Upper Trinity Groundwater Conservation District

District Rules for Water Wells in Hood, Montague, Parker, and Wise Counties, Texas

As Adopted on XXXXXX, 2019

PROPOSED AMENDMENTS TO DISTRICT RULES

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Upper Trinity
Groundwater Conservation District
District Rules

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PREAMBLE

The Upper Trinity Groundwater Conservation District ("District") was created in 2007 by the 80th 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, ensure 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 groundwater, now and in the future. The District will strive to develop, promote, and implement groundwater conservation, augmentation, and management strategies to protect groundwater 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. DEFINITIONS

Rule 1.1 Definitions 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, except where a term clearly has a different meaning as used when read in context in these rules:

(1) "Agriculture" means any of the following activities:

(a) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(b) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(c) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(d) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(e) wildlife management; and

(f) raising or keeping equine animals.

(2) "Agricultural use" means any use or activity involving agriculture, including agricultural irrigation.

(3) "Applicant" means an individual or entity seeking a specific action from the District that the District is authorized to undertake under these rules, including but not limited to, approval of a registration or permit or granting a request for hearing on a matter.

(4) "Aquifer" means a water bearing geologic formation in the District. The two primary aquifers located in the District are the Trinity Group and the Cross Timbers aquifer. See also definition of "layer of an aquifer."

(5) "Artificial excavation" means one that is man-made rather than naturally occurring.

(6) "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.

(7) "Beneficial use" or "use for a beneficial purpose" means use of groundwater for:

(a) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;

(b) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or

(c) any other purpose that is useful and beneficial to the user that does not constitute waste.

(8) "Board" means the Board of Directors of the District.

(9) "Certificate of Convenience and Necessity" or "CCN" as used in these rules means a certificate issued by the Public Utility Commission of Texas or the Texas Commission on Environmental Quality or its predecessor agencies that provides the CCN holder the exclusive right to provide retail water service within the geographic area specified in the CCN and within which geographic area the CCN holder has the legal duty to provide continuous and adequate retail water service.

(10) "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, highway, or other easement if the properties would otherwise share a common border.

(11) "Contiguous controlled acreage" means a surface acre of land on which a well is located that is the subject of an Operating Permit or an application for an Operating Permit, and each additional acre of land inside the boundaries of the District for which the Operating Permit applicant or holder has a legal right to produce groundwater that:

(a) is located over the same aquifer as the aquifer from which the well will be producing groundwater; and

(b) meets one of the following criteria:

(A) located within the perimeter of the same surface estate plat, deed, or other legally recognized surface estate property description filed in the deed records of the county clerk as the acre on which the well is located;

(B) located within a common perimeter of an area of land in which the well is located and that is under the same right to produce and use groundwater, as established by deed, lease, or otherwise as the surface acre of land upon

which the well is located, although the property may be described in separate plats or deeds; or

(C) otherwise abuts the acreage described under (a) or (b), but on a different tract of land that does not meet the description of acreage under (a) or (b). The term "contiguous controlled acreage" also applies to acreage on separate properties divided by a publicly owned road, highway, or other easement if the properties would otherwise share a common border and constitute contiguous controlled acreage under this definition. The acreage of the road, highway, or other long and narrow easement shall not be included for purposes of calculating the amount of total contiguous controlled acreage unless the permit applicant has the right to produce groundwater from the road, highway, or easement. However, acreage on two otherwise non-contiguous tracts of land shall not be considered contiguous simply because they are joined by the length of a road, highway, or other long and narrow easement. For an applicant that is a retail public utility, "contiguous controlled acreage" has the additional meaning set forth under Rule 5.3.

Nothing in this definition or in any part of these rules related to minimum well spacing distances requires an applicant for a well registration or permit who owns the right to produce groundwater on two (2) or more contiguous tracts to meet the minimum well spacing distances from the property line with regard to the property line separating the two (2) or more tracts.

(12) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, Texas Water Code, of the desired condition of the groundwater resources in a management area at one or more specified future times.

(13) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.

(14) "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.

(15) "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.

(16) "Domestic use" means the use of groundwater by an individual or a household to support domestic activity. Such use may include groundwater for drinking, washing, or culinary purposes; for irrigation of lawns, or a family garden and/or family orchard; for watering of domestic animals. Domestic use does not include use by or for a public water system or a

retail public utility. Domestic use does not include irrigation of crops in fields or pastures. Domestic use does not include groundwater used for open-loop residential geothermal heating and cooling systems but does include groundwater 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).

(17) "Dry hole" means wells that do not encounter groundwater.

(18) "Effective date" means XXXXX, 2019, which was the original date of adoption of these rules.

(19) "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.

(20) "Evidence of historic or existing use" means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste and declared by an applicant for a Historic Use Permit as the applicant's Maximum Historic Use~~permit applicant during the relevant time period set by District rule that regulates groundwater based on historic use~~. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(21) "Existing and historic use period" means the time period of January 1, 2009, through December 31, 2019.

(22) "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.

(23) "Geothermal well" means an opening (either a bore hole or trench) in the ground into which a series of pipes are installed and connected to a heat exchange system for the purpose of beneficially utilizing geothermal resources. A "closed-loop" geothermal well is one filled with a heat transfer fluid, which does not function through the pumping of groundwater. An "open-loop geothermal well" is one that functions through the pumping of groundwater

into the pipes that comprise the well, which shall be treated as a water well under these rules for all purposes.

(24) "Groundwater" means water percolating below the surface of the earth.

(25) "Historic Use Permit" means a permit required by the District for the operation of any nonexempt, existing groundwater well or well system that produced groundwater during the existing and historic use period or for which an administratively complete well registration was submitted to the District on or before the last day of the existing and historic use period, December 31, 2019.

(26) "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.

(27) "Layer of an aquifer" means the Wichita, Cisco/Bowie, Canyon, and the Strawn geologic strata/ hydrogeologic units of the Cross Timbers Aquifer, and the Antlers, Paluxy, Glen Rose, and Twin Mountains geologic strata/ hydrogeologic units of the Trinity Aquifer group as depicted in Appendix H.

(28) "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.

(29) "Maintenance and Repair" of a well means work done in the normal course of operation to ensure safe and proper operation, groundwater 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.

(30) "Management area" or "Groundwater Management Area" means an area designated and delineated by the Texas Water Development Board under Chapter 35 as an area suitable for management of groundwater resources.

(31) "Maximum designed production capacity" means the designed production capacity of the well and pump according to the manufacturer's specifications with regard to depth from the pump to the land surface, the groundwater level, and the size of the pipes. Maximum designed production capacity is expressed in gallons per minute (GPM).

(32) "Maximum Historic Use" means the amount of groundwater from the aquifer as determined by the District that, unless reduced by the District under Rule 5.4 or otherwise under these rules, an applicant for a Historic Use Permit is authorized to withdraw equal to the ~~greater of the~~ following:

(a) for an applicant who had beneficial use during the existing and historic use period for a full calendar year at the maximum designed and planned annual groundwater production amount for the applied-for historical purpose of use, the applicant's actual maximum beneficial use of groundwater from the aquifer excluding waste during any one full calendar year of the existing and historic use period; or

(b) for an applicant who is eligible for a Historic Use Permit but for whom Subsection (a) of this definition does not apply because the applicant's project or activity supported by the investment in the well were not commenced and in operation for a full calendar year of the existing and historic use period at the maximum designed and planned annual groundwater production amount because the project or activity was not fully constructed, completed, or built out for a full calendar year of that period, the applicant's extrapolated Maximum Historic Use will be calculated as follows: the amount of groundwater that would normally have been placed to beneficial use without waste by the applicant for the last full calendar year of the existing and historic use period for the applied-for purpose if the applicant's project or activity supported by the investment in the well had been commenced and in full operation at the maximum designed and planned production amount~~for an applicant who had beneficial use during the existing and historic use period, but due to the applicant's activities not having been commenced and in operation for the full final calendar year of the existing and historic use period, the applicant did not have beneficial use for a full calendar year, the applicant's extrapolated maximum beneficial use will be calculated as follows: the amount of groundwater that would normally have been placed to beneficial use without waste by the applicant for the last full calendar year during the existing and historic use period for the applied-for purpose if the applicant's activities had been commenced and in full operation at the maximum designed and planned production capacity for the full final calendar year of the existing and historic use period~~.

Maximum Historic Use only applies to groundwater produced from wells that were either drilled and completed, or for which an administratively complete well registration was

submitted to the District, on or before the last day of the existing and historic use period, December 31, 2019, regardless of whether such wells are part of a well system or not.

(33) "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.

(34) "Modeled available groundwater" means the amount of groundwater that the Texas Water Development Board's Executive Administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108 of the Texas Water Code.

(35) "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.

(36) "Operating permit" means a permit required by the District for drilling, equipping, completing, substantially altering, operating, or producing groundwater from any non-exempt water well for which a Historic Use Permit has not been issued by the District or timely applied for and is awaiting District action.

(37) "Penalty" means an additional fee imposed by the District for a violation of these rules, as authorized by Section 8830.106 of the District Act,~~n administrative or~~ or a civil penalty authorized by Section 8830.106 of the District Act, Section 36.102(b) of the Texas Water Code, or other applicable law.

(38) "Person" means an individual, corporation, limited liability company, organization, government, governmental subdivision, agency, business trust, estate, trust, partnership, association, or other legal entity.

(39) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 67.

(40) "Poultry" means chickens, turkeys, nonmigratory game birds, and other domestic nonmigratory fowl, but does not include any other bird regulated by the Texas Parks and Wildlife Department 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.

(41) “Production” or “producing” means the act of extracting groundwater from an aquifer by a pump or other method.

(42) “Property Line” means the outer perimeter of a tract of land.

(43) “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 sixty (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 sixty (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.

(44) “Pump” means any facility, device, equipment, materials, or method used to obtain groundwater from a well.

(45) "Recharge" means the amount of groundwater that infiltrates to the water table of an aquifer.

(46) “Registrant” means a person required to submit an application for registration.

(47) “Registration” means an application submitted to the District that provides certain required information about a well that a well owner seeks to register with the District, as more particularly described under Section 2. The term also refers to the subsequent approval of such application by the District. Once approved by the District, a well registration shall be perpetual in nature, subject to enforcement and/or cancellation for violation of the District Rules.

(48) “Retail public utility” means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining,

or controlling in this state facilities for providing potable water service or raw water service, or both, for compensation.

(49) “Rule” or “Rules” means a rule or rules of the District compiled in this document, including the appendices, as supplemented or amended from time to time, and any rule adopted to implement these rules.

(50) “Spacing requirement” means a minimum well spacing requirement established under Rule 4.3.

(51) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

(52) “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, the size of the pump on the well, or the maximum designed production capacity of the well, unless the well as altered has a maximum designed production capacity of 17.36 gpm or less.

(53) “TCEQ” means the Texas Commission on Environmental Quality.

(54) “Tract” means a surface estate plat, surface estate deed, or other legally recognized surface estate property configuration recorded in the deed records of the county in which the property is located as one or more contiguous parcels 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.

(55) “Tract size requirement” means a minimum tract size requirement established under Rule 4.3.

(56) “Transfer” means a change in a registration or permit 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.

(57) Types of wells:

(a) “Exempt well” means a new or an existing well that is exempt under Rule 3.1 or Rule 3.2 from certain regulatory requirements in these rules.

(b) "Existing well" means a well that was in existence or for which drilling commenced prior to the Effective Date, XXXXX 2019, of the District Rules, unless the use of the term clearly indicates otherwise.

(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 the Effective Date, XXXXX 2019, of the District Rules, unless the use of the term clearly indicates otherwise.

(f) "Non-exempt well" means an existing or new well that does not qualify for exempt well status under the laws of this State or the District Rules.

(g) "Public water supply well" means, for purposes of these rules, a well that produces the majority of its water for use by a public water system or by a retail public utility.

(h) "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.

(i) "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.

(58) "Verification Period" means the period of time from January 1, 2021, to December 31, 2022, or as such period of time is established by the Board under Rule 2.8(i), during which a person required to obtain a Historic Use Permit under these rules who was not required by a rule of the District to meter groundwater withdrawals prior to the Effective Date of these rules (XXXXX 2019) or who does not otherwise have certain metered records of groundwater production ~~for two (2) calendar years~~ during the existing and historic use period shall be required to meter and report to the District their groundwater production volumes and pay associated Groundwater Use Fees and Groundwater Transport Fees, and during which such users may amend their Historic Use Permit applications to the extent that groundwater production during the Verification Period provides information relevant to the person's Maximum Historic Use during the existing and historic use period.

(59) "Waste" means one or more of the following:

(a) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause an intrusion into the reservoir of groundwater unsuitable for agriculture, gardening, domestic, stock raising, or other beneficial purposes;

(b) the flowing or producing of water from the groundwater reservoir by artificial means if the groundwater produced is not used for a beneficial purpose;

(c) the escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(d) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(e) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or 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 groundwater 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.

(60) "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 groundwater wells producing less groundwater than desired by the well owner, test holes, and dry holes. Any reference to a "well" in terms of a requirement under these rules also applies to a "well system," as defined in this rule, except as specifically distinguished in these rules. See definition (57) of this rule regarding types of wells.

(61) "Well owner" means the person or persons who own 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.

(62) "Well system" means a well or group of wells providing groundwater to a common distribution system, natural or artificial storage facility, or common consumptive use.

(63) "Withdraw" means the act of extracting or producing groundwater by pumping or other method.

(64) "Year" means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.

SECTION 2. REGISTRATIONS, PERMITS, RECORDS, REPORTS, AND LOGS

Rule 2.1 General Provisions Applicable to Permits and Registrations

(a) No person may:

(1) Drill a well without first obtaining from the District an approved well registration and, if required by these rules, an approved permit;

(2) Alter the size of a well or pump such that it would disqualify the well from a registration or permitting exemption without first obtaining an approved registration and/or permit, as applicable, from the District;

(3) Substantially alter the size of a well or pump without first obtaining an approved registration, registration amendment, permit, and/or permit amendment, as applicable, from the District; or

(4) Operate a well or produce groundwater from a well that is subject to the requirement to obtain a registration and/or permit without first obtaining the approved registration, permit, or appropriate amendment thereto, as applicable, from the District.

(b) A violation of any of the prohibitions in Subsection (a) occurs on the first day that the prohibited drilling, alteration, operation, or production begins, and continues each day thereafter as a separate violation until cessation of the prohibited conduct, or until the necessary authorization from the District is formally granted.

(c) Registration and permit applications shall be sworn to and submitted to the District on a form provided by the District by mail, email, facsimile, or hand delivery.

(d) An application pursuant to which a permit or registration has been issued is incorporated in the permit or registration, and the permit or registration is granted on the basis of, and its validity contingent upon, the accuracy of the information supplied in that application. A finding that false information has been supplied in the application may be grounds to refuse or deny the application or for immediate revocation of the permit or registration.

(e) No person may violate the terms, conditions, requirements, or special provisions in a permit or registration. Any such violation shall be grounds for enforcement against the person for a violation of these rules.

(f) Submission of a permit or registration application constitutes an acknowledgment by the applicant of receipt of the rules and regulations of the District and agreement that the applicant will comply with all rules and regulations of the District.

(g) District approval of a permit or registration application may not automatically grant the applicant all necessary legal authority to drill, complete, or operate a well under another governmental entity's rules or regulations. The applicant should refer to the rules and regulations of other governmental entities with possible jurisdiction over the drilling and operation of groundwater wells at the location of the groundwater well or proposed groundwater well, including but not limited to, the county, the city, the special district, 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 groundwater wells. In determining whether to approve or deny a permit or registration application under these rules, the District may consider whether the proposed well is consistent with any applicable rules or decisions of the applicable county or municipal platting authority with regard to the drilling of groundwater wells on the property of which the District is aware.

(h) Notwithstanding any provision of this rule to the contrary, no application for a well registration or permit pursuant to these rules 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 applicant for any other wells for which the applicant holds a registration or permit from the District.

Rule 2.2 Well Registration

(a) The following wells must be registered with the District.

(1) all wells drilled on or after January 1, 2009, regardless of size, capacity, or type of use;

(2) all existing wells that are not listed as exempt under Rule 3.1(a)(1), (2), or (3);

(3) all wells replaced and plugged under Rule 2.12; notwithstanding anything in these rules, there shall be no fee for wells registered under this provision.

(4) all wells that were required to be registered under the District's previous Temporary Rules for Water Wells.

(b) Although not required under these rules, the owner of an exempt well drilled before January 1, 2009, may elect to register the well with the District to provide the owner with evidence that the well existed before the adoption of certain rules by the District for purposes of exempting the well from the requirement to comply with any well location, minimum tract size, or spacing requirements of the District, the protection of the owner's existing well against encroachment from new wells through the District's well spacing requirements, and any other entitlements that existing wells may receive under these rules.

(c) 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, mailing address, email address, phone number, and fax number of the registrant, and the owner of the property, if different from the registrant, on which the well is or will be located, and the name of the well driller;

(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 groundwater from the well;

(4) the location or proposed location of the well, identified as a specific point measured by latitudinal and longitudinal coordinates, and the surface elevation of the well at land surface, expressed in terms of mean sea level (MSL);

(5) the location or proposed location of the use of groundwater from the well, if used or proposed to be used at a location other than the location of the well;

(6) the maximum designed production capacity or proposed maximum designed production capacity of the well, as equipped, in gallons per minute;

(7) a groundwater 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; and

(8) a statement that the groundwater withdrawn from the well will be put to beneficial use at all times.

(d) The General Manager shall, within five (5) 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 one hundred twenty (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 of this rule, including providing all information required to be included in the application that may be obtained through reasonable diligence;

(2) it is not inconsistent with any rules or decisions of the county or municipal platting authority where the proposed well is to be located with regard to the drilling of groundwater wells on the property of which the General Manager is aware; and

(3) if it is a registration for a well drilled after January 1, 2009:

(A) includes the well completion report deposit; and

(B) proposes a well that complies with the spacing, location, minimum tract size, and well completion requirements of Section 4 in effect at the time the application is submitted.

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. If the General Manager denies the application, the applicant may appeal the General Manager's ruling by filing a written request for a hearing before the Board. The Board will hear the registration applicant's appeal at the next available regular Board meeting.

(e) 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.

(f) The owner of a well described under Subsection (a)(2) that was drilled prior to January 1, 2009, must register the well with the District on or before July 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.

(g) The owner of an existing well described under Subsection (a)(2) that was not required to register the well under the District's previous Temporary Rules for Water Wells but that is required to register the well under these rules must register the well with the District on or before ~~December~~ May 1, 2020~~19~~, and must install a meter on the well as set forth under Section 8 of these rules on or before ~~December~~ May 1, 2020~~19~~. Failure of the owner of such a well to timely register and meter the well under this rule shall subject the well owner

to enforcement under these rules. The well owner shall comply with the meter reading, groundwater production reporting, and fee payment requirements of these rules beginning on ~~January~~ July 1, 2020.

(h) No person shall operate or otherwise produce groundwater from a well required under this section to be registered with the District before first obtaining approval from the District of the application for registration or amendment application, if such approval is required under these rules.

(i) An owner or well driller of a new well must obtain an approved well registration from the District before drilling commences, beginning on and after the effective date of these rules.

(j) The person who drills or completes the well shall file a well completion report or the State of Texas Well Report Tracking Number associated with the well with the District within sixty (60) days after the date the well is completed as required by Rule 2.13. Upon receipt of the well completion report or the State of Texas Well Report Tracking Number required by Rule 2.13, the registration of the well shall be perpetual in nature, subject to enforcement and/or cancellation for violation of the District Rules.

(k) If the well completion report or the State of Texas Well Report Tracking Number associated with the well is timely submitted to the District, the District shall return the well completion report deposit required by Rule 6.7 to the owner, well driller, or other party who paid the deposit on behalf of the well owner. In the event that the well completion report or State of Texas Well Report Tracking Number required under Subsection (j) of this rule and Rule 2.13 is not filed within the deadlines set forth therein, the driller, owner, or other party who paid the deposit on behalf of the owner shall forfeit the well completion report deposit. The well owner or driller shall be subject to enforcement by the District for violation of this rule.

(l) 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.

(m) Notwithstanding any other rule to the contrary, an application for well registration for a well that requires a permit under these rules will only be approved if the corresponding permit application is approved.

Rule 2.3 Authorization for Construction of New Wells

(a) Before drilling commences, the well owner, water well driller, or any other person acting on behalf of the well owner pursuant to written, legal authority, must:

(1) submit an application in accordance with Rule 2.2 for well registration with the District, using a form provided by the District;

(2) obtain a permit, if the well is not exempt from the requirement to obtain a permit; and

(3) receive specific authorization from the District in the form of an approved well registration and, if applicable, an approved permit to commence drilling or altering the well.

(b) The General Manager shall review the application submitted under Subsection (a) of this rule and shall determine, based on information provided by the applicant, whether the proposed well qualifies for a permitting exemption under Rule 3.1(a) or Rule 3.2(a). The General Manager shall inform the applicant of this determination within five (5) business days of the General Manager's receipt of the completed application. An applicant may appeal the General Manager's determination under this subsection by filing, within thirty (30) days of the date of the written determination, a written request for a hearing before the Board.

(c) For proposed wells that qualify for a permitting exemption under Rule 3.1(a) or Rule 3.2(a), the registrant may begin drilling upon receipt of the approved registration. The registrant has one hundred twenty (120) days from the date of approval of its application for well registration to drill and complete the new well. The registrant may apply for one extension of up to one hundred twenty (120) days, which may be approved by the General Manager without further action by the Board. Thereafter, the registrant must apply for and obtain approval of the Board for any further extension.

(d) For proposed wells that do not qualify for a permitting exemption under Rule 3.1(a) or Rule 3.2(a), application must be made, and fees must be submitted, for all appropriate permits required by these rules, and the District must approve the permit application before drilling commences. Once the applicable permit that authorizes drilling, equipping, completing, or substantially altering the size or capacity of a well is approved, the permit holder has two hundred forty (240) days from the date of issuance of the permit to complete the drilling, equipping, well completion, or well alteration activities authorized in the permit. If drilling, equipping, well completion, or well alteration activities are not completed within two hundred forty (240) days of permit issuance, the permit will expire unless an extension is requested and granted. The permit holder may apply for one extension of up to one hundred twenty (120) days, which may be approved by the General Manager without further action by the Board. Any further extensions may only be granted by the Board upon application by the permit holder, and in no case shall an extension be granted for more than one hundred twenty (120) days. If additional extensions are not requested by the permit holder or are not approved by the Board, the permit shall expire upon one hundred twenty (120) days from the date the last extension was granted if the authorized construction activities have not been completed, and a new permit must be applied for and obtained. A well completion report or State of Texas Well Report Tracking Number associated with the well must be filed with the District within sixty (60) days of completion as required by Rule 2.13.

(e) Once the General Manager has determined under Subsection (b) that a well does not qualify for permitting exemption under Rule 3.1(a) or Rule 3.2(a), a pre-application meeting with

the permit applicant and District staff is required.

(f) The requirements in this rule do not apply to proposed leachate wells or monitoring wells.

~~(f)~~(g) Notwithstanding anything to the contrary in these rules, a proposed well for which an administratively complete well registration was submitted to the District on or before the last day of the existing and historic use period, December 31, 2019, and that is included in a Historic Use Permit application must be drilled and completed on or before January 31, 2021, or the well will forever lose its eligibility for a Historic Use Permit. The timelines set forth under Subsection (d) for drilling or completing a well do not apply to a well that is described by this subsection.

Rule 2.4 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, a change in the type of use of the groundwater produced, 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 or registration amendment is not required for maintenance or repair of a well if the "maintenance or repair" conforms to its definition in Rule 1.1, nor for an increase in the size of the pump if the maximum designed production capacity of the new pump is 17.36 gpm or less.

Rule 2.5 Application Requirements for All Permits

(a) A permit is required before drilling, substantially altering, operating, or producing groundwater from any well not exempt from the requirement to obtain a permit under Rule 3.1(a) or Rule 3.2(a).

(b) A well for which a permit application is submitted must have either a well registration previously approved by the District or an administratively complete well registration application submitted to the District before the permit application will be considered administratively complete.

(c) The following information shall be included in the permit application form provided by the District:

(1) the name, mailing address and e-mail address, phone number and fax number of the applicant and the owner of the land on which the well is or will be located, and the name of the well driller;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to file the application, hold the permit 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 proposed use and the amount of groundwater to be used for each purpose;

(4) a declaration that the applicant will comply with the District's Management Plan and rules;

(5) the location of each well and the maximum designed production capacity of the well;

(6) a groundwater well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;

(7) a drought contingency plan, if the applicant is required by law to have a drought contingency plan;

(8) a statement by the applicant that the groundwater withdrawn under the permit will be put to beneficial use at all times;

(9) the location of the use of the groundwater from the well;

(10) the name of the aquifer and layer of the aquifer from which groundwater will be produced by the well;

(11) legal description of the tract of land on which the well is located;

(12) a digital map or plat of the tract of land on which the well is located, in a format designated by the District at the pre-application meeting required under Subsection (b) of this rule;

(13) the amount of contiguous controlled acreage associated with the well(s) that is the subject of a permit application, a legal description of all such contiguous controlled acreage, and information demonstrating the extent to which the acreage is located over the same aquifer or layer of the aquifer from which the well(s) will be producing;

(14) for political subdivisions and other retail public utilities applying for an Operating Permit, the number of acres within the corporate boundaries of the political subdivision, the number of acres within the political subdivision or other retail public utility's CCN, if any, where the well is located or proposed to be located, a map of the corporate boundaries and a map of the retail water CCN where the well is located or proposed to be located, and a description of each tract of land within the service area on which an exempt or non-exempt well of the political subdivision or other retail public utility is located or proposed to be located;

(15) any additional information required for an Operating Permit under Rule 2.9, as

applicable; and

(16) any additional information required for a Historic Use Permit under Rule 2.8, as applicable.

(d) An application shall be accompanied by payment by the applicant of any administrative fees required by the District for permit applications.

(e) An application may be rejected as not administratively complete if the District finds that substantive information required by the permit application is missing, false, or incorrect.

(f) An application will be considered administratively complete if it complies with all requirements set forth under this rule, including all information required to be included in the application.

(g) A determination of administrative completeness shall be made by the General Manager.

(h) The Board shall promptly consider and act on each administratively complete permit application. No later than sixty (60) days after the date an administratively complete application is submitted, the District shall set the administratively complete permit application for hearing on a specified date. The initial hearing shall be held within thirty-five (35) days after the setting of the date.

(i) After public notice and hearing pursuant to the requirements in Appendix E, the Board shall act on the application within sixty (60) days after the date the final hearing on the application is concluded.

(j) For a well that requires a permit, approval or denial by the Board of the permit application also constitutes approval or denial of any underlying well registration application.

Rule 2.6 Considerations for Granting or Denying a Permit Application

Before granting or denying a permit application, the Board shall consider whether the application is accompanied by the prescribed fees and conforms to the requirements prescribed by Chapter 36, Texas Water Code, the District Act, and the District Rules, including without limitation:

(1) whether the proposed use of groundwater unreasonably affects existing groundwater and surface water resources;

(2) whether the proposed use of groundwater unreasonably affects the property rights of landowners or groundwater rights owners in the District;

(3) whether the proposed use of groundwater unreasonably affects existing groundwater well owners and permit holders;

(4) whether the proposed use of groundwater is dedicated to any beneficial use;

(5) whether the proposed use of groundwater is consistent with the District's Management Plan;

(6) whether the applicant has agreed to avoid waste and achieve groundwater conservation;

(7) whether the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure;

(8) the spacing, minimum tract size, and completion requirements under Section 4 of these rules;

(9) for Operating Permit applicants, the number of contiguous controlled acres at the well site;

(10) whether special conditions should be included in the permit;

(11) whether the issuance of the requested permit or permits would authorize the withdrawal of groundwater in amounts that are greater than necessary for the project proposed in the application; and

(12) any other consideration in granting or denying a permit that is authorized by these rules.

Rule 2.7 Permits Issued by District

All permits issued by the District shall include the following:

(1) the name of the person to whom the permit is issued;

(2) the date the permit is issued;

(3) the date the permit is to expire;

(4) the conditions and restrictions, if any, placed on the rate and amount of withdrawal of groundwater;

(5) the identification numbers issued by the District for each well included in the permit;

(6) any other conditions or restrictions the District prescribes; and

(7) any other information set forth in Section 36.1131, Water Code, or otherwise that

the District determines necessary or appropriate.

Rule 2.8 Historic Use Permits

(a) An owner of an existing well or well system shall apply to the District for a Historic Use Permit on or before ~~June~~ December 31, 2020, in the manner prescribed by this rule for any well or well system that is not exempt from the requirement to obtain a permit under Rules 3.1(a) or 3.2(a) and either:

~~(1) is not exempt from the requirement to obtain a permit under Rules 3.1(a) or 3.2(a);~~

~~(2) was completed and operational prior to the Effective Date (XXXXX, 2019) of these rules; and~~

(1) produced and used groundwater for a beneficial use in any year during the existing and historic use period (January 1, 2009, through December 31, 2019); or

~~(3)~~(2) for which an administratively complete well registration was submitted to the District on or before the last day of the existing and historic use period, December 31, 2019.

If the owner of a well described by this subsection~~Subsection (a) of this rule~~ fails to apply for a Historic Use Permit on or before ~~June~~ December 31, 2020, the well owner shall forfeit his right to make any future claim or application to the District for a Historic Use Permit under these rules and the right to file a lawsuit or make any claim against the District for taking ~~a~~ the person's property without just compensation based on loss of reasonable investment-backed expectations, and shall forfeit his rights and ability to operate the well under these rules~~,~~ unless the owner thereafter applies for and obtains an Operating Permit from the District that authorizes production from the well.

(b) Notwithstanding anything to the contrary in these rules, the owner of a well or well system that ~~existed~~ was completed prior to or during the existing and historic use period but was not in use during the existing and historic use period, but which may be used in the future for an activity that is supported by the water well and in which the well owner has made an economic investment prior to the XXXX Effective Date of these rules, may apply for a Historic Use Permit if desired by claiming extrapolated Maximum Historic Use under Rule 1.1 (32)(b). An application for a Historic Use Permit under this subsection must be submitted on or before ~~June~~ December 31, 2020. The application will be processed by the District in the same manner as other Historic Use Permit applications, except that in considering the application, the Board will also consider whether the applicant has abandoned the historic activity for which the permit is sought. Any application conditionally approved by the Board under this subsection shall go through a two (2) year Verification Period as described under Subsection (i) of this rule prior to final Board authorization approving the application. Failure to submit a Historic Use Permit application prior to the ~~June~~ December 31, 2020, deadline shall preclude the well owner described

under this subsection from being eligible to obtain a Historic Use Permit for the well in the future, and the person shall forfeit his right to make any future claim or application to the District for a Historic Use Permit under these rules and the right to file a lawsuit or make any claim against the District for taking the person's property without just compensation based on loss of reasonable investment-backed expectations, and shall forfeit his rights and ability to operate the well under these rules~~,~~ unless the owner thereafter applies for and obtains an Operating Permit from the District that authorizes production from the well.

(c) An application for a Historic Use Permit shall be on a form provided by the District and shall include evidence of historic or existing ~~and historic~~ use ~~of~~ for each~~a~~ well and, if applicable, each well system. Multiple historic wells that are part of a well system will be authorized under a single Historic Use Permit and permitted based on the aggregated production of the system, as explained in detail under Rule 2.10. An application for a Historic Use Permit shall include~~, including~~ the information required under Rule 2.5 and the following information on the application form and, as necessary or appropriate, attachments to the form:

(1) the year in which ~~the~~ each well was drilled;

(2) the purpose for which ~~the~~ each well was drilled and all subsequent purposes of use for which the groundwater produced from ~~the~~ each well was used;

(3) if the well is part of a well system, as defined under Rule 1.1, identification of all other wells in that well system;

(4) annual groundwater production history of ~~the~~ each well, and, if applicable, the annual groundwater production history for the entire well system, for each calendar year during the existing and historic use period in which the well was completed and operational;

(5) a declaration by the applicant of the Maximum Historic Use of ~~the~~ each individual well and, if applicable, the Maximum Historic Use for the entire well system,

~~(5)~~(6) evidence of historic or existing use for each well and, if applicable, each well system to support the information provided on annual groundwater production history and declaration(s) of Maximum Historic Use~~if the well is part of a well system, a declaration of the Maximum Historic Use of the well system~~;

~~(6)~~(7) a legal description of the tract of land on which ~~the~~ each well is located; and

(8) for any applicant whose application includes a well or well system that is claiming extrapolated Maximum Historic Use under Rule 1.1 (32)(b):

(A) evidence in the form of planning or design documents, records, or otherwise that the applicant reasonably expected to be able to produce the amount of groundwater declared as the Maximum Historic Use in the future, including

without limitation evidence of the maximum designed and planned annual groundwater production amount for the project or activity when fully constructed, completed, or built out that would be supplied by the well, and, if applicable, well system, that is the subject of the Maximum Historic Use declaration; and

~~(A)~~(B) a description and evidence of any and all investment-backed expectations associated with the well or well system and the groundwater produced from the well or well system. An investment-backed expectation represents the financial resources the applicant has invested in a project or activity based upon a reasonable expectation that the applicant ~~will~~ would be able to produce a certain amount of groundwater from the well or well system.

(d) During the time between January 1, 2021, and the issuance or denial of the Historic Use Permit, an applicant for a Historic Use Permit may annually produce no more than the amount of groundwater specified in the application, or most recent amendment thereto, as the Maximum Historic Use. This interim authorization by rule based on the information included in the Historic Use Permit application, or most recent amendment thereto, shall constitute the applicant's permit to operate and produce groundwater from the well or well system identified in the application for purposes of Chapter 36, Texas Water Code, until the Board acts to approve or deny the application. Notwithstanding anything to the contrary in these rules, prior to January 1, 2021, the District shall not impose a production limit on a well or well system that is eligible for a Historic Use Permit under these rules.

(e) An applicant shall amend the applicant's application to include any new information or to update information that the applicant has determined to be inaccurate or incorrect on or before January 1, 2021.

(f) Beginning on January 1, 2021, an applicant who produces more groundwater from a well or well system than designated in the approved Historic Use Permit or, for permits that have not yet been approved or denied by the Board, the amount claimed as the Maximum Historic Use for that well in the application or most recent amendment thereto, will be subject to enforcement for violation of these rules, unless the applicant is authorized under an Operating Permit to produce the additional groundwater from the well or well system.

(g) In the interest of promoting conservation of groundwater, the District shall allow an applicant for a Historic Use Permit to apply for a permit authorization in an amount less than the applicant's Maximum Historic Use. However, any such applicant shall forfeit the applicant's right to make any future claim or application to the District for a Historic Use Permit for a greater amount of groundwater production authorization and the right to file a lawsuit or make any claim against the District for taking a person's property without just compensation.

(h) After January 1, 2021, the District shall commence its review and processing of Historic Use Permit applications and determination of the Maximum Historic Use as set forth in Appendix F of these rules for each applicant's well.

(i) Notwithstanding anything to the contrary in this rule:

(1) The following types of Historic Use Permit applicants shall commence the two (2) year Verification Period, as defined in Rule 1.1, beginning January 1, 2021, or as otherwise determined by the Board:

(A) an applicant whose application includes a well that was not required to be metered by the District prior to the Effective Date (XXXXX 2019) of these rules~~ but that was registered with the District prior to the Effective Date~~;

(B) an applicant whose application includes a well or well system that is claiming extrapolated Maximum Historic Use under Rule 1.1 (32)(b)~~was not required to be metered by the District prior to the Effective Date of these rules and that was not required to be registered with the District prior to the Effective Date~~; and

(C) an applicant whose application includes a well that was required to be metered ~~and registered~~ by the District prior to the Effective Date but for which at least two (2) full calendar years of metered records of groundwater production for the well during the existing and historic use period do not exist~~; and~~

~~any other applicant required to do so under this section~~.

(2) An applicant described by Subdivision~~s~~ (1)(A) ~~or (B)~~ of this subsection shall install a meter that complies with the requirements of Section 8 of these rules on each well no later than ~~December~~ May 1, 2020~~19~~. Failure to timely install such a meter shall be grounds for the District to deny the permit and/or pursue enforcement for a violation of these rules.

(3) If a well described under Subdivision (1)(A~~B~~) of this subsection does not already have an approved well registration from the District, the owner of the well shall submit an administratively complete well registration application to the District no later than May 1, 2020, in addition to the Historic Use Permit application that must~~,~~ ~~to~~ be submitted to the District no later than ~~June~~ December 31, 2020.

(4) An applicant for a well described by Subdivision~~s~~ (1)(A)~~ or (B)~~ of this subsection shall comply with the meter reading, groundwater production reporting, and fee payment requirements of these rules beginning on ~~January~~ July 1, 2020.

(5) For all types of applicants described by Subdivision (1) of this subsection, upon completion of the Verification Period, the applicant shall provide as part of the application the annual groundwater production history of ~~the~~ each well, and, if applicable, well system, for each year of the two (2) year Verification Period.

(6) For an applicant ~~for~~ with a well that is described by Subdivision (1)(C) of this subsection, compliance with the metering, fee payment, and reporting requirements of these rules is not suspended and shall continue during the Verification Period.

(7) A well owner described by this subsection shall amend the Historic Use Permit application ~~for the well~~ during the Verification Period or at any time prior to ~~March~~ September 1, 2023, to include any new information or to update information that the applicant has determined to be inaccurate or incorrect.

(8) Production of groundwater by a well owner described by this subsection during the Verification Period shall not itself be eligible for a claim of Maximum Historic Use from the well or well system, but rather is intended as relevant information to assist the well owner and District in determining what the Maximum Historic Use of the well or well system was during the existing and historic use period.

(9) For the owner of any well system that includes one or more wells that did not have two (2) full calendar years of metered production during the existing and historic use period and that have not been plugged and are still operational, the Historic Use Permit application of such an owner shall be subject to the Verification Period to determine both the Maximum Historic Use of those individual wells and the overall Maximum Historic Use of the well system as a whole.

(10) After ~~March~~ September 1, 2023, the District shall commence its review and processing of Historic Use Permit applications and determination of the Maximum Historic Use as set forth in Appendix F of these rules for each applicant's well or well system described by this subsection.

(11) For approved well registrations or administratively complete well registration applications ~~deemed to be administratively complete~~submitted to the District on or before December 31, 2019, but for which no groundwater has yet been produced prior to January 1, 2021, the Board may authorize the two (2) year Verification Period to begin the first calendar year after production begins. The Maximum Historic Use for such a well, or well system that includes such a well, shall be based on the extrapolated Maximum Historic Use as defined in Rule 1.1(32)(B).

(12) Any person who has submitted an administratively complete well registration application under Rule 2.2 on or before December 31, 2019, even if the District has not yet acted on the application, is eligible to apply for a Historic Use Permit under this rule for the well for which a registration application was submitted, and must submit a Historic Use Permit application on or before ~~June~~ December 31, 2020, or shall otherwise forfeit his rights as set forth under Subsection (a) of this rule.

(13) A proposed well for which an administratively complete well registration was submitted to the District on or before the last day of the existing and historic use period, December 31, 2019, and that is included in a Historic Use Permit application must be drilled and completed before the applicable deadline in Rule

2.3(g) or the well will forever lose its eligibility for a Historic Use Permit.

Rule 2.9 Operating Permits

(a) An Operating Permit is required by the District for drilling, equipping, completing, substantially altering, operating, or producing groundwater from any well that is not exempt from the requirement to obtain a permit under Rule 3.1(a) or Rule 3.2(a) and that is:

(1) any new well, except for a new well included under a Historic Use Permit as a replacement well and the well owner does not desire to increase the production of groundwater from the replacement well to an amount higher than the amount of Maximum Historic Use designated in the approved Historic Use Permit or most current version of the application for a Historic Use Permit for the well that was replaced; ~~or~~

(2) any existing well or replacement well for which a Historic Use Permit has been issued by the District or timely applied for and awaiting District action and the well owner desires to increase the production of groundwater from the well to an amount higher than the amount of Maximum Historic Use designated in the approved Historic Use Permit or most current version of the application for a Historic Use Permit for the existing well or the well that was replaced;~~ or~~

(3) an existing well or other well for which an administratively complete well registration was submitted to the District on or before December 31, 2019, for which no~~a~~ Historic Use Permit or amendment thereto to include the well as a replacement well has ~~not~~ been issued by the District nor timely applied for ~~issued by the District nor timely applied for~~ and awaiting District action and the well owner seeks to begin producing groundwater from the well.

(b) The requirement in Subsection (a) of this rule is effective on January ~~June~~ 1, 2020 ~~the Effective Date (XXXXX, 2019)~~.

(c) Prior to applying for an Operating Permit, the applicant shall meet with District staff for a pre-application meeting, at which time the District shall assist the applicant in the completion of all necessary application forms as required under the District Rules.

(d) An application for an Operating Permit shall, in addition to the information required under Rule 2.5, include the following information on an application form provided by the District:

(1) any Historic Use Permit or application for a Historic Use Permit associated with the well or well system, if any, as well as the amount of Maximum Historic Use designated in the approved Historic Use Permit or most current version of the application for a Historic Use Permit;

(2) if the well is to be part of a well system, as defined under Rule 1.1, identification of all other wells in that well system.

(e) A person who already holds an Operating Permit for a well or well system shall file an application to amend the Operating Permit to make any substantial changes to the well or well system, including without limitation increasing the production authorization or adding any additional wells to a well system.

(f) Subject to the considerations listed in Rule 2.6 and Section 5 of these rules, an application for an Operating Permit submitted under this rule shall not be unreasonably denied by the District if the application describes a well that meets the District's well completion standards and complies with all location, minimum tract size, and well spacing regulations included in these rules or required by other state law. Except as provided by Subsection (g) of this rule, the maximum annual authorized production from the well shall be limited by the Board to the lesser of:

(1) the reasonable non-speculative amount of annual groundwater demand during the term of the permit, for which the General Manager shall provide a recommendation to the Board based upon a technical evaluation of the applicant's groundwater demand by the General Manager; or

(2) the applicable annual production allowable per contiguous controlled acre established by the Board under Section 5 of these rules multiplied by the number of contiguous controlled acres of the Operating Permit applicant.

(g) If a well authorized under an Operating Permit is also authorized under a Historic Use Permit, the maximum annual authorized production from the well under the Operating Permit shall be limited by the Board to the difference between the amount that would otherwise be authorized under Subsection (f~~e~~) of this rule and the amount of Maximum Historic Use authorized for the well under the Historic Use Permit.

(h) The Operating Permit holder shall equip the well with a meter prior to producing from the well and shall comply with the groundwater production reporting and fee payment requirements of these rules.

(i) The District may impose more restrictive permit conditions on Operating Permit applications, including Operating Permit applications submitted by Historic Use Permit holders to increase their production, if the limitations:

(1) apply uniformly to all ~~subsequent~~ Operating Permit applications, or to all ~~subsequent~~ Operating Permit applications within the same aquifer or layer of an aquifer;

(2) bear a reasonable relationship to the District's Management Plan; and

(3) are reasonably necessary to protect existing use under Historic Use Permits.

(j) The holder of an Operating Permit is authorized to produce groundwater only in accordance with the terms of the permit and these rules.

(k) The continuing validity of an Operating Permit issued by the District is contingent upon payment by the permit holder of the applicable fee as set forth under Rule 6.1.

(l) An Operating Permit is subject to the pumping reduction regulations set forth in Rule 5.4. The Operating Permit applicant or Operating Permit holder expressly assumes the risk of this occurrence in applying for the permit and in drilling, operating, or otherwise investing in the well or the groundwater to be produced from it.

(m) No person shall drill, equip, complete, substantially alter, operate, or produce groundwater from a well in violation of this rule. A violation of this rule occurs on the first day the unauthorized activity occurs and continues each day thereafter until a permit for the well is issued.

Rule 2.10 Aggregation of Production for Well Systems

(a) Multiple wells that are part of a well system, as defined by Rule 1.1, and that are owned by the same permit holder will be authorized under a single Historic Use Permit and/or Operating Permit and amendments to those permits to add replacement wells or new wells to the well system.

(b) For the purposes of limiting the amount of total authorized annual groundwater production, when wells that are part of a well system are permitted with an aggregate withdrawal under a single permit or through the combination of a Historic Use Permit and an Operating Permit, the aggregate annual groundwater production limit amount shall be assigned to the well system, rather than allocating to each well its prorated share of estimated production. However, an individual well that is part of a well system that is authorized solely under a Historic Use Permit may not produce more than the Maximum Historic Use established for the individual well regardless of the total aggregated production amount authorized for the well system.

(c) Notwithstanding Subsection (b) of this rule, in the event of an emergency where one or more wells in a well system has failed or is not functioning properly, the General Manager may authorize a permit holder to temporarily transfer and distribute the allocated amount of groundwater production from the faulty well to one or more other wells included in the well system. In such cases, an individual well may exceed its maximum production authorization for the well without violating the District Rules and without penalty until the faulty well can be repaired or a replacement well drilled, so long as the maximum production authorization for the well system is not exceeded. The permit holder shall have the well repaired or replaced on an expedited basis. The General Manager may establish a deadline for the well to be repaired or replaced and for production to resume among the

wells in the well system as authorized in the permit.

(d) A person or entity that owns or operates two or more otherwise independent public water supply systems, commercial operations, or well systems that are at different geographic locations and are not tied to a common distribution system will be permitted under separate Historic Use Permits and Operating Permits by the District for each such public water system, commercial operation, or well system. The District in its sole discretion shall determine whether to permit a group of wells as a well system under a single Historic Use Permit and/or Operating Permit or under separate Historic Use Permits and/or Operating Permits.

Rule 2.11 Groundwater Production Reports

(a) Not later than January 31 and July 31 of each year, the owner of a well or well system within the District that is not exempt under Rule 3.1 must submit a groundwater production report on a form provided by the District. The owner of two (2) or more well systems shall file a separate report for each well system. The report shall be signed and sworn to by the owner or a legally authorized representative of the owner verifying the accuracy of the information contained in the report, which shall contain the following:

(1) the name of the registrant or permit holder;

(2) a method of identifying the registered and/or permitted wells or well system owned or operated by the registrant or permit holder that are associated with the report;

(3) the total amount of groundwater produced by each well and by the well system during the immediately preceding reporting period and during each month of the immediately preceding reporting period;

(4) the purposes for which the groundwater was used;

(5) for groundwater used at a location other than the property on which the well or well system 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 groundwater; and

(B) if the groundwater 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

(6) for groundwater used by a retail public utility, 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 groundwater 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

(7) 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 3.3:

(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 or permit holder 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 groundwater 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 Appendix G.

(d) The first deadline to submit a report to the District under this rule is no later than the first January 31 or July 31 following the semiannual reporting period during which the registration or permit for the well was approved.

Rule 2.12 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 and, if applicable, for amendment of the Historic Use Permit or Operating Permit associated with the original well.

(b) Each application described in Subsection (a) shall include the information required under Rule 2.2(c) 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 fifty (50) feet of the location

of the well being replaced;

(2) the replacement well will be completed and screened at an equal or greater depth than the well being replaced;

(3) 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

(4) 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 ninety (90) days of commencing operation of the replacement well.

(c) Except as required under Subsection (d), applications for registration of replacement wells or for permit amendments associated with 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 the General Manager's 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 fifty (50) feet of the location of the well being replaced if the applicant demonstrates to the satisfaction of the General Manager that groundwater quality, sanitation, or other issues prevent the replacement well from being located within fifty (50) feet of the location of the well being replaced. Requests to locate a replacement well beyond one hundred (100) feet of the location of the well being replaced may be granted only by the Board. The Board may authorize a replacement well to be drilled at a location beyond one-hundred (100) feet of the location of the well being replaced if the Board determines that such authorization will not cause unreasonable impacts to other landowners or well owners or on other reasonable grounds, including without limitation if the well is drilled on the same property as the well being replaced and in compliance with the well spacing and minimum tract size requirements under Section 4.

Rule 2.13 Well Completion Reports

(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 completion report recorded on the State Well Report form prescribed by the Texas Department of Licensing and Regulation. The person who drilled, deepened, completed or otherwise altered the well shall, within sixty (60) days after the date the work on the well is completed:

(1) file with the District the well completion report described in this subsection; or

(2) send to the District the State of Texas Well Report Tracking Number associated with the well.

(b) Replacement of a pump that does not exceed the capacity of the pump being replaced, or that 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 completion report or State of Texas Well Report Tracking Number under Subsection (a).

(c) If the drilling or completion of a well requires cementing under an alternative siting method under Section 76.100(b) of the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, the person who drills the well shall notify the District prior to cementing the well so that the District has the opportunity to observe the work. Such notice shall be provided to the General Manager in writing by fax or e-mail no less than 48 hours prior to beginning any work to cement the well; provided, however, that if cementing is to begin on a Monday, notification shall be provided to the General Manager no later than the preceding Thursday, and if cementing is to begin on a Tuesday, notification shall be provided to the General Manager no later than the preceding Friday.

(d) Each well completion report required by Subsection (a) of this rule shall contain the information prescribed by the Texas Department of Licensing and Regulation.

(e) Not later than the 30th day after the date a well is plugged, a driller, licensed pump installer, or well owner who plugs the well shall submit a State of Texas Well Plugging Report to the District or send to the District the State of Texas Well Plugging Report Tracking number associated with the well.

SECTION 3. EXEMPTIONS FROM REGULATORY REQUIREMENTS

Rule 3.1 Wells Exempt from Permitting, Reporting, Fee Payment, and Metering Requirements

(a) The requirements of these rules relating to permitting and reporting under Section 2, the payment of fees under Section 6, and metering under Section 8 and Appendix G 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 is not a retail public utility well and that does not

have the capacity, as equipped, to produce more than 17.36 gallons per minute and is used in whole or in part for any 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, monitoring wells, and closed-looped geothermal 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 17.36 gallons per minute, the well system and the individual wells that are part of it are not exempt from the permitting, reporting, fee payment, and metering 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 17.36 gallons per minute or the well was part of a well system that had the capacity, based on the total sum of the capacities of the individual wells in the system, to produce more than 17.36 gallons per minute. Such wells are subject to the permitting, reporting, fee payment, metering, and other requirements of these rules, and may be subject to enforcement under Appendix C.

(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 2, and comply with the minimum tract size and well spacing requirements of Section 4.

(f) A retail public utility well of any capacity is subject to the permitting, reporting, fee payment, and metering requirements of these rules.

Rule 3.2 Wells Exempt from Permitting Requirements Only

(a) The provisions of these rules relating to the requirement to obtain a permit under Section 2 do not apply to the following types of wells:

(1) A well used solely to supply groundwater for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; or

(2) A well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any

subsequent use of the groundwater.

(b) A well exempt under Subsection (a)(1) from permitting requirements does not include a well used to supply water for hydraulic fracturing purposes.

(c) A well exempted under Subsection (a)(1) will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt from permitting and must obtain a permit from the District prior to such use.

(d) A well exempted under Subsection (a)(1) from permitting requirements is nonetheless subject to the registration, reporting, fee payment, metering, well completion, well spacing, minimum tract size, and well location requirements of these rules.

Rule 3.3 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 groundwater use fees and groundwater transport fees otherwise required by Section 6 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 groundwater production report that complies with Rule 2.11.

SECTION 4. SPACING AND LOCATION OF WELLS; WELL COMPLETION

Rule 4.1 Spacing and Location of Existing Wells

Wells drilled prior to XXXXX XX, 2019, shall be drilled in accordance with the District Rules, Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and state law, if any, in effect on the date such drilling commenced, and are exempt from the well spacing and location requirements of these rules to the extent that they were drilled lawfully. If a person wishes to substantially alter the size or capacity of an existing well, the well shall become subject to the well spacing, location, and minimum tract size requirements of this section.

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.

(b) New wells must also be drilled and completed in such a manner as to prevent interference between wells and impacts to neighboring wells within the same aquifer and to protect the reasonable investment-backed expectations of existing well owners while recognizing the concurrent rights of property owners to the common pool. Therefore, wells must be drilled and completed in compliance with the District Rules, including the minimum tract size requirements, the minimum distances from property lines, and the minimum distances from the nearest existing registered or permitted well, approved well site, or existing unregistered well identified by the General Manager pursuant to Rule 4.3, and the minimum well completion and screening depths pursuant to Rule 4.4, unless an exception is granted by the District under Section 4 of these rules.

~~As used in this section, "vertical offset" shall mean the difference in elevation from mean sea level, measured in feet, between the bottom of the lowest point of completion of the proposed well or the existing well, whichever well is shallower, and the top of the upper most point of completion of the proposed well or the existing well, whichever well is deeper~~.

(c) 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 thirty (30) feet of the location specified in the registration or permit. New wells must nonetheless be drilled in compliance with the minimum well spacing and tract size requirements under Rule 4.3. Replacement wells must be actually drilled and completed so that they are located no more than fifty (50) feet from the well being replaced, unless otherwise authorized by Rule 2.12(d).

(d) 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 and spacing requirements of this subsection. If the Board determines that a well is drilled at a location that does not strictly comply with the location and spacing requirements of this subsection, the Board may, in addition to taking all other appropriate enforcement action, including without limitation revoking or suspending the well registration or permit, require the well to be permanently closed and plugged or authorize the institution of legal action to enjoin any continued drilling activity or the operation of the well.

Rule 4.3 Well Spacing and Minimum Tract Size Requirements

(a) All (1) new wells drilled or completed in any layer of an aquifer in the District, as defined under Rule 1.1 of these rules, and (2) all existing wells that are substantially altered, unless the maximum amount of groundwater the altered existing well can actually produce as equipped is 17.36 gpm or less, shall comply with the spacing and minimum tract size

requirements in the following table:

Maximum Allowed Well Production	Minimum Tract Size	Spacing from Other Well Sites	Spacing from Property Line
The maximum amount of groundwater 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 well.	The minimum distance, in feet, that a new well or proposed well site may be located from an existing registered or permitted well, existing unregistered well identified by the General Manager under Rule 4.3(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	Minimum Tract Size is 2 Acres	150 ft.	50 ft.
17.36 - 30 gpm		500 ft.	150 ft.
30 - 50 gpm		1,000 ft.	250 ft.
50 - 80 gpm		1,750 ft.	500 ft.
80 – 100 gpm		2,500 ft.	750 ft.
>100 gpm		3,250 ft.	1,000 ft.

(b) With regard 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 minimum spacing requirements from existing wells shall not apply as between a proposed well and an existing well that meet the vertical offset requirements of Subsection (c) of this rule. 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 section 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 this rule. All well registration applicants for non-exempt wells, and all well permit applicants, are required to schedule a pre-application meeting with the General Manager prior to submitting a well spacing or minimum tract size requirement exception application to review project options that may be available to the applicant.

(c) New Wells Vertically Offset from Existing Wells: As used in this Section 4 of the rules,

"vertical offset" shall mean the difference in elevation from mean sea level, measured in feet, between the bottom of the lowest point of completion of the proposed well or the existing well, whichever well is shallower, and the top of the upper most point of completion of the proposed well or the existing well, whichever well is deeper. The minimum spacing requirements from existing wells under this rule do not apply as between a proposed well and existing well that meet either of the following vertical offset requirements:

(1) 100 feet or more of vertical offset; or

(2) if the District determines based on science and data available to the District or presented by the applicant that an aquitard exists between the relevant points of completion of the two wells such that there is no more than a de minimis vertical hydraulic conductivity between the wells.

The General Manager shall make the determination of whether a proposed well meets the vertical offset requirements of this rule for well registration applications for wells that are exempt from the requirement to obtain a permit under these rules, and for purposes of determining the applicable the notice requirements for wells that do require a permit or that seek an exception to the minimum spacing requirements from existing wells under this rule. The applicant may appeal the General Manager's determination under this subsection, or the General Manager may set the matter of the determination for board consideration, in the procedural manner generally prescribed in Rule 4.7(d). ~~District may authorize wells producing from different aquifers or different layers of an aquifer 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(d). If there is more than 150 feet of vertical offset between a proposed well and an existing well that is within the minimum distance required under Subsection (a) of this rule, or if the District determines based on science and data available to the District that the proposed well and the existing well that is within the minimum distance required under Subsection (a) of this rule are drilled in different layers of the aquifer with de minimis vertical hydraulic conductivity, the District may approve an exception to the minimum tract size or well spacing requirements from existing wells set forth under Subsection (a) of this rule.~~ Wells that meet the vertical offset requirements of this subsection must nonetheless comply with the well completion requirements under Rule 4.4 and the minimum tract size and minimum spacing distances from property lines requirements of this rule. This subsection shall not be construed to limit the authority of the District to approve an exception to the minimum tract size or well spacing requirements in situations where the vertical offset provisions of this rule are not met.

(d) Multiple Wells on a Tract. There shall be no more than one (1) well~~, regardless of type,~~ per two (2) acres on a tract of land, unless the wells are required to obtain a permit under these rules and meet the vertical offset requirements of Subsection (c) with respect to each other~~an exception has been granted by the District pursuant to Rules 4.5 through 4.7, in which case there shall be no more than one (1) well per number of acres of tract size approved pursuant to the exception~~. Otherwise, t~~T~~o complete more than one well on any

tract of land ~~equal to or greater than the applicable minimum tract size~~, each well must individually comply with the minimum spacing distances required under Subsection (a), such that individual wells on one tract must meet the required spacing distances from each other and from the property lines, as well as meet the required spacing distances from wells located on a different tract.

(e) Once a well that is subject to the well spacing and minimum tract size requirements of these rules is registered or permitted, the well owner must maintain ownership of the acreage or groundwater rights necessary to comply with the minimum tract size and spacing requirements of this rule for the registration or permit to remain valid. In the event the well owner sells or transfers a portion of the property upon which the well is located or dedicates a portion to a public right of way or easement, the well owner must retain the required minimum acreage of the surface estate, or the groundwater estate, if severed from the surface estate, and maintain the required distance from the nearest property line in compliance with the minimum tract size and spacing requirements in effect at the time the well was drilled. If a well owner fails to retain ownership of the acreage or groundwater rights necessary to maintain compliance with the tract size and spacing requirements of these rules, the District may:

(1) reduce the amount of groundwater authorized to be produced from the well or its maximum designed production capacity as necessary to comply with the minimum tract size and spacing requirements in effect at the time the well was drilled or to otherwise be protective of neighboring wells and landowners; or

(2) require the well to be plugged.

Property that is sold or transferred may be ineligible for a groundwater well to the extent that the acreage of the sold or transferred property is insufficient in size for the drilling of a new well or to allow continued groundwater production from a well that depended upon the acreage sold or transferred for that well's maximum designed production capacity.

(f) In situations where an applicant owns the right to produce groundwater on two (2) or more contiguous tracts, the applicant is not required to meet minimum well spacing distances from the property line with regard to the property line separating the two (2) tracts. However, if a road, highway, or other easement separates the tracts and the applicant does not own or lease the right to produce groundwater under the easement, the minimum well spacing requirements for distance from the property line will apply. As set forth in Subsection (e) of this rule, if the applicant sells the tract in the future, the well becomes subject to the provisions of that subsection.

(g) Retail Public Utilities: Retail public utilities must comply with the minimum spacing requirements from existing wells when drilling a new well. However, a retail public utility may use its retail water CCN boundary, or its political subdivision boundary for a retail public utility that does not have a CCN, as its external property line for purposes of this rule for minimum well spacing distances from a property line. Similarly, a retail public utility may use the acreage within its CCN or political subdivision boundary for purposes

of compliance with the minimum tract size requirements under this rule. However, any such well that is drilled by a retail public utility by relying upon its CCN boundary or political subdivision boundary as its external property line, but that does not actually comply with the minimum spacing distances from the actual property lines of land owned by the retail public utility, will not be considered to be an existing well in the future for purposes of other landowners having to comply with well spacing requirements from existing wells for such a well.

(h) A well owner may apply to the District for an exception to the 2 (two) acre minimum tract size requirement under Rules 4.5 through 4.7.

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) All new wells must be completed, screened, and equipped at a depth such that, at the time that well completion and equipping has concluded, there is either:

(1) a minimum depth of 50 feet of groundwater in the well bore over the pump; or
(2) the well fully penetrates the aquifer or layer of the aquifer in which the well is screened and the pump is placed at the lowest practicable location in the well.

(c) Notwithstanding the requirements of Subsection (b) of this rule, if a water well driller penetrates the bottom of the aquifer or layer of the aquifer, appropriate steps shall be taken to ensure that the well is completed in a manner that prevents pollution or harmful alteration of fresh groundwater by saltwater or other deleterious matter or other commingling of waters that differ in chemical quality as required by Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. The water well driller may request assistance from the District in determining the appropriate depth to drill and complete the well in order to ensure compliance with this subsection.

(d) Water well drillers shall indicate on the well completion report the method of completion performed.

(e) To prevent the commingling of groundwater between aquifers or layers of an aquifer, which can result in a loss of artesian (or static) head pressure or the degradation of groundwater quality, each well penetrating more than one aquifer or layer of an aquifer must be completed in a manner so as to prevent the commingling of groundwater between aquifers or between layers 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 on the well completion report the method of completion used to prevent the commingling of groundwater. The well driller may use any lawful method of completion calculated to prevent the commingling of groundwater.

(f) In order to protect groundwater 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 General Provisions for Exceptions to Well Spacing and Minimum Tract Size Requirements

(a) The Board or General Manager may grant exceptions to the well spacing and minimum tract size requirements in Rule 4.3 only after consideration of an exception application filed by an applicant that is consistent with these rules.

(b) An application for an exception to the minimum tract size requirements of Rule 4.3, other than an application submitted by a retail public utility, shall not be granted if a public water system exists that is available to the property. Water from a public water system is available to a property for purposes of this rule if it is already physically available on the property, a water main is located on or adjacent to the property to which the landowner has a legal right to be connected, or if the approved plat for the property calls for public water to be delivered to the property and it can be delivered to the property within a reasonable amount of time upon request by the property owner.

(c) Owners of wells that are not exempt from the regulatory requirements of Rules 3.1 or 3.2 must provide in an application for an exception to well spacing or minimum tract size requirements evidence that an economically feasible alternative water supply is not available to the property. For purposes of this rule, an alternative water supply is economically feasible if it can be delivered to the user for no more than 25 times the District's groundwater use fee rate in effect at the time of the application.

(d) An application filed pursuant to Rule 4.6 for an exception to the well spacing or minimum tract size requirements of Rule 4.3 shall be on a form provided by the District and shall include:

(1) a short, plain statement explaining each circumstance that the applicant believes justifies the requested exception to the well spacing or minimum tract size requirements of the District;

(2) a digital map, satellite image, or plat of the property upon which the applicant proposes to locate the well that is the subject of the application for an exception to the well spacing or minimum tract size requirements of the District that may be 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 the General Manager's 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) for an exception application that must by rule be approved by the Board instead of the General Manager under Rule 4.6(d), a list of the names and mailing addresses of the owners of record of:

(A) ~~each~~ all properties~~y~~ that are located within the minimum spacing distances from property lines from the location of the proposed well under Rule 4.3(a); and

~~(A)~~(B) all properties with an existing registered well, previously approved well site, or existing unregistered well identified by the General Manager in the General Manager's review of the registration application under this rule that is located within the minimum spacing distance requirements from existing wells under Rule 4.3(a) from the location of the proposed well, excluding any such wells that meet the vertical offset requirements of Rule 4.3(c)~~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;

(5) a recordation filing fee in an amount established by 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, and which shall be refunded to the applicant in the event the exception is denied; and

(6) any additional information required by Rules 4.5 through 4.7.

(e) An application for an exception filed pursuant to Rule 4.6 must be sworn to or affirmed by the applicant, 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, the applicant must have personal knowledge of the information set forth in the preliminary plat and must swear or affirm that the information is true and correct to the best of the person's knowledge.

(f) Any person may obtain an exception to the minimum tract size requirement of two (2) acres for a tract of land that was platted or was otherwise lawfully configured as a tract smaller than two (2) acres prior to January 1, 2009, and that was not further subdivided into smaller tracts after January 1, 2009, provided that such person complies with the minimum well spacing requirements of these rules or obtains an exception to those requirements, and the drilling of the well is consistent with the rules or decisions of the applicable county or municipal platting authority where the well is to be located with regard to the drilling of groundwater wells on the property.

(g) Any well drilled pursuant to an approved exception to the District's well spacing requirements is not considered or protected as an existing well in a future application by another landowner.

Rule 4.6 Minimum Tract Size or Well Spacing Exception Applications Submitted with Well Registration/Permit Applications (Submitted by Well Registration/Permit Applicants)

(a) A completed application for new well registration and, if applicable, a permit application or an application for a permit amendment, must accompany all applications for an exception.

(b) An application for an exception to the minimum tract size requirements may be approved by the General Manager under the following conditions:

(1) the well is to be used solely for domestic, livestock, or poultry watering use;

(2) the well as equipped is incapable of producing more than 17.36 gallons of groundwater per minute;

(3) the well registration associated with the application for an exception meets the requirements of these rules; and

(4) the applicant provides evidence that the tract of land was platted or was otherwise lawfully configured prior to January 1, 2009, as a tract that is smaller than two (2) acres and such tract was not further subdivided into smaller tracts after January 1, 2009, and prior to the drilling, completion, or equipping of the well.

(c) An applicant for an exception to the minimum tract size requirements that is approved by the General Manager under Subsection (b) of this rule must nonetheless comply with the minimum well spacing requirements of Rule 4.3 if a location exists on the property where the well can be drilled in compliance with such requirements. If no such location exists, the General Manager may approve an alternative location on the tract where the well must be drilled.

(d) Any application for an exception to the minimum tract size requirements that is not authorized to be approved by the General Manager under Subsection (b) of this rule and any application for an exception to the minimum well spacing requirements of Rule 4.3 except as authorized under Subsection (c) of this rule must be approved by the Board.

Rule 4.7 Processes and Procedures for Applications for Exception to Well Spacing or Minimum Tract Size Requirements

(a) A hearing will be held on registered wells that are exempt from the permitting requirements of these rules only when an exception from well spacing or minimum tract size requirements is sought and an application for an exception is not approved by the General Manager under Rule 4.6(b).

(b) For wells requiring a permit and permit hearing, if an exception to well spacing or minimum tract size requirements is also sought, the hearing on the spacing exception shall be held in conjunction with the hearing on the permit application, and the notice requirements applicable to both the exception application and the application for a permit or permit amendment shall apply to the hearing.

(c) Any person interested in supporting or challenging any application for an exception to the minimum tract size or well spacing requirements of Rule 4.3 that must be approved by the Board or is otherwise set by the General Manager for consideration by the Board or any other application requiring Board approval may submit comments or other information in writing to the District, if received by the District prior to a board decision on the application, or appear before the Board in person at the public hearing. For an exception application involving a proposed well that requires a permit or permit amendment under these rules, a person may provide oral or written comments on the application in the manner set forth in this subsection for any other application, but must contest ~~the exception application by contesting~~ the application on the permit or permit amendment as set forth under Rule E.6 in order to request a contested case hearing on the issues involving the exception application.

(d) In cases where the General Manager has the authority to approve or deny an application for an exception, the exception applicant may appeal the General Manager's ruling denying the application by filing a written request for a hearing before the Board. The Board shall hear the applicant's appeal at the next available Board meeting if practicable, 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 A.6.

(e) In cases where the Board must approve or deny an application for an exception to well spacing or minimum tract size requirements, the Board may not approve such application 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 Rule 4.5(d)(3) in accordance with Subsection (f); and

(3) following the applicant's satisfaction of the notice requirements of Paragraph (2) of this subsection, 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 the General Manager's discretion, where the applicant may be required to appear and provide information demonstrating ~~show cause~~ why the application should be granted, and at which interested persons shall be given an opportunity to appear and be heard on the application.

(f) The notice required by Subsection (e)(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 well spacing or minimum tract size 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 4.5 (d)(3), using a method of service that complies with Rule A.6, no less than ten (10) 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.

(g) The burden of proof in any proceeding related to an application for an exception to a minimum well spacing or tract size requirement shall be on the applicant.

(h) The Board may grant or deny an application filed pursuant to Rule 4.6 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 District is aware prior to granting or denying the application,

whether the well in the application will produce groundwater from an aquifer or layer of an aquifer other than the aquifer or layer of an aquifer from which the wells that are closer than the minimum distances are producing, or any unique hydrogeology at the proposed location of the well. The Board may also consider any legal restrictions such as restrictive covenants or political subdivision requirements that may impact the amount of water needed or the ability to drill wells on the tracts that are the subject of the application or on adjacent properties. The Board may also consider whether the proposed well is consistent with any rules or decisions of the applicable county or municipal platting authority with regard to the drilling of groundwater wells on the property of which the Board is aware.

(i) The Board may require any applicant to perform site-specific hydrogeologic testing and analysis conducted in compliance with hydrogeologic guidelines approved by the Board, to demonstrate that the hydrogeology of the land will support smaller tract sizes or well spacing distances, prior to acting to grant or deny an application for an exception. All hydrogeologic testing or analysis provided to the District pursuant to this subsection must be conducted in compliance with hydrogeologic guidelines approved by the Board.

(j) The Board may impose additional restrictions on the exact location, construction and completion, maximum designed production capacity, or the production of a well to be drilled pursuant to an exception that it grants. If the Board imposes a maximum designed production capacity restriction of less than 17.36 gallons per minute on a well, the well owner shall not allow the capacity of the well to exceed the restriction imposed by the board in its design, construction, completion, or as a result of any maintenance or repair on the well, notwithstanding anything to the contrary in these rules.

(k) If the Board or General Manager grants an exception to the minimum spacing or tract size requirements, the General Manager shall have such exception recorded in the property deed records of the county in which the well is located.

SECTION 5. REGULATION OF PUMPING

Rule 5.1 Maximum Allowable Production

(a) The maximum annual quantity of groundwater that may be produced in a calendar year from a well or well system ~~after~~ beginning ~~the Effective Date (XXXXX)~~ January 1, 2021, under an Operating Permit issued by the District shall be the amount authorized in the permit. Such amount shall be subject to the pumping reduction regulations of the District under Rule 5.4.

(b) The maximum annual quantity of groundwater that may be produced in a calendar year from an individual well beginning ~~after the Effective Date (XXXXX)~~ January 1, 2021, under a Historic Use Permit issued by the District shall be the amount authorized in the permit as the Maximum Historic Use for the individual well, regardless of whether the

individual well is part of a well system, except as authorized under Rule 2.10(c). The maximum annual quantity of groundwater that may be produced in a calendar year from a well system beginning ~~after~~ January 1, 2021, ~~the Effective Date (XXXXX)~~ under a Historic Use Permit issued by the District shall be the amount authorized in the permit as the Maximum Historic Use for the well system. The maximum annual quantity of groundwater that may be produced in a calendar year from a well or well system by an applicant for a Historic Use Permit during the time between January 1, 2021, ~~the Effective Date (XXXXX)~~ and the issuance or denial of the permit shall be the amount specified in the applicant's Historic Use Permit application or most recent amendment thereto as the Maximum Historic Use for the individual well or well system, respectively. Such amounts shall be subject to the pumping reduction regulations of the District under Rule 5.4.

(c) The maximum annual quantity of groundwater that may be ~~withdrawn~~ produced in a calendar year beginning ~~after~~ January 1, 2021, ~~the Effective Date (XXXXX)~~ for a well or well system operating under both a Historic Use Permit and an Operating Permit shall be the sum of the annual production authorizations for the well or well system, as applicable, under the two permits. Such amounts shall be subject to the pumping reduction regulations of the District under Rule 5.4.

Rule 5.2 Limitation on Maximum Allowable Production Under Operating Permits for Applicants Other than Retail Public Utilities

(a) In this rule:

(1) the terms "top," "bottom," or "thickness" of the Trinity Aquifer group at any location shall be defined by the site-specific data from the Groundwater Availability Model of the Northern Trinity and Woodbine Aquifers most recently approved by the Texas Water Development Board or as otherwise determined and defined at a particular location by the Board;

(2) the term "aquifer depth of the well" shall mean the vertical depth of a well in feet that is located within the interval between the top of the Trinity Aquifer group and the bottom of the Trinity Aquifer group; and

(3) the term "average aquifer thickness on the property" shall mean the average vertical distance in feet between the top of the Trinity Aquifer group and the bottom of the Trinity Aquifer group on the contiguous controlled acreage that is included in the permit or permit application~~; provided, however, for purposes of these rules, at any location of the aquifer where the Groundwater Availability Model of the Northern Trinity and Woodbine Aquifers indicates that the aquifer thickness is less than fifty (50) feet, the aquifer thickness shall be construed to be fifty (50) feet~~.

(b) The maximum annual quantity of groundwater that may be authorized by the Board for production under an Operating Permit shall be the annual production allowable per contiguous controlled acre for the aquifer, layer of an aquifer, or aquifers from which the

well is producing groundwater multiplied by the number of contiguous controlled acres associated with the well of the Operating Permit applicant, subtracting out:

(1) all annual groundwater production authorization recognized under any Historic Use Permit or pending application for a Historic Use Permit for any well or well system located on such contiguous controlled acreage; and

(2) an estimate of production by any exempt wells located on such contiguous controlled acreage, as determined by the General Manager.

(c) If the amount of groundwater authorized to be produced from a well located on contiguous controlled acreage under a Historic Use Permit is greater than the amount set forth under Subsection (b) of this rule, the well is not eligible for additional groundwater production under an Operating Permit unless or until the applicant secures a sufficient number of contiguous controlled acres to qualify for such additional production under this rule, or except as may be authorized by the Board under Rule 5.5.

(d) The initial annual production allowable per contiguous controlled acre for ~~any~~ all ~~individual~~ wells or well systems producing from the Trinity Aquifer Group is ~~hereby established as~~ the greater of:

(A) an amount in gallons per acre derived by 300 gallons per acre multiplied by the lesser of:

(i) the aquifer depth of the well; or
(ii) the average aquifer thickness on the property; or

(B~~ii~~) 25,000 gallons per acre.

(e) The initial annual production allowable per contiguous controlled acre for all ~~for~~ well~~s~~ or well systems producing groundwater from any layer of the Cross Timbers Aquifer or any other source of groundwater other than the Trinity Aquifer group is 25,000 gallons per acre.

~~(e) The initial aggregated annual production allowable per contiguous controlled acre for multiple wells located on common contiguous controlled acreage is hereby established as:~~

~~(1) 100 gallons per acre multiplied by the average aquifer thickness on the property for wells producing groundwater from any layer of the Trinity Aquifer group; and~~

~~(2) 25,000 gallons per acre for wells producing groundwater from any layer of the Cross Timbers Aquifer or any other source of groundwater other than the Trinity Aquifer group.~~

(f) The Board may reduce the annual production allowable per contiguous controlled acre set

forth under Subsections (d) and (e) of this rule for an aquifer, or may restructure the production allowable to limit groundwater production by each layer of an aquifer, as necessary or appropriate under Rule 5.4 in order to achieve adopted desired future conditions for an aquifer or layer of an aquifer. However, in order to ensure that all landowners have an opportunity to produce their fair share of the groundwater beneath their land while the District is managing groundwater production to achieve the relevant adopted desired future conditions for the aquifer or layer of the aquifer, under no circumstance may the Board reduce the annual production allowable per contiguous controlled acre for an aquifer or layer of an aquifer lower than the true annual production allowable per contiguous controlled acre for an aquifer or layer of an aquifer, as defined in Subsection (g) of this rule.

(g) The true annual production allowable per contiguous controlled acre for any aquifer or layer of an aquifer in the District will be determined by the Board by allocating the amount of modeled available groundwater established by the Texas Water Development Board across the surface acres overlying an aquifer or layer of an aquifer inside the boundaries of the District proportionally based on the thickness of the aquifer at each location.

Rule 5.3 Regulation of Production under Operating Permits for Retail Public Utilities

(a) For a retail public utility, the maximum contiguous controlled acreage that may be assigned under Rule 5.2 to an Operating Permit for a well located within the corporate boundaries or CCN of the utility is determined by the acreage within the utility's CCN, or the acreage within the utility's corporate boundaries if the utility is a political subdivision that does not have a CCN, subtracting out:

(1) all annual groundwater production authorization recognized under any permit held by an individual landowner within those boundaries;

(2) the acreage of a tract with a registered exempt well, but not to exceed two (2) acres for each registered exempt well used solely for domestic or livestock use, which shall be calculated by the General Manager during the period of time between the filing of an administratively complete application for an Operating Permit or for renewal of an Operating Permit and the time the Operating Permit is approved or renewed; and

(3) any amounts authorized under a Historic Use Permit for the same well system or under a ~~separate~~ Historic Use Permit or Operating Permit for a separate well system for wells within the CCN of a retail public utility or within the corporate boundaries of a utility that is a political subdivision and does not have a CCN.

(b) If a retail public utility has a CCN that overlaps wholly or partially with another political subdivision's corporate boundaries, the overlapping acreage not assigned to the permits of individual landowners within those boundaries will be assigned to the CCN holder.

(c) For an investor-owned utility or non-profit water supply corporation that provides retail water service but is exempt from the requirement to obtain a CCN from the Public Utility Commission of Texas and is registered as an exempt utility with that agency, the maximum contiguous controlled acreage that may be assigned under Rule 5.2 to an Operating Permit is determined by the combined acreage of the properties to which the utility is actually providing retail water service at the time the Operating Permit is approved or renewed, subtracting out all annual groundwater production authorization recognized under any permit held by an individual landowner and the acreage of a tract with a registered exempt well, but not to exceed two (2) acres for each registered exempt well used solely for domestic or livestock use.

(d) For any situation in which the Public Utility Commission of Texas has approved dual certification for two retail public utilities for providing retail water service to a designated geographic area:

(1) any acreage associated with a property to which a first utility is actually providing service or to which the first utility is obligated to provide service pursuant to a written agreement with the second dual-certified utility shall be assigned to the first utility;

(2) any acreage associated with a property to which a second utility is actually providing service or to which the second utility is obligated to provide service pursuant to a written agreement with the first dual-certified utility shall be assigned to the second utility; and

(3) all remaining acreage in the area of dual-certification will be split equally between the two utilities.

After the assignment of acreage to each of the dual-certified utilities as set forth above, all annual groundwater production authorization recognized under any permit held by an individual landowner and the acreage of a tract with a registered exempt well that is located on the acreage assigned to one of the utilities will be subtracted from that utility's production authorization.

(e) For any situation in which a retail public utility owns a well or well system outside of its CCN and political subdivision boundaries, the contiguous controlled acreage for such well or well system shall be limited to the contiguous controlled acreage owned or controlled by the utility at the well site or well system site, excluding any acreage located within its CCN or political subdivision boundaries.

(f) For any situation in which a retail public utility has multiple CCNs for which the boundaries are otherwise not contiguous to each other, but such CCNs are connected by a common water distribution system, the CCNs shall be considered to be contiguous for purposes of this rule. If a retail public utility buys or leases land, the land shall be considered to be contiguous not only to the well, but also to the CCN or political subdivision boundaries.

(g) The initial annual allowable production per contiguous controlled acre for a retail public utility under this rule are those set forth under Rule 5.2(d) and (e).

Rule 5.4 Pumping Reductions and Other Aquifer Management Measures

(a) The Board shall, if necessary or appropriate to achieve an adopted desired future condition in an aquifer or layer of an aquifer, impose additional limitations on the production of groundwater from that aquifer or layer of an aquifer, as set forth in this rule. In implementing pumping reductions under this rule, the Board shall consider an estimate of total average exempt and permitted production from the aquifer or layer of an aquifer and compare it to the Modeled Available Groundwater number for that aquifer or layer of an aquifer, as well as other factors set forth under Section 36.1132, Water Code. The Board may consider projected future increases in total average exempt and permitted production in implementing this rule as necessary or appropriate to address overall pumping levels from an aquifer or layer of an aquifer to begin to reduce total production from an aquifer or layer of an aquifer before aquifer conditions reach critical levels from a standpoint of achieving desired future conditions.

(b) Before implementing any reductions in pumping under Historic Use Permits or pending applications for Historic Use Permits under this rule, the Board shall first reduce production under Operating Permits by reducing the annual production allowable per contiguous controlled acre for the aquifer, layer of an aquifer, or aquifers under Rule 5.2. The Board shall reduce the annual production allowable per contiguous controlled surface acre from the initial values established under Rule 5.2(d) and (e) incrementally as necessary or appropriate to ensure achievement of the applicable adopted desired future condition. However, in order to ensure that all landowners have an opportunity to produce their fair share of the groundwater beneath their land while the District is managing groundwater production to achieve the relevant adopted desired future conditions for the aquifer or layer of the aquifer, under no circumstances may the Board reduce the annual production allowable per contiguous controlled acre for any aquifer or layer of an aquifer below the true annual production allowable per contiguous controlled acre for that aquifer or layer of an aquifer.

(c) If the Board has reduced the annual production allowable per contiguous controlled acre for any aquifer or layer of an aquifer down to the level of the true annual production allowable per contiguous controlled acre for that aquifer or layer of an aquifer and the Board determines that additional pumping reductions must be implemented in order to achieve the applicable desired future condition established for the aquifer or layer of an aquifer, the Board shall reduce groundwater production among Historic Use Permits by reducing the amount authorized under each on an equal percentage basis until total permitted and exempt production from the aquifer or layer of an aquifer has been reduced to a level determined by the Board that will achieve the applicable adopted desired future condition.

(d) If the Board implements any pumping reductions under this rule, the Board may also implement increased well spacing minimum distances, increased minimum tract size requirements, or other measures determined by the Board to be necessary or appropriate to achieve an applicable adopted desired future condition. This provision shall not be construed to limit the authority of the Board to implement such measures absent the imposition of pumping reductions under this rule.

(e) The Board may in its sole discretion implement the pumping reductions and other measures set forth in this rule on a District-wide basis or for a particular aquifer, or layer of an aquifer, and may adopt different pumping reductions and other measures for each where such aquifers or layers of an aquifer are distinguishable and identifiable by the Board. Moreover, if the Board determines that conditions in or use of an aquifer or layer of an aquifer differ substantially from one geographic area in the District to another, the Board may define such geographic areas and implement different pumping reductions and other measures set forth in this rule for such defined geographic areas.

(f) Notwithstanding anything to the contrary in this rule, the Board may implement the pumping reductions and other measures set forth in this rule in order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to prevent interference between wells, to prevent degradation of groundwater quality, to prevent waste, or to achieve applicable adopted desired future conditions.

Rule 5.5 Additional Production Authorization Through Compliance Orders

(a) It shall be a violation of these rules for a person to produce groundwater in an amount annually that exceeds the amounts authorized under Rule 5.1. However, a person may apply to the Board for issuance of a compliance order that allows the person to produce groundwater in an annual amount that exceeds the amounts otherwise authorized to be produced under these rules under an Operating Permit issued under Rules 5.1 and 5.2 or a Historic Use Permit issued under Rule 2.8.

(b) The Board may approve a compliance order under this rule in its sole discretion, provided however that requests for approval of such orders shall not be unreasonably denied by the Board if the Board determines that:

(1) no economically feasible alternative water sources are available to the applicant within a reasonable time to meet the applicant's water need if the applicant were to exercise due diligence in the pursuit of such alternative water sources; and

(2) the purchase or lease of additional contiguous controlled acreage that would provide the applicant with the necessary acreage under Rules 5.2 or 5.3 to meet the applicant's water need is not feasible within a reasonable time to meet the applicant's water need if the applicant were to exercise due diligence in the pursuit of such additional acreage.

For purposes of this rule, an alternative water source is feasible if it can be delivered to the user for no more than twenty-five (25) times the District's Water Use Fee rate then in effect.

(c) The terms and conditions of a compliance order issued under this rule shall be established in the sole discretion of the Board. However, such terms and conditions shall generally:

(1) require the applicant to utilize due diligence in the pursuit of alternative water sources or the purchase or lease of additional contiguous controlled acreage during the term of the compliance order; and

(2) provide for expiration of the compliance order to coincide with expiration of the underlying Operating Permit or Historic Use Permit associated with the well. In approving an initial five-year compliance order, the Board may extend the terms of any associated permit as necessary or appropriate to have the permits expire on the same date as the compliance order.

(d) After the conclusion of an initial five-year compliance order, the Board may include in any subsequent compliance order or renewal of the compliance order a requirement that a disincentive fee be assessed for all excess groundwater production under such compliance order in an amount not to exceed ten (10) times the amount of the groundwater use fee, which disincentive fee shall be separate and distinct from any penalties set forth in the Enforcement Policy and ~~Civil~~ Penalty Schedule in Appendix D.

(e) The Board may approve subsequent compliance orders for an applicant that has already been issued a compliance order under this rule. Such subsequent compliance orders may be issued by the Board:

(1) after considering the provisions of Subsection (b) of this rule and the performance and due diligence exercised by the applicant under the criteria set forth under Subsection (c) of this rule in prior compliance orders; and

(2) with such additional terms and conditions that the Board may determine are necessary or appropriate to reduce the applicant's reliance on groundwater produced in the District and bring the applicant into compliance with the rules of the District.

(f) A person who produces groundwater within the terms and conditions of the person's permit and any compliance order approved by the Board shall not be subject to additional enforcement under these rules for violations related to overproduction of groundwater. However, a person who in any year produces groundwater in excess of the amounts authorized by permit and a valid compliance order approved by the Board shall be subject to enforcement for an additional major violation of these rules.

(g) Any groundwater authorized to be produced under a compliance order under this rule shall not be authorized by or included in the associated Operating Permit or Historic Use Permit

for the well, nor shall such authorization to produce groundwater under a compliance order be a contestable subject in a permit or permit amendment hearing related to the well. However, other activities and requirements related to the well, such as the drilling, completion, equipping, or altering of the well, compliance with minimum tract size and well spacing requirements, and other activities and requirements that require authorization through issuance of a permit or permit amendment under these rules shall apply to such a well and shall be issues to be considered at any hearing for a permit or permit amendment for the well otherwise required by these rules.

Rule 5.6 Accounting for Production by Owner or Lessee of Mineral Estate or Mineral Interest

(a) The ownership and right to produce groundwater from land is, unless expressly severed by conveyance or reservation, part of the surface estate.

(b) In instances where the right to explore for, develop, or produce minerals from land, including without limitation oil, gas, or other hydrocarbons, has been severed, sold, leased, or otherwise authorized to someone other than the landowner, the sum total of annual production of groundwater by the landowner and annual production of groundwater by the person authorized to explore for, develop, or produce such minerals shall not exceed the maximum annual groundwater production authorization limits applicable to a landowner only under these rules. These rules do not in any way authorize a person with an ownership or other interest in minerals to produce groundwater from a property where such right or other authorization to produce groundwater does not exist outside of these rules.

(c) The landowner and the person authorized to explore for, develop, or produce minerals are jointly and severally responsible for coordinating their groundwater production activities so that total groundwater production between them does not exceed the maximum annual groundwater production authorization limits for the land. If total groundwater production between them does exceed those limits, the landowner and the person authorized to explore for, develop, or produce minerals are jointly and severally liable for such a violation of these rules, and any other violation of these rules that is related to their combined groundwater production activities. The burden of proof in demonstrating that the violation resulted from the unlawful activity of only one of the two parties shall be on the party making such a claim, and the District shall bear no such burden of proof to apportion liability between the parties in an enforcement action by the District for a violation of these rules. A party shall not be held jointly and severally liable for such a violation to the extent that the party can demonstrate to the satisfaction of the Board that the party does not bear any individual responsibility for the violation. The Board may consider all relevant information related to the violation, including without limitation any agreements between the parties, in making its determination under this subsection.

Rule 5.7 Waste Prohibited

(a) No person shall engage in any conduct subject to the District's regulatory jurisdiction that constitutes waste, as that term is defined in Rule 1.1.

(b) Any discharge of groundwater into a surface water course, except as authorized by a permit, rule, or other order issued by the TCEQ under Chapter 26 of the Texas Water Code, shall be prohibited as waste.

Rule 5.8 Petition for Additional Production Authorization

(a) Notwithstanding anything to the contrary in these rules, a person may petition the District for approval of a permit application or permit amendment application that would authorize the production of groundwater in an amount greater than the amount otherwise authorized pursuant to the requirements of these rules if the person can demonstrate to the satisfaction of the Board that the request for increased production is necessary in order for the person to produce their fair share of the groundwater beneath their land ~~while nonetheless achieving the relevant adopted desired future conditions for the aquifer or layer of the aquifer~~or to prevent loss of reasonable investment-backed expectations. In determining whether a person may be entitled to produce more groundwater, the Board may consider factors including, but not limited to, the size of the surface area of land owned by the person over the aquifer, historic use, future needs, the relative importance of various uses, and concerns unrelated to use, such as the nature and conditions of the aquifer underlying the land including any site-specific conditions or unique hydrogeology, and environmental impacts, as well as the criteria set forth in Rule 2.6.

(b) The Board may require a person who submits a petition under this rule to perform site-specific hydrogeologic testing and analysis to demonstrate the nature of the groundwater resources on the property and the impacts of the increased production sought in the petition, including without limitation impacts on achievement of the relevant desired future conditions for the aquifer or layer of the aquifer that will be impacted by the groundwater production, and impacts to other property owners, owners of permitted wells, and owners of wells exempt from the requirement to obtain a permit. All hydrogeologic testing or analysis provided to the District pursuant to this subsection must be conducted in compliance with hydrogeologic guidelines approved by the Board. A person making a claim related to loss of reasonable investment-backed expectations under this section shall provide evidence to support the petition as generally described under Paragraphs (A) and (B) under Rule 2.8(c)(8).

(c) A petition as described by Subsection (a) shall be submitted to the District in conjunction with an application for an Operating P~~p~~ermit or Operating P~~p~~ermit amendment ~~application~~ in accordance with Section 2 of these rules. A petition under this rule must be submitted prior to any deadline established by these rules for the submission of the associated permit or permit amendment application, and where there is no such deadline established by these rules, the petition must be received by the District prior to the District issuing notice of the hearing on the associated permit or permit amendment application for hearing.

(d) The applicant has the burden of proof in a hearing on a petition and application for permit submitted under this rule to prove they are entitled to additional groundwater production in accordance with the evidence and issues to be considered under Subsections (a) and (b) of this rule. A hearing on the petition and permit or permit amendment application shall be held in accordance with the procedures required in Appendix E of these rules related to permit and permit amendment hearings before the Board.

(e) Submitting a petition under Subsection (a) in conjunction with a permit or permit amendment application as required by Subsection (c) and completing the combined hearing process on the petition and the permit or permit amendment application is a prerequisite to filing suit against the District on either the Board's decision regarding a permit or permit amendment application ~~and petition~~ or for a taking of a person's property without just compensation on grounds that the application of these rules on a person has resulted in their inability to produce a fair share of the groundwater beneath their property or a loss of reasonable investment-backed expectations.

SECTION 6. FEES AND PAYMENT OF FEES

Rule 6.1 Groundwater Use Fees

(a) A groundwater use fee rate schedule shall be established by Board resolution annually at least sixty (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 3.1. 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 groundwater use fees are due or if a refund of groundwater use fees is warranted.

(b) Wells exempt under Rule 3.1 shall be exempt from payment of groundwater 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 sixty (60) days prior to the end of the calendar year, the District shall send by regular mail, internet account, or e-mail to the owner or operator of each registered well that is required to pay the groundwater use fee a reminder statement setting forth the groundwater use fee rate applicable to the groundwater 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.

(d) Notwithstanding any other rule to the contrary, the owner and any operator of a well are jointly responsible for ensuring that water use fees and groundwater transport fees required by this rule or Rule 6.2 are timely submitted to the District. Each will be subject to enforcement action if a report or log required by this rule is not timely filed by either, or by any other person legally authorized to act on the behalf of either.

Rule 6.2 Groundwater Transport Fee

The District shall impose a fifty (50) percent export surcharge in addition to the District's groundwater use fee for in-District use for groundwater produced in the District that is transported for use outside of the District, except as provided by Rule 7.1(b). The procedures, requirements, and penalties related to payment of the groundwater use fee shall also apply to payment of the groundwater transport fee.

Rule 6.3 Payment of Groundwater 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 groundwater 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 groundwater 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 groundwater 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 groundwater for both agricultural and non-agricultural purposes shall pay the groundwater use fee rate applicable to non-agricultural purposes for all groundwater 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 groundwater for each purpose of use.

(c) A well owner who is required to pay a disincentive fee under a compliance order under Rule 5.5 shall pay such fee in conjunction with the well owner's submission of groundwater use fee payments according to the schedule established in Subsection (a) of this rule.

Rule 6.4 Failure to Make Fee Payments

(a) Payments not received within thirty (30) days following the date that groundwater use fees or groundwater transport fees are due and owing to the District pursuant to Rule 6.3(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 groundwater use fees due and owing to the District.

(b) Persons failing to remit all groundwater use fees due and owing to the District within sixty (60) days of the date such fees are due pursuant to Rule 6.3(a) shall be subject to a penalty fee not to exceed three times the amount of the outstanding groundwater use fees due and owing, in addition to:

(1) the late payment fee ~~penalty~~ prescribed in Subsection (a) of this rule; and

(2) the civil penalties for major violations set forth in Appendix D to these rules.

(c) Persons in violation of this rule may also be subject to additional enforcement measures provided for by these rules or by order of the Board.

Rule 6.5 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 6.6 Well Completion Report Deposit

The Board, by resolution, may establish a well completion 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 completion reports are timely submitted to the District in accordance with these rules. In the event the District does not timely receive all relevant well completion reports, or if rights granted within the registration are not timely used, the deposit shall become the property of the District.

Rule 6.7 Enforcement

(a) After a well is determined to be in violation of these rules for failure to make payment of groundwater use fees or groundwater transport fees on or before the 60th day following the date such fees are due pursuant to Rule 6.3, 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.

(b) The owner and any operator of a well are jointly responsible for compliance with these rules. Each will be subject to enforcement action and are jointly and severally liable for a violation of these rules.

SECTION 7. TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT

Rule 7.1 General Provisions

(a) A person who produces or wishes to produce groundwater from a well not exempt under Rule 3.1(a) that is located or is to be located within the District and transport such groundwater for use outside of the District must register the well and, if applicable, obtain a permit for the well, and submit timely payment of the groundwater transport fee to the District under Rule 6.2 for any groundwater 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, assess a groundwater transport fee against the transport of groundwater 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's 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 7.2 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 groundwater 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 groundwater production reports under Rule 2.11. 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 and permit 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 during the immediately preceding reporting period; (4) the total amount of groundwater transported outside of the District from each well during each month of the immediately preceding reporting period; (5) the purposes for which the groundwater was transported; (6) the amount and source of surface water transported, if any; and (7) any other information requested by the District.

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 3.1 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 3.1 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) Bypasses are prohibited unless they are also metered.

Rule 8.2 Water Meter Exemption

Wells exempt under Rule 3.1(a) shall be exempt from the requirement to obtain a water meter under Rule 8.1.

Rule 8.3 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. Failure to notify the District prior to removing a meter for repairs constitutes a major violation of these rules.

Rule 8.4 Water Meter Readings

The registrant of a well not exempt under Rule 3.1 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 groundwater production report required by Rule 2.11, along with fee payments as set forth under Section 6. 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 groundwater use fees and groundwater transport fees by the deadlines set forth for fee payment under Rule 6.3.

Rule 8.5 Installation of Meters

Except as otherwise provided by these rules, a meter required to be installed under these

rules shall be installed before producing groundwater from the well on or after January 1, 2009.

Rule 8.6 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.

Rules regarding meter installation and accuracy requirements are found in Appendix G. of these rules.

APPENDIX A

GENERAL PROVISIONS

PROCEDURAL HISTORY OF RULES ADOPTION

These rules of the Upper Trinity Groundwater Conservation District were adopted by the Board of Directors on XXXXX, 2019, 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 adopted as the permanent rules of the District by its Board of Directors, subject only to future amendments after public notice and hearing as prescribed by law.

Prior to its adoption of these permanent rules, the District operated under its Temporary Rules for Water Wells, initially adopted by the District's Board of Directors on August 18, 2008.

GENERAL PROVISIONS

Rule A.1 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 A.2 Purpose of Rules

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

Rule A.3 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 or amendments to these rules.

Rule A.4 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, referred to in these rules as “aquifers” and “layers of aquifers,” consistent with the objectives of Section 59, Article XVI, Texas Constitution. Pursuant to Section 36.0015 of the Texas Water Code, groundwater conservation districts are the state’s preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by the District in accordance with Chapter 36, Texas Water Code.

Rule A.5 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 A.6 Methods of Service

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 email, by commercial delivery service, 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, or by fax to the recipient's current fax number and shall be accomplished by 5:00 o'clock p.m. on the date which it is due. Service by mail or commercial delivery service is complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. Service by email or fax is complete upon transfer, except that service completed after 5:00 o'clock p.m. local time of the recipient shall be deemed served on the following 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 (3) 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 A.7 Severability

If a provision contained in these 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 rules, and these rules shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in these rules.

Rule A.8 Regulatory Compliance; Other Governmental Entities

All wells and well drillers, owners, and operators, including all registrants and permit holders, within 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 incompatible with and more stringent than those of other governmental entities, the District Rules and regulations control. However, a person applying for a registration or permit related to a water well with the District should be aware that, for many projects that involve water wells, multiple permits or authorizations must be obtained from numerous governmental entities in order for the project to lawfully go forward, Those governmental entities may include a city, county, or other local political subdivision, the Texas Commission on Environmental Quality, the Texas Department of

Licensing and Regulations, or others. Therefore, just because a person qualifies for and obtains a well permit or well registration under the District Rules, the person may not be able to lawfully drill or operate the water well until the person obtains all other necessary permits or authorizations from other governmental entities.

Rule A.9 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 after which the designated period of time begins to run is not included. 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 not a Saturday, Sunday, or legal holiday.

Rule A.10 Time Limits

(a) 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, unless a required time limit for filing falls on a Saturday, Sunday, or legal holiday in which case the required time limit for filing shall be extended to the next day that is not a Saturday, Sunday, or legal holiday. An electronically filed document, including e-mail, is deemed filed when transmitted to the District's electronic service provider, except if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday. Filing of a document by fax is considered complete on receipt by the District. Faxes or emails received after 5:00 p.m. local time of the District shall be deemed filed on the following day.

(b) Filing by mail or commercial delivery service is complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. Time periods set forth in these rules shall be measured by calendar days, unless otherwise specified.

Rule A.11 Amending of Rules

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

Rule A.12 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.

Rule A.13 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 shall review and readopt the Management Plan, with or without revisions, at least once every five (5) 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.

Rule A.14 Effective Date

These rules take effect on Effective Date (XXXXX), which was the date of their adoption. An amendment to these rules takes effect on the date of its 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 B

PERMIT TERMS, RENEWALS, AMENDMENTS, AND TRANSFERS

Rule B.1 Permit Terms and Renewal

(a) Permit terms are as follows:

(1) An Operating Permit shall be issued for a term not to exceed five (5) years. The Board may issue an Operating Permit with an initial term of more than four (4) but equal to or less than five (5) years for the purpose of causing the permit term to align with a renewal schedule applicable to other Operating Permits issued by the District in the same year of original issuance.

(2) A Historic Use Permit shall be issued for a term not to exceed ten (10) years. The Board may issue an Historic Use Permit with an initial term of more than nine (9) but equal to or less than ten (10) years for the purpose of causing the permit term to align with a renewal schedule applicable to other Historic Use Permits issued by the District in the same year of original issuance.

(b) The permit term will be shown on the permit. A permit expires on the date the permit term ends unless the permit is renewed prior to that date or until the conclusion of a pending enforcement action or permit amendment process as set forth in Subsections (d) or (e) of this rule. An Operating Permit subject to renewal under Subsection (c)(2) remains in effect until the final settlement or adjudication on the matter of an enforcement action for a substantive violation under Subsection (d)(2) of this rule.

(c) Permit renewal procedures are as follows:

(1) A permit holder shall make application to renew a permit required under these rules prior to the expiration of the current permit term on a form provided by the District. In order to ensure adequate time for approval by the District of a renewal application prior to the expiration of its term, an administratively complete application to renew a permit shall be filed and submitted to the District no later than sixty (60) days prior to the expiration of the permit term. The General Manager shall provide the permit application renewal form to the permit holder no less than one hundred twenty (120) days prior to the expiration of the permit term. The permit holder shall indicate on the renewal application form whether any changes to the well, well operations, purpose of use, amount of use, or other changes are requested.

(2) Permit renewals shall be approved by the General Manager without notice or hearing if:

(A) the application is submitted in a timely manner and accompanied by any required fees in accordance with these rules; and

(B) the permit holder is not requesting a change related to the renewal that would require a permit amendment under these rules.

(d) The General Manager may not approve an Operating Permit renewal application if the applicant:

(1) is delinquent in paying a fee required by the District;

(2) is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; or

(3) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or rule.

(e) If the permit holder seeks, as part of the renewal application, to increase the amount of authorized withdrawal under an Operating Permit or otherwise change any of the permit terms or conditions of an Operating Permit or Historic Use Permit that would require a permit amendment, the application will be scheduled for a hearing and consideration by the Board under Rule E.4. If the requested changes or amendments are denied, the permit shall be renewed under the original permit conditions as it existed before the permit amendment process, unless the District proposes an amendment under Subsection (f) of this rule. The permit, as it existed before the permit amendment process, remains in effect until the later of:

(1) the conclusion of the permit amendment process or renewal process, as applicable; or

(2) final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.

(f) The District may initiate an amendment to an Operating Permit or Historic Use Permit, in connection with the renewal of a permit or otherwise, in accordance with these rules. If the District initiates an amendment to an Operating Permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

Rule B.2 Permit Amendments

(a) A permit amendment is required prior to any deviation from the permit terms regarding the maximum amount of groundwater to be produced from a well, ownership of a well or permit, the location of a proposed well, the purpose of use of the groundwater, the location of use of the groundwater, or the drilling and operation of additional wells in a well system, even if aggregate withdrawals remain the same. A permit amendment is not required for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well.

(b) A major amendment to a permit includes, but is not limited to, a change that would substantially alter the size or capacity of a well, an increase in the annual quantity of groundwater authorized to be produced, a change in the type of use of the groundwater produced, the addition of a new well to be included in an already permitted aggregate

system, or a change of location of groundwater withdrawal or location of use, except for a replacement well authorized under Rule 2.12.

(c) A major amendment to a permit shall not be made prior to notice and hearing.

(d) Amendments that are not major, as determined by the General Manager and these rules, such as a change in ownership of the land the well is located on or an amendment sought by the permit holder for a decrease in the quantity of groundwater authorized for withdrawal and beneficial use, are minor amendments and may be made by the General Manager.

(e) The General Manager is authorized to deny or grant in full or in part a minor permit amendment and may grant minor amendments without public notice and hearing. Such decision by the General Manager may be appealed to the Board. This appeal is a pre-requisite to filing suit against the District to overturn the General Manager's decision. Any minor amendment sent to the Board for consideration shall be set on the Board's agenda and shall comply with the notice requirements of the Texas Open Meetings Act.

(f) A Historic Use Permit may not be amended to change the purpose of use of the groundwater for which the permit was originally issued or to increase the production of groundwater above the Maximum Historic Use. In order to use a well for a different purpose of use or to increase groundwater production above the Maximum Historic Use, the Historic Use Permit holder must obtain an Operating Permit and will be subject to the same rules and regulations as non-historic users of groundwater.

(g) The District may initiate an amendment to an existing Operating Permit or Historic Use Permit, in connection with a permit renewal during the term of a permit, in order to accomplish the purposes of Chapter 36, Water Code, the District Act, or these rules, including without limitation to achieve the applicable desired future conditions for the aquifer.

Rule B.3 Transfer of Well Ownership

(a) Within ninety (90) days after the date of a change in ownership of a well that is registered with the District as exempt under Rule 3.1 or Rule 3.2, the current well owner (transferor) or the new well owner (transferee) shall notify the District in writing of the effective date of the change in ownership and 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. The General Manager shall amend the registration to reflect the change in ownership. The new well owner shall be required to submit an application for registration of an existing well if a registration does not yet exist for the well. The transferor and the transferee are jointly and severally liable for a violation of this rule.

(b) Within ninety (90) days after the date of a change in ownership of a well that is permitted with the District or that is otherwise not exempt under Rule 3.1 from the fee payment, metering, and reporting requirements of these rules, the current well owner (transferor) or 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 of the permit or well registration, as applicable. The written sworn to application shall include a request to make the ownership change and show the authority for requesting the change. The General Manager may grant or deny such an amendment without notice, hearing, or further action by the Board. The transferor and the transferee are jointly and severally liable for a violation of this rule.

(c) If a registrant or permit holder conveys by any lawful and legally enforceable means to another person the real property interests in one or more wells that is recognized in the registration or permit 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 permit holder or registrant, 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 permit or 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:

(1) 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 permit or registration, and each well and permit or registration made the subject of the application is otherwise in good standing with the District; and

(2) all outstanding fees, penalties, and compliance matters have first been fully and finally paid or otherwise resolved by the new well owner (transferee) for all wells included in the new owner's existing permit or registration, if any.

(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 ninety (90) days from the date of the change in ownership until the transferor or transferee has provided the required transfer of ownership information to the District.

(g) 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 permit or registration or that would trigger the requirement to permit the well under the District Rules must also submit and

obtain District approval of an application for a permit, permit amendment, registration, or registration amendment, as applicable, prior to altering or operating the well in the new manner.

(h) If multiple wells have been aggregated under one permit and one or more wells under the permit will be transferred, the District may require separate registration and permit applications from each new owner for the wells retained or obtained by that person.

APPENDIX C

INSPECTIONS, PENALTIES, AND ENFORCEMENT OF RULES

Rule C.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 groundwater 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 C.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 civil 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 the Enforcement Policy and Penalty Schedule, which is attached to these rules as Appendix D and adopted as 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 and the court shall grant against any person, 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 C.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 groundwater resources in the District. Failure of a well owner required by these rules to submit complete, accurate, and timely pumpage and transportation reports may result in:

(a) the assessment of any fees or recovery of penalties adopted under Rule C.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 C.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 C.5 Notices of Violation

Whenever the District determines that any person has violated or is violating any provision of the District 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 act, 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. Notices of violation issued hereunder shall be tendered by a delivery method that complies with Rule A.6. Nothing in this subsection shall limit the authority of the District to act, 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 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 subsection shall limit the authority of the District to act, including emergency actions or any other enforcement action, without first conducting a meeting under this subsection.

Rule C.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 Rules, or any term of a District permit or 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 written notice on each person to be made the subject of the hearing not less than twenty (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;

(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 act, 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.

APPENDIX D

ENFORCEMENT POLICY AND 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 sixty (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 an appropriate settlement offer to settle the violation in lieu of litigation based upon the Penalty Schedule set forth below or as otherwise provided in the 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 recovery of administrative and/or civil penalties, injunctive relief, and costs of court and expert witnesses, damages, and attorneys' fees. The District does not have the authority to assess civil penalties, but rather has the express statutory authority to file a lawsuit against a person in a court of competent jurisdiction to seek recovery of civil penalties through the court, along with recovery of its attorney's fees and costs. Civil penalty references herein refer to the amounts that the Board may offer a person violating a rule of the District as a settlement in lieu of filing a lawsuit, as well as amounts that the District may seek through a court if a lawsuit is filed. The District does have the authority to assess certain administrative penalty fees against a person for producing groundwater in violation of a rule of the district without filing a lawsuit.

I. Minor Violations

The following acts each constitute a minor violation:

1. Failure to conduct a meter reading within the required period.

2. Failure to timely notify District regarding change of ownership.

3. Failure to timely file a well completion report.

4. Failure to timely submit required documentation reflecting alterations or increased production.

5. Operating a meter that is not accurately calibrated.

CIVIL PENALTY SCHEDULE FOR MINOR VIOLATIONS

First Violation:	**Up to $250.00**
Second Violation:	**Up to $500.00**
Third Violation:	**Major Violation**

II. Major Violations

The following acts each constitute a major violation:

1. Failure to register a well that is required to be registered under Rule 2.2 or failure to permit a well that does not qualify for an exemption under Rule 3.1.

2. Drilling, completing, altering, or operating a well without a compliant and approved registration or permit if a registration or permit is required by these rules.

3. Failure to timely meter a well when required.

4. Failure to submit accurate groundwater production report within the required period.

5. Failure to submit accurate groundwater transport report within the required period.

6. Drilling a well at a different location than authorized or in violation of minimum tract size or well spacing requirements.*

7. Failure to close or cap an open or uncovered well.

8. Failure to submit groundwater use fees within sixty (60) days of the date the fees are due.**

9. Failure to timely submit groundwater transport fees within sixty (60) days of the date the fees are due.**

10. Intentionally or knowingly submitting inaccurate and untruthful information on District forms or to the Board.

11. Committing waste.

~~11.~~12. Failure to notify the District prior to removing a required well meter for repairs.

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**
Fourth and Subsequent Violations:	**Civil Suit for injunction and maximum penalties and damages authorized by law.**

DETERMINING THE LEVEL OF A MINOR OR MAJOR VIOLATION

Whether a minor or major violation is a first, second, third, fourth, or subsequent minor or major violation will be determined by a five-year period immediately preceding the violation and how many violations the person has incurred during that five-year period. After five years have lapsed, a minor or major violation shall no longer be included in the determination of the level of a subsequent minor or major violation being considered by the Board. For violations of a compliance order, any violation during the term of the compliance order shall be included in the determination of the level of the violation, but violations that occurred during a previous compliance order shall not be included in the determination of the level of a violation during the current compliance order.

* 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 minimum tract size or well 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 groundwater use fees and groundwater transport fees due and owing within sixty (60) days of the date the fees are due pursuant to Rule 6.3(a) shall be subject to a penalty not to exceed three (3) times the total amount of outstanding groundwater use fees, groundwater transport fees, or both, that are due and owing.

*** In addition to the applicable penalty provided for in the Penalty Schedule, the Board may refer any person it suspects of falsifying documents or records submitted to the District to the district attorney or other local prosecuting authority for criminal prosecution.

**** For violations related to producing more groundwater than authorized by the District, the Board will assess penalties and take other action as indicated in the Fee and Penalty Schedule for Excessive Groundwater Pumping.

III. Renewal of Compliance Orders

Compliance orders are renewable every five (5) years, up to a maximum of twenty (20) years. Renewal of a compliance order is contingent upon the applicant providing evidence every five (5) years demonstrating to the satisfaction of the Board that the applicant has utilized due diligence in the pursuit of alternative water sources or the purchase or lease of additional contiguous controlled acreage during the term of the compliance order. Once a person has entered into a compliance order with the District, any production of groundwater over the amount authorized in the permit during the period of the compliance order is subject to any applicable disincentive fee payment required under that order, even if the person does not produce groundwater in excess of the amount authorized in the permit in some years during the period of the compliance order. If a person has ever entered into a compliance order with the District and enters into another compliance order through renewal or otherwise, the provisions of any subsequent compliance order shall be those provisions applicable for the next higher five (5) year

level of fees and penalties as set forth in the "Fee and Penalty Schedule for Excessive Groundwater Pumping" from the previous compliance order of the person., regardless of any intermittent years of pumping within the terms of the permit or permits held by the person.

IV. Violations of Compliance Orders

A person who produces groundwater in excess of the amount authorized by the compliance order shall pay fees and penalties as set forth in the "Fee and Civil Penalty Schedule for Excessive Groundwater Pumping." Once a person has violated a compliance order by producing groundwater in excess of the amount authorized under such order, penalties for additional violations will continue to increase in accordance with the schedule established by this policy, even if there are intermittent periods of compliance. Each violation of the compliance order, regardless of the length of time between violations, incurs the next level of civil penalties in accordance with this rule.

FEE AND ~~CIVIL~~ PENALTY SCHEDULE FOR EXCESSIVE GROUNDWATER PUMPING****

Pumping in Excess of Authorized Amount	**Compliance Order Violation**
First Violation: 1. Three (3) times the groundwater use fee for the amount of production exceeding the amount authorized by registration or permit; and 2. Civil penalties totaling 5% of the groundwater use fee for the entire amount of production authorized by registration or permit, or a civil penalty of $100, whichever is greater.	**First Violation:** 1. Three (3) times the groundwater use fee for the amount of production exceeding the amount authorized by the compliance order; and 2. Civil penalties totaling 5% of the groundwater use fee for the entire amount of production authorized by the compliance order, or a civil penalty of $100, whichever is greater.
Second Violation: 1. Ten (10) times the groundwater use fee for the amount of production exceeding the amount authorized by registration or permit; and 2. Civil penalties totaling 10% of the groundwater use fee for the entire amount of production authorized by registration or permit, or a civil penalty of $500, whichever is greater.	**Second Violation:** 1. Ten (10) times the groundwater use fee for the amount of production exceeding the amount authorized by the compliance order; and 2. Civil penalties totaling 10% of the groundwater use fee for the entire amount of production authorized by the compliance order, or a civil penalty of $500, whichever is greater.

Third Violation: 1. Three (3) times the groundwater use fee for the entire amount of production authorized by registration or permit; or 2. Ten (10) times the groundwater use fee for the amount of production exceeding the amount authorized by registration or permit, whichever is greater; and 3. Civil penalties totaling 10% of the groundwater use fee for the entire amount of production authorized by registration or permit, or a civil penalty of $1,000, whichever is greater, not to exceed $10,000; and 4. Civil suit, including injunctive relief to prevent continued violations.	**Third Violation:** 1. Three (3) times the groundwater use fee for the entire amount of production authorized by the compliance order; or 2. Ten (10) times the groundwater use fee for the amount of production exceeding the amount authorized by the compliance order, whichever is greater; and 3. Civil penalties totaling 10% of the groundwater use fee for the entire amount of production authorized by the compliance order or a civil penalty of $1,000, whichever is greater, not to exceed $10,000; and 4. Civil suit, including injunctive relief to prevent continued violations.
Fourth Violation: 1. Permit suspension; and 2. Ten (10) times the groundwater use fee for the entire amount of production authorized by registration or permit; and 3. Civil penalties not to exceed $10,000/day for pumping without a permit; and 4. Civil suit, including injunctive relief to prevent continued violations.	**Fourth Violation:** 1. Compliance order suspension; and 2. Ten (10) times the groundwater use fee for the entire amount of production authorized by the compliance order registration; and 3. Civil penalties not to exceed $10,000/day for pumping excess groundwater without a permit; and 4. Civil suit, including injunctive relief to prevent continued violations.

V. Water Well Construction and Completion Requirements

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 penalties provided for in this schedule, persons who drill a well in violation of applicable well spacing, minimum tract size, or completion requirements may be required to recomplete or reconstruct the well in accordance with the District Rules or may be ordered to plug the well.

VI. 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 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.

APPENDIX E

HEARINGS PROCESSES AND PROCEDURES

Rule E.1 Types of Hearings

(a) The District conducts four general types of hearings under this section:

(1) hearings involving the issuance of permits or permit amendments, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing;

(2) rules enforcement hearings, in which the obligation and authority of the District to impose or recover penalties are considered under specific relevant circumstances, after an opportunity for an adjudicative hearing;

(3) rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District; and

(4) hearings on proposed desired future conditions.

(b) Any matter designated for hearing before the Board may be heard by a quorum of the Board, referred by the Board for hearing before a Hearing Examiner, or heard by a quorum of the Board along with an appointed Hearing Examiner who officiates during the hearing.

Rule E.2 General Procedures for All Hearings

(a) Authority of Presiding Officer: The Board president, or another Board member designated by the president, or a Hearing Examiner shall serve as the Presiding Officer for a hearing. The Presiding Officer may conduct a hearing or other proceeding in the manner the Presiding Officer determines most appropriate for the particular proceeding. The authority of a Hearing Examiner appointed by the Board to serve as Presiding Officer may be limited at the discretion of the Board. The Presiding Officer may:

(1) convene the hearing at the time and place specified in the notice for public hearing;

(2) set hearing dates other than the initial hearing date on a permit matter, which is set by the General Manager;

(3) establish the jurisdiction of the District concerning the subject matter under consideration;

(4) rule on motions, the admissibility of evidence, and amendments to pleadings;

(5) designate parties and establish the order for presentation of evidence;

(6) administer oaths to all persons presenting testimony;

(7) examine persons presenting testimony;

(8) prescribe reasonable time limits for the presentation of evidence and oral argument;

(9) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party to the proceeding;

(10) conduct public hearings in an orderly manner in accordance with these rules;

(11) recess a hearing from time to time and place to place;

(12) reopen the record of a hearing for additional evidence when necessary to make the record more complete;

(13) determine how to apportion between the parties' costs related to a contract for the services of a presiding officer and the preparation of the official hearing record; and

(14) exercise any other lawful power necessary or convenient to effectively carry out the responsibilities of the Presiding Officer.

(b) Registration form: Each individual attending a hearing or other proceeding of the District who wishes to testify or otherwise provide information to the District must submit a form to the Presiding Officer providing the following information:

(1) the individual's name and signature;

(2) the individual's address;

(3) whether the individual plans to testify;

(4) whom the person represents, if the person is not there in the person's individual capacity; and

(5) any other information relevant to the hearing or other proceeding.

(c) Appearance; representative capacity: An interested person may appear in person or may be represented by counsel, an engineer, or other representative, provided the representative is authorized to speak and act for the principal. The person or the person's representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. A partner may appear on behalf of a partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear on behalf of the entity. A fiduciary may appear for a ward, trust,

or estate. A person appearing in a representative capacity may be required to prove proper authority to so appear.

(d) Alignment of parties; number of representatives heard: Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The Presiding Officer may require the members of an aligned class to select one or more persons to represent the class in the proceeding or on any particular matter or ruling and may limit the number of representatives heard but must allow at least one representative from each aligned class to be heard in the proceeding or on any particular matter or ruling.

(e) Appearance by applicant, movant, or Respondent: The applicant, movant, party, or Respondent, or their authorized representative, should be present at the hearing or other proceeding. Failure to appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the Presiding Officer determines that action is necessary to fully develop the record. For Respondents who have requested a contested case hearing on an enforcement matter under Rule E.11, the failure to appear at the hearing on the merits will be grounds for the issuance of a default order in favor of the enforcement actions at issue.

(f) Recording:

(1) Contested hearings: A record of the hearing in the form of an audio or video recording or a court reporter transcription shall be prepared and kept by the Presiding Officer in a contested hearing. The Presiding Officer shall have the hearing transcribed by a court reporter upon a request by a party to a contested hearing. The Presiding Officer may assess court reporter transcription costs against the party requesting the transcription or among the parties to the hearing. The Presiding Officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this rule, unless the parties have agreed that the costs assessed against such party will be paid by another party.

(2) Uncontested hearings: In an uncontested hearing the Presiding Officer may use the means available in Subsection (f)(1) of this rule to record a proceeding or substitute meeting minutes or the report set forth under Rule E.5(c) for a method of recording the hearing.

(3) Rulemaking hearings: The Presiding Officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

(g) Filing of documents; time limit: Applications, petitions, motions, exceptions, communications, requests, briefs, or other papers and documents required to be filed under

these rules or by law must be received at the District office within the time limit, if any, set by these rules or by the Presiding Officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit, unless the filing party is able to demonstrate that a postal system error prevented the submission from arriving within the time limit.

(h) Affidavit: If a party to a hearing or other proceeding is required to make an affidavit, the affidavit may be made by the party or the party's representative. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.

(i) Broadening the issues: No person will be allowed to appear in a hearing or other proceeding that in the opinion of the Presiding Officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.

(j) Conduct and decorum: Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If, in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer determines necessary.

(k) Public comment on applications: Documents that are filed with the Board that comment on an application but do not request a hearing will be treated as public comment. The Presiding Officer may allow any person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application.

Rule E.3 Permit Application Hearings

(a) Permit Applications and Amendments: The District shall hold a hearing for each activity for which a permit or permit amendment is required pursuant to Section 2 of these rules, subject to the exception in Rule E.3(b). A hearing involving permit matters may be scheduled before a Hearing Examiner.

(b) The District shall hold a hearing for minor amendments, as determined by the General Manager and these rules pursuant to Rule B.2(d), only if the General Manager determines that a hearing is required.

(c) Continuances: The Presiding Officer may continue a contested case from time to time and from place to place without providing notice under Rule E.4. If the Presiding Officer continues a hearing without announcing at the hearing the time, date, and location of the

continued hearing, the Presiding Officer must provide notice of the continued hearing by regular mail to the parties.

(d) Hearings on Motions for Rehearing: Motions for rehearing will be heard by the Board pursuant to Rule E.15(d).

Rule E.4 Notice and Scheduling of Hearings on Permit Applications and Applications for an Exception to Minimum Tract Size and Spacing Requirements

(a) This rule applies to all permit matters for which a hearing is required, except as provided under Appendix F for Historic Use Permit applications.

(b) Scheduling of Hearing. Unless these rules specifically provide that a hearing is not required for an application, the General Manager or Board will schedule the application for a hearing at a regular or special meeting of the Board. The Board may schedule hearings for additional dates, times, and places if the hearing is to be presided over by a Hearing Examiner. The General Manager or Board may schedule more than one application for consideration at a hearing. Well registrations do not require a hearing or Board action.

(c) Not later than the 10th day before the date of a hearing, the General Manager, as instructed by the Board, is responsible for giving notice in the following manner:

(1) by posting notice in a place readily accessible to the public at the District's office;

(2) by providing the notice to the County Clerk of each county in the District;

(3) by regular mail to the applicant;

(4) by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and

(5) if an exception to the minimum well spacing distances or minimum tract size requirements is requested, by providing notice as required by Rule 4.7; and

(6) by regular mail to any other person entitled to receive notice under the District’s rules.

(d) A person having an interest in the subject matter of a hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service by first class mail, fax, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this subsection does not invalidate any action taken by the Board.

(e) The notice provided under Subsections (c) and (d) must include:

(1) the name of the applicant;

(2) the name or names of the owner or owners of the land if different from the applicant;

(3) the address or approximate location of the well or proposed well;

(4) if the notice is for a permit, permit amendment, or exception from minimum tract size or spacing requirements, provide a brief explanation, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;

(5) the time, date, and location of the hearing; and

(6) any other information the Board or General Manager deems relevant and appropriate to include in the notice.

(f) An administratively complete application shall be set for a hearing on a specific date within sixty (60) days after the date the administratively complete application is submitted to the District. A hearing shall be held within thirty-five (35) days after the setting of the date, and the District shall act on the application within sixty (60) days after the date the final hearing on the application is concluded.

(g) A hearing may be scheduled during the District's regular business hours, excluding District holidays. All permit hearings will be held at the District office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location. The Board may change or schedule additional dates, times, and places for hearings.

(h) Failure to provide notice in accordance with this rule does not invalidate an action taken by the District at the hearing.

Rule E.5 Uncontested Applications

(a) The Board may act on any uncontested permit or permit amendment application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The Board may issue a written order to:

(1) grant the application;

(2) grant the application with special conditions; or

(3) deny the application.

(b) The District may allow any person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application.

(c) Any case not declared a contested case under Rule E.6 is an uncontested case, and the Presiding Officer will summarize the evidence and issue a report to the Board within thirty (30) days after the date a hearing is concluded. Such report must include a summary of the subject matter of the hearing, a summary of the evidence or public comments received, and the Presiding Officer's recommendations to the Board. A copy of the report must be provided to the applicant and each person who provided comment. A report is not required if the hearing was conducted by a quorum of the Board and the hearing was recorded pursuant to Rule E.2(f).

Rule E.6 Contesting a Permit Application

(a) Contested case hearings may be requested in connection with the following applications:

(1) Historic Use Permits;

(2) Operating Permits; and

(3) major amendments to any existing permit.

(b) The following may request a contested case hearing on an application for a permit or permit amendment:

(1) the General Manager;

(2) the applicant; or

(3) a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by the permit or permit amendment application, not including persons who have an interest common to members of the public.

(c) A request for a contested case hearing must be in writing and be filed on or before the date noticed for the initial public hearing, and before Board action on the application, regardless of any continuance of the public hearing.

(d) Requirement for contested case hearing requests on applications: A request for a contested case hearing must substantially comply with the following:

(1) provide the name, address, daytime telephone number, e-mail address, and fax number of the person who files the request. If the request is made by a corporation, partnership, or other business entity, or a group or an association, the request must

identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the entity, group, or association;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) state whether the person requesting the contested case hearing is the applicant for that permit, holder of another groundwater withdrawal permit, owner of a registered well, or a landowner or other person with a justiciable interest pursuant to Subsection (d)(2) of this rule;

(4) set forth the grounds on which the person is protesting the application;

(5) request a contested case hearing;

(6) be timely under Rule E.6(f);

(7) be sworn to; and

(8) provide any other information required by the public notice of application.

(e) Contested case hearing request on more than one application: If a person or entity is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

(f) Deadline for contested case hearing requests on applications: A hearing request is considered timely if it complies with Rule E.6(d) and:

(1) it is submitted in writing to and received by the District on or before the date of the hearing and action by the Board on the application; or

(2) the person appears before the Board at the hearing and opposes the application.

For a hearing request on a Historic Use Permit application, the date of the preliminary hearing set forth in accordance with Rule F.5(a) shall be used for purposes of determining timeliness under this subsection.

(g) Contested case: A matter regarding an application is considered to be contested if a hearing request is made pursuant to Rule E.6(d) and E.6(e), made in a timely manner pursuant to Rule E.6(f), and declared as such by the Presiding Officer. Any case not declared a contested case under this rule is an uncontested case.

Rule E.7 Processing of Contested Case Hearing Requests

(a) After a contested case hearing request is timely filed, the Board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with these rules.

(1) At least twenty (20) days prior to a preliminary hearing to hear the request for a contested case hearing, District staff will provide notice to the applicant and any persons who filed a timely hearing request. The General Manager is deemed to have constructive notice of the meeting.

(2) Potential parties may submit a written response to the hearing request no later than ten (10) days before the schedule preliminary hearing to hear the request for a contested case hearing. Responses must be filed with the District and served on the General Manager, the applicant, and any other persons who timely filed a hearing request in connection with that matter.

(3) The person requesting a hearing may submit a written reply to a response no later than five (5) days before the scheduled preliminary hearing to hear the request for a contested case hearing. All replies shall be filed with the District and served on the same day on the General Manager, the applicant, and any other person who timely filed a hearing request.

(b) The preliminary hearing may be conducted by:

(1) a quorum of the Board, with or without an appointed hearing examiner, as authorized under Rule E.1(b);

(2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or

(3) the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Rule E.8.

(c) The determination of whether a hearing request should be granted is not a contested case hearing. Following a preliminary hearing, the Board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the Board determines that no person who requested a contested case hearing has standing or that no justiciable issues were raised, the Board may take any action authorized under Texas Water Code Section 36.4051 and Rule E.5.

(d) An applicant may, not later than the 20th day after the date the Board issues an order granting the application, demand a contested case hearing if the order includes special

conditions that were not part of the application as finally submitted, or grants a maximum amount of groundwater production that is less than the amount requested in the application.

(e) At the discretion of the Board or hearing examiner, persons not designated as parities may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Board or hearing examiner as evidence.

(f) If the Board grants the contested case hearing request, a contested case hearing must be conducted by:

(1) a quorum of the Board;

(2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or

(3) the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Rule E.8.

(g) Except as provided by Rule E.8, the Board president, or another Board member designated by the president, or a hearing examiner shall serve as the Presiding Officer for a hearing. The Presiding Officer shall:

(1) schedule a preliminary hearing;

(2) at least twenty-one (21) days after the preliminary hearing, schedule an evidentiary hearing; and

(3) following the evidentiary hearing, prepare a proposal for decision including proposed findings of fact and conclusions of law, and transmit that proposal to the Board.

(h) The Board shall schedule a final hearing where it will consider the evidence and testimony presented during the evidentiary hearing and the Presiding Officer's proposal for decision.

(i) Following the final hearing, the Board may:

(1) grant the application;

(2) grant the application with conditions; or

(3) deny the application.

(j) The Presiding Officer may recommend issuance of a temporary permit for a period not to exceed four (4) months, with any special provisions the Presiding Officer deems necessary, for the purpose of completing the contested case process.

Rule E.8 Delegation to State Office of Administrative Hearings

(a) By order, the Board may delegate to the State Office of Administrative Hearings the authority to conduct hearings designated by the Board.

(b) If the Board refers a contested case hearing to the State Office of Administrative Hearings, then Subchapters C, D, and F, Chapter 2001, Texas Government Code, and the applicable rules of practice and procedure of the State Office of Administrative Hearings (1 TEX. ADMIN. CODE Ch. 155) govern any contested case hearing of the District, as supplemented by this subchapter.

(c) If the Board refers a preliminary hearing or contested case hearing to the State Office of Administrative Hearings, the administrative law judge who conducts the contested case hearing shall serve as the Hearing Examiner and consider applicable District rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.

(d) If the Board refers a contested case hearing to the State Office of Administrative Hearings, the District may not attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.

(e) If requested by the applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct the hearing. The party must file such a request not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by the State Office of Administrative Hearings. The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall, before the hearing begins, deposit with the District an amount sufficient to pay the contract amount. At the conclusion of the hearing, the District shall refund any excess money to the paying party.

Rule E.9 Consolidated Hearing on Application

(a) Except as provided by Subsection (b), the Board shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant.

(b) The Board is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.

Rule E.10 Remand to Board

(a) A Hearing Examiner may remand an application to the Board as follows:

(1) all timely hearing requests have been withdrawn;

(2) all parties to a contested case reach a settlement so that no facts or issues remain controverted; or

(3) the party or parties requesting the hearing defaults.

(b) After remand, the application will be uncontested, and the applicant will either be deemed to have agreed to the action proposed by the General Manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration. District staff will set the application for consideration at a Board meeting.

Rule E.11 Contested Case Hearings on Enforcement Matters

(a) Following the issuance of any notice of violation by the District pursuant to Rule C.5, or upon the proposal to institute or the institution of any other enforcement action by the District other than an action filed by the District in a court of appropriate jurisdiction pursuant to Section 36.102, Texas Water Code, the Respondent may contest an enforcement action or a proposed enforcement action by requesting, pursuant to this rule, a contested case hearing on the matter.

(b) A person in receipt of a written notice of violation from the District, or an order of the Board involving a matter for which an opportunity for a contested enforcement action has not previously been provided, may formally contest the enforcement action or actions at issue by submitting to the District a written petition contesting the actions or proposed actions and seeking a hearing on the merits of the same.

(c) A petition filed pursuant to Subsection (a) of this rule must be filed within forty-five (45) days following the date the notice of violation or order is delivered. For purposes of this rule only, the date a notice of violation or order will be considered delivered is the date of delivery as evidenced by a return receipt or written delivery confirmation generated by the United States Postal Service. In the absence of either a return receipt, a delivery confirmation, or other convincing evidence indicating otherwise, a notice of violation or order is considered delivered on the third business day following the date such notice or order was deposited by the District for delivery with the United States Postal Service.

(d) Petitions filed under Subsection (a) shall be addressed directly to the Board of Directors of the Upper Trinity Groundwater Conservation District, and shall contain the following:

(1) the name, physical address, email address, daytime telephone number, and, if available, the facsimile number of the Respondent;

(2) the name and contact information of all other known parties;

(3) a concise statement of the facts relied upon in defense of each violation asserted by the District to which a contest is being filed;

(4) a concise statement of any law relied upon in defense of each violation asserted by the District to which a contest is being filed;

(5) a statement regarding the type of relief requested; and

(6) the signature of the Respondent or the Respondent's authorized representative.

(e) A petition may adopt and incorporate by reference any part of any document or entry in the official files and records of the District. Copies of the relevant portions of such documents must be attached to the petition.

(f) Parties to an enforcement action formally contested under this rule may file supplemental or amended pleadings no later than seven (7) days before a hearing on the merits of the matter.

Rule E.12 Notice and Scheduling of Contested Case Hearings on Enforcement Matters

(a) This rule applies to all enforcement matters for which a contested hearing has been requested in accordance with Rule E.11.

(b) Not later than the 20th day before the date of a hearing, the General Manager, as instructed by the Board, shall notify the Respondent of the hearing by providing notice of the same:

(1) in a place readily accessible to the public at the District's office; and

(2) by mail, facsimile, or electronic mail to the Respondent or the Respondent's designated representative.

(c) The notice provided under Subsection (b) must include:

(1) the name of the Respondent;

(2) the mailing address of the Respondent;

(3) the date or dates of all notices of violation or Board orders that will be the subject of the hearing, along with a description of the violations noticed in each pertinent notice of violation or Board order;

(4) the date that the request for a contested case hearing on the proposed enforcement action was received by the District;

(5) a statement informing the Respondent of the need to appear at the hearing;

(6) the time, date, and location of the hearing; and

(7) any other information the Board or General Manager deems relevant and appropriate to include in the notice.

(d) A hearing on the merits of the enforcement matters noticed under this rule shall begin within sixty (60) days after the date that the request under Rule E.11 is received by the District.

(e) Requisites for notice of show cause hearings ordered by the Board shall be governed by Rule C.6(b).

Rule E.13 Contested Permit Application and Enforcement Hearings Procedures

(a) A procedural hearing may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process in contested matters. Matters that may be considered at a procedural hearing include:

(1) the designation of parties;

(2) the formulation and simplification of issues;

(3) the necessity or desirability of amending applications or other pleadings;

(4) the possibility of making admissions or stipulations;

(5) the scheduling of depositions, if authorized by the Presiding Officer;

(6) the identification of and specification of the number of witnesses;

(7) the filing and exchange of prepared testimony and exhibits; and

(8) the procedure at the evidentiary hearing.

(b) A procedural hearing or evidentiary hearing may be held at a date, time, and place stated in a notice given in accordance with Rule E.4, or at the date, time, and place for hearing stated in the notice of public hearing and may be continued at the discretion of the Presiding Officer.

(c) Action taken at a procedural hearing may be reduced to writing and made a part of the record or may be stated on the record at the close of the hearing.

(d) Designation of parties:

(1) Parties to a contested permit hearing will be designated as determined by the Presiding Officer in accordance with these rules.

(2) The General Manager and the applicant are automatically designated as parties in matters involving permit or permit amendment applications.

(3) The General Manager and the Respondent are automatically designated as parties in contested cases involving enforcement actions.

(4) In order to be admitted as a party, persons other than the automatic parties must appear at the hearing in person or by representation and seek to be designated as a party.

(5) A person requesting a contested case hearing that is unable to attend the first day of the proceeding must submit a continuance request to the Presiding Officer, in writing, stating good cause for his inability to appear at the proceeding. The Presiding Officer may grant or deny the request, at his discretion.

(6) After parties are designated, no other person may be admitted as a party unless, in the judgment of the Presiding Officer, there exists good cause and the hearing will not be unreasonably delayed.

(e) Service of Documents:

(1) For any document filed in a contested case, the person filing that document must serve a copy on all parties.

(2) A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served.

(f) Continuances:

(1) The Presiding Officer may continue a contested case from time to time and from place to place without providing notice under Rules E.4 or E.12.

(2) If the Presiding Officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the Presiding Officer must provide notice of the continued hearing by regular mail to the parties.

(3) Parties to a contested case hearing, with the approval of the Presiding Officer, may agree to modify any time limit prescribed by these rules related to conducting contested case hearings.

(g) Discovery:

Discovery in contested case proceedings will be governed by Chapter 2001, Subchapter D, TEX. GOV'T CODE and Title 1, Section 155.31, TEX. ADMIN CODE, as supplemented by this subchapter. Depositions in a contested case shall be governed by TEX. GOV'T CODE §§ 2001.096-2001.102.

(h) Evidentiary matters:

(1) Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.

(2) The rules of privilege recognized by law shall be given effect.

(3) An objection to an evidentiary offer may be made and shall be noted in the record.

(4) Evidence may be received in writing if:

(A) it will expedite the hearing; and

(B) the interests of the parties will not be substantially prejudiced.

(5) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.

(6) A party may conduct cross-examination required for a full and true disclosure of the facts.

(7) Witnesses shall be sworn and their testimony taken under oath.

(8) Official notice may be taken of:

(A) all facts that are judicially cognizable; and

(B) generally recognized facts within the area of the District's specialized knowledge. Each party shall be notified either before or during the hearing,

or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledge of District staff may be used in evaluating the evidence.

(i) Depositions and Subpoenas:

(1) On the written request of a party, and on deposit of an amount that will reasonably ensure payment of the estimated total amount, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested matter pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case will be in writing and directed to the Board.

(2) A party requesting the issuance of a commission requiring deposition or a subpoena will file an original of the request with the District. District staff will arrange for the request to be presented to the Board at its next meeting.

(3) In the case of a deposition, the Board will issue a commission addressed to the officer authorized by statute to take a deposition, requiring that the deposition of a witness be taken. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers or other objects that may be necessary and proper for the purpose of the proceeding. Additionally, the commission will require the officer to whom it is addressed to examine the witness before the officer on the date and at the place named in the commission; and take answers under oath to questions asked the witness by a party to the proceeding, the District, or an attorney for a party or the District. The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.

(4) In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the District will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers or other objects that may be necessary or proper for the purpose of the proceeding.

(j) Furnishing copies of pleadings: After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every party or party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies to a party or a party’s representative may be grounds for withholding consideration of the pleading or the matters set forth therein.

(k) Disabled parties and witnesses: Persons who have special requests concerning their need for reasonable accommodation, as defined by the Americans With Disabilities Act, 42 U.S.C.12111(9), during a Board meeting or a hearing shall make advance arrangements with the General Manager of the District. Reasonable accommodation shall be made unless undue hardship, as defined in 42 U.S.C. 12111(10), would befall the District.

(l) Interpreters for deaf parties and witnesses: If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(m) Agreements to be in writing: No agreement between parties or their representatives affecting any pending matter will be considered by the Presiding Officer unless it is in writing, signed by all parties, and filed as part of the record, or unless it is announced at the hearing and entered on the record.

(n) Ex Parte communications: Neither the Presiding Officer nor a Board member may communicate, directly or indirectly, in connection with any issue of fact or law in a contested case with any agency, person, party, or representative, except with notice and an opportunity for all parties to participate. This subsection does not apply if:

(1) The Board member abstains from voting on a matter in which he or she engaged in ex parte communications;

(2) The communications were by and between members of the Board consistent with the Texas Open Meetings Act;

(3) The communications are with District staff who have not participated in any hearing in the contested case and are for the purpose of using the special skills or knowledge of the staff in evaluating the evidence; or

(4) The communications are with legal counsel representing the Board.

(o) Written testimony: The Presiding Officer may allow testimony to be submitted in writing, either in narrative or question and answer form, and may require the written testimony be sworn to. On the motion of a party to a hearing, the Presiding Officer may exclude written testimony if the person who submits the testimony is not available for cross-examination in person or by phone at the hearing, by deposition before the hearing, or other reasonable means.

(p) Cross-examination: The opportunity for cross-examination shall be provided for all testimony offered in a contested case hearing.

(q) Evidence:

(1) The Presiding Officer shall admit evidence if it is relevant to an issue at the hearing. The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) Notwithstanding Paragraph (1) of this subsection, the Texas Rules of Evidence govern the admissibility and introduction of evidence of historic use or existing use in a Historic Use Permit application, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(r) Burden of Proof:

(1) The General Manager has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed remedial provisions and penalties. The Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted.

(2) Except as provided by Paragraph (1) of this subsection, the burden of proof is on the moving party by a preponderance of the evidence.

Rule E.14 Proposal for Decision

(a) Except as provided by Subsection (e) of this rule, the Presiding Officer shall submit a proposal for decision to the Board not later than the 30th day after the date the evidentiary hearing is concluded. The Presiding Officer may direct the General Manager or other District representative to prepare the proposal for decision and recommendation required by this rule.

(b) The proposal for decision must include a summary of the subject matter of the hearing, a summary of the evidence, and the Presiding Officer's recommendations for Board action on the subject matter of the hearing.

(c) The Presiding Officer or the General Manager must provide a copy of the proposal for decision to the Board and each designated party to the proceeding.

(d) A party may submit to the Board written exception to the proposal for decision.

(e) If the hearing was conducted by a quorum of the Board and if the Presiding Officer prepared a record of the hearing as provided by Rule E.2(f), the Presiding Officer shall determine whether to prepare and submit a proposal for decision to the Board under this rule.

(f) The Board shall consider the proposal for decision, any exceptions to the proposal for decision, and replies to the exceptions at a final hearing. Additional evidence may not be presented during the final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued in accordance with these rules.

(g) In a proceeding for a permit application or amendment in which the District has contracted with the State Office of Administrative Hearings for a contested case hearing, the Board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge. The Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, only if the Board determines:

(1) That the administrative law judge did not properly apply or interpret applicable law, the District Rules or written District policies provided to the administrative law judge pursuant to Texas Water Code Section 36.416(e), or prior administrative decisions;

(2) That a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) That a technical error in a finding of fact should be changed.

Rule E.15 Final Decision; Appeal

(a) Board Action on rulemaking hearings: After the record is closed on a rulemaking hearing and the matter is submitted to the Board, the Board may take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought, grant the action sought in whole or part, or take any other appropriate action. Board action on a rulemaking hearing takes effect at the conclusion of the meeting in which the Board took the action and is not affected by a request for rehearing.

(b) Board Action on permit hearings: The Board shall act on a matter involving an application for a permit or an application for a permit renewal or amendment not later than the 60th day after the date the final hearing on the matter is concluded. The Board may act on an uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The public meeting may be held in conjunction with a regularly scheduled or special called Board meeting. The Board may issue a written order to grant an application, grant the application with special conditions, or deny the application. The Board, on the motion of any party or on its own motion, may order a remand to reopen the record for further proceedings on specific issues of dispute.

(c) Determination of merit in enforcement hearings:

(1) Following the closing of a hearing presided over by the Board pursuant to this section, or following receipt of a proposal for decision from the Presiding Officer pursuant to Rule E.14, the Board shall consider the evidence admitted on each issue in contest and shall, based upon the preponderance of the credible evidence admitted, render a decision on the matter that shall include provisions requiring remedial relief, where appropriate, and one of the following findings:

(A) that a violation has occurred and that a specific amount of administrative penalties for producing groundwater in violation of a rule or order of the District should be assessed or that the District should seek to recover a specific amount of civil penalties through settlement or institution of a lawsuit;

(B) that a violation has occurred but that no penalty should be assessed; or

(C) that no violation has occurred.

(2) When assessing an administrative penalty or determining the amount of a civil penalty it seeks to recover through settlement or instituting a lawsuit, the Board shall analyze each factor prescribed by the applicable statute or rule to be considered by the Board in determining the amount of the penalty, as well as consider the Enforcement Policy and Penalty Schedule in Appendix D.

(3) The Board shall act on contested enforcement matters no later than the 60th day following the date of submission of closing arguments, or within thirty (30) days following receipt of the hearings report submitted by the Presiding Officer pursuant to Rule E.5(c) whichever is later.

(d) Requests for Rehearing or Findings and Conclusions

(1) An applicant in a contested or uncontested hearing on a permit application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application, or on an enforcement matter, by requesting written findings and conclusions or a rehearing before the Board not later than the 20th day after the date of the Board's decision.

(2) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit or permit amendment application or on an enforcement matter. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35th day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions

from the Board may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.

(3) A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.

(4) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.

(5) A timely filed motion for rehearing shall be denied under operation of law should the Board fail to grant or deny the request before the 91st day after the date the request is submitted.

(e) Decision; when final: A decision by the Board on a permit or permit amendment application or on an enforcement matter is final:

(1) if a request for rehearing is not timely filed, on the expiration of the period for filing a request for rehearing; or

(2) if a request for rehearing is timely filed, on the date:

(A) the Board denies the request for rehearing, either expressly or by operation of law; or

(B) the Board renders a written decision after rehearing.

Rule E.16 Notice and Scheduling of Rulemaking Hearings

(a) Not later than the 20th day before the date of a rulemaking hearing for rulemaking hearings that require notice under Section 36.101, Water Code, the General Manager, as instructed by the Board, is responsible for giving notice in the following manner:

(1) Publish notice of the hearing at least once in one or more newspapers of general circulation in the four counties comprising the District;

(2) Post a copy of the notice in a place readily accessible to the public at the District's office;

(3) Provide notice of the hearing to the County Clerk of each county in the District;

(4) Provide notice by mail, fax, or electronic mail to any person who has requested notice under Subsection (b); and

(5) Make available a copy of all proposed rules at the District's offices during normal business hours and post an electronic copy on the District's website.

(b) A person having an interest in the subject matter of a hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for the remainder of the calendar year in which the request is received by the District. To receive notice of a public hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this subsection does not invalidate any action taken by the Board.

(c) The notice provided under Subsection (a) must include:

(1) the time, date, and location of the rulemaking hearing;

(2) a brief explanation of the subject of the rulemaking hearing; and

(3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

(d) A hearing may be scheduled during the District's regular business hours, excluding District holidays. All rulemaking hearings will be held at the District office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location. The Board may change or schedule additional dates, times, and places for hearings.

Rule E.17 Rulemaking Hearings Procedures

(a) General procedures: The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer determines most appropriate to obtain all relevant information pertaining to the subject matter of the hearing as conveniently, inexpensively, and expeditiously as possible. In conducting a rulemaking hearing, the Presiding Officer may elect to utilize procedures set forth in these rules for permit hearings to the extent that and in the manner that the Presiding Officer deems most appropriate for the particular rulemaking hearing. The Presiding Officer will prepare and keep a record of the rulemaking hearing in the form of an audio or video recording or a court reporter transcription at his discretion.

(b) Submission of documents: Any interested person may submit to the Presiding Officer written statements, protests, comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject matter of the hearing. Such documents must be submitted no later than the time of the hearing as stated in the notice of hearing given in

accordance with Rule E.16. The Presiding Officer may grant additional time for the submission of documents.

(c) Oral presentations: Any person desiring to testify on the subject matter of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. The Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

Rule E.18 Hearings on Desired Future Conditions

(a) At least ten (10) calendar days before a public hearing or a Board meeting required for the adoption of the Desired Future Condition(s) under Section 36.108(d-2) or (d-4) of the Texas Water Code, the District shall post notice that includes the following:

(1) the proposed Desired Future Condition(s) and a list of any other agenda items;

(2) the date, time, and location of the meeting or hearing;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the name of the other groundwater districts in the Groundwater Management Area; and

(5) information on how the public may submit comments.

(b) Notice required under this rule shall be posted and published in the same manner as that for rulemaking hearings in Rule E.16.

(c) During the public comment period, the District shall make available in its office a copy of the proposed Desired Future Condition(s) and any supporting materials.

Rule E.19 Appeal of Desired Future Conditions

(a) Not later than one hundred twenty (120) calendar days after the date on which the District adopts a Desired Future Condition under Subsection 36.108(d-4), Texas Water Code, a person determined by the District to be an affected person may file a petition appealing the reasonableness of a Desired Future Condition. The petition must include:

(1) evidence that the petitioner is an affected person;

(2) a request that the District contract with the State Office of Administrative Hearings to conduct a hearing on the petitioner's appeal of the reasonableness of the Desired Future Condition;

(3) evidence that the districts did not establish a reasonable Desired Future Condition of the groundwater resources within the Groundwater Management Area.

(b) Not later than ten (10) calendar days after receiving a petition described by Subsection (a), the District shall determine whether the petition was timely filed and meets the requirements of Rule E.19(a) and, if so, shall submit a copy of the petition to the Texas Water Development Board. If the petition was untimely or did not meet the requirements of Rule E.19(a), the District shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than sixty (60) calendar days after receiving a petition under Rule E.19(a), the District shall:

(1) contract with the State Office of Administrative Hearings to conduct the requested hearing; and

(2) submit to the State Office of Administrative Hearings a copy of any petitions related to the hearing requested under Rule E.19(a) and received by the District.

(c) A hearing under Rule E.19(a) and (b) must be held:

(1) at the District office unless the District's Board provides for a different location; and

(2) in accordance with Chapter 2001, Texas Government Code, and the State Office of Administrative Hearings rules.

(d) Not less than ten (10) calendar days prior to the date of the State Office of Administrative Hearings hearing under this rule, notice shall be issued by the District and meet the following requirements:

(1) state the subject matter, time, date, and location of the hearing;

(2) be posted at a place readily accessible to the public at the District's office;

(3) be provided to the county clerk's office for posting; and

(4) be sent by certified mail, return receipt requested; hand delivery; first class mail; fax; email; FedEx; UPS; or any other type of public or private courier or delivery service to:

(A) the petitioner;

(B) any person who has requested notice in writing to the District;

(C) each nonparty district and regional water planning group located within the Groundwater Management Area 8;

(D) Texas Water Development Board's Executive Administrator; and

(E) TCEQ's Executive Director.

(e) Before a hearing is conducted under this rule, the State Office of Administrative Hearings shall hold a prehearing conference to determine preliminary matters, including:

(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and

(3) each affected person that shall be named as a party to the hearing.

(f) The burden of proof is on the petitioner to demonstrate at the hearing that the adopted Desired Future Condition is unreasonable.

(g) The petitioner shall pay the costs associated with the contract for the hearing conducted by the State Office of Administrative Hearings under this rule. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, the State Office of Administrative Hearings may assess costs to one or more of the parties participating in the hearing and the District shall refund any money exceeding actual hearing costs to the petitioner. ~~the~~ The State Office of Administrative Hearings shall consider the following in apportioning costs of the hearing:

(1) the party who requested the hearing;

(2) the party who prevailed in the hearing;

(3) the financial ability of the party to pay the costs;

(4) the extent to which the party participated in the hearing; and

(5) any other factor relevant to a just and reasonable assessment of costs.

(h) On receipt of the Administrative Law Judge's findings of fact and conclusions of law in a proposal for decision, which may include a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter and the District's findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the Administrative Law Judge or may vacate or modify an order issued by the Administrative Law Judge, as provided by Section 2001.058(e), Texas Government Code.

(i) If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the Administrative Law Judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.

(j) If the District in its final order finds that a Desired Future Condition is unreasonable, not later than the 60th calendar day after the date of the final order, the District shall coordinate with the districts in the Groundwater Management Area at issue to reconvene in a joint planning meeting for the purpose of revising the Desired Future Condition found to be unreasonable. The districts in the Groundwater Management Area shall follow the procedures in Section 36.108, Texas Water Code, to adopt new Desired Future Conditions applicable to the District.

(k) The Administrative Law Judge may consolidate hearings requested under this rule that affect two or more districts. The Administrative Law Judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

APPENDIX F

HISTORIC USE PERMIT PROCESSES AND PROCEDURES

Rule F.1 Implementation of Historic Use Permit Program

This section has been adopted to implement the District's Historic Use Permit program in furtherance of the requirements set forth in Rule 2.8 and shall apply solely to Historic Use Permit applications.

Rule F.2 Determination of Administrative Completeness

(a) Upon receipt of an application for a Historic Use Permit, the deadline for which is ~~June~~ December 31, 2020, for existing wells as defined by Rule 2.8(a), the General Manager shall conduct an initial review of the application for administrative completeness. The applicant must provide evidence of an existing and historic use in accordance with the requirements of these rules to be determined eligible for a Historic Use Permit.

(b) Applications for a Historic Use Permit that are required to complete a groundwater production Verification Period under Rule 2.8(i) will be reviewed for administrative completeness by the General Manager in the same manner as other Historic Use Permit applications, except that the final determination of administrative completeness and technical review of such applications may be delayed as described in Subsection (c).

(c) During this initial review, or upon determination that an application is or is not administratively complete, the General Manager shall mail written notification to the applicant of any deficiencies in the application or of the General Manager's determination that the application is administratively complete. Any additional information received from the applicant will become part of the application. An application shall not be considered administratively complete until all requested information has been submitted and all applicable fees have been paid. The application may be deemed to have expired, at the discretion of the Board, if the applicant does not complete the application within ninety (90) days of the date of the District's initial request for additional information.

Rule F.3 Technical Review and Issuance of Notice of Proposed Permit

(a) Upon determination that an application is administratively complete, the General Manager shall conduct a technical review of the application and prepare a recommendation for Board action on the application based upon the information contained in the application and after consideration of the applicable criteria set forth in Chapter 36 of the Texas Water Code, the District Act, and the District Rules. The General Manager may request additional information from the applicant to support the General Manager's technical review and development of a recommendation. If the General Manager's recommendation is to grant a permit in whole or in part, the recommendation shall include an amount that the General Manager believes the weight of the evidence will support as the applicant's Maximum Historic Use, and the General Manager shall not be constrained by the amount designated as Maximum Historic Use by the applicant in the application or most recent amendment thereto in developing the recommendation.

(b) Because of the high volume of Historic Use Permit applications expected to be submitted during a relative brief time period and the associated administrative burden that will be placed on the District to process such applications, the General Manager is authorized to process technical reviews and schedule applications for hearing by groups of applications in the method that he deems most efficient.

(c) For Historic Use Permit applications requiring a groundwater production Verification Period, the production history of the well for the entirety of the Verification Period must be submitted as part of the application. The General Manager may conduct an initial review of the application upon receipt under Rule F.2, but an application shall not be declared administratively complete until all required production records have been submitted to and reviewed by the District. Until such time as the Verification Period is completed and the required production history is submitted to the District, the applicant may operate and produce groundwater under an interim authorization by rule as described in Rule 2.8(d).

(d) Issuance of Notice of Proposed Permit:

After completing the technical review and developing a recommendation on an application, and no less than thirty (30) days prior to the preliminary hearing, the General Manager shall issue notice of the recommendation and setting of the preliminary hearing in the following manner:

(1) The General Manager's recommendation shall be incorporated into a proposed permit and provided to the applicant by regular mail, along with an advisory on how to protest the recommendation, and notice of the date, time, and place of the preliminary hearing.

(2) The General Manager's recommendation shall be posted at a place convenient to the public in the District office, provided to the County Clerk of each county in the District for posting on a bulletin board at a place convenient to the public at the County Courthouse, and provided by mail, facsimile, or email to any person who has requested notice under Paragraph (3) of this subsection. This notice may include recommendations on one or more applications and shall include the following information:

(A) name and address of the applicant;

(B) the approximate location or address of the well or wells that are the subject of the application;

(C) the Maximum Historic Use claimed by the applicant;

(D) a brief explanation of the proposed permit, including the historic purpose of use of the groundwater, and the General Manager's recommended action, including both the applicant's and the General Manager's proposed Maximum Historic Use recommendation, if applicable;

(E) notice of the date, time, and place of the preliminary hearing;

(F) an advisory on how to protest the recommendation; and

(G) any other information the General Manager deems appropriate to include in the notice.

(3) A person having an interest in the subject matter of a hearing on a Historic Use Permit application may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for the remainder of the calendar year in which the request is received by the District. To receive notice of a public hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this paragraph does not invalidate any action taken by the Board.

Rule F.4 Contesting a Historic Use Permit Application

The requirements set forth in Rule E.6 relating to requests for contested case hearings shall apply to Historic Use Permit applications.

Rule F.5 Hearing Before the Board

(a) A Historic Use Permit application designated for hearing before the Board may be heard by the Board, be referred by the Board for hearing before a Hearing Examiner, or may be heard by the Board along with an appointed Hearing Examiner who officiates during the hearing. Upon issuance of the notice of proposed permit under this section, the Board shall proceed with setting and conducting the following hearings on an application:

(1) preliminary hearing: A preliminary hearing shall be held after issuance of the notice of a proposed permit;

(2) pre-evidentiary hearing: If determined by the Board or Hearing Examiner to be necessary;

(3) evidentiary hearing: An evidentiary hearing shall be conducted no later than seventy-five (75) days from the date the preliminary hearing is held;

(4) hearing for Board's consideration of hearing report and final decision;

(5) hearing on any filed motions for rehearing; and

(6) rehearing, if a motion for rehearing is granted.

(b) The parties shall bear their own costs and the District shall not assess costs associated with the hearing beyond any application fee to the applicant or other parties, except as provided by these rules.

Rule F.6 Preliminary Hearing

(a) Uncontested applications: For any application determined to be uncontested, as set forth in Rule E.5, the Hearing Body may proceed at the preliminary hearing to review the evidence on file with the District and upon consideration of the relevant factors decide on the application if the Hearing Body is the Board. If the Hearing Examiner or two or more members of the Hearing Body disagree with the General Manager's proposed permit, the applicant and General Manager shall be given an opportunity to present additional argument and evidence to address the Hearing Examiner's or Hearing Body's concerns. The Hearing Body or Hearing Examiner may continue the hearing to grant additional time to the applicant to file supplemental evidence with the District. For any application determined to be uncontested, the uncontested hearing procedures of Appendix E of these rules, as set forth in Rules E.2 and E.5 shall apply. At the discretion of the Hearing Body, the procedures of Rule E.10 may also be applicable.

(b) Contested applications: For any application determined to be contested, the contested hearings procedures of Appendix E of these rules, as set forth at Rule E.2 and Rule E.6, shall apply to Historic Use Permit applications.

APPENDIX G

METERING

Rule G.1 Meter Type and Installation

(a) 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.

(b) 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 G.2. 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.

(c) 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.

(d) The owner of a well is responsible for the purchase, installation, operation, maintenance, and repair of the meter associated with the well.

(e) Bypasses are prohibited unless they are also metered.

Rule G.2 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 (3) 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 ninety (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 ninety (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 ninety (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 ninety (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 (2) 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 (2) 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.

APPENDIX H

LAYERS OF THE TRINITY AQUIFER GROUP

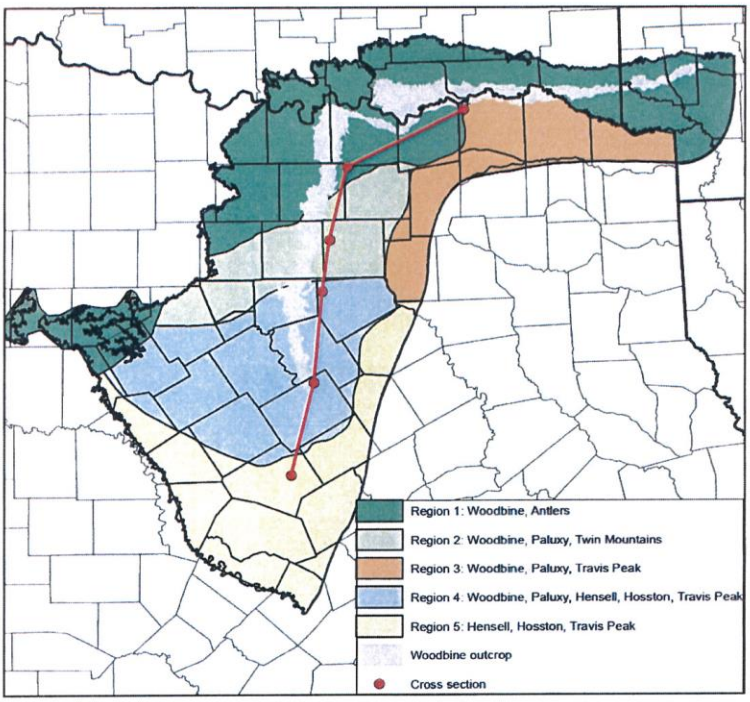

Figure 12. Regions of the Trinity and Woodbine Aquifers.[18] (Note – these regional delineations are not to be confused with regional water planning area boundaries illustrated on Figure 4.)

[18] Kelley, -V.A., Ewing, J., Jones, T. L., Young, S. C., Deeds, N., and Hamlin, S., 2014, Updated groundwater availability model of the Northern Trinity and Woodbine Aquifers: - Final Report: Prepared for the North Texas Groundwater Conservation District, Northern Trinity Groundwater Conservation District, Prairielands Groundwater Conservation District, and Upper Trinity Groundwater Conservation District by INTERA, Inc., The Bureau of Economic Geology, and LBG-Guyton Associates, Volumes I, II, and III, variously paginated.

Model Terminology	Region 1	Region 2	Region 3	Region 4	Region 5
Woodbine Aquifer	Woodbine	Woodbine	Woodbine	Woodbine	Woodbine (no sand)
Washita/ Fredericksburg Groups	Washita/ Fredericksburg	Washita/ Fredericksburg	Washita/ Fredericksburg	Washita/ Fredericksburg	Washita/ Fredericksburg
Paluxy Aquifer	Antlers	Paluxy	Paluxy	Paluxy	Paluxy (no sand)
Glen Rose Formation	Antlers	Glen Rose	Glen Rose	Glen Rose	Glen Rose
Hensell Aquifer	Antlers	Twin Mountains	Travis Peak	Hensell/ Travis Peak	Hensell/ Travis Peak
Pearsall Formation	Antlers	Twin Mountains	Travis Peak	Pearsall/ Sligo	Pearsall/ Sligo
Hosston Aquifer	Antlers	Twin Mountains	Travis Peak	Hosston/ Travis Peak	Hosston/ Travis Peak

Figure 13. Aquifer names by region shown in Figure 12. Modified from Kelley and others (2014).

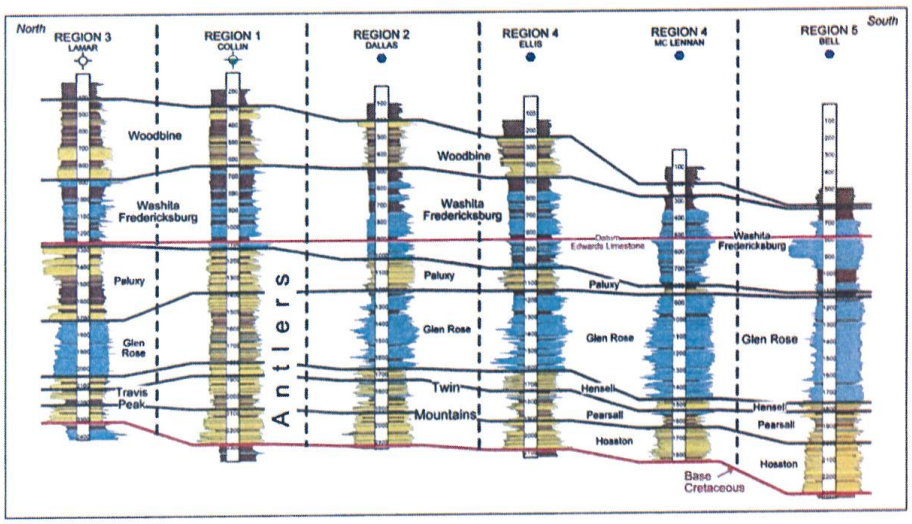

Figure 14. Cross-section showing representative geophysical logs for each aquifer region. The cross-section location is shown in Figure 12.