

# **Upper Trinity Groundwater Conservation District**

## **Temporary Rules for Water Wells in Hood, Montague, Parker, and Wise Counties, Texas**

As Revised and Adopted on December 18, 2017

### *Procedural History of Rules Adoption*

*These temporary rules of the Upper Trinity Groundwater Conservation District were initially adopted by the Board of Directors on August 18, 2008, at a duly posted public meeting in compliance with the Texas Open Meetings Act and following notice and hearing in accordance with Chapter 36 of the Texas Water Code. In accordance with Section 59 of Article XVI of the Texas Constitution, the District Act, and Chapter 36 of the Texas Water Code, the following rules are hereby ratified and adopted as the rules of this District by its Board. These rules which initially took effect on August 18, 2008, were subsequently amended after proper notice and hearing on February 9, 2009, November 30, 2009, December 16, 2013, November 20, 2017, and on December 18, 2017, and are effective in their present form as of December 18, 2017.*

# Contents

- SECTION 1. DEFINITION, CONCEPTS, AND GENERAL PROVISIONS ..... 4
  - Rule 1.1 Definition of Terms..... 4
  - Rule 1.2 Authority of District ..... 10
  - Rule 1.3 Purpose of Rules..... 10
  - Rule 1.4 Use and Effect of Rules..... 11
  - Rule 1.5 Purpose of District..... 11
  - Rule 1.6 Construction. .... 11
  - Rule 1.7 Methods of Service Under the Rules..... 11
  - Rule 1.8 Severability..... 11
  - Rule 1.9 Regulatory Compliance; Other Governmental Entities..... 12
  - Rule 1.10 Computing Time. .... 12
  - Rule 1.11 Time Limits. .... 12
  - Rule 1.12 Notification to Well Owners. .... 12
  - Rule 1.13 Amending of Rules..... 12
  - Rule 1.14 Ownership of Groundwater ..... 12
- SECTION 2. APPLICABILITY OF REGULATORY REQUIREMENTS; EXEMPTIONS..... 12
  - Rule 2.1 Wells Exempt from Fee Payment, Metering, and Reporting Requirements of These Temporary Rules. .... 12
  - Rule 2.2 Wells Subject to Fee Payment, Metering, and Reporting Requirements of These Temporary Rules ..... 13
  - Rule 2.3 Exemption from Production Fees for Groundwater Used for Certain Emergency Purposes 13
- SECTION 3. REGISTRATIONS, RECORDS, REPORTS, AND LOGS; PERMIT NOT REQUIRED 14
  - Rule 3.1 Purpose and Policy ..... 14
  - Rule 3.2 Permit Not Required Under Temporary Rules..... 14
  - Rule 3.3 Well Registration..... 14
  - Rule 3.4 Registration of Existing Non-Exempt Wells Required by July 1, 2009..... 16
  - Rule 3.5 Registration of New Wells or Alterations to Existing Wells Required Prior to Drilling or Alteration..... 16
  - Rule 3.6 General Provisions Applicable to Registrations..... 17
  - Rule 3.7 Records of Drilling, Pump Installation and Alteration Activity, and Plugging ..... 18
  - Rule 3.8 Transfer of Well Ownership..... 19
  - Rule 3.9 Amendment of Registration ..... 20
  - Rule 3.10 Water Production Reports ..... 21
  - Rule 3.11 Replacement Wells. .... 22
- SECTION 4. SPACING AND LOCATION OF WELLS; WELL COMPLETION ..... 23
  - Rule 4.1 Spacing and Location of Existing Wells. .... 23
  - Rule 4.2 Spacing and Location of New Wells..... 23

Rule 4.3	Well Spacing Requirements .....	24
Rule 4.4	Standards of Completion for All Wells .....	25
Rule 4.5	Exceptions to Spacing Requirements. ....	25
Rule 4.6	Exception Requests Involving Certain Public Water Systems. ....	29
SECTION 5.	REGULATION OF PRODUCTION; WASTE PROHIBITED .....	30
Rule 5.1	Temporary Production Limitations. ....	30
Rule 5.2	Regular Production Limitations. ....	30
Rule 5.3	Waste Prohibited. ....	30
SECTION 6.	TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT.....	30
Rule 6.1	General Provisions. ....	30
Rule 6.2	Reporting.....	31
SECTION 7.	FEES AND PAYMENT OF FEES .....	31
Rule 7.1	Water Use Fees.....	31
Rule 7.2	Groundwater Transport Fee. ....	31
Rule 7.3	Payment of Water Use and Groundwater Transport Fees. ....	32
Rule 7.4	Failure to Make Fee Payments. ....	32
Rule 7.5	Returned Check Fee. ....	32
Rule 7.6	Well Report Deposit.....	32
Rule 7.7	Enforcement. ....	33
SECTION 8.	METERING .....	33
Rule 8.1	Water Meter Required. ....	33
Rule 8.2	Water Meter Exemption. ....	34
Rule 8.3	Metering Aggregate Withdrawal.....	34
Rule 8.4	Accuracy Verification. ....	34
Rule 8.5	Removal of Meter for Repairs.....	35
Rule 8.6	Water Meter Readings.....	35
Rule 8.7	Installation of Meters. ....	35
Rule 8.8	Enforcement. ....	35
SECTION 9.	REPORTS, INSPECTION, PENALTIES AND ENFORCEMENT OF RULES.....	36
Rule 9.1	Purpose and Policy.....	36
Rule 9.2	Rules Enforcement. ....	36
Rule 9.3	Failure to Report Pumpage and/or Transported Volumes.....	37
Rule 9.4	District Inspections.....	37
Rule 9.5	Notices of Violation. ....	37
Rule 9.6	Show Cause Hearing. ....	38
SECTION 10.	OTHER DISTRICT MANAGEMENT ACTIONS AND DUTIES .....	39
Rule 10.1	District Management Plan. ....	39
SECTION 11.	EFFECTIVE DATE.....	39

Rule 11.1. Effective Date..... 39  
APPENDIX 1. Enforcement Policy and Civil Penalty Schedule..... 40  
I. Minor Violations..... 40  
II. Major Violations ..... 41  
III. Water Well Construction and Completion Requirements ..... 42  
IV. Other Violations of District Rules Not Specifically Listed Herein..... 42

# Upper Trinity Groundwater Conservation District District Rules

\*\*\*\*\*

## PREAMBLE

The Upper Trinity Groundwater Conservation District ("District") was created in 2007 by the 80<sup>th</sup> Texas Legislature with a directive to conserve, protect and enhance the groundwater resources of Montague, Wise, Parker, and Hood Counties, Texas. The District's boundaries are coextensive with the boundaries of Montague, Wise, Parker, and Hood Counties, and all lands and other property within these boundaries will benefit from the works and projects that will be accomplished by the District. The creation of the District was confirmed by the citizens of Montague, Wise, Parker, and Hood Counties, Texas, on November 6, 2007, in an election called for that purpose, with over 78 percent of the voters casting favorable ballots.

The Mission of the Upper Trinity Groundwater Conservation District is to develop rules to provide protection to existing wells, prevent waste, promote conservation, provide a framework that will allow availability and accessibility of groundwater for future generations, protect the quality of the groundwater in the recharge zone of the aquifer, insure that the residents of Montague, Wise, Parker, and Hood Counties maintain local control over their groundwater, and operate the district in a fair and equitable manner for all residents of the district.

The District is committed to manage and protect the groundwater resources within its jurisdiction and to work with others to ensure a sustainable, adequate, high quality and cost-effective supply of water, now and in the future. The District will strive to develop, promote, and implement water conservation, augmentation, and management strategies to protect water resources for the benefit of the citizens, economy and environment of the District. The preservation of this most valuable resource can be managed in a prudent and cost-effective manner through conservation, education, and management. Any action taken by the District shall only be after full consideration and respect has been afforded to the individual property rights of all citizens of the District.

\*\*\*\*\*

## SECTION 1. DEFINITION, CONCEPTS, AND GENERAL PROVISIONS

### Rule 1.1 Definition of Terms.

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

- (1) "Agriculture" means any of the following activities:
  1. cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
  2. the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
  3. 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;
  4. 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;
  5. wildlife management; and
  6. raising or keeping equine animals.
- (2) "Agricultural use" means any use or activity involving agriculture, including irrigation.
- (3) "Aquifer" means a water bearing geologic formation in the District.
- (4) "Artificial excavation" means man-made rather than naturally occurring in nature.
- (5) "As equipped" for purposes of determining the capacity of a well means the pump, visible pipes, plumbing, and equipment attached to the wellhead or adjacent plumbing that controls the maximum rate of flow of groundwater and that is permanently affixed to the well or adjacent plumbing by welding, glue or cement, bolts or related hardware, or other reasonably permanent means.
- (6) "Beneficial use" or "beneficial purpose" means use of groundwater for:
  1. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes;
  2. exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals; or
  3. any other purpose that is useful and beneficial to the user that does not constitute waste.
- (7) "Board" means the Board of Directors of the District.

- (8) “Contiguous” means property within a continuous perimeter boundary situated within the District. The term also refers to properties that are divided by a publicly owned road or highway or other easements if the properties would otherwise share a common border.
- (9) “District” means the Upper Trinity Groundwater Conservation District created in accordance with Section 59, Article XVI, Texas Constitution, Chapter 36, Texas Water Code, and the District Act.
- (10) “District Act” means the Act of May 25, 2007, 80th Leg., R.S., ch. 1343, 2007 Tex. Gen. Laws 4583, codified at TEX. SPEC. DIST. LOC. LAWS CODE ANN. ch. 8830 (“the District Act”), as may be amended from time to time.
- (11) “Domestic use” means the use of groundwater by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or family orchard; for watering of domestic animals. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold. Domestic use does not include use by or for a public water system. Domestic use does not include irrigation of crops in fields or pastures. Domestic use does not include water used for open-loop residential geothermal heating and cooling systems, but does include water used for closed-loop residential geothermal systems. Domestic use does not include pumping groundwater into a pond or other surface water impoundment unless the impoundment is fully lined with an impervious artificial liner and has a surface area equal to or smaller than one-third of a surface acre (14,520 square feet).
- (12) “Dry hole” means wells which do not encounter groundwater.
- (13) “Effective date” means August 18, 2008, which was the original date of adoption of these Temporary Rules.
- (14) “Emergency purposes” means the use of groundwater:
  - (a) to fight fires, manage chemical spills, and otherwise address emergency public safety or welfare concerns; or
  - (b) for training exercises conducted in preparation for responding to fires, chemical spills, and other emergency public safety or welfare concerns.
- (15) “General Manager” as used herein is the chief administrative officer of the District, as set forth in the District's bylaws, or the District staff acting at the direction of the General Manager.
- (16) “Groundwater” means water percolating below the surface of the earth.
- (17) “Groundwater reservoir” means a specific subsurface water-bearing stratum.

- (18) “Landowner” means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on the land surface.
- (19) “Livestock” means, in the singular or plural, grass- or plant-eating, single- or cloven-hooved mammals raised in an agricultural setting for subsistence, profit or for its labor, or to make produce such as food or fiber, including cattle, horses, mules, asses, sheep, goats, llamas, alpacas, and hogs, as well as species known as ungulates that are not indigenous to this state from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families, but does not mean a mammal defined as a game animal in section 63.001, Parks and Wildlife Code, or as a fur-bearing animal in section 71.001, Parks and Wildlife Code, or any other indigenous mammal regulated by the Texas Department of Parks and Wildlife as an endangered or threatened species. The term does not include any animal that is stabled, confined, or fed at a facility that is defined by Texas Commission on Environmental Quality rules as an Animal Feeding Operation or a Concentrated Animal Feeding Operation.
- (20) “Maintenance and Repair” of a well means work done in the normal course of operation to ensure safe and proper operation, water quality, proper sanitary measures, and normal replacement or repair of well components, so as not to exceed the original capacity of the well. This term includes the repair or replacement of the pump as long as the replacement pump does not exceed the maximum design production capacity of the pump being replaced or the maximum design production capacity of the replacement pump does not exceed 17.36 gpm.
- (21) “Meter” or “measurement device” means a water flow measuring device that can measure within +/- 5% of accuracy the instantaneous rate of flow and record the amount of groundwater produced or transported from a well or well system during a measure of time.
- (22) “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.
- (23) “Penalty” means a reasonable civil penalty set by rule under the express authority delegated to the District through Section 36.102(b) of the Texas Water Code.
- (24) “Person” means an individual, corporation, limited liability company, organization, government, governmental subdivision, agency, business trust, estate, trust, partnership, association, or other legal entity.
- (25) “Poultry” means chickens, turkeys, nonmigratory game birds, and other domestic nonmigratory fowl, but does not include any other bird regulated by the Parks and Wildlife as an endangered or threatened species. The term does not include any animal that is stabled, confined, or fed at a facility that is defined by Texas Commission on Environmental Quality rules as an Animal Feeding Operation or a Concentrated Animal Feeding Operation.

- (26) “Production” or “producing” means the act of extracting groundwater from an aquifer by a pump or other method.
- (27) “Property Line” means the outer perimeter of a tract of land.
- (28) “Public Water System” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for "drinking water" in 30 Texas Administrative Code, Section 290.38. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.
- (29) “Pump” means any facility, device, equipment, materials, or method used to obtain water from a well.
- (30) “Registrant” means a person required to submit a registration.
- (31) “Registration” means a well owner providing certain information about a well to the District, as more particularly described under Section 3.
- (32) “Rule” or “Rules” or “Temporary Rules” means these Temporary Rules of the District regulating water wells, which shall continue to be effective until amended or repealed.
- (33) “Spacing requirement” means a well spacing, tract size, or minimum distance requirement established under Rule 4.3.
- (34) “Substantially alter” with respect to the size or capacity of a well means to increase the inside diameter of the pump discharge column pipe size of the well in any way or to increase the size of the pump on the well, but, shall not apply to an increase in the size of the pump if the maximum designed production capacity of the new pump is 17.36 gpm or less.
- (35) “Tract” means a contiguous parcel of land under the ownership of a single entity, such as a corporation, partnership or trust, or an individual or individuals holding as joint owners or tenants in common.
- (36) “Transfer” means a change in a registration as follows, except that the term “transfer” shall have its ordinary meaning as read in context when used in other contexts:

- (a) ownership; or
- (b) the person authorized to exercise the right to make withdrawals and place the groundwater to beneficial use.

(37) Types of wells:

- (a) “Exempt well” means a new or an existing well that is exempt under Rule 2.1 from certain regulatory requirements in these rules.
- (b) “Existing well” means a well that was in existence or for which drilling commenced prior to January 1, 2009.
- (c) “Leachate well” means a well used to remove contamination from soil or groundwater.
- (d) “Monitoring well” means a well installed to measure some property of the groundwater or the aquifer that it penetrates, and does not produce more than 5,000 gallons per year.
- (e) “New well” means a well for which drilling or artificial excavation commenced on or after January 1, 2009.
- (f) “Registered well” means a new or existing well for which a completed well registration has been approved by the District, and from which any new proposed well must meet minimum well spacing requirements as set forth under Section 4 of these rules.
- (g) “Unregistered well” means an existing well for which a well registration has not been approved by the District, and which may not be assured the protections of the minimum well spacing requirements from new proposed wells as set forth under Section 4 of these rules.

(38) “Waste” means one or more of the following:

- (a) withdrawal of groundwater from the aquifer at a rate and in an amount that causes or threatens to cause an intrusion into the aquifer unsuitable for agriculture, gardening, domestic, stock raising, or other beneficial purposes;
- (b) the flowing or producing of water from the aquifer by artificial means if the water produced is not used for a beneficial purpose;
- (c) the escape of groundwater from the aquifer to any other underground reservoir or geologic stratum that does not contain groundwater;
- (d) pollution or harmful alteration of groundwater in the aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the

- ground;
- (e) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or other order issued by the Texas Commission on Environmental Quality under Chapter 26 of the Texas Water Code;
  - (f) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge;
  - (g) for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205, Texas Water Code;
  - (h) operating a deteriorated well; or
  - (i) producing groundwater in violation of any District rule governing the withdrawal of groundwater through production limits on wells, managed depletion, or both.
- (39) “Well” means any artificial excavation located within the boundaries of the District dug or drilled for the purpose of exploring for or withdrawing groundwater from the aquifer, including water wells producing less water than desired by the well owner, test holes, and dry holes.
- (40) “Well owner” means the person who owns a possessory interest in: (1) the land upon which a well or well system is located or to be located; (2) the well or well system; or (3) the groundwater withdrawn from a well or well system.
- (41) “Well system” means a well or group of wells tied to the same distribution system.
- (42) “Withdraw” means the act of extracting or producing groundwater by pumping or other method.
- (43) “Year” means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.

### **Rule 1.2 Authority of District.**

The Upper Trinity Groundwater Conservation District is a political subdivision of the State of Texas organized and existing under Section 59, Article XVI, Texas Constitution, Chapter 36, Texas Water Code, and the District Act. The District is a governmental agency and a body politic and corporate. The District was created to serve a public use and benefit.

### **Rule 1.3 Purpose of Rules.**

These Temporary Rules are adopted under the authority of Sections 36.101 and 36.1071(f), Texas Water Code, and the District Act for the purpose of conserving, preserving, protecting, and recharging groundwater in the District in order to prevent subsidence, prevent degradation of water quality,

prevent waste of groundwater, and to carry out the powers and duties of Chapter 36, Texas Water Code, and the District Act.

#### **Rule 1.4 Use and Effect of Rules.**

These rules are used by the District in the exercise of the powers conferred on the District by law and in the accomplishment of the purposes of the law creating the District. These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case will they, or any part therein, be construed as a limitation or restriction upon the District to exercise powers, duties and jurisdiction conferred by law. These rules create no rights or privileges in any person or water well, and shall not be construed to bind the Board in any manner in its promulgation of the District Management Plan, amendments to these Temporary Rules, or promulgation of permanent rules.

#### **Rule 1.5 Purpose of District.**

The purpose of the District is to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution.

#### **Rule 1.6 Construction.**

A reference to a title or chapter without further identification is a reference to a title or chapter of the Texas Water Code. A reference to a section or rule without further identification is a reference to a section or rule in these Rules. Construction of words and phrases is governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code. The singular includes the plural, and the plural includes the singular. The masculine includes the feminine, and the feminine includes the masculine.

#### **Rule 1.7 Methods of Service Under the Rules.**

Except as provided in these rules, any notice or document required by these rules to be served or delivered may be delivered to the recipient or the recipient's authorized representative in person, by agent, by courier receipted delivery, by certified or registered mail sent to the recipient's last known address, by regular mail sent to the recipient's last known address unless superseded by specific District rule, by electronic mail (email), or by telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 o'clock p.m. on the date which it is due. Service by mail is complete upon deposit in a post office depository box or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer commencing after 5:00 o'clock 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. If service by other methods has proved unsuccessful, service will be deemed complete upon publication of the notice or document in a newspaper of general circulation in the District.

#### **Rule 1.8 Severability.**

If a provision contained in these Temporary Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability does not affect any other rules or provisions of these Temporary Rules, and these Temporary Rules shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in these rules.

## **Rule 1.9 Regulatory Compliance; Other Governmental Entities.**

All registrants of the District shall comply with all applicable rules and regulations of the District and of all other governmental entities. If the District Rules and regulations are more stringent than those of other governmental entities, the District Rules and regulations control.

## **Rule 1.10 Computing Time.**

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

## **Rule 1.11 Time Limits.**

Applications, requests, or other papers or documents required or allowed to be filed under these Rules or by law must be received for filing by the District within the time limit for filing, if any. The date of receipt, not the date of posting, is determinative of the time of filing. Time periods set forth in these rules shall be measured by calendar days, unless otherwise specified.

## **Rule 1.12 Notification to Well Owners.**

As soon as practicable after the effective date, the District shall publish notice to inform the well owners of the District's existence, the management authority of the District, and the well owners' duties and responsibilities under these Rules. This provision does not apply to the adoption of amendments to these Rules.

## **Rule 1.13 Amending of Rules.**

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

## **Rule 1.14 Ownership of Groundwater.**

The District recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property, and nothing in these rules shall be construed as depriving or divesting a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by Section 36.002 of the Texas Water Code.

## **SECTION 2. APPLICABILITY OF REGULATORY REQUIREMENTS; EXEMPTIONS**

### **Rule 2.1 Wells Exempt from Fee Payment, Metering, and Reporting Requirements of These Temporary Rules.**

- (a) The requirements of these Temporary Rules relating to the payment of fees under Section 7, the requirement to install and maintain a meter under Section 8, and the requirement to report to the District the amount of water produced from a well under Section 3 do not

apply to the following types of wells:

1. All wells, existing or new, of any size or capacity used solely for domestic use, livestock use, poultry use, or agricultural use;
  2. An existing well or new well that does not have the capacity, as equipped, to produce more than 25 gallons per minute and is used in whole or in part for commercial, industrial, municipal, manufacturing, or public water supply use, use for oil or gas or other hydrocarbon exploration or production, or any other purpose of use other than solely for domestic, livestock, poultry, or agricultural use, except as provided by Subsection (b) of this rule; or
  3. Leachate wells and monitoring wells.
- (b) For purposes of determining whether the exemption set forth under Subsection (a)(2) applies, the capacity of a well that is part of a well system shall be determined by taking the sum of the capacities of each of the individual wells, as equipped, in the system. If the total sum of the capacities is greater than 30 gallons per minute, the well system and the individual wells that are part of it are not exempt from the fee payment, metering, and reporting requirements of these rules.
- (c) A well exempted under Subsection (a) will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt under Subsection (a).
- (d) A well exempted under Subsection (a)(2) will lose its exempt status if, while the well was registered as an exempt well, the District determines that the well had the capacity, as equipped, to produce more than 25 gallons per minute. Such wells are subject to the fee payment, metering, reporting, and other requirements of these Temporary Rules, and may be subject to enforcement under Section 9.
- (e) The owner of a new well that is exempt under this Rule shall nonetheless register the well with the District, as required under Section 3.

## **Rule 2.2 Wells Subject to Fee Payment, Metering, and Reporting Requirements of These Temporary Rules**

All wells not described as exempt under Rule 2.1(a) are subject to the fee payment, metering, reporting, registration, and other requirements of these Temporary Rules. Such wells include wells with a capacity, as equipped, to produce more than 25 gallons per minute and that are used in whole or in part for any purpose of use other than solely for domestic use, livestock use, poultry use, or agricultural use.

## **Rule 2.3 Exemption from Production Fees for Groundwater Used for Certain Emergency Purposes**

- (a) Groundwater produced within the boundaries of the District is exempt from the assessment of applicable Water Use Fees and Groundwater Transport Fees otherwise required by

Section 7 if the groundwater is used by a fire department or an emergency services district solely for emergency purposes and the use is qualified under Subsection (b).

- (b) To qualify for the exemption provided for in Subsection (a), a fire department or emergency services district that uses groundwater produced from within the District, or a person that supplies groundwater produced from within the District to a fire department or emergency services district, shall submit to the District a Water Production Report that complies with Rule 3.10.

## **SECTION 3. REGISTRATIONS, RECORDS, REPORTS, AND LOGS; PERMIT NOT REQUIRED**

### **Rule 3.1 Purpose and Policy**

The accurate and timely reporting to the District of activities governed by these Rules is a critical component to the District's ability to effectively and prudently manage the groundwater resources that it has been charged by law with regulating. The purpose of Section 3 is to require the submission, by the appropriate person or persons, of complete, accurate, and timely registrations, records, reports, and logs as required throughout the District Rules. Because of the important role that accurate and timely reporting plays in the District's understanding of past, current and anticipated groundwater conditions within the District, the failure to comply with these rules may result in the assessment of additional fees, civil penalties, or any combination of the same, as specifically set forth under Section 9.

### **Rule 3.2 Permit Not Required Under Temporary Rules.**

No permit of any kind is required under these Temporary Rules. Notwithstanding Chapter 36, Water Code, a permit is not required under these Temporary Rules to drill, equip, operate, or complete a well, produce water from a well, or to substantially alter the size or capacity of a well. Permitting requirements will be developed and adopted by the District in the future after it has had a sufficient opportunity to develop a management plan and carefully consider various regulatory approaches and how such approaches may impact landowners and other water users in the District while achieving proper management of the groundwater resources. Permitting rules will be adopted only after ample opportunity has been afforded the public to participate in the development of such rules.

### **Rule 3.3 Well Registration.**

- (a) The following wells must be registered with the District:
  - 1. all new wells drilled on or after January 1, 2009, including new wells exempt under Rule 2.1(a);
  - 2. all existing wells that are not exempt under Rule 2.1(a);

3. all wells replaced and plugged under Rule 3.11; notwithstanding anything in these rules, there shall be no fee for wells registered under this subsection.
- (b) A person seeking to register a well shall provide the District with the following information in the registration application on a form provided by the District:
1. the name and mailing address of the registrant and the owner of the property, if different from the registrant, on which the well is or will be located;
  2. if the registrant is other than the owner of the property, documentation establishing the applicable authority to file the application for well registration, serve as the registrant in lieu of the property owner, and construct and operate a well for the proposed use;
  3. a statement of the nature and purpose of the existing or proposed use of water from the well;
  4. the location or proposed location of the well, identified as a specific point measured by latitudinal and longitudinal coordinates;
  5. the location or proposed location of the use of water from the well, if used or proposed to be used at a location other than the location of the well;
  6. the production capacity or proposed production capacity of the well, as equipped, in gallons per minute;
  7. a water well closure plan or a declaration that the applicant will comply with well plugging guidelines, as set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and report closure to the District;
  8. a statement that the water withdrawn from the well will be put to beneficial use at all times; and
  9. any other information deemed necessary by the Board.
- (c) The timely filing of an application for registration shall provide the owner of a well described under Subsection (a)(2) with evidence that a well existed before the effective date of these Temporary Rules for purposes of grandfathering the well from the requirement to comply with any well location or spacing requirements of the District and any other entitlements that existing wells may receive under these Temporary Rules or under permanent rules adopted by the District. A well that is required to be registered under this Rule and that is not exempt under Rule 2.1(a) shall not be operated after January 1, 2009, without first complying with the metering provisions set forth under Section 8. Once a registration is complete, which for new wells also includes receipt by the District of the well report required by Rule 3.7, the registration shall be perpetual in nature, subject to being amended or transferred and to enforcement for violations of these Rules.

### **Rule 3.4 Registration of Existing Non-Exempt Wells Required by July 1, 2009.**

- (a) The owner of an existing well described under Rule 3.3(a)(2) must register the well with the District between January 1, 2009, and July 1, 2009, and must install a meter on the well as set forth under Section 8 of these rules by January 1, 2009. Failure of the owner of such a well to timely register the well under this Rule shall subject the well owner to enforcement under these Rules.
- (b) Although not required under these Temporary Rules, the owner of an existing well exempt under Rule 2.1(a) may elect to register the well with the District to provide the owner with evidence that the well existed before the adoption of these Temporary Rules for purposes of grandfathering the well from the requirement to comply with any well location or spacing requirements of the District and any other entitlements that existing wells may receive under these Temporary Rules or under permanent rules adopted by the District.

### **Rule 3.5 Registration of New Wells or Alterations to Existing Wells Required Prior to Drilling or Alteration.**

- (a) An owner or well driller, or any other person legally authorized to act on their behalf, must submit all applicable registration fees, obtain approval of a registration application, and submit a well report deposit with the District before any new well, as defined in Rules 1.1(39) and 1.1(37)(e), except leachate wells or monitoring wells, may be drilled, equipped, or completed, or before an existing well may be substantially altered with respect to size or capacity, beginning on and after January 1, 2009.
- (b) A registrant for a new well has 120 days from the date of approval of its application for well registration to drill and complete the new well, and must file the well report within 60 days of completion. The registrant may apply for one extension of up to 120 days which may be approved by the General Manager without further action by the Board of Directors. However, if the well is for a public water system, the registrant shall have 240 days to drill and complete the new well from the date of approval of its application for well registration, in order to allow time for Texas Commission on Environmental Quality (TCEQ) approval(s), and must file the well report within 60 days of well completion. Such a public water system registrant may apply for one extension of an additional 240 days which may be approved by the General Manager without further action by the Board of Directors, or may resubmit an identical well registration without the need to pay an additional administrative fee associated with the submittal of well registrations for new wells.
- (c) If the well report is timely submitted to the District, the District shall return the well report deposit to the owner or well driller. In the event that the well report required under this rule and Rule 3.7 are not filed within the deadlines set forth under Subsection (b) of this rule, the driller or owner shall forfeit the well report deposit and shall be subject to enforcement by the District for violation of this rule.
- (d) Notwithstanding any other rule to the contrary, the owner and driller of a new well are jointly

responsible for ensuring that a well registration required by this section is timely filed with the District and contains only information that is true and accurate. Each will be subject to enforcement action if a registration required by this section is not timely filed by either, or by any other person legally authorized to act on the behalf of either.

### **Rule 3.6 General Provisions Applicable to Registrations.**

- (a) Registration applications may be submitted to the District by utilizing any of the methods described in Rule 1.7, using the registration form provided by the District.
- (b) The General Manager, or his designee, shall, within five business days after the date of receipt of an application for registration, make a determination and notify the applicant as to whether the application is administratively complete or incomplete. If an application is not administratively complete, the District shall request the applicant to complete the application. The application will expire if the applicant does not complete the application within 120 days of the date of the District's request. An application will be considered administratively complete and may be approved by the General Manager without notice or hearing if:
  - (1) it substantially complies with the requirements set forth under Rule 3.3(b), including providing all information required to be included in the application that may be obtained through reasonable diligence; and
  - (2) if it is a registration for a new well:
    - (A) includes the well log deposit; and
    - (B) proposes a well that complies with the spacing, location, and well completion requirements of Section 4.

A person may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next regular Board meeting. The General Manager may set the application for consideration by the Board at the next available Board meeting or hearing in lieu of approving or denying an application.

- (c) Upon approval or denial of an application, the General Manager shall inform the registrant, by utilizing a method described in Rule 1.7, of the approval or denial, as well as whether the well meets the exemptions provided in Rule 2.1 or whether it is subject to the metering, fee payment, and reporting requirements of these Rules.
- (d) An application pursuant to which a registration has been issued is incorporated in the registration, and the registration is valid contingent upon the accuracy of the information supplied in the registration application. A finding that false information has been supplied in the application may be grounds to refuse to approve the registration or to revoke or suspend the registration.
- (e) Submission of a registration application constitutes an acknowledgment by the registrant of receipt of the rules and regulations of the District and agreement that the registrant will

comply with all rules and regulations of the District.

- (f) The District may amend any registration, in accordance with these Rules, to accomplish the purposes of the District Rules, management plan, the District Act, or Chapter 36, Texas Water Code.
- (g) If multiple wells have been aggregated under one registration and one or more wells under the registration will be transferred, the District will require separate registration applications from each new owner for the wells retained or obtained by that person.
- (h) No person shall operate or otherwise produce groundwater from a well required under this Section to be registered with the District before:
  - (1) timely submitting an accurate application for registration, or accurate application to amend an existing registration as applicable, of the well to the District; and
  - (2) obtaining approval from the District of the application for registration or amendment application, if such approval is required under these Rules.
- (i) District approval of a registration application may not automatically grant the registrant the authority to drill, complete, or operate a well under another governmental entity's rules or regulations. The registrant should refer to the rules and regulations of other governmental entities' with jurisdiction over the drilling and operation of water wells at the location specified in the District registration application, including but not limited to, the county, the city, the Texas Department of Licensing and Regulation, and/or the Texas Commission on Environmental Quality, where applicable, to determine whether there are any other requirements or prohibitions in addition to those of the District that apply to the drilling and operation of water wells.

### **Rule 3.7 Records of Drilling, Pump Installation and Alteration Activity, and Plugging**

- (a) Each person who drills, deepens, completes or otherwise alters a well shall make, at the time of drilling, deepening, completing or otherwise altering the well, a legible and accurate well report recorded on forms prescribed by the District or by the Texas Department of Licensing and Regulation. Replacement of a pump, which does not exceed the capacity of the pump being replaced or which has a maximum designed production capacity of 17.36 gpm or less, shall not constitute an alteration for purposes of the requirement to submit a well report under this section.
- (b) Each well report required by subsection (a) of this Rule shall contain:
  - (1) the name and physical address of the well owner;
  - (2) the location of the drilled, deepened, completed or otherwise altered well, including the physical address of the property on which the well will be located, as well as the coordinates of the wellhead location, as determined by a properly functioning and calibrated global positioning system (GPS) unit;

- (3) the type of work being undertaken on the well;
  - (4) the type of use or proposed use of water from the well;
  - (5) the diameter of the well bore;
  - (6) the date that drilling was commenced and completed, along with a description of the depth, thickness, and character of each strata penetrated;
  - (7) the drilling method used;
  - (8) the borehole completion method performed on the well, including the depth, size and character of the casing installed;
  - (9) a description of the annular seals installed in the well;
  - (10) the surface completion method performed on the well;
  - (11) the location of water bearing strata, including the static level and the date the level was encountered, as well as the measured rate of any artesian flow encountered;
  - (12) the type and depth of any packers installed;
  - (13) a description of the plugging methods used, if plugging a well;
  - (14) the type of pump installed on the well, including the horsepower rating of the pump, as assigned by the pump manufacturer;
  - (15) the type and results of any water test conducted on the well, including the yield, in gallons per minute, of the pump operated under optimal conditions in a pump test of the well; and
  - (16) a description of the water quality encountered in the well.
- (c) The person who drilled, deepened, completed or otherwise altered a well pursuant to this rule shall, within 60 days after the date the well is completed, file a well report described in Subsections (a) and (b) of this Rule with the District. Not later than the 30<sup>th</sup> day after the date a well is plugged, a driller, licensed pump installer, or well owner who plugs the well shall submit a plugging report to the District.
- (d) The plugging report described in Subsection (d) must be in substantially similar form to the Texas Department of Licensing and Regulation Form a004WWD (Plugging Report) and shall include all information required therein.

### **Rule 3.8      Transfer of Well Ownership**

- (a) Within 90 days after the date of a change in ownership of a well that is registered with the

District as exempt under Rule 2.1, the new well owner (transferee) shall notify the District in writing of the effective date of the change in ownership, the name, daytime telephone number, and mailing address of the new well owner, along with any other contact or well-related information reasonably requested by the General Manager.

- (b) Within 90 days after the date of a change in ownership of a well that is not exempt under District Rule 2.1 from the fee payment, metering, and reporting requirements of these rules, the new well owner (transferee) shall submit to the District, on a form provided by the District staff, a signed and sworn-to application for transfer of ownership.
- (c) If a registrant conveys by any lawful and legally enforceable means to another person the real property interests in one or more wells or a well system that is recognized in the registration so that the transferring party (the transferor) is no longer the “well owner” as defined herein, and if an application for change of ownership under subsection (b) has been approved by the District, the District shall recognize the person to whom such interests were conveyed (the transferee) as the legal holder of the registration, subject to the conditions and limitations of these District Rules.
- (d) The burden of proof in any proceeding related to a question of well ownership or status as the legal holder of a registration issued by the District and the rights thereunder shall be on the person claiming such ownership or status.
- (e) Notwithstanding any provision of this Rule to the contrary, no application made pursuant to Subsection (a) or (b) of this Rule shall be granted by the District unless all outstanding fees, penalties, and compliance matters have first been fully and finally paid or otherwise resolved by the transferring party (transferor) for all wells included in the application or existing registration, and each well and registration made the subject of the application is otherwise in good standing with the District.
- (f) The new owner of a well that is the subject of a transfer described in this rule (transferee) may not operate or otherwise produce groundwater from the well after 90 days from the date of the change in ownership until the new owner has:
  - (1) submitted written notice to the District of the change in ownership, for wells described in subsection (a); or
  - (2) submitted to the District a completed application for transfer of ownership, for wells described in subsection (b).

A new well owner that intends to alter or use the well in a manner that would constitute a substantial change from the information in the existing registration or that would trigger the requirement to register the well under these Rules must also submit and obtain District approval of a registration application or registration amendment application, as applicable, prior to altering or operating the well in the new manner.

### **Rule 3.9          Amendment of Registration**

A registrant shall file an application to amend an existing registration and obtain approval by the District of the application prior to engaging in any activity that would constitute a substantial

change from the information in the existing registration. For purposes of this rule, a substantial change includes a change that would substantially alter the size or capacity of a pump or well, but shall not apply to an increase in the size of the pump if the maximum designed production capacity of the new pump is 17.36 gpm or less, a change in the type of use of the water produced, the addition of a new well to be included in an already registered aggregate system, a change in location of a well or proposed well, a change of the location of use of the groundwater, or a change in ownership of a well. A registration amendment is not required for maintenance or repair of a well if the maintenance or repair conforms to the definition in Rule 1.1(20).

### **Rule 3.10 Water Production Reports**

- (a) Not later than January 31 and July 31 of each year, the owner of any non-exempt well within the District must submit, on a form provided by the District, a report containing the following:
  - (1) the name of the registrant;
  - (2) the well numbers of each registered well within the District owned or operated by the registrant;
  - (3) the total amount of groundwater produced by each well or well system during the immediately preceding reporting period;
  - (4) the total amount of groundwater produced by each well or well system during each month of the immediately preceding reporting period;
  - (5) the purposes for which the water was used;
  - (6) for water used at a location other than the property on which the well is located, and that is not used by a fire department or emergency services district for emergency purposes or by a public water system:
    - (A) the location of the use of the water; and
    - (B) if the water was sold on a retail or wholesale basis, the name of the person to whom it was sold and the quantity sold to each person; and
  - (7) for water used at a location other than the property on which the well is located and that is used by a public water system, a description of identified system losses, including:
    - (A) an estimate of the total quantity, reported in gallons or in percentages of total annual production, of water lost to system loss, if known;
    - (B) the sources of system losses reported under Subpart (A); and
    - (C) the methods, if any, employed to address the system losses reported under this subsection; and

- (8) additionally, for fire departments, emergency services districts, and any person that provides groundwater produced from within the District to a fire department or emergency services district and that seeks a fee payment exemption under Rule 2.3:
  - (A) the total amount of groundwater produced or used, as applicable, solely for emergency purposes during each month of the reporting period provided for under this Rule; and
  - (B) the total amount of groundwater produced or used, as applicable, for any purpose other than for emergency purposes during each month of the reporting period provided for under this Rule.
- (b) The report due on January 31 shall report groundwater produced during the period of the immediately preceding July 1 to December 31. The report due July 31 shall report groundwater produced during the period of the immediately preceding January 1 to June 30. To comply with this rule, the registrant of a well shall read each water meter associated with a well not later than the dates the reports are due as set forth in this section and report the readings to the District on the form described in Subsection (a). Additionally, to comply with this rule, all applicable information required under Subsection (a) must be contained in the water production report filed with the District.
- (c) The report required by Subsection (a) must also include a true and correct copy of the meter log required by District Rule 8.6.
- (d) The first deadline to submit a report to the District under this Rule is:
  - (1) July 31, 2014, for wells in existence or completed by June 30, 2014; and
  - (2) no later than the first January 31 or July 31 following the date the well was completed, for wells completed after June 30, 2014.

### **Rule 3.11 Replacement Wells.**

- (a) No person may replace an existing well without first having obtained authorization for such work from the District. Authorization for the construction of a replacement well may only be granted following the submission to the District of an application for registration of a replacement well.
- (b) Each application described in Subsection (a) shall include the information required under Rule 3.3(b), as well as any other information, fees, and deposits required by these rules for the registration of a new well. In addition, information submitted in the application must demonstrate to the satisfaction of the General Manager each of the following:
  - (1) the proposed location of the replacement well is within 50 feet of the location of the well being replaced;
  - (2) the replacement well and pump will not be larger in designed production capacity

than the well and pump being replaced, unless the maximum designed production capacity is 17.36 gpm or less; and

- (3) immediately upon commencing operation of the replacement well, the well owner will cease all production from the well being replaced and will begin efforts to plug the well being replaced, which plugging shall be completed within 90 days of commencing operation of the replacement well.
- (c) Except as required under Subsection (d), applications for registration of replacement wells submitted under this rule may be granted by the General Manager without notice or hearing. A person may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next available regular Board meeting or hearing called for that purpose, as determined by the General Manager in his discretion.
- (d) Notwithstanding Section (b)(1) of this Rule, the General Manager may authorize the drilling of a replacement well at a location that is beyond 50 feet of the location of the well being replaced if the applicant demonstrates to the satisfaction of the General Manager that water quality, sanitation, or other issues prevent the replacement well from being located within 50 feet of the location of the well being replaced. Requests to locate a replacement well beyond 100 feet of the location of the well being replaced may be granted only by the Board.

## **SECTION 4. SPACING AND LOCATION OF WELLS; WELL COMPLETION**

### **Rule 4.1 Spacing and Location of Existing Wells.**

Wells drilled prior to the effective date shall be drilled in accordance with state law in effect, if any, on the date such drilling commenced and are exempt from the spacing and location requirements of these rules to the extent that they were drilled lawfully.

### **Rule 4.2 Spacing and Location of New Wells.**

- (a) All new wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant. All such new wells must also be drilled or completed at locations that comply with the minimum tract sizes requirements, the minimum distances from the property lines for the land upon which the well is to be located, and the minimum distances from the nearest existing registered well, approved well site, or existing unregistered well identified by the General Manager under Rule 4.5(b), unless an exception is granted by the Board under Rule 4.5. The minimum tract size requirements and minimum well spacing distances are set forth under Rule 4.3 below.

- (b) After authorization to drill a new or replacement well has been granted by the District, the well may only be drilled at a location that is within ten (10) yards (30 feet) of the location specified in the registration. New wells must nonetheless be actually drilled in compliance with the spacing requirements under Rule 4.3. Replacement wells must be actually drilled and completed so that they are located no more than 50 feet from the well being replaced, unless otherwise authorized by Rule 3.11(d).
- (c) The Board may authorize wells producing from different aquifers to observe a reduction in spacing between each other if the wells comply with the additional well completion requirements set forth under Rule 4.4(c).
- (d) Compliance with the spacing and location requirements of these rules or the grant of an exception to such requirements does not necessarily authorize a person to drill a well at a specified location in the District. Agencies or other political subdivisions of the State of Texas that are located in whole or in part within the boundaries of the District may impose additional requirements related to the drilling or completion of water wells.
- (e) The owner and driller of a well are jointly responsible for ensuring that the well is drilled at a location that strictly complies with the location requirements of Subsection (b). If the Board determines that a well is drilled at a location that does not strictly comply with the location requirements of Subsection (b), the Board may, in addition to taking all other appropriate enforcement action, require the well to be permanently closed or authorize the institution of legal action to enjoin any continued drilling activity or the operation of the well.

### **Rule 4.3 Well Spacing Requirements**

All (1) new wells drilled or completed in any aquifer in the District, and (2) all existing wells that are substantially altered, unless the maximum amount of water the altered existing well can actually produce as equipped is 17.36 gpm or less, shall observe the spacing and tract size requirements in the following table:

<b>Maximum Allowed Well Production</b>	<b>Minimum Tract Size</b>	<b>Spacing from Other Well Sites</b>	<b>Spacing from Property Line</b>
The maximum amount of water the well can actually produce as equipped in gallons per minute (gpm).	The minimum tract size that may be considered an appropriate site for a new well.	The minimum distance, in feet, that a new well or proposed well site may be located from an existing registered well, existing unregistered well identified by the General Manager under Rule 4.5(b), or approved well site.	The minimum distance, in feet, that a new well or proposed well site may be located from the nearest property line of the tract of land on which it is to be located.
17.36 gpm or less	Minimum Tract Size is 2 acres.	150 feet	50 feet
More than 17.36 gpm but not more than 40 gpm		1,200 feet	100 feet
More than 40 gpm but less than 80 gpm		1,800 feet	200 feet
80 gpm or larger		2,400 feet	400 feet

## **Rule 4.4 Standards of Completion for All Wells**

- (a) All wells must be completed in accordance with the well completion standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and under these Rules.
- (b) Water well drillers shall indicate the method of completion performed on the well report.
- (c) To prevent the commingling of water between the aquifers which can result in a loss of artesian (or static) head pressure or the degradation of water quality, each well penetrating more than one aquifer or subdivision thereof must be completed in a manner so as to prevent the commingling of groundwater between aquifers or between subdivisions of an aquifer if required by the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. The driller shall indicate the method of completion used to prevent the commingling of water on the well report. The well driller may use any lawful method of completion calculated to prevent the commingling of groundwater.
- (d) In order to protect water quality, the integrity of the well, or loss of groundwater from the well, the District may impose additional well completion requirements on any well as determined necessary or appropriate by the Board.

## **Rule 4.5 Exceptions to Spacing Requirements.**

- (a) The Board may grant exceptions to the spacing requirements of the District only after consideration of an application filed pursuant to this Rule.
- (b) An application for an exception to the spacing requirements of the District is only required for a proposed well that does not meet the minimum tract size or minimum spacing requirements from property lines or existing wells under Rule 4.3. With regards to minimum spacing requirements from existing wells, the requirements shall apply to existing registered wells, previously approved well sites, and existing unregistered wells that the General Manager is able to readily identify from aerial photos, satellite images, or other information available in the District's databases and records, or by visual inspection from a public road or right of way without entering private property, as part of the General Manager's review of a well registration application. The General Manager may rely on any credible source of information as an aid in identifying existing wells. This rule does not impose any duty or standard of care on the General Manager to identify existing unregistered wells, but rather is intended to allow protection of such wells that the General Manager may easily identify in processing a well registration application. A landowner with an unregistered well should not rely on the General Manager's review under this subsection to identify the well; such a well owner may only ensure application of the District's well spacing requirements to protect his or her well and consideration of the well in the exception application process under this rule by registering the existing well with the District. The General Manager shall inform the well registration applicant if the well fails to meet the minimum tract size or well spacing requirements of Rule 4.3. All well registration applicants for non-exempt wells are encouraged to schedule a pre-application meeting with the General Manager prior to

submitting a spacing requirement exception application to review project options that may be available to the applicant. If an applicant decides to proceed with the filing of an exception application, the exception application must include:

- (1) a short, plain statement explaining each circumstance that the applicant believes justifies the requested exception to the spacing requirements of the District;
  - (2) a plat or sketch of the property upon which the applicant proposes to locate the well that is the subject of the application for exception to the spacing requirements of the District that is prepared by the General Manager and that:
    - (A) is drawn to scale;
    - (B) accurately identifies and depicts the location of the boundaries of each property located, in whole or in part, within the minimum spacing distances from the proposed well location under Rule 4.3; and
    - (C) accurately identifies and depicts the location of each existing registered well, previously approved well site, or existing unregistered well identified by the General Manager in his review of the registration application under this rule that is located within the minimum spacing distances from the proposed well location under Rule 4.3;
  - (3) a list of the names and physical and mailing addresses of the owners of record of each property located within a circle surrounding the location of the proposed well as its center, and the radius of which is defined by the applicable minimum spacing distance from other well sites under Rule 4.3, as such names and addresses are identified in the records of the applicable county appraisal district at the time the application is filed;
  - (4) a completed application for new well registration; and
  - (5) a filing fee in an amount to be set by resolution of the Board, which shall cover all expenses involved in recording the exception in the property deed records of the county in which the well is located. This filing fee shall be refunded to the applicant in the event the exception is denied.
- (c) An application for an exception filed pursuant to this Rule must be sworn to or affirmed by a person with personal knowledge of relevant facts who shall swear or affirm that the facts contained in the application are true and correct to the best of the person's knowledge. A plat filed pursuant to this Rule must be certified by the county clerk's office or municipal platting authority where the land is located, unless the District already has a certified plat by the appropriate platting authority on file at the District office that covers the property in question. If the proposed well involves a preliminary plat, it must be sworn to or affirmed by a person with personal knowledge of relevant facts set forth in the preliminary plat.
- (d) The Board may not approve an application filed pursuant to this Rule unless:

- (1) the General Manager has declared the application to be administratively complete;
  - (2) following the General Manager's written declaration of administrative completeness to the applicant, the applicant has, using a form provided by the District, provided written notice to each person described in Subsection (b)(3) in accordance with Subsection (e); and
  - (3) following the applicant's satisfaction of the notice requirements of Subsection (d)(2), the Board holds a public hearing on the application at the next available Board meeting or hearing called for that purpose, as determined by the General Manager in his discretion, where the applicant may be required to appear and show cause why the application should be granted, and at which all persons shall be given an opportunity to appear and be heard on the application.
- (e) The notice required by Subsection (d)(2) shall:
- (1) include each of the following:
    - (A) the name and address of the applicant;
    - (B) a description of the location of the property upon which the applicant proposes to locate the well that is the subject of the application for exception to the spacing requirements of the District;
    - (C) a general description of the applicant's request; and
    - (D) the date, time, and location of the public hearing on the application;
  - (2) be delivered to each person described in Subsection (b)(3), using a method of service that complies with Rule 1.7, no less than ten calendar days before the date of the public hearing on the application; and
  - (3) be deemed sufficient by the District for purposes of providing notice to the proper persons even if there are inaccuracies in the records of the applicable county appraisal district.
- (f) The Board may grant or deny an application filed pursuant to this Rule on any reasonable grounds based on information contained in the application or properly and timely presented to the Board for its consideration at the public hearing, including without limitation anticipated impacts to any registered well, previously approved well site, or unregistered existing well of which the Board is aware prior to granting or denying the application, and whether the well in the application will produce groundwater from an aquifer other than the aquifer from which the wells that are closer than the minimum distances are producing.
- (g) Notwithstanding any subsection of this rule to the contrary, the Board may grant an administratively complete application filed pursuant to this Rule without the requirement of the notice described in Subsection (d)(2) and without the requirement of a public hearing described in Subsection (d)(3) if:

- (1) the applicant obtains, on a form provided by the District, a signed, voluntary waiver indicating the consent to the applicant's requested exception to the spacing requirements of the District from the following:
    - (A) the owner of each property that is located, in whole or in part, within the applicable minimum spacing distance, as established under these Rules, from the proposed well location; and
    - (B) the owner of each existing registered well, previously approved well site, or existing unregistered well identified by the General Manager in his review of the registration application under Subsection (b) of this rule that is located within the applicable minimum spacing distance, as established under these Rules, from the proposed well location; or
  - (2) the applicant seeks an exception to the spacing requirements of the District for a well that is proposed to be located on a tract of land that was platted, meets an exception to platting, or was otherwise lawfully configured, prior to January 1, 2009, as a tract that is too small to comply with the minimum tract size and spacing requirements set forth under Rule 4.3, but only if:
    - (A) the well is to be used solely for domestic, livestock, or poultry watering use;
    - (B) the well as equipped is incapable of producing more than 17.36 gallons of water per minute;
    - (C) such tract is not further subdivided into smaller tracts of land after January 1, 2009, and prior to the drilling, completion, or equipping of the well; and
    - (D) the applicant provides evidence of the date the tract of land was platted or was otherwise lawfully configured.
- (h) Any person interested in supporting or challenging the application may;
- (1) submit comments or other information in writing to the District, if received by the District prior to the date of the public hearing on the application; or
  - (2) appear before the Board in person at the public hearing.
- (i) Applications for an exception under Subsections (g)(1) or (2) of this Rule may be approved or denied by the General Manager. A person may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board shall hear the applicant's appeal at the next regular Board meeting, unless the General Manager sets the application for consideration by the Board at an earlier Board meeting or hearing called for that purpose, as determined by the General Manager in his discretion, in lieu of approving or denying an application. Upon approval or denial of an application, the General Manager shall inform the registrant in writing by utilizing a method described in Rule 1.7.
- (j) If the Board or General Manager grants an exception to the spacing requirements, the General Manager or his designee shall have such exception recorded in the property deed

records of the county in which the well is located.

- (k) The burden of proof in any proceeding related to an application for an exception to a spacing requirement shall be on the applicant. The Board may impose additional restrictions on the exact location or the production of a well to be drilled pursuant to an exception that it grants.
- (l) The Board or General Manager may grant an application for an exception under this rule to a person who owns multiple tracts of land or lots in a platted subdivision for each tract or lot that meets the requirements of Subsection (g)(2) of this rule without the need to include a well registration application with the application for an exception. However, no well shall be drilled on any such tract until a well registration application for such well has been approved by the District.

## **Rule 4.6      Exception Requests Involving Certain Public Water Systems.**

- (a) When considering a request for an exception to spacing requirements under Rule 4.5 by an applicant that is a retail public utility that is a political subdivision of the state and proposes to drill a well to supply water exclusively for a public water system, the Board may consider evidence of whether the proposed well will be drilled at a location within the boundaries of the political subdivision that has prohibited the drilling of wells by other persons through a lawful ordinance, rule, resolution, or order of the political subdivision or whether the drilling of wells on other land in the area of the proposed well is prohibited through deed restrictions or other lawful means. The Board may consider whether and to what extent the well drilling prohibitions may reasonably be expected to limit the impact of the proposed well on surrounding landowners and well owners.
- (b) Notwithstanding the owners of land who are entitled to notice under Rule 4.5(d) and (e) and in lieu of the class of persons entitled to notice described under Rule 4.5(b)(3), notice of an application submitted under this Rule 4.6 shall be provided in the manner set forth under Rule 4.5 to:
  - (1) Each owner of an existing registered well or previously approved well site located within the minimum distance requirements from the proposed well under Rule 4.3 as indicated in the records of the District at the time the application is filed;
  - (2) each existing unregistered well owner identified by the General Manager in the General Manager's review under Rule 4.5(b), as identified in the records of the applicable county appraisal district at the time the application is filed; and
  - (3) the owner of record of each property, as identified in the records of the applicable county appraisal district at the time the application is filed, located within the minimum distance requirements from the proposed well under Rule 4.3 whose land is located in whole or in part outside of the corporate boundaries of the political subdivision.

## **SECTION 5. REGULATION OF PRODUCTION; WASTE PROHIBITED**

### **Rule 5.1 Temporary Production Limitations.**

The maximum quantity of water that a person may withdraw after January 1, 2009, from a well that is not exempt under Rule 2.1(a) is the amount of water the person produces and timely:

- (1) submits payment to the District for in accordance with the fee rate adopted by the District under Section 7; and
- (2) reports pumpage volumes to the District under Rule 3.10.

### **Rule 5.2 Regular Production Limitations.**

In order to accomplish the purposes of Chapter 36, Texas Water Code, and the District Act, and to achieve the goals of the District Management Plan, the District may, after notice and hearing, establish groundwater production limitations for all wells when it adopts permanent rules for the District.

### **Rule 5.3 Waste Prohibited.**

No person shall engage in any conduct subject to the District's regulatory jurisdiction that constitutes waste, as that term is defined herein.

## **SECTION 6. TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT**

### **Rule 6.1 General Provisions.**

- (a) A person who produces or wishes to produce water from a well not exempt under Rule 2.1(a) that is located or is to be located within the District and transport such water for use outside of the District must register the well and submit timely payment of the Groundwater Transport Fee to the District under Rule 7.2 for any water transported out of the District. The District may require the person to install any meters necessary to report the total amount of groundwater transported outside of the District for reporting purposes and for purposes of calculating the Groundwater Transport Fee.
- (b) The District may not, in a manner inconsistent with rules and fees applied to production and use occurring wholly within the boundaries of the District, regulate production of groundwater or assess fees against the transport of water produced in an area of a retail public utility that is located inside the district boundaries and transported for use to an area that is within the same retail public utility but that is located outside the district boundaries if the majority of the geographic area of the retail public utility's boundaries or defined service area is within the boundaries of the District and the majority of the groundwater

produced is used within the boundaries of the District. If conditions change over time such that the majority of such geographic area or use is not within the boundaries of the District, the groundwater transported for use outside of the District shall be assessed the Groundwater Transport Fee.

## **Rule 6.2 Reporting.**

A person transporting groundwater for use outside of the District and subject to the requirement to pay the Groundwater Transport Fee shall file periodic reports with the District describing the amount of water transported and used outside the District. The report shall be filed with the District for the reporting periods and by the deadlines set forth for Water Production Reports under Rule 3.10. The report for groundwater transported shall be on the appropriate form provided by the District and shall state the following: (1) the name of the person; (2) the well registration numbers of each well from which the person has produced groundwater transported for use outside the District; (3) the total amount of groundwater produced from each well or well system during the immediately preceding reporting period; (4) the total amount of groundwater transported outside of the district from each well or well system during each month of the immediately preceding reporting period; (5) the purposes for which the water was transported; (6) the amount and source of surface water transported, if any; and (7) any other information requested by the District.

## **SECTION 7. FEES AND PAYMENT OF FEES**

### **Rule 7.1 Water Use Fees.**

- (a) A water use fee rate schedule shall be established by Board resolution annually at least 60 days before the end of the calendar year. The rate shall be applied to the groundwater pumpage in the ensuing calendar year for each well not exempt under Rule 2.1. The District will review the account of any person changing the use of a well from non-exempt to exempt or vice versa to determine if additional water use fees are due or if a refund of water use fees is warranted.
- (b) Wells exempt under Rule 2.1 shall be exempt from payment of water use fees. However, if exempt well status is withdrawn, the District may assess fees and penalties in accordance with the District Rules.
- (c) No later than 60 days prior to the end of the calendar year, beginning with calendar year 2009, the District shall send by regular mail to the owner or operator of each registered well that is required to pay the water use fee a reminder statement setting forth the water use fee rate applicable to the water produced in the ensuing year, setting forth deadlines for submission of fee payments and production reports of meter readings, and other information deemed appropriate by the District.

### **Rule 7.2 Groundwater Transport Fee.**

The District shall impose a 50 percent export surcharge in addition to the District's water use fee for in-District use for groundwater produced in the District that is transported for use outside of the District, except as provide by Rule 6.1(b). The procedures, requirements, and penalties related to payment of the Water Use Fee shall also apply to payment of the Groundwater Transport Fee.

## **Rule 7.3 Payment of Water Use and Groundwater Transport Fees.**

- (a) All fees for groundwater production or transport in a calendar year must be paid to the District semi-annually. Fees for water produced or transported between January 1 and June 30 each year are due to the District by July 31 of the same calendar year; fees for water produced or transported between July 1 and December 31 each year are due to the District by January 31 of the following calendar year. Fee payments shall be submitted in conjunction with the Water Production Reports, monthly logs, and groundwater transport reports if applicable.
- (b) Any well that is subject to fee payment under this rule and that provides water for both agricultural and non-agricultural purposes shall pay the water use fee rate applicable to non-agricultural purposes for all water produced from the well, unless the applicant can demonstrate through convincing evidence to the satisfaction of the District that a system is or will be in place so as to assure an accurate accounting of water for each purpose of use.

## **Rule 7.4 Failure to Make Fee Payments.**

- (a) Payments not received within 30 days following the date that Water Use Fees or Groundwater Transport Fees are due and owing to the District pursuant to Rule 7.3(a) will be subject to a late payment fee of the greater of the following:
  - (1) \$25.00; or
  - (2) ten percent (10%) of the total amount of water use fees due and owing to the District.
- (b) Persons failing to remit all water use fees due and owing to the District within 60 days of the date such fees are due pursuant to Rule 7.3(a) shall be subject to a civil penalty not to exceed three times the amount of the outstanding water use fees due and owing, in addition to the late fee penalty prescribed in Subsection (a) of this Rule, and may be subject to additional enforcement measures provided for by these Rules or by order of the Board.

## **Rule 7.5 Returned Check Fee.**

The Board, by resolution, may establish a fee for checks returned to the District for insufficient funds, account closed, signature missing, or any other reason causing a check to be returned by the District's depository.

## **Rule 7.6 Well Report Deposit.**

The Board, by resolution, may establish a well report deposit to be held by the District as part of the well registration procedures. The District shall return the deposit to the depositor if all relevant well logs are timely submitted to the District in accordance with these Rules. In the event the District does not timely receive all relevant well logs, or if rights granted within the registration are not timely used, the deposit shall become the property of the District.

## **Rule 7.7 Enforcement.**

After a well is determined to be in violation of these rules for failure to make payment of water use fees or groundwater transport fees on or before the 60th day following the date such fees are due pursuant to Rule 7.3, all enforcement mechanisms provided by law and these Rules shall be available to prevent unauthorized use of the well and may be initiated by the General Manager without further authorization from the Board.

## **SECTION 8. METERING**

### **Rule 8.1 Water Meter Required.**

- (a) Except as provided in Rule 8.2, the owner of a well located in the District and not exempt under Rule 2.1 shall equip the well with a flow measurement device meeting the specifications of these Rules and shall operate the meter on the well to measure the flow rate and cumulative amount of groundwater withdrawn from the well. Except as provided in Rule 8.2, the owner of an existing well not exempt under Rule 2.1 that is located in the District shall install a meter on the well prior to producing groundwater from the well after December 31, 2008.
- (b) A mechanically driven, totalizing water meter is the only type of meter that may be installed on a well registered with the District unless an approval for another type of meter is applied for and granted by the District. The totalizer must not be resettable by the registrant and must be capable of a maximum reading greater than the maximum expected annual pumpage. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for cold-water meters as those standards existed on the date of adoption of these Rules.
- (c) The water meter must be installed according to the manufacturer's published specifications in effect at the time of the meter installation, or the meter's accuracy must be verified by the registrant in accordance with Rule 8.4. If no specifications are published, there must be a minimum length of five pipe diameters of straight pipe upstream of the water meter and one pipe diameter of straight pipe downstream of the water meter. These lengths of straight pipe must contain no check valves, tees, gate valves, back flow preventers, blow-off valves, or any other fixture other than those flanges or welds necessary to connect the straight pipe to the meter. In addition, the pipe must be completely full of water throughout the region. All installed meters must measure only groundwater.
- (d) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's standards, instructions, or recommendations, and shall be calibrated to ensure an accuracy reading range of 95% to 105% of actual flow.

- (e) The owner of a well is responsible for the purchase, installation, operation, maintenance, and repair of the meter associated with the well.
- (f) Bypasses are prohibited unless they are also metered.

## **Rule 8.2 Water Meter Exemption.**

Wells exempt under Rule 2.1(a) shall be exempt from the requirement to obtain a water meter under Rule 8.1.

## **Rule 8.3 Metering Aggregate Withdrawal.**

Where wells are part of an aggregate system, one or more water meters may be used for the aggregate well system if the water meter or meters are installed so as to measure the groundwater production from all wells included in the system. The provisions of Rule 8.1 apply to meters measuring aggregate pumpage.

## **Rule 8.4 Accuracy Verification.**

- (a) **Meter Accuracy to be Tested:** The General Manager may require the registrant, at the registrant's expense, to test the accuracy of a water meter and submit a certificate of the test results. The certificate shall be on a form provided by the District. The General Manager may further require that such test be performed by a third party qualified to perform such tests. The third party must be approved by the General Manager prior to the test. Except as otherwise provided herein, certification tests will be required no more than once every three years for the same meter. If the test results indicate that the water meter is registering an accuracy reading outside the range of 95% to 105% of the actual flow, then appropriate steps shall be taken by the registrant to repair or replace the water meter within 90 calendar days from the date of the test. The District, at its own expense, may undertake random tests and other investigations at any time for the purpose of verifying water meter readings. If the District's tests or investigations reveal that a water meter is not registering within the accuracy range of 95% to 105% of the actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or wells, the registrant shall reimburse the District for the cost of those tests and investigations within 90 calendar days from the date of the tests or investigations, and the registrant shall take appropriate steps to bring the meter or meters into compliance with these Rules within 90 calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement of accuracy is impaired, the District may require the registrant, at the registrant's expense, to take appropriate steps to remedy the problem and to retest the water meter within 90 calendar days from the date the problem is discovered and reported to the registrant.
- (b) **Meter Testing and Calibration Equipment:** Only equipment capable of accuracy results of plus or minus two percent of actual flow may be used to calibrate or test meters.
- (c) **Calibration of Testing Equipment:** All approved testing equipment must be calibrated every two years by an independent testing laboratory or company capable of accuracy

verification. A copy of the accuracy verification must be presented to the District before any further tests may be performed using that equipment.

### **Rule 8.5      Removal of Meter for Repairs.**

A water meter may be removed for repairs and the well remain operational provided that the District is notified prior to removal and the repairs are completed in a timely manner. The readings on the meter must be recorded immediately prior to removal and at the time of reinstallation. The record of pumpage must include an estimate of the amount of groundwater withdrawn during the period the meter was not installed and operating.

### **Rule 8.6      Water Meter Readings.**

The registrant of a well not exempt under Rule 2.1 must read each water meter associated with the well and record the meter readings and the actual amount of pumpage in a log at least monthly. The logs containing the recordings shall be available for inspection by the District at reasonable business hours. Copies of the logs must be included with the Water Production Report required by District Rule 3.10, along with fee payments as set forth under Section 7. The registrant of a non-exempt well shall read each water meter associated with a non-exempt well not later than January 31 and July 31 of each year and report the readings to the District on a form provided by the District along with copies of the monthly logs and payment of all Water Use Fees and Groundwater Transport Fees by the deadlines set forth for fee payment under Rule 7.3.

### **Rule 8.7      Installation of Meters.**

Except as otherwise provided by these Rules, a meter required to be installed under these Rules shall be installed before producing water from the well on or after January 1, 2009.

### **Rule 8.8      Enforcement.**

It is a major violation of these Rules to fail to meter a well and report meter readings in accordance with this Section. After a well is determined to be in violation of these rules for failure to meter or maintain and report meter readings, all enforcement mechanisms provided by law and these Rules shall be available to prevent unauthorized use of the well and may be initiated by the General Manager without further authorization from the Board.

## **SECTION 9. REPORTS, INSPECTION, PENALTIES AND ENFORCEMENT OF RULES**

### **Rule 9.1 Purpose and Policy.**

The District's ability to effectively and efficiently manage the limited groundwater resources within its boundaries depends entirely upon the adherence to the rules promulgated by the Board to carry out the District's purposes. Those purposes include providing for the conservation, preservation, protection and recharge of the groundwater resources within the District, to protect against subsidence, degradation of water quality, and to prevent waste of those resources. Without the ability to enforce these rules in a fair, effective manner, it would not be possible to accomplish the District's express groundwater management purposes. The enforcement rules and procedures that follow are consistent with the responsibilities delegated to it by the Texas Legislature through the District Act, and through Chapter 36 of the Texas Water Code.

### **Rule 9.2 Rules Enforcement.**

- (a) If it appears that a person or entity has violated, is violating, or is threatening to violate any provision of the District Rules, including failure to pay any assessed penalty or fee, the Board may institute and conduct a suit in a court of competent jurisdiction in the name of the District for any remedy or combination of remedies listed below:

1. payment of fees owed;
2. injunctive relief;
3. recovery of a civil penalty in an amount set by District Rule per violation; and/or
4. any other legal or equitable remedy provided by District Rule or by law.

Each day of a continuing violation constitutes a separate violation.

- (b) Unless otherwise provided in these rules, the penalty for a violation of any District rule shall be either:
- (1) \$10,000.00 per violation; or
  - (2) a lesser amount, as determined appropriate by the Board, as set forth in an enforcement policy that may include a civil penalty and disincentive fees schedule, which policy shall be adopted by the Board pursuant to Sections 36.101 or 36.1011 of the Texas Water Code, that shall be incorporated by this reference into these Rules and shall constitute a Rule of the District for all purposes.

- (c) A penalty under this section is in addition to any other penalty or remedy provided by law or by District Rule and may be enforced by filing a complaint in a court of competent jurisdiction in the county in which the District's principal office or meeting place is located.
- (d) If the District prevails in a suit to enforce its Rules, the District may seek, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of attorney's fees awarded by a court under this Rule shall be fixed by the court.

### **Rule 9.3 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 in the District. Failure of a well owner required by these Temporary Rules to submit complete, accurate, and timely pumpage and transportation reports may result in:

- (a) the assessment of any fees or penalties adopted under Rule 9.2 for meter reading and inspection as a result of District inspections to obtain current and accurate pumpage and/or transported volumes; and
- (b) additional enforcement measures provided by these Rules or by order of the Board.

### **Rule 9.4 District Inspections.**

No person shall unreasonably interfere with the District's efforts to conduct inspections or otherwise comply with the requirements, obligations, and authority provided in Section 36.123 of the Texas Water Code.

### **Rule 9.5 Notices of Violation.**

Whenever the District determines that any person has violated or is violating any provision of the District's Rules, including the terms of any rule or order issued by the District, it may use any of the following means of notifying the person or persons of the violation:

- (a) **Informal Notice:** The officers, staff or agents of the District acting on behalf of the District or the Board may inform the person of the violation by telephone by speaking or attempting to speak to the appropriate person to explain the violation and the steps necessary to satisfactorily remedy the violation. The information received by the District through this informal notice concerning the violation will be documented, along with the date and time of the call, and will be kept on file with the District. Nothing in this subsection shall limit the authority of the District to take action, including emergency actions or any other enforcement action, without first providing notice under this subsection.
- (b) **Notice of Violation:** The District may inform the person of the violation through a written notice of violation issued pursuant to this rule. Each notice of violation issued hereunder

shall explain the basis of the violation, identify the rule or order that has been violated or is being violated, and list specific required actions that must be satisfactorily completed—which may include the payment of applicable civil penalties—to address each violation raised in the notice. Notices of violation issued hereunder shall be tendered by a delivery method that complies with District Rule 1.7. Nothing in this rule subsection shall limit the authority of the District to take action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

- (c) **Compliance Meeting:** The District may hold a meeting with any person whom the District believes to have violated, or to be violating, a District Rule or District order to discuss each such violation and the steps necessary to satisfactorily remedy each such violation. The information received in any meeting conducted pursuant to this rule subsection concerning the violation will be documented, along with the date and time of the meeting, and will be kept on file with the District. Nothing in this rule subsection shall limit the authority of the District to take action, including emergency actions or any other enforcement action, without first conducting a meeting under this subsection.

## **Rule 9.6 Show Cause Hearing.**

- (a) Upon recommendation of the General Manager to the Board or upon the Board's own motion, the Board may order any person that it believes has violated or is violating any provision of the District's Rules a District order to appear before the Board at a public meeting called for such purpose and show cause why an enforcement action, including the initiation of a suit in a court of competent jurisdiction, should not be pursued by the District against the person or persons made the subject of the show cause hearing.
- (b) No show cause hearing under subsection (a) of this Rule may be held unless the District first serves, on each person to be made the subject of the hearing, written notice not less than 20 days prior to the date of the hearing. Such notice shall include the following:
  1. the time and place for the hearing;
  2. the basis of each asserted violation; and
  3. the rule or order that the District believes has been violated or is being violated; and
  4. a request that the person cited duly appear and show cause why enforcement action should not be pursued.
- (c) The District may pursue immediate enforcement action against the person cited to appear in any show cause order issued by the District where the person so cited fails to appear and show cause why an enforcement action should not be pursued.
- (d) Nothing in this rule shall limit the authority of the District to take action, including emergency actions or any other enforcement action, against a person at any time regardless of whether the District holds a hearing under this Rule.

## **SECTION 10. OTHER DISTRICT MANAGEMENT ACTIONS AND DUTIES**

### **Rule 10.1 District Management Plan.**

Following notice and hearing, the District shall adopt a comprehensive Management Plan. The District Management Plan shall specify the acts and procedures and performance and avoidance measures necessary to prevent waste, the reduction of artesian pressure, or the draw-down of the water table. The District shall use the Rules to implement the Management Plan. The Board will review the Management Plan at least every five years. If the Board considers a new Management Plan necessary or desirable based on evidence presented at a hearing, a new Management Plan will be developed and adopted. A Management Plan, once adopted, remains in effect until the subsequent adoption of another Management Plan.

## **SECTION 11. EFFECTIVE DATE**

### **Rule 11.1. Effective Date.**

These Rules take effect on August 18, 2008, which was the date of their original adoption. An amendment to these Rules takes effect on the date of its original adoption. It is the District's intention that the rules and amendments thereto be applied retroactively to activities involving the production and use of groundwater resources located in the District, as specifically set forth in these Rules.

# **APPENDIX 1. Enforcement Policy and Civil Penalty Schedule.**

## **Upper Trinity Groundwater Conservation District ENFORCEMENT POLICY AND CIVIL PENALTY SCHEDULE**

### **General Guidelines**

When the General Manager discovers a violation of the District Rules that either (1) constitutes a Major Violation, or (2) constitutes a Minor Violation that the General Manager is unable to resolve within 60 days of discovering the Minor Violation, the General Manager shall bring the Major Violation or the unresolved Minor Violation and the pertinent facts surrounding it to the attention of the Board. Violations related to water well construction and completion requirements shall also be brought to the attention of the Board.

The General Manager shall recommend to the Board of Directors an appropriate settlement offer to settle the violation in lieu of litigation based upon the Civil Penalty Schedule set forth below or as otherwise provided in District Rules. The Board may instruct the General Manager to tender an offer to settle the violation or to institute a civil suit in the appropriate court to seek remedies, including, but not limited to civil penalties, injunctive relief, and costs of court and expert witnesses, damages, and attorneys' fees.

### **I. Minor Violations**

The following acts each constitute a minor violation:

1. Failure to timely file a registration on a new well that qualifies for an exemption under Rule 2.1.
2. Failure to conduct a meter reading within the required period.
3. Failure to timely notify District regarding change of ownership.
4. Failure to timely file Well Report.
5. Failure to timely submit required documentation reflecting alterations or increased production.
6. Operating a meter that is not accurately calibrated.

#### **CIVIL PENALTY SCHEDULE FOR MINOR VIOLATIONS**

<b>First Violation:</b>	<b>Up to \$250.00</b>
<b>Second Violation:</b>	<b>Up to \$500.00</b>
<b>Third Violation:</b>	<b>Major Violation</b>

A second violation shall be any minor violation within 3 years of the first minor violation. A third violation shall be any minor violation following the second minor violation within 5 years of the first minor violation. Each day of a continuing violation constitutes a separate violation.

## **II. Major Violations**

The following acts each constitute a major violation:

1. Failure to register a well where mandated by rules, including drilling, equipping, completing, altering, or operating a well without a compliant and approved registration.
2. Failure to timely meter a well when required.
3. Failure to submit accurate Groundwater Production report within the required period.
4. Failure to submit accurate Groundwater Transport report within the required period.
5. Drilling a well at a different location than authorized or in violation of spacing requirements.\*
6. Failure to close or cap an open or uncovered well.
7. Failure to submit Water Use Fees within 60 days of the date the fees are due.\*\*
8. Failure to timely submit Groundwater Transport Fees within 60 days of the date the fees are due.\*\*
9. Intentionally or knowingly submitting inaccurate and untruthful information on District forms or to the Board.
10. Committing waste.

### **CIVIL PENALTY SCHEDULE FOR MAJOR VIOLATIONS**

**First Violation:** Up to \$1,000.00

**Second Violation:** Up to \$5,000.00

**Third Violation:** Civil Penalty Up to \$10,000.00 or

**Civil Suit for injunction and damages**

A second violation shall be any major violation within 3 years of the first major violation. A third violation shall be any major violation following the second major violation within 5 years of the first major violation. Each day of a continuing violation constitutes a separate violation.

\* In addition to the applicable penalty provided for in the Civil Penalty Schedule for Major Violations, persons who drill a well in violation of applicable spacing requirements may be required to plug the well.

\*\* In addition to the applicable penalty provided for in the Civil Penalty Schedule for Major Violations, persons who do not submit all Water Use Fees and Groundwater Transport Fees due and owing within 60 days of the date the fees are due pursuant to Rule 7.3(a) shall be subject to a civil penalty not to exceed three times the amount of the outstanding Water Use Fees, Groundwater Transport Fees, or both, that are due and owing.

### **III. Water Well Construction and Completion Requirements**

#### **CIVIL PENALTY SCHEDULE: WATER WELL CONSTRUCTION & COMPLETION REQUIREMENTS**

Failure to use approved construction materials: Up to **\$250 + total costs of remediation**

Failure to properly cement annular space: Up to **\$500 + total costs of remediation**

The terms “approved construction materials” and “properly cement annular space” refer to the construction material and annular space requirements for wells that are set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. In addition to the civil penalties provided for in this schedule, persons who drill a well in violation of applicable spacing or completion requirements may be required to recomplete or reconstruct the well in accordance with the District's rules, or may be ordered to plug the well.

### **IV. Other Violations of District Rules Not Specifically Listed Herein**

Any violation of a District Rule not specifically set forth herein shall be presented to the Board of Directors for a determination of whether the violation is Minor or Major, based upon the severity of the violation and the particular facts and issues involved, whereupon the procedures and the appropriate civil penalty amount set forth herein for Minor and Major Violations shall apply to the violation.

*This Enforcement Policy and Civil Penalty Schedule was originally adopted by the Board of Directors on February 9, 2009, and was amended by the Board on November 30, 2009, as and in the manner of a rule of the District, after notice and hearing in accordance with the rulemaking hearing provisions of Chapter 36, Water Code, and in compliance with the provisions of the Texas Open Meetings Act, Chapter 551, Government Code.*