Manager if specifically authorized by an Emergency Contingency Plan, may adopt emergency orders of either a mandatory or prohibitory nature, requiring remedial action by a permittee or other party responsible for the emergency condition.

SECTION 15. FEES

RULE 15.1 APPLICATION, REGISTRATION, AND OTHER FEES: The Board shall establish a schedule of fees.

RULE 15.2 APPLICATION PROCESSING FEE: The Board may adopt a processing fee for 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.

**SECTION 16. JOINT PLANNING IN MANAGEMENT AREA
AND ENFORCEMENT OF DESIRED FUTURE CONDITIONS**

This District shall comply with the Joint Management and Desired Future Condition requirements in §36.108, et seq., Water Code.

RULE 16.1 ACTIONS BASED ON AQUIFER RESPONSE TO PUMPING

- (a) The District shall use its well monitoring program to assess aquifer levels in the District and the effects caused by groundwater production to enforce the District's adopted Desired Future Conditions of the aquifers and to conserve and preserve groundwater availability and protect groundwater users and groundwater ownership and rights.
- (b) The District shall adopt threshold average aquifer drawdown amounts that will be used to initiate groundwater management responses that will be implemented to enforce the District's adopted Desired Future Conditions of the aquifers and to conserve and preserve groundwater availability and protect groundwater users and groundwater ownership and rights.
- (c) **Standard Actions to Enforce DFCs.** Prior to approaching the initial adopted DFC Threshold, the District shall follow the below-listed actions to monitor aquifer levels; regulate, educate, and promote water conservation; and enforce the Desired Future Conditions of the aquifers:
 - (1) monitor groundwater production reports, with random meter checks;
 - (2) permit and register wells according to District Rules;
 - (3) Monitor groundwater production in adjoining GCDs coordinating responses as needed;
 - (4) Promote and require conservation;
 - (5) prepare an annual report on groundwater production and aquifer water-level trends and changes; and
 - (6) develop and implement a scientifically valid procedure to determine and monitor long term aquifer drawdown trends developing responses as needed.
- (d) The District shall initially adopt three threshold average aquifer drawdown levels to act as triggers to provide for increased levels of District regulatory responses based on the change in three (3) consecutive years average aquifer drawdown levels across the District for an aquifer. The District shall monitor how rapidly each threshold is achieved and amend or add new thresholds as better hydrological assessment data becomes available. The initial DFC threshold levels are: Level 1, Level 2, and Level 3. Each level will be based on an average of three (3) consecutive years immediately prior to reaching the trigger.

DFC Threshold Level 1. If Threshold Level 1 is reached, additional study and monitoring may be undertaken as appropriate at such time as the average aquifer drawdown on a District-wide basis or within a designated Management Zone, calculated with a District-approved methodology for an aquifer, is greater than **65 percent** of the average aquifer drawdown amounts adopted as a DFC for that aquifer in the Management Plan. The following District actions shall occur to enforce the Desired Future Conditions of the

aquifers and to conserve and preserve groundwater availability and protect property rights of landowners and groundwater users:

- (A) Adopt a Study Area(s) for an Aquifer(s). Based on the best available science, the District may designate Study Areas for portions of an aquifer within the District that are experiencing significant drawdowns of the aquifer levels, which may be caused by concentrated groundwater pumping, and develop additional hydrological data and analysis of the causes of the drawdown and hydrological trends developing and make recommendations for appropriate action.
 - (B) Monitor aquifer water levels.
 - (C) Monitor groundwater production in adjoining GCDs.
 - (D) Prepare an annual report on groundwater production and aquifer water-level and drawdown changes.
 - (E) Monitor groundwater production reports, with mandatory, if judged necessary by the District, meter checks on all permitted wells in the study area(s).
 - (F) Promote and require conservation;
 - (G) If DFC Threshold Level 1 is exceeded, the district may perform studies to provide additional information on the hydrogeology in the area. The results may be used to improve the Groundwater Availability Models and other methodologies used to analyze monitoring and pumping data and predict future aquifer response and groundwater availability.
- (1) **DFC Threshold Level 2**. If DFC Threshold Level 2 is reached, a District review of the Management Plan, Rules and Regulations may be initiated at such time as the average aquifer drawdown over the district or within a designated Management Zone calculated with a District approved methodology for an aquifer is greater than **80 percent** of the average aquifer drawdown amounts adopted as a DFC for that aquifer in Section 5 of the Management Plan. The following District actions shall occur to enforce the Desired Future Conditions of the aquifers and to conserve and preserve groundwater availability and protect groundwater users and groundwater ownership and rights:
- (A) Consider Adoption of Depletion Management Zone(s) for the Aquifer(s). Based on the best available science, the District may designate Depletion Management Zones in areas of the District that are experiencing significant drawdowns of the aquifer levels, which may be caused by concentrated groundwater pumping. Within designated Depletion Management Zones, the District may adopt appropriate production limitations to alleviate the substantial stress on the aquifer(s). Management strategies within the designated Depletion Management Zones may include, but are not limited to, a reduction in groundwater production of existing and future permits and increased well spacing requirements.
 - (B) Monitor aquifer water levels.
 - (C) Promote/require conservation.

- (D) Monitor groundwater production reports, with mandatory meter checks on all permitted wells in management zone.
- (E) Monitor groundwater production in adjoining GCDs.
- (F) Prepare annual report on groundwater production and rate of aquifer water-level changes.
- (G) Evaluate need for curtailment of groundwater production as average water-level decline reaches 80 percent of DFC or is trending to exceed DFC.
- (H) If Threshold Level 2 is exceeded, the District shall reevaluate the monitoring program, pumping inventory and response of the aquifers to pumping, both inside and outside the District. Revisions to the DFCs could be considered as part of the Joint Planning Process of the Groundwater Management Areas 13 and 15.

The District shall conduct a public hearing to discuss the status of the aquifer or aquifers and develop a response plan focused on achieving the District's goals and objectives, including not exceeding the DFCs. The response plan should be completed within 6 months after the first public hearing and should be available to the public through the District's website.

- (2) **DFC Threshold Level 3.** If DFC Threshold Level 3 is reached, the Board shall consider amendments to the Management Plan, Rules and Regulations at such time as the average aquifer drawdown over the District for an aquifer, calculated with a District approved methodology, is greater than **90 percent** of the average aquifer drawdown amounts adopted as a DFC for that aquifer in Section 5 of the Management Plan. The following District actions shall occur to enforce the Desired Future Conditions of the aquifers and to conserve and preserve groundwater availability and protect groundwater users and groundwater ownership and rights:
 - (A) Consider Adoption of Depletion Management Zone(s) for the Aquifer(s). Based on the best available science, the District may designate Depletion Management Zones in areas of the District that are experiencing significant drawdowns of the aquifer levels, which may be caused by concentrated groundwater pumping. Within designated Depletion Management Zones, the District may adopt specific production limitations to alleviate the substantial stress on the aquifer(s). Management strategies within the designated Depletion Management Zones may include, but are not limited to, a reduction in groundwater production of existing and future permits and increased well spacing requirements.
 - (B) Monitor aquifer water levels.
 - (C) Promote/require conservation.
 - (D) Monitor groundwater production reports, with mandatory meter checks on all permitted wells in management zone.
 - (E) Monitor groundwater production in adjoining GCDs.
 - (F) Prepare annual report on groundwater production and rate of aquifer water-level changes.

- (G) Curtailement of groundwater production as average aquifer drawdown amounts reach 90 percent of DFC or it's trending to exceed DFC. The District shall curtail groundwater production under DFC Threshold Level 3 as follows:
- i. All groundwater production shall be reduced at the same time.
 - ii. Groundwater production shall be reduced based on a pro rata formula to be determined by the Board by the time the DFC Threshold Level 3 is reached.
 - iii. Reductions to groundwater production will be based on actual production amounts and will be based on the maximum production from a well or aggregate of wells that has been put to beneficial use in any permitted year.
 - iv. Singled permitted wells will be reduced based on the production from the single well. Wells permitted in aggregate will be reduced in aggregate.
 - v. The groundwater production reduction formula may be increased or decreased by the Board, based on the aquifer response to achieve the District's adopted DFCs.
 - vi. Groundwater production from registered exempt wells cannot be reduced by the Board, per existing law at the time of the adoption of this rule (January 14, 2016).
 - vii. Permitting New Wells after Curtailement. New wells will be permitted pursuant to District Rules, including but not limited to Sections 6 and 7. The permit amount will be immediately reduced by the total amount of curtailments that have already occurred. Upon completion and equipping of the well, the permit holder has one (1) year to provide evidence of beneficial use, which will then become the basis for the curtailment amount, pursuant to (G)(iv) above.
 - viii. If Threshold Level 3 is exceeded, the District shall conduct a public hearing to discuss the status of the aquifer or aquifers and develop a response plan focused on achieving the District's goals and objectives, including not exceeding the DFCs. The response plan should be completed within six (6) months after the first public hearing and should be available to the public through the District's website.
 - ix. Groundwater reductions that result from entering DFC Threshold Level 3 may be reinstated if aquifer levels rise and the average drawdown amount is less than 90% of the adopted DFC.

**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 waster 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, 59th Leg., R.S., ch. 197, 1965 Tex. Gen. Laws 398 (Vernon); as amended by Act of May 25, 1967, 60th Leg., R.S., ch. 1272, 1967 Tex. Gen. Laws 1676 (Vernon); Act of May 30, 1983, 68th Leg., R.S., ch. 484, 1983 Tex. Gen. Laws 2852 (Vernon); and Act of May 17, 1985, 69th 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 CONSERVAITON 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 October 27, 2017.

AND IT IS SO ORDERED

PASSED AND ADOPTED ON THIS 27th DAY OF OCTOBER, 2017.

SIGNED:



Blaine Schorp
President

ATTEST:



Diane Savage
Secretary/Treasurer