

**MEDINA COUNTY GCD  
RULEMAKING**

Title: **MEDINA COUNTY GCD RULES**  
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Rule Type: **Proposed Rules (PRs)**  
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Date Prepared: February 16, 2010

Effective Date: _____, 200_
Board approves FRs: _____, 200_
GM approves FRs: _____, 200_
Public Hearing on PRs: _____, 200_
Board approves PRs: _____, 200_
GM approves PRs: _____, 200_

**CHAPTER 1. GENERAL PROVISIONS**

**Section**

- 1.1 Definitions of Terms
- 1.3 Applicability
- 1.5 Purpose of Rules
- 1.7 Amending the Rules
- 1.9 Headings and Captions
- 1.11 Construction
- 1.13 Methods of Services Under the Rules
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**§ 1.1 Definitions of Terms**

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

~~(a1)~~ “Abandoned well” means a well that has not been in use for six consecutive months. A well is considered to be in use in the following cases:

~~(+A)~~ a non-deteriorated well that contains the casing, pump, and pump column in good condition; or

~~(2B)~~ a non-deteriorated well that has been capped.

~~(b2)~~ “Acre-foot” of water means the quantity of water needed to cover one acre of land to the depth of one foot; 325,851 U.S. gallons of water.

~~(e3)~~ “Affected person” means 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 is or may be affected by the application in question. An interest common to members of the general public does not qualify as a personal justiciable interest.

~~(d4)~~ “Aquifer” means a geologic formation, group of formations or part of a formation that is capable of yielding groundwater to a well or spring.

~~(f5)~~ “Aquifer storage and recovery (ASR) project” means a process of storing water through injection wells or other means into a suitable aquifer for later recovery or retrieval.

~~(g6)~~ “Artesian well” means a well completed in the confined portion of an aquifer such that, when properly cased, water will rise in the well, by natural pressure, above an overlying impermeable stratum.

~~(h7)~~ “Beneficial use” or “beneficial purpose” means use of groundwater for:

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

~~(2B)~~ exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or

~~(3C)~~ any other purpose that is useful and beneficial to the user that does not commit or result in waste as that term is defined in these Rules.

(i8) “Board” means the board of Directors of the District.

(j9) “Carrizo-Wilcox Aquifer” means sand, sandstone, siltstone and shale deposits of the Eocene Series of Tertiary age cropping out in the southern part of Medina County from the Atascosa County line southwest to the Frio and Uvalde County Lines. The Carrizo-Wilcox Aquifer includes the Carrizo Sand of the Claiborne Group and the Indio Formation of the Wilcox Group which overlie the Midway Group.

(k10) “Contested case hearing” means a proceeding before the District in which the legal rights, duties or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(l11) “Deteriorated well” means a well, the condition of which will cause, or is likely to cause, pollution of any groundwater in the District.

(m12) “De-watering well” means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.

(n13) “Director” means a member of the board.

(o14) “Discharge” means the amount of water that leaves an aquifer by natural or artificial means.

(p15) “District” means the Medina County Groundwater Conservation District.

(q16) “District Act” means Act of May 14, 1991, 72nd Leg., R.S., ch. 177, 1991 Tex. Gen. Laws 792.

(r17) “District office” means the office of the District as established by resolution of the board.

(s18) “Existing well” means a well which:

(iA) was in existence prior to April 25, 2007;

(iiB) is capable of having water withdrawn from it; and

(iiiC) was properly constructed in accordance with the District’s rules and applicable state law.

(t19) “Federal conservation program” means the Conservation Reserve Program of the United States Department of Agriculture.

(u20) “Groundwater” means water percolating beneath the earth’s surface within the boundaries of the District.

(v21) “Groundwater reservoir” means a specific subsurface water-bearing stratum.

(w22) “Hearings examiner” means a person appointed by the board of Directors to conduct a hearing or other proceeding.

(x23) “Inflows” means the amount of water that flows into an aquifer from another formation.

(y24) “Injection well” includes the following:

(+A) An air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;

(2B) A cooling water return flow well used to inject water previously used for cooling;

(3C) A drainage well used to drain surface fluid into a subsurface formation;

(4D) A recharge well used to replenish the water in an aquifer;

(5E) A saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;

(6F) A sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines; and

(7G) A closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(25) “Irrigation use” means the use of water for the irrigation of improved pastures and commercial crops, including orchards.

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(z26) “Landowner” means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on such land surface.

(aa27) “Leachate well” means a well used to remove contamination from soil or groundwater.

(28) “Leona Gravel Aquifer” means terraced sand, silt and gravel deposits in the Pleistocene Series of Quaternary age that occur in areas parallel to the principal streams of Medina County. The deposits of each terrace may constitute a hydrologically-distinct unit or terraces may have hydraulic connection to other parallel deposits.

(29) “Lower Subdivision of Trinity Aquifer” means that portion of the Trinity Aquifer that includes the Sligo Limestone and Hosston Conglomerate of the Travis Peak Formation in Medina County.

(bb30) “Managed available groundwater” means the amount of water that may be permitted by the District for beneficial use in accordance with the desired future condition of the aquifer as determined under Section 36.108, ~~Tex~~Texas Water Code, provided such desired future conditions have been selected and are applicable to the District.

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~~(cc) “Leona Gravel Aquifer” means terraced sand, silt and gravel deposits in the Pleistocene Series of Quaternary age that occur in areas parallel to the principal streams of Medina County. The deposits of each terrace may constitute a hydrologically distinct unit or terraces may have hydraulic connection to other parallel deposits.~~

(31) “Meter” means a water flow measuring device that can, within +/- 5% of accuracy, measure the instantaneous rate of flow and record the amount of groundwater produced from a well during a measure of time.

(dd32) “Monitoring well” means a well installed to measure some property of the groundwater or aquifer it penetrates, and which does not produce more than 5,000 gallons per year.

(ee33) “Open Meetings Law” means Chapter 551, Texas Government Code, as may be amended from time to time.

(ff34) “New well” means a well for which drilling commenced on or after April 25, 2007;

(gg35) “Operating permit” means a permit issued by the District allowing groundwater to be withdrawn from a well.

(hh36) “Party” means each person admitted as a party in a contested case hearing.

(ii37) “Pleadings” means any document filed by a party in a contested case hearing.

(jj38) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any groundwater in the District, that renders the groundwater harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable use.

(kk39) “Protestant” means any person opposing, in whole or in part, an application for which a request for a contested case hearing may be filed under the District’s rules.

(ll40) “Public Information Act” means Chapter 552, Texas Government Code, also referred to as the “Open Records Law,” as may be amended from time to time.

(mm41) “Person” includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any

other legal entity.

| ~~(nn42)~~ “Presiding officer” means the President, Vice-President, Secretary, or other board member presiding at any hearing or other proceeding or a hearings examiner conducting any hearing or other proceeding on behalf of the District.

| ~~(oo43)~~ “Recharge” means the amount of water that infiltrates to the water table of an aquifer.

| ~~(pp44)~~ “Recharge Facility” means any system for recharge, injection, storage, pressure maintenance, cycling or recycling, of water, which includes one or more wells, spreading dams, or percolation basins, or any other surface or subsurface system engineered and designed for the purpose of recharging water into a groundwater reservoir.

| ~~(qq45)~~ “Registration” means a certificate issued by the District for a well that is exempt from the requirement for an operating permit.

| ~~(rr46)~~ “Rules” means the rules of the District compiled in this document and as may be supplemented or amended from time to time.

| ~~(ss47)~~ “Texas Rules of Civil Procedure” and “Texas Rules of Evidence” mean the civil procedure and evidence rules as may be amended and in effect at the time of the action or proceeding before the District.

| ~~(tt48)~~ “Total aquifer storage” means the total calculated volume of groundwater that an aquifer is capable of producing.

| ~~(uu49)~~ “Trinity Aquifer” means limestone and sandstone, sand, gravels and clay of Cretaceous age in the Upper and Lower members of the Glen Rose Formation and the Cow Creek Limestone, Hensell Sand, Hammett (Pine Island) Shale, Sligo Limestone and Hosston Conglomerate of the Travis Peak Formation in Medina County. The Trinity Aquifer crops out in northern Medina County from the Bexar County line west to the Uvalde County line and overlies Pre-Cretaceous rocks not known to supply water. South of the Balcones Escarpment the Trinity Aquifer underlies the rocks of the Edwards Group. The Trinity Aquifer is subdivided into Upper, Middle and Lower subdivisions.

| ~~(vv50)~~ “Waste” means any one or more of the following:

| ~~(+A)~~ Withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic or stock raising purposes;

| ~~(2B)~~ The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

| ~~(3C)~~ Escape of groundwater from a groundwater reservoir to any other

reservoir or geologic strata that does not contain groundwater;

(4D) 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;

(5E) Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26, Texas Water Code;

(6F) 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;

(G7) For water produced from an artesian well, “waste” has the meaning assigned by § 11.025, Texas Water Code; or

(8H) The pumping of groundwater from a well within the District into a pond, lake, tank, swimming pool, reservoir or other confinement that is not entirely lined with impermeable materials.

(~~ww~~51) “Well” means any artificial opening or excavation in the ground to a depth greater than the top of any stratum containing groundwater.

(~~xx~~52) “Well construction permit” means a permit for a well issued or to be issued by the District allowing a well to be drilled.

(~~yy~~53) “Well operator” means the person who operates a well or well system.

(~~zz~~54) “Well owner” means the person who owns a possessory interest in the land upon which a well or well system is located or to be located.

(~~aaa~~55) “Well system” means a well or group of wells tied to the same distribution system.

(~~bbb~~56) “Withdraw” means extracting groundwater by pumping or by another method.

(~~eee~~57) “Windmill” means a wind-driven or hand-driven device that uses a piston pump to remove groundwater.

### § 1.3 Applicability

These rules and District actions taken pursuant to these rules do not apply to groundwater

withdrawals from the Edwards Aquifer, or to wells drilled for the purpose of withdrawing water from the Edwards Aquifer that are completed so as to be incapable of withdrawing water from any other aquifer within the District's boundaries. None of these rules may be construed to conflict with the rules of the Edwards Aquifer Authority.

#### **§ 1.5 Purpose of Rules**

These rules are adopted to achieve the provisions of the District Act, Chapter 36 of the Texas Water Code, and Section 59 of Article XVI of the Texas Constitution.

#### **§ 1.7 Amending the Rules**

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

#### **§ 1.9 Headings and Captions**

The section and other headings and captions contained in these rules are for reference purposes only. They do not affect the meaning or interpretation of these rules in any way.

#### **§ 1.11 Construction**

A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the [Texas](#) Water Code. Construction of words and phrases used in these rules is governed by the Code Construction Act, Subchapter B, Chapter 311, [Texas](#) Government Code.

#### **§ 1.13 Methods of Services Under the Rules**

Except as otherwise expressly provided in these rules, any notice or documents required by these rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery; by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 p.m. (local time) of the date on which it is due. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service.

Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day.

If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three days will be added to the prescribed period. Where service by one or more methods has been attempted and failed, the service is complete upon publication of the notice in a newspaper of general circulation in Medina County, Texas, or by such other method as the District may direct.

The person or the person's attorney of record shall certify compliance with this rule in writing over signature on the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of the fact of service.

Nothing herein shall preclude any person from offering proof that the notice or instrument was not received and upon so finding, the District may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service are cumulative of all other methods of service prescribed by these rules.

In contested case hearings, copies of all documents filed with the presiding officer shall be served on all parties, including the general manager, no later than the day of filing.

**§ 1.15 Severability**

If any one or more of the provisions contained in these rules are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other rules or provisions of these rules, and these rules must be construed as if such invalid, illegal or unenforceable rules or provision had never been contained in these rules.

**§ 1.17 District Boundaries**

The boundaries of the District are coterminous with the boundaries of Medina County, Texas.

## **CHAPTER 2. BOARD**

### **Section**

- 2.1 Purpose of Board
- 2.3 Board Structure, Officers
- 2.5 Meetings
- 2.7 Committees
- 2.9 Quorum
- 2.11 Conduct and Decorum at Board Meetings

### **§ 2.1 Purpose of Board**

The board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District for conserving, preserving, protecting and recharging the groundwater within the District, and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act and Chapter 36, [Texas](#) Water Code. The board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.

### **§ 2.3 Board Structure, Officers**

The board consists of the members elected and qualified as required by the District Act and other applicable law. The board will elect one of its members to serve as President, to preside over board meetings and proceedings; one to serve as Vice President to preside in the absence of the President; and one to serve as Secretary to keep a true and complete account of all meetings and proceedings of the board. Other officers or assistant officers may be elected as the board deems necessary.

The board may elect officers annually, but must elect officers at the first meeting following the November elections of each even-numbered year. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act, Chapter 36 of the Texas Water Code, and these rules.

### **§ 2.5 Meetings**

The board will meet at least quarterly. All board meetings will be held according to the Open Meetings Law.

### **§ 2.7 Committees**

The President may establish committees for formulation of policy recommendations to the board, and appoint the chair and membership of the committees. Committee members serve at the pleasure of the President. A meeting of a committee of the board, where less than a quorum of the full board is present, is not subject to the provisions of the Open Meetings Law.

**§ 2.9 Quorum**

A simple majority of the entire membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the District.

**§ 2.11 Conduct and Decorum at Board Meetings**

(a) Persons who attend or participate in a meeting of the board must act in a manner that is respectful of the conduct of public business and conducive to orderly and polite discourse.

(b) All persons shall comply with the president's directions concerning the offer of public comment, conduct and decorum. Before the meeting, any person who wishes to speak shall complete a public participation form and deliver it to the general manager or his or her representative at the meeting.

(c) Persons who have special requests concerning a presentation during a meeting shall make advance arrangements with the general manager. A special request includes:

- (1) the presentation of audio or video recordings;
- (2) the need to move furniture, appliances, or easels;
- (3) alternative language interpreters; or
- (4) auxiliary aids or services, such as interpreters for persons who are hearing impaired, readers, large print, or Braille.

**CHAPTER 3. DISTRICT STAFF**

**Section**

3.1 General Manager

**§ 3.1 General Manager**

The board may employ a person to manage the District, and title this person general manager. The general manager is the chief administrative officer of the District and shall have authority to manage and to operate the affairs of the District, subject to the direction given by the board. The board will determine the salary and review the position of general manager each year at the beginning of the third quarter of every fiscal year.

The general manager, with approval of the board, may employ persons necessary for the proper handling of business and operation of the District and their salaries will be set by the board.

**CHAPTER 4. DISTRICT RECORDS**

**Section**

- 4.1 Minutes and Records of the District
- 4.3 Certified Copies
- 4.5 Notice of Change of Address or Telephone Number

**§ 4.1 Minutes and Records of the District**

Documents, reports, records, and minutes of the District may be available for public inspection and copying, consistent with the requirements of the Public Information Act. Copying charges may be assessed by the District. A list of the charges for copies will be furnished by the District.

**§ 4.3 Certified Copies**

Requests for certified copies must be in writing. Certified copies will be made under the direction of the board of Directors. Certification charges and copying charges may be assessed by the District.

**§ 4.5 Notice of Change of Address or Telephone Number**

Applicants, registrants, permittees, and other persons with a matter or proceeding before the District shall give written notice to the District of any change of mailing address or telephone number within 30 days of such change.

## CHAPTER 5. GROUNDWATER PRODUCTION

### Subchapter A. General Provisions

#### Section

- 5.1 Beneficial Use; Prohibition on Waste
- 5.3 Operating of Well at Higher Than Authorized Rate Prohibited
- 5.5 Conveyed Water; Pipelines
- 5.7 Permits Subject to Revocation

### Subchapter B. Groundwater Production Limitations

#### Section

- 5.9 Maximum Allowable Production; Exclusion of Edwards Aquifer Wells
- 5.11 Total Production Limited to Managed Available Groundwater Amount

### Subchapter C. Operating Permits

#### Section

- 5.13 Applicability
- 5.15 Well Operating Permits Required; Consequences of Failure to Obtain
- 5.16 Requirement that Holders of Existing Leona Gravel Operating Permits Apply to Convert their Permits
- 5.17 Applications for Well Operating Permits
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- 5.27 Basis for Granting Applications to Amend Operating Permits
- 5.29 Transfer of Ownership; Leases; Notice of Transfer
- 5.31 Effective Date of Transfers or Amendments

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### Subchapter D. Groundwater Exportation Permits

#### Section

- 5.33 Applicability
- 5.35 Groundwater Exportation Permits Required
- 5.37 Application for Groundwater Exportation Permits
- 5.39 Basis for Action on Groundwater Exportation Permit Applications
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- 5.45 Review of Groundwater Exportation Permits; Limitation on Exportation
- 5.47 Standard Permit Conditions

- 5.49 Groundwater Production in Violation of Permit Prohibited; Permit Transfers and Amendments; Applications; Exceptions
- 5.51 Transfer of Ownership; Notice
- 5.53 Effective Date of Transfers or Amendments

**Subchapter E. Wells Exempt from Permits**

**Section**

- 5.55 Exempt Wells
- 5.57 Annual Reporting of Water Use from Non-Exempt Well
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**Subchapter F. Well Registrations**

**Section**

- 5.63 Well Registration Required
- 5.65 Basis for Action on Well Registrations; Wells Ineligible for Registration

**Subchapter A. General Provisions**

**Section**

- 5.1 Beneficial Use; Prohibition on Waste
- 5.3 Operating of Well at Higher Than Authorized Rate Prohibited
- 5.5 Conveyed Water; Pipelines
- 5.7 Permits Subject to Revocation

**§ 5.1 Beneficial Use; Prohibition on Waste**

Groundwater produced within the District may only be used for a beneficial purpose. No person may produce or use groundwater in such a manner to constitute waste. Any person producing or using groundwater from within the District shall employ all reasonable methods to identify, prevent and stop the waste of water.

**§ 5.3 Operation of Well at Higher Than Authorized Rate Prohibited**

No person may operate a well within the District's boundaries at a rate of production higher than the rate authorized by a permit, these rules, or other applicable law. All such unauthorized production is illegal, wasteful per se, and a nuisance.

**§ 5.5 Conveyed Water; Pipelines**

All persons shall use reasonable diligence to convey water from the wellhead where produced to the place of use in order to prevent waste caused by evaporation or channel loss by percolation. Water conveyed greater than a distance of one-half mile from the wellhead where produced must be conveyed through a pipeline.

**§ 5.7 Permits Subject to Revocation**

All permits granted by the District are based upon and contingent upon the accuracy of the information supplied by the applicant. A finding that false information has been supplied is grounds for immediate revocation of the permit.

**Subchapter B. Groundwater Production Limitations**

**Section**

- 5.9 Maximum Allowable Production; Exclusion of Edwards Aquifer Wells
- 5.11 Total Production Limited to Managed Available Groundwater Amount

**§ 5.9 Maximum Allowable Production; Exclusion of Edwards Aquifer Wells**

(a) Pursuant to Chapter 36 of the Texas Water Code and to achieve the goals of the District’s Management Plan, except as otherwise set forth in these rules and subject to the limitation set out in Section 5.11 (~~Total Production Limited to Managed Available Groundwater Amount~~), this Section establishes the production limitations applicable to all wells and wells systems within the District other than those wells constructed to withdraw groundwater solely from the Edwards Aquifer.

(b) The maximum annual quantity of groundwater that may be withdrawn from a well within the District shall ~~be no greater than the~~ be calculated as follows:

(1) for wells capable of withdrawing water from the Carrizo-Wilcox Aquifer or the Trinity Aquifer, the maximum annual quantity of groundwater that may be withdrawn shall be no greater than the product of the applicable “water allocation” per acre set forth in Subsection (c) of this Section multiplied by the number of contiguous acres of land within the District upon which the well is located that are owned or controlled by the well owner and that are assigned to the well.

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(2) for wells capable of withdrawing water from the Leona Gravel Aquifer, the maximum annual quantity of groundwater that may be withdrawn for irrigation use shall be no greater than two-acre feet multiplied by the number of acres of land irrigated.

(3) for wells capable of withdrawing water from the Leona Gravel Aquifer, the maximum quantity of groundwater that may be withdrawn for uses other than irrigation shall be the amount of water necessary for beneficial use without waste for the applied-for purpose of use as determined by the board when taking final action on an application for an operating permit or to update an operating permit under §§ 5.19 and 5.20, respectively.

(c) Water Allocations for the Carrizo-Wilcox Aquifer and the Trinity Aquifer. The water allocation for each well shall, depending upon the source of the water capable of being produced from the well, be as follows:

(1) for a well that is capable of producing groundwater solely from ~~source(s) other than the Trinity-Carrizo-Wilcox~~ Aquifer, the water allocation shall be two acre-feet per acre;

(2) for a well that is capable of producing groundwater from the Trinity

Aquifer, the water allocation shall be one acre-foot per acre, regardless of whether the well is also capable of producing groundwater from a source or sources other than the Trinity Aquifer.

(d) No production limits are established for exempt wells under this Section. However, production limitations exist for exempt wells as inherent to their exempt status under Subchapter E of this Chapter.

(e) Edwards Aquifer Wells Not Regulated Hereby. Wells that are capable of producing groundwater from sources other than the Edwards Aquifer must be completed so as to be incapable of producing groundwater from the Edwards Aquifer. Likewise, all wells that are capable of producing groundwater from the Edwards Aquifer must be completed so as to be incapable of producing groundwater from any source other than the Edwards Aquifer. The production limits established under this Section are not applicable to wells that are capable of producing groundwater from the Edwards Aquifer.

(f) The maximum annual quantity of groundwater that may be withdrawn from a well set forth in a permit is subject to change if necessitated so as to ensure that the total volume of groundwater withdrawals permitted does not exceed the applicable managed available groundwater amount.

(fg) The burden shall be on the owner of a well to demonstrate to the board the source(s) of groundwater associated with the well.

#### **§ 5.11 Total Production Limited to Managed Available Groundwater Amount**

Notwithstanding any other provision in these rules, the District shall, to the extent possible and to the extent such water rights are applied for, issue permits up to, but not exceeding, the point that the total volume of groundwater authorized to be withdrawn pursuant to permits plus all withdrawals pursuant to exempt wells and existing wells equals the managed available groundwater amount for that aquifer. If and when that point is reached for any aquifer other than the Edwards Aquifer, no additional operating permits may be issued for that aquifer, unless the managed available groundwater amount is subsequently revised upward.

## Subchapter C. Operating Permits

### Section

5.13	Applicability
5.15	Well Operating Permits Required; Consequences of Failure to Obtain
5.17	Applications for Well Operating Permits
5.19	Basis for Action on Operating Permit Applications
5.21	Standard Permit Conditions
5.23	Contents of Operating Permits
5.25	Groundwater Production in Violation of Permit Prohibited; Permit Transfers and Amendments; Applications; Exceptions; Certain Transfers of Operating Permits Prohibited
5.27	Basis for Granting Applications to Amend Operating Permits
5.29	Transfer of Ownership; Leases; Notice of Transfer
5.31	Effective Date of Transfers or Amendments

### § 5.13 Applicability

(a) Except as provided by subsection (b), this subchapter applies to the owner of any new well within the District's boundaries producing, or intended to produce, groundwater from any source other than the Edwards Aquifer.

(b) This subchapter does not apply to an owner of a well that qualifies as exempt under Subchapter E of this chapter.

### § 5.15 Well Operating Permits Required; Consequences of Failure to Obtain

(a) Producing groundwater from a new well within the District without a required operating permit is illegal, wasteful per se, and a nuisance.

(b) No person may make withdrawals from a new well for which an operating permit is required without first applying for and obtaining an operating permit from the District. An application for an operating permit must be submitted on a form prescribed by the District.

(c) For wells capable of withdrawing water from the Carrizo-Wilcox Aquifer or the Trinity Aquifer, ~~Unless~~ ~~unless~~ site-specific factors warrant a lesser production amount, the amount of groundwater authorized to be produced pursuant to an operating permit shall be calculated based upon the surface acreage owned or controlled by the applicant within the boundaries of the District that is not already allotted to another well and in accordance with the production limitations set forth in Section 5.9 of these rules, and subject to the limitations of Section 5.11 of these rules.

(d) For wells capable of withdrawing water from the Leona Gravel Aquifer, unless site-specific factors warrant a lesser production amount, the amount of groundwater authorized

to be produced pursuant to an operating permit:

(1) \_\_\_\_\_ for irrigation use, shall be calculated based on the surface acreage irrigated by the applicant within the boundaries of the District and in accordance with the production limitations set forth in Section 5.9 of these rules, and subject to the limitations of Section 5.11 of these rules;

(2) \_\_\_\_\_ for uses other than irrigation, shall be the amount of water necessary for beneficial use without waste for the applied-for purpose of use as determined by the board when taking final action on an application for an operating permit or to convert an operating permit under §§ 5.19 and 5.20, respectively.

**§ 5.16 Requirement that Holders of Existing Leona Gravel Operating Permits Apply to Convert their Permits**

By no later than [\_\_\_\_\_] [date that is six months from effective date of rule], all holders of existing operating permits for wells capable of withdrawing water from the Leona Gravel Aquifer must apply to convert their operating permit to assure the maximum authorized annual withdrawal amount is based on beneficial use by submitting an application that contains the information required under § 5.17. An application to convert an existing Leona Gravel Operating Permit is not subject to the notice and hearing requirements of §§ 11.31 and 11.33 of these Rules.

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**§ 5.17 Applications for Well Operating Permits**

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In addition to the information specified in § 11.13 (~~Contents of and Requirements for All Applications and Registrations~~), an application for an operating permit shall contain the following:

- (a) Name and Address of Owner. The full name, address, telephone number, fax number, and e-mail address of the well owner.
- (b) Source of Supply. An identification of the groundwater reservoir(s) from which groundwater will be produced from the well. The applicant must include a certification that Edwards Aquifer groundwater will not be produced from the proposed well.
- (c) Rate of Withdrawal. The estimated rate at which water will be withdrawn, in gallons per minute or cubic feet per second.
- (d) A completed well information sheet prescribed by the general manager accompanied by a photograph of the well taken approximately 100 feet from the well head.
- (e) Well Address. The physical address of the property upon which the well is located.
- (f) Well Location. A legal description of the location of the well, including: the

county, section, block and survey, and the number of feet to the two nearest public streets or highways; or other adequate legal description approved by the District.

(g) Maps. If requested by the District, a city or county map with the location of the property on which the well is located highlighted and the location of the well pinpointed.

~~(h) Acres Irrigated. Identify the number of acres irrigated, if any, along with a map or survey showing the location of such acres. The map shall consist of a United States Department of Agriculture, Natural Resources Conservation Service (NRCS) map where available.~~

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~~(i) Amount of Beneficial Use. For uses other than irrigation, a declaration by the applicant of the maximum amount of groundwater to be beneficially used without waste and documentation showing the purpose of use.~~

~~(j) Place of Use. A description of the place of use of the groundwater to be withdrawn from the well.~~

~~(j) Geophysical log. For wells capable of withdrawing water from the Lower Subdivision of the Trinity Aquifer, a geophysical log of the well from bottom to top, which includes natural gamma ray and caliper logs, certified as true and correct for the identified well on its header by the logging technician. The natural gamma ray well log shall be presented to the District using a horizontal scale that spans the log data over a 5-inch linear grid on log track 4 as defined by American Petroleum Institute Recommended Practice 31A dated August 1997.~~

~~(k) Application Sworn To. The application must be in writing and sworn to by the applicant.~~

~~(l) Water Conservation Plan. A water conservation plan or a declaration that the applicant will comply with the District's management plan.~~

~~(m) Water well closure plan. A water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District.~~

~~(n) Drought Contingency Plan. A drought contingency plan.~~

~~(o) Purpose of Use. A statement of the nature and purpose of the proposed use of the groundwater and the amount to be used for each purpose; and~~

~~(p) any other information that the general manager may require.~~

#### § 5.19 Basis for Action on Operating Permit Applications

(a) The board shall grant an application for an operating permit if the board finds that:

(1) the application is complete;

- (2) the application complies with the rules of the District;
- (3) all applicable fees and deposits have been paid;
- (4) the applicant owns the proposed or existing well;
- (5) the applicant has a legal right to produce groundwater from the proposed or existing well;
- (6) the application identifies a proposed, or an existing well, for the production of groundwater within the District from a source other than the Edwards Aquifer and the proposed rate of withdrawal;
- (7) the wellhead is, or will be physically located, within the boundaries of the District;
- (8) the withdrawals are proposed to be placed to a beneficial use;
- (9) based on the applicable groundwater production allowance under §§ 5.9 and 5.11 there is sufficient volume of groundwater to satisfy the applicant's intended purpose of use for the term of the permit;
- (10) the place of use is located within the District's boundaries, unless the applicant also has obtained or applied for a groundwater exportation permit from the District;
- (11) the applicant is in compliance with any permits the applicant holds from the District and with District rules;
- (12) the activities of the applicant constituting the purpose of use for which the groundwater will be beneficially used will be managed to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of groundwater from, and achieve the conservation of groundwater in and produced from, the aquifer;

(13) for operating permits for wells capable of producing water from the Leona Gravel Aquifer, for uses other than irrigation, the applicant has demonstrated an amount of water that is necessary for beneficial use without waste for the applied-for purpose;

~~(4314)~~ the proposed production of water will not unreasonably affect existing groundwater or surface water resources or existing holders of permits issued by the District;

~~(4415)~~ operation of the well will not cause unreasonable interference between wells; and

~~(4516)~~ the application is consistent with the District's certified groundwater

management plan, as may be amended.

(b) Aggregation of Withdrawals. In issuing an operating permit, the authorized withdrawal amount for a given well may be aggregated with the authorized withdrawal amounts from other permitted wells designated by the District. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal amount will be assigned to the wells in aggregate, rather than allocating to each well its pro-rata share of production.

**§ 5.20 Action to Convert Existing Leona Gravel Operating Permits**

With respect to operating permits for wells capable of withdrawing water from the Leona Gravel, the board shall adjust the maximum authorized annual withdrawal amounts and related terms in those permits to the extent necessary based on §§ 5.9(b) and 5.15(d) and shall reissue such permits. The board may adjust such operating permits whether or not the permit holder files an application to convert an operating permit pursuant to § 5.16. Where a permit holder fails to apply to convert its operating permit pursuant to § 5.16, the board shall take action to adjust the maximum authorized annual withdrawal amount and related terms in that permit using the best information that may be available to the board.

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**§ 5.21 Standard Permit Conditions**

All operating permits issued by the District shall be subject to the following conditions:

- (a) the duty to beneficially use water and avoid waste;
- (b) the duty to conserve water in accordance with applicable law, and comply with either the District's water conservation plan, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;
- (c) the duty to properly close (cap or plug) all wells in accordance with applicable law, and comply with either the District's well closure plan, if any, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;
- (d) the duty to file all applicable reports with the District, and other appropriate federal, state, or local governments;
- (e) the duty to reduce water or production or consumption during times of drought in accordance with applicable law, and comply with either the District's drought management plan, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;
- (f) the District's certified groundwater management plan, as may be amended from time to time;
- (g) the duty to use diligence to protect the groundwater quality within the District;

- (h) the duty to comply with the District's rules, as may be amended;
- (i) permit review, renewal, or extension conditions;
- (j) the duty to locate all wells, and confirm the actual location with the proposed location in the application or as provided for in the permit, consistent with the District's well spacing rules, prior to the production from any wells identified in the permit or application;
- (k) the continuing right of the District to supervise and manage groundwater production and the depletion of the aquifer;
- (l) the duty to install, equip, operate, maintain, and close all wells in accordance with the District's rules, and other applicable federal, state, and local law;
- (m) the duty to comply with the District's rules relating to transfers and amendments of permits;
- (n) the duty to pay and be current in the payment of all applicable fees;
- (o) the duty not to export groundwater from a well within the District's boundaries to a place of use outside the District's boundaries without a groundwater exportation permit issued by the District;
- (p) the duty to give notice to District of any changes in name, address, or telephone number of the permittee, or the authorized representative, or the landowner, as may be appropriate;
- (q) the duty to comply with all of the terms and conditions of the permit;
- (r) the duties to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;
- (s) the right of the District to enter land under § 36.123, Texas Water Code, as may be amended; ~~and~~
- (t) the duty to comply with the metering and reporting requirements set forth in Chapter 13 of these rules; and
- ~~(u)~~ any other conditions as the board may deem appropriate.

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**§ 5.23 Contents of Operating Permits**

An operating permit shall include the following terms and conditions:

- (a) the name, address, and telephone number of the permittee;
- (b) the name, address, and telephone number of the authorized representative, if any, of the permittee;
- (c) if not owned by the permittee, the name, physical address, mailing address, and telephone number of the owner of the land on which the well is located;
- (d) the location of the well;
- (e) the permit term, including dates of issuance date, effectiveness, and termination;
- (f) the purpose of use for which the water produced from the well will be used;
- (g) the specific location of the place of use of the water produced from the well;
- (h) if the place of use is not within the District's boundaries, the permittee must obtain a groundwater exportation permit from the District prior to the withdrawal of groundwater under the permit;
- (i) the requirements for the conveyance of water produced from the well to the place of use;
- (j) the maximum rate of production in gpm/gallons per minute, and any conditions relative thereto;
- (k) the maximum amount of production in acre-feet per annum which, unless site-specific factors warrant a lesser production amount, shall be calculated based upon ~~the surface acreage owned or controlled by the applicant within the boundaries of the District that is not already allotted to another well and in accordance with~~ the production limitations set forth in Subchapter B of this Chapter.
- (l) a water well closure plan or a declaration that the applicant will comply with well plugging requirements and report closure to the District and the Commission.
- (m) reporting requirements; and
- (n) other terms and conditions as may be required by the board.

**§ 5.25 Groundwater Production in Violation of Permit Prohibited; Permit Transfers and Amendments; Applications; Exceptions; Certain Transfers of Operating Permits Prohibited**

(a) No holder of an operating permit may produce groundwater in a manner inconsistent with the permit, and any such production is illegal, wasteful per se, and a nuisance. No change in the production and use of groundwater under a permit may be made without the prior approval of a permit amendment issued by the board.

(b) Except as provided in subsection (e), this section applies to an owner of an operating permit seeking to transfer or change the permit in the following respects:

- (1) purpose of use;
- (2) place of use; or
- (3) the total volume of groundwater produced in acre-feet per annum.

(c) Any person seeking to transfer or change their permit as provided in subsection (b) must file with the District an application to amend on a form prescribed by the District.

(d) This section does not apply to the wholesale or retail sale of groundwater on a commodity basis to a person under a utility service contract, water supply contract, or similar document, unless the implementation of the contract results in a transfer or change described in this section.

(e) The District may not approve a transfer of the point of withdrawal.

#### **§ 5.27 Basis for Granting Applications to Amend Operating Permit**

The board shall grant an application to amend a permit if it finds that:

- (a) the elements provided for in § 5.19 are established; and
- (b) during the term of the permit, the applicant, transferor, or transferee, as may be appropriate, demonstrates a positive compliance history with the permit's terms and conditions, and the District's rules.

#### **§ 5.29 Transfer of Ownership; Leases; Notice of Transfer**

(a) The ownership of an operating permit may be transferred separately from the ownership of a place of use or point of withdrawal. The owner of an operating permit may authorize a person other than the permit owner to produce groundwater under the permit.

(b) Within 30 days after transfer of the ownership of an operating permit, or lease of the right to produce thereunder, the transferee shall file with the District a notice on a form prescribed by the District. For transfers of ownership, if the notice is complete, and the transfer is otherwise in compliance with this subchapter, the general manager shall reflect the new ownership and issue an amended permit to the transferor, transferee, or both, as may be appropriate. For leases, the general manager will update the District's permit records to reflect the lease.

#### **§ 5.31 Effective Date of Transfers or Amendments**

No permit transfer or amendment is effective until the application or registration has been approved by the board.

## **Subchapter D. Groundwater Exportation Permits**

### **Section**

5.33	Applicability
5.35	Groundwater Exportation Permits Required
5.37	Application for Groundwater Exportation Permits
5.39	Basis for Action on Groundwater Exportation Permit Applications
5.41	Groundwater Exportation Permit Term; Renewal
5.43	Contents of Groundwater Exportation Permits
5.45	Review of Groundwater Exportation Permits; Limitation on Exportation
5.47	Standard Permit Conditions
5.49	Groundwater Production in Violation of Permit Prohibited; Permit Transfers and Amendments; Applications; Exceptions
5.51	Transfer of Ownership; Notice
5.53	Effective Date of Transfers or Amendments

### **§ 5.33 Applicability**

(a) Except as provided in subsection (b), this subchapter applies to any person who seeks to export groundwater that is produced from a well within the District's boundaries and from a source other than the Edwards Aquifer to a place of use outside the District's boundaries.

(b) This subchapter does not apply to:

(1) a groundwater export arrangement in effect prior to March 2, 1997, and continuing thereafter, so long as there is no increase in the annual amount exported after March 2, 1997;

(2) groundwater that is incorporated into a finished, manufactured product within Medina County and then exported for sale outside of the County; or

(3) groundwater that is produced from a well located within the District, where the well is situated on a contiguous tract of land that straddles the District boundary and the groundwater is placed to use solely on that tract, but including portions outside the District's boundaries.

### **§ 5.35 Groundwater Exportation Permits Required**

(a) Exporting groundwater from the District without a required groundwater exportation permit is illegal, wasteful per se, and a nuisance.

(b) Any person seeking to export groundwater to a place of use outside of the District's boundaries is required to obtain a groundwater exportation permit from the District and file with the District an application to export groundwater on a form prescribed by the District.

(c) An application filed to comply with this section shall be considered and processed under the same procedures as other applications for other permits and may be combined with applications filed to obtain a permit for in-District water use from the same applicant, if any.

**§ 5.37 Applications for Groundwater Exportation Permits**

In addition to the information specified in § 11.13, an application for a groundwater exportation permit shall contain information reasonably related to the information to be contained in a groundwater exportation permit under §§ 5.43 and 5.47 and the elements to be considered by the board in determining whether to grant or deny the application under § 5.39. The application shall be submitted on the form developed and prescribed by the District.

**§ 5.39 Basis for Action on Groundwater Exportation Permit Applications**

The board shall grant an application for a groundwater exportation permit if the board finds that:

- (a) the application is complete;
- (b) the application complies with the rules of the District;
- (c) all applicable fees and deposits have been paid;
- (d) the water to be exported is proposed to be placed to a beneficial use;
- (e) the place of use is identified specifically and located outside the District's boundaries;
- (f) the well to be used for the proposed exportation project is identified specifically and located within the District's boundaries;
- (g) the applicant is in compliance with any permits the applicant holds from the District and with the District's rules;
- (h) the applicant owns an operating permit issued by the District to produce the groundwater necessary for the proposed exportation project, or has a contract to purchase the groundwater from a third party who holds such permit or other authorization;
- (i) there is insufficient water available in the proposed receiving area to substantially meet the actual or projected demand during the proposed term of the groundwater exportation permit;
- (j) there is sufficient water available within the District to substantially meet the actual or projected demand during the proposed term of the groundwater exportation permit;

(k) the proposed exportation will not have an unreasonably adverse effect on aquifer conditions, depletion, or water quality within the District;

(l) the proposed exportation will not have an unreasonably adverse effect on existing permittees, or other groundwater users within the District;

(m) the proposed exportation is consistent with the applicable Regional Water Plans approved by the TWDB; and

(n) the proposed exportation is consistent with the District's certified Groundwater Management Plan, as may be amended.

#### **§ 5.41 Groundwater Exportation Permit Term; Renewal**

(a) The permit term for an exportation permit shall be set by the board, consistent with the following criteria:

(1) the permit term shall be three years, if construction of a conveyance system in the District's boundaries has not been initiated prior to the issuance of the permit; or

(2) the permit term shall be 30 years, if construction of a conveyance system has been initiated in the District's boundaries prior to the issuance of the permit.

(b) The three year term specified in Subsection (a)(1) shall automatically be extended to thirty years if construction of a conveyance system is begun before the expiration of the three year period. For the purposes of this Section, construction of a conveyance system shall be considered to have been initiated when the permittee has completed construction of at least 10% of the portion of the conveyance facilities located within the District that will be used to convey the maximum annual quantity of groundwater permitted for transfer outside of the boundaries of the District.

(c) An exportation permit may be renewed. Any person seeking the renewal of a groundwater exportation permit must file with the District an application to renew on a form prescribed by the District. The application must be filed with the District no later than one year prior to the expiration of the permit term.

#### **§ 5.43 Contents of Groundwater Exportation Permits**

A groundwater exportation permit shall include the following terms and conditions:

(a) the name, address, and telephone number of the permittee;

(b) the production permit number for the well to be used for the exportation project;

(c) if the permittee does not own the well from which the production for exportation is made, then the name, address and telephone number of the well owner;

(d) if not the permittee, the name, address and telephone number of the owner of the land on which the well is located;

(e) the permit term, including dates of issuance, effectiveness, and termination;

(f) the purpose of use for which the water produced from the well is to be used;

(g) a requirement that the water produced under the permit be put to beneficial use without waste;

(h) the specific location of the place of use outside the District's boundaries;

(i) the maximum amount of production in acre-feet per annum that may be exported from the District, which will be limited to the amount that could be produced by the well for in-district use pursuant to the production limitations set forth in Sections 5.9 and 5.11 of these Rules; and any conditions or restrictions relative thereto;

(j) reporting requirement; and

(k) other terms and conditions as may be required by the board.

**§ 5.45 Review of Groundwater Exportation Permits; Limitation on Exportation**

The board may periodically review the amount of water that is authorized for exportation under a groundwater exportation permit and may reduce or otherwise limit the amount of exportation if the factors considered in § 5.39 warrant the limitation.

**§ 5.47 Standard Permit Conditions**

All exportation permits shall be issued with and subject to the following conditions:

(a) the duty to beneficially use water and avoid waste;

(b) the duty to conserve water in accordance with applicable law, and comply with either the District's water conservation plan, as may be amended;

(c) the duty to file all applicable reports with the District and other appropriate federal, state, or local governments;

(d) the duty to reduce water consumption during times of drought in accordance with applicable law, and comply with either the District's drought management plan, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;

(e) the District's certified groundwater management plan, as may be amended from time to time;

- (f) the duty to use all reasonable diligence to protect the groundwater quality of the aquifer;
- (g) the duty to comply with the District's rules as may be amended from time to time;
- (h) permit review, renewal, or extension conditions;
- (i) the continuing right of the District to supervise the depletion of the aquifer;
- (j) installation, equipping, operation, and maintenance of all meters in accordance with the District's rules;
- (k) the duty to comply with the District's rules relating to transfers and amendments of permits as may be amended from time to time;
- (l) the duty to pay and be current in the payment of all applicable fees;
- (m) the duty to record the permit;
- (n) the duty to give notice to District of any changes in name, address, or telephone number of the permittee, or the authorized representative, or the landowner, as may be appropriate;
- (o) the duty to comply with all of the terms and conditions of the permit;
- (p) the duties to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;
- (q) the right of the District to enter land under § 36.123, Texas Water Code, as may be amended; and
- (r) any other conditions as the board may deem appropriate.

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**§ 5.49 Groundwater Production in Violation of Permit Prohibited; Permit Transfers and Amendments; Applications; Exceptions**

(a) No holder of an exportation permit may export groundwater in a manner inconsistent with the terms of the permit, and any such production is illegal, wasteful per se, and a nuisance. No change in the production and use of groundwater under a permit may be made without the prior approval of a permit amendment issued by the board.

(b) This section also applies to the owners of exportation permits seeking to transfer or change their permit in the following respects:

- (1) purpose of use;
- (2) place of use; or
- (3) the total volume of groundwater exported in acre-feet per annum.

(c) Any person seeking to transfer or change their permit as provided in subsection (b) must file with the District an application to amend on a form prescribed by the District.

**§ 5.51 Transfer of Ownership; Notice**

(a) The ownership of an exportation permit may be transferred separately from the ownership of the place of use or point of withdrawal. The owner of an exportation permit may authorize a person other than the permit owner to export groundwater under the permit.

(b) Within 30 days after transfer of the ownership of an exportation permit, or lease of the right to export thereunder, the transferee shall file with the District a notice on a form prescribed by the District. For transfers of ownership, if the notice is complete, and the transfer is otherwise in compliance with this subchapter, the general manager shall reflect the new ownership and issue an amended permit to the transferor, transferee, or both, as may be appropriate. For leases, the general manager will update the District's permit records to reflect the lease.

**§ 5.53 Effective Date of Transfers or Amendments**

No permit transfer or amendment is effective until the application or registration has been approved by the board.

## Subchapter E. Wells Exempt from Permits

### Section

5.55	Exempt Wells
5.57	Annual Reporting of Water Use from Non-Exempt Well
5.59	Loss of Exemptions; Notice of Changed Circumstances
5.61	Well Conversions

### § 5.55 Exempt Wells

(a) The permit requirements of these rules do not apply to the following types of wells, which shall be considered exempt wells:

(1) a well located on a tract of land larger than 10 acres, if the well is drilled, completed or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day and if the water produced or to be produced from the well is used or to be used solely for domestic purposes or to provide water for livestock or poultry;

(2) a well used solely to supply water for a drilling rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas if:

(A) the person holding the permit is responsible for the water well; and

(B) the water well is located:

(i) on the lease on which the drilling rig is located; or

(ii) within the boundaries of the field in which the drilling rig is located;

(3) a well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, [Texas](#) Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water;

(b) Notwithstanding Subsection (a), the District may require a well to be permitted pursuant to these rules if:

(1) a well exempted under Subsection (a)(2) above is no longer used solely to supply water for a drilling rig that is actively engaged in drilling or exploration operations permitted by the Railroad Commission of Texas; or

(2) withdrawals from a well exempted under Subsection (a)(3) are no longer

necessary for mining purposes or are greater than the amount necessary for mining purposes permitted by the Railroad Commission of Texas under Chapter 134, Texas Natural Resources Code.

(c) A person holding a permit issued by the Railroad Commission of Texas under Chapter 134 of the Texas Natural ~~Resource~~Resources Code that authorizes the drilling of a water well shall report monthly to the District the total amount of water withdrawn from the well, the quantity of water necessary for mining purposes, and the quantity of water withdrawn for other purposes.

(d) All exempt wells shall be registered in accordance with these rules.

(e) All exempt wells shall be equipped and maintained so as to conform to the District's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(f) All exempt wells, other than those qualifying as exempt pursuant to Subsection (a)(3), shall comply with the spacing requirements set forth in Subchapter B of Chapter 6 of these rules.

(g) The driller of an exempt well shall file the well's drilling log with the District within 60 days of completion of the exempt well.

(h) An exemption under this Section does not affect the District's authority to impose fees under Texas Water Code, § 36.122 or Texas Water Code, Chapter 36, Subchapter G. Groundwater withdrawn from an exempt well and subsequently transported outside the boundaries of the District shall be subject to any applicable production and transfer fees.

(i) An exempt well will lose its exempt status if the well is subsequently altered, equipped, located, or used for a purpose or in a manner that is not exempt.

(j) The owner of an exempt well must ensure that the well site is accessible to District representatives for inspection, and must cooperate fully in any reasonable inspection of the well and well site by District representatives.

#### **§ 5.57 Annual Reporting of Water Use from Non-Exempt Well**

Withdrawals from all non-exempt wells must be measured or estimated by the owner or operator using a device or method that is within plus or minus 5% accuracy. The total amount of water withdrawn in each calendar year shall be measured or estimated and reported to the District by March 1 of the year following the year to be reported on.

#### **§ 5.59 Loss of Exemptions; Notice of Changed Circumstances**

The owner of a well that is exempt under this subchapter loses the exemption if the nature of the well changes such that the well no longer qualifies for the exemption. Within 30 days of the occurrence of any facts that may cause a well to lose its exemption, the owner of the well shall give written notice to the District of the changed circumstances. If the board determines that the changed circumstances should cause the well to lose its exemption, then the board will issue an order declaring the loss of exemption and advise the well owner that the well is subject to District regulation, including the duty to obtain a permit, or other regulation, as may be applicable.

**§ 5.61 Well Conversions**

(a) If the owner of a well for which an operating permit has been issued desires to convert the well to one exempt from the duty to obtain a production permit, the owner must claim the exemption by abandoning the operating permit and registering the well as provided for in Subchapter F of this chapter.

(b) If the owner of a well exempt from the duty to obtain an operating permit desires to convert the well to one for which an operating permit is required, then the owner must apply for an operating permit as a new well under Subchapter C of this Chapter.

**Subchapter F. Well Registrations**

**Section**

- 5.63 Well Registration Required
- 5.65 Basis for Action on Well Registrations; Wells Ineligible for Registration

**§ 5.63 Well Registration Required**

(a) Producing groundwater from a well without a required registration is illegal, wasteful per se, and a nuisance. No person may operate or produce groundwater from a well that is required to be registered unless the District has approved a completed well registration for the well.

(b) It is a violation of these rules for a well owner, well operator, or well driller to drill or operate any new well that will qualify as an exempt well under Section 5.55 without first filing a well registration form with the District and obtaining written confirmation from the District that the well will qualify as exempt. On the well registration form, the well owner, well operator, or well driller shall provide all information necessary for the District to determine whether the proposed well qualifies for exempt well status.

(c) It is a violation of these rules for a well owner or well operator to operate any existing exempt well without first filing a well registration form with the District and obtaining written confirmation from the District that the well will qualify as exempt. On the well registration form, the well owner, well operator, or well driller shall provide all information necessary for the District to determine whether the proposed well qualifies for exempt well status.

(d) It is a violation of these rules for a well owner or well operator to operate a non-exempt well existing on or before the effective date of these rules without first filing a well registration form with the District.

(e) A well registration form must contain the following information, as applicable:

- (1) the name, address and phone number of the registrant and the owner of the land on which the well is or will be located;
- (2) if the registrant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
- (3) a statement of the nature and purpose of the existing or proposed use and the annual amount of water used or to be used for each purpose;
- (4) the location of the well and the estimated rate at which water is or will be withdrawn;

(5) the physical address of the property upon which the well is located;

(6) the location of the use of the water from the well;

(7) The owner of a well described under Subsection (d) of this Section shall provide the District with an affidavit confirming that the well existed before the effective date of these Rules;

(8) Information relating to the size, source of power, and estimated ~~gpm~~ gallons per minute production rate of the pump used or to be used in the well;

(9) Depth. The depth or proposed depth of the well and the depth of the casing;

(10) Internal Diameter of Casing. The internal diameter of the well casing.

(11) Date of Construction. The approximate date that the well was (or will be) constructed;

(12) Well Driller. The name, address, and telephone number of the water well driller who constructed (or will construct) the well, and related information;

(13) Reports. A copy of any well drilling and completion report; drillers logs, or well equipping report which pertain to the well.;

(14) Well Site Tract Size. The size of the tract of land on which the well site is located, including the total number of acres owned by the registrant upon which the well is or will be located; and

(15) any other information deemed necessary by the board.

**§ 5.65 Basis for Action on Well Registrations; Wells Ineligible for Registration**

(a) The general manager may approve a well registration if the general manager finds that:

(1) the well is eligible to be registered;

(2) the registration is complete;

(3) the registration complies with the rules of the District;

(4) all applicable fees and deposits have been paid;

(5) the registrant owns the well;

- District;
- (6) the registration identifies a proposed or an existing well;
  - (7) the wellhead is or will be physically located within the boundaries of the District;
  - (8) the production from the well is proposed to be placed to a beneficial use;
  - (9) the registrant has a legal right to make withdrawals from the well;
  - (10) for new wells, the proposed well location complies with the spacing rules;
  - (11) the registrant is in compliance with any permits the registrant holds from the District and with District rules;
  - (12) the well will be installed, equipped, operated, maintained, or closed, as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of, and achieve the conservation of groundwater in the aquifer;
  - (13) the registrant intends to install, equip, operate, maintain, and close the well, as appropriate, in accordance with the manufacturer's standards, instructions, or recommendations, as may be applicable; and
  - (14) for exempt wells, the well meets the criteria for exempt well status pursuant to Section 5.55 of these Rules.
- (b) If the general manager makes a preliminary determination that the well is ineligible to be registered, then the matter shall be referred to the board for its consideration. If the board determines that the well is ineligible to be registered, then the owner of the well shall file an application for an operating permit under Subchapter C of this Chapter, and, as applicable, an application for a well drilling permit under Subchapter C of Chapter 6 of these rules.

**CHAPTER 6. WELL MANAGEMENT**

**Subchapter A. General Provisions**

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- 6.3 Well Construction and Pump Installation Standards
- 6.5 Standards of Completion for Wells
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- 6.17 Applications for Well Drilling Permits
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- 6.41 Unlicensed or Unregistered Well Drillers or Pump Installers Prohibited
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**Subchapter E. Capping of Wells**

**Section**

6.49 Capping Requirements

**Subchapter F. Plugging of Abandoned or Deteriorated Wells**

**Section**

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**Subchapter G. Reworking and Replacing a Well**

**Section**

6.59 Procedures

## Subchapter A. General Provisions

### Section

- 6.1 Responsibility for Well Management
- 6.3 Well Construction and Pump Installation Standards
- 6.5 Standards of Completion for Wells
- 6.7 Re-completions

### § 6.1 Responsibility for Well Management

Well owners shall be responsible for the installation, equipping, operation, maintenance, and closure of their wells, and all costs associated therewith.

### § 6.3 Well Construction and Pump Installation Standards

(a) All new wells located within the District's boundaries shall be installed, equipped, operated, maintained, and closed consistent with Chapters 1901 and 1902, Texas Occupations Code, and Chapter 76, 16 Texas Administrative Code, as may be amended, relating to the Texas Department of Licensing and Regulation's (TDLR) rules on water well drillers and water well pump installers, irrespective of whether the well is required to obtain a drilling permit from the District.

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(b) Any existing well or pump that is altered, reworked, redrilled, reequipped or replaced must be done so in accordance with the standards in subsection (a), irrespective of whether the well owner is required to obtain a drilling permit from the District.

### § 6.5 Standards of Completion for Wells

Water well drillers must indicate the method of completion performed on the Well Report (TCEQ-0199) Section 10 Surface Completion. Domestic, industrial, injection, and irrigation wells must be completed in accordance with the following specifications and in compliance with local county or incorporated city ordinances:

(a) The annular space between the borehole and the casing shall be filled from the ground level to a depth of not less than 10 feet below the land surface or well head with cement slurry.

(b) All wells shall have a concrete slab or sealing block above the cement slurry around the well at the ground surface.

(c) The slab or block shall extend at least two (2) feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(d) The surface of the slab shall be sloped to drain away from the well.

(e) In all wells:

(1) The casing shall extend a minimum of one foot above the original ground surface; and

(2) A slab or block as described in ~~Paragraph (2)(a)~~ subsections (b), (c) and (d) is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells provided that:

(A) Pitless adapter is welded to the casing or fitted with another suitably effective seal; and

(B) The annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.

(f) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.

(g) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

#### **§ 6.7 Re-completions**

(a) The landowner shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the wellbore to other porous strata.

(b) If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

(c) The board of Directors may direct the landowner to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

## **Subchapter B. Well Spacing and Location Requirements**

### **Section**

6.9	Required Well Spacing
6.11	Exceptions to Well Spacing Requirements
6.13	Location of Wells

### **§ 6.9 Required Well Spacing**

A new well may not be drilled within 50 feet from the property line of any adjoining landowner.

### **§ 6.11 Exceptions to Well Spacing Requirements**

An exception to the well spacing limitations set forth in § 6.9 may be granted under the following circumstances:

(a) If the applicant presents waivers signed by the adjoining landowner(s) whose property line will be closer to the proposed new well than the applicable spacing requirement mandated in § 6.9, stating that the adjoining landowner(s) has no objection to the proposed location of the well, then the well may be sited in the proposed location, notwithstanding the applicable spacing requirement in § 6.9;

(b) If no waivers are presented pursuant to § 6.11(a), an applicant may apply for a variance from the well spacing requirement in § 6.9. The board may grant a variance if the applicant:

(1) shows good cause why the applicable well spacing requirement mandated in § 6.9 cannot be complied with; and

(2) demonstrates that the operation of the proposed well will not substantially interfere with the use and enjoyment of nearby wells or property owned by adjoining landowners whose property lines will be closer to the proposed new well than the applicable spacing requirement mandated in § 6.9.

(3) Any adjoining landowner whose property line will be within the applicable spacing requirement mandated in § 6.9 from the proposed new well, may protest the variance application pursuant to the procedures set forth in Subchapters C and D of Chapter 11. If timely protested, the issue of spacing requirements will be decided utilizing the contested case process set out in Subchapter D of Chapter 11. If the board chooses to grant a variance to drill a well that does not meet the spacing requirements, the board may limit the production of the well to ensure no injury is done to adjoining landowners or the aquifer.

(c) The board, on its own motion, may enter special orders or add special permit

conditions increasing or decreasing spacing requirements if site-specific conditions warrant.

**§ 6.13 Location of Wells**

(a) A well must be located a minimum horizontal distance of 50 feet from any water-tight sewage facility and liquid waste collection facility.

(b) A well must be located a minimum horizontal distance of 100 feet from any source of contamination, such as existing or proposed livestock or poultry yards, privies, and septic system absorption fields.

(c) A well must be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it must be completed with a water-tight sanitary well seal and steel casing extending a minimum of 24 inches above the known flood level.

(d) No well may be located within five hundred (500) feet of a sewage treatment plant, solid waste disposal site, or land irrigated by sewage plant effluent, or within three hundred (300) feet of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.

## Subchapter C. Well Drilling Permits

### Section

6.15	Well Drilling Permits Required; Applications; Exception for Exempt Wells
6.17	Applications for Well Drilling Permits
6.19	Basis for Action on Well Drilling Permit Applications
6.21	<del>Authorization to Withdraw Water Based on Well Drilling Permit Does Not Authorize Withdrawals</del>
6.23	Well Drilling Permit Terms; Extensions; Applications
6.25	Multiple Test Wells Authorized
6.27	Basis for Action on Applications to Extend Well Drilling Permit Term
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6.37	Replacement of Wells
6.39	Transfer of Well Drilling Permit Prohibited

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### § 6.15 Well Drilling Permits Required; Applications; Exception for Exempt Wells

(a) Drilling a well without a well drilling permit required by this subchapter is illegal, wasteful per se, and a nuisance.

(b) The owner of a well or proposed well must apply for and obtain from the District a well drilling permit before drilling, equipping or completing any non-exempt well or substantially altering the size of a well or well pump.

(c) Any person seeking to perform any of the activities identified in Subsection (b) must file with the District an application for a well drilling permit on a form prescribed by the District.

(d) A drilling permit is not required for well maintenance or repair that does not increase the production capabilities of the well to more than its authorized production rate.

### § 6.17 Applications for Well Drilling Permits

In addition to the information specified in § 11.13 (~~Contents of and Requirements for All Applications and Registrations~~), an application for a well drilling permit shall contain the following:

(a) Name and Address of Owner. The full name, address, telephone number, and e-mail address of the owner of the proposed well.

(b) Description of Proposed Activity. A description of the activity for which a well

drilling permit is being sought (e.g., drilling a new well; altering an existing well, installing a larger pump).

(c) Well Address. The physical address of the property upon which the proposed well is to be located.

(d) Well Location. A description of the location of the proposed well, including: the county; section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines); or other adequate description approved by the District.

(e) Map. A city or county map with the location of the property on which the well is proposed to be located highlighted and the location of the proposed well pinpointed.

(f) Purpose of Use. The proposed purpose of use for the water stated in definite terms.

(g) Amount of Withdrawal. The total amount of groundwater proposed to be withdrawn from the aquifer and beneficially used on an annual basis, stated in number of acre-feet.

(h) Rate of Withdrawal. The maximum rate of withdrawal that the proposed well will be capable of, in gallons per minute or cubic feet per second.

(i) Depth. The proposed depth of the well and proposed depth of cement casing.

(j) Casing. The proposed depth of the cemented casing and cementing methodology.

(k) Depth of Strata. The predicted depth to top of targeted water-bearing strata.

(l) Pump. The size of the proposed pump and pumping method.

(m) Proposed Construction Date. The approximate date that well construction operations are proposed to begin.

(n) Identity of Well Drilling Contractor. The name, address, telephone number and driller's license number of the well drilling contractor.

(o) Water source. The applicant shall identify the intended source or sources of water for the well.

(p) Legal Basis of Right to Withdraw Groundwater. The applicant shall identify the claimed legal basis under which groundwater will be withdrawn from the well.

(q) Any other information as may be required by the general manager.

**§ 6.19 Basis for Action on Well Drilling Permit Applications**

The board shall grant an application for a well drilling permit if the board finds that:

- (a) the application is complete;
- (b) the application complies with the rules of the District;
- (c) all applicable fees and deposits have been paid;
- (d) the applicant owns the well;
- (e) the application identifies a proposed or an existing well;
- (f) the wellhead is or will be physically located within the boundaries of the District;
- (g) the well is designed to produce groundwater from a groundwater source within the District other than the Edwards Aquifer;
- (h) the withdrawals are proposed to be placed to a beneficial use;
- (i) the applicant has a legal right to make withdrawals from the well;
- (j) the well location complies with the spacing rules;
- (k) the applicant is in compliance with any permits the applicant holds from the District and with District rules;
- (l) the well will be installed, equipped, operated, maintained, or closed, as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of, and achieve the conservation of groundwater in the aquifer;
- (m) the applicant intends to install, equip, operate, maintain, and close the well, as appropriate, in accordance with the manufacturer’s standards, instructions, or recommendations, as may be applicable; and
- (n) the well will be installed, equipped, operated, maintained, or closed, as appropriate, consistent with applicable local, state, and federal law.

**§ 6.21 ~~Authorization to Withdraw Water Based on Well Drilling Permit Does Not Authorize Withdrawals~~**

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~~(a) Except as provided for in this section, No no water may be withdrawn or produced from a well that is issued a well drilling permit by the District~~

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(b) Water may be withdrawn or produced from a well that is issued a well drilling permit by the District, except for the purposes of drilling or testing the well during the time the well drilling permit is valid, and the well shall not be placed into operation without the owner of such well first obtaining an operating permit.

(c) Interim Authorization. Unless the general manager determines otherwise for good cause, water may be withdrawn or produced from a well that is issued a well drilling permit by the District where the well is also the subject of a technically complete application for an operating permit, until such time as the board takes final action on that application. The amount of water that may be withdrawn or produced under this provision shall be limited to the amount that may be beneficially used without waste at the place of use indicated on the application, which for irrigation use, shall not exceed two acre-feet per acre irrigated, unless the general manager determines for good cause that a lesser production amount is warranted.

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### **§ 6.23 Well Drilling Permit Terms; Extensions; Applications**

A well drilling permit shall expire and be void and of no force or effect 120 days from the date of issuance of the permit, or upon the expiration of any permit extension. The board, for good cause, may extend the term of a drilling permit for up to two additional 120-day periods. In order to extend the period, the permittee must file with the District an application to extend the term. The application must be filed with the District during the original 120-day term, or the first extension period, as appropriate.

### **§ 6.25 Multiple Test Wells Authorized**

A well drilling permit authorizes the completion of a single well. However, a holder of a well drilling permit may, within a radius of ¼ of a mile from the authorized well location specified in a well drilling permit, drill multiple test wells in order to identify the best location for the completed well. The coordinates of the location ultimately chosen must be provided to the District and the well drilling permit will be modified as necessary to reflect the chosen location. The chosen location must comply with all applicable spacing requirements. All test wells must, within 60 days, be completely plugged in compliance with applicable well plugging standards.

### **§ 6.27 Basis for Action on Applications to Extend Well Drilling Permit Term**

The board shall grant an application to extend a drilling permit term if the board finds that:

- (a) the application is complete;
- (b) the application complies with the rules of the District;
- (c) all applicable fees and deposits have been paid;
- (d) the applicant filed the original drilling permit application;

(e) the applicant is in compliance with any permits the applicant holds from the District and with District rules; and

(f) a reasonable basis for the need for the extension is established and demonstrates that the failure to complete is not due to the permittee's own lack of due diligence.

**§ 6.29 Contents of Well Drilling Permits**

Well drilling permits shall contain the following:

- (a) name, address and telephone number of the permittee;
- (b) name, address and telephone number of an authorized representative, if any, of the permittee;
- (c) permit term;
- (d) purpose of use of the well;
- (e) maximum rate of withdrawal in gallons per minute;
- (f) legal description of the location of the well, including, county; section, block and survey; latitude and longitude, or other adequate legal description, as may be required by the District;
- (g) identification of the legal authority of the permittee to produce groundwater from the well;
- (h) the groundwater source;
- (i) size of the pump, pumping rate, and pumping method;
- (j) meter specifications, if any;
- (k) borehole diameter, external and internal diameter of casing, total depth of casing, depth of grout, total well depth, and other well installation specifications, as appropriate;
- (l) any conservation-oriented methods of drilling prescribed by the District;
- (m) all applicable reporting requirements;
- (n) installation and completion schedule;
- (o) a requirement that the permittee must file all applicable reports with the District prior to the production of water from the well, except for such production necessary to the drilling and testing of the well;

(p) a requirement that the permittee use reasonable diligence to protect groundwater quality and that all well plugging laws will be followed at the time of well closure;

(q) a copy of the approved water well closure plan, if any, or a requirement that the permittee will comply with well plugging law and report closure to the TDLR and the District; and

(r) any other appropriate conditions as determined by the board.

**§ 6.31 Standard Permit Conditions**

All well drilling permits shall be issued with and subject to the following conditions:

(a) the duty to properly close (cap or plug) all wells in accordance with applicable law, and comply with either the District's well closure plan, if any, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;

(b) the duty to file all applicable reports with the District, and other appropriate federal, state, or local governments;

(c) the duty to use diligence to protect the groundwater quality of the aquifer;

(d) the duty to comply with the District's rules as may be amended;

(e) permit review, or extension conditions;

(f) the duty to locate all wells, and confirm the actual location with the proposed location in the application or as provided for in the permit, consistent with the District's well spacing rules, prior to the production from any wells identified in the permit or application;

(g) the continuing right of the District to supervise and manage groundwater production and the depletion of the aquifer;

(h) installation, equipping, operation, maintenance, and closure of all wells in accordance with the District's rules, and other applicable federal, state, and local law;

(i) installation, equipping, operation, and maintenance of all meters in accordance with the District's rules;

(j) the duty to pay and be current in the payment of all applicable fees;

(k) the duty to give notice to District of any changes in name, address, or telephone number of the permittee, or the authorized representative, or the landowner, as may be appropriate;

(l) the duty to comply with all of the terms and conditions of the permit;

(m) the duties to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;

(n) the right of the District to enter land under § 36.123, Texas Water Code, as may be amended; and

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(o) any other conditions as the board may deem appropriate.

### **§ 6.33 Notice of Condition Affecting Groundwater Quality; Corrective Action**

If at any time a well owner has reason to believe that a well condition may exist that may cause the pollution, degradation, or harmful alteration of the character of the groundwater in the aquifer, then the owner shall, within forty-eight (48) hours of learning of the fact(s), notify the general manager in writing of the well condition. The general manager may conduct an investigation and, if facts warrant, direct the owner of the well, at the owner's cost, to evaluate and test the well conditions and take appropriate corrective action, including replacement, to bring the well into proper working condition in conformance with this chapter.

### **§ 6.35 Notice of Commencement of Well Installation**

No later than 3 days prior to commencement of the activities authorized in a well drilling permit, the permittee shall give notice to the District of the intent to commence, so that a representative of the District may attend and observe the activities, at the District's discretion.

### **§ 6.37 Replacement of Wells**

Within 30 days of the completion of a replacement well, the former well shall be:

(a) plugged;

(b) capped; or

(c) re-equipped to meet the eligibility requirements applicable to an exempt well and registered under Subchapters E and F of Chapter 5 of these rules.

### **§ 6.39 Transfer of Well Drilling Permit Prohibited**

No person may transfer the ownership of a well drilling permit issued by the District.

**Subchapter D. Well Drillers**

**Section**

- 6.41 Unlicensed or Unregistered Well Drillers or Pump Installers Prohibited
- 6.43 Notice of Commencement of Well Installation
- 6.45 Confirmation and Posting of Drilling ~~of Drilling~~ Permits and Registrations
- 6.47 Well Records, Reports, and Logs

**§ 6.41 Unlicensed or Unregistered Well Drillers or Pump Installers Prohibited**

(a) Except as otherwise provided in Subsection (b) of this Section, within the District's boundaries, no person may engage in any of the activities identified in § 6.15 unless the person first, as applicable:

(1) holds a well driller's license issued by the TDLR under Chapter 1901, Texas Occupations Code; and Chapter 76, 16 Texas Administrative Code, as may be amended, relating to the TDLR's rules on water well drillers and water well pump installers; or

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(2) holds a pump installer's license issued by the TDLR under Chapter 1902, Texas Occupations Code; and Chapter 76, 16 Texas Administrative Code, as may be amended, relating to the TDLR's rules on water well drillers and water well pump installers.

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(b) The requirement to hold a well driller's or pump installer's license issued by the TDLR under Chapters 1901 or 1902, Texas Occupations Code; and Chapter 76, 16 Texas Administrative Code does not apply to:

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(1) any person who personally drills, bores, cores or constructs a water well on his own property for his own use;

(2) any person who personally installs or repairs a water well pump and equipment on his own property, or on property that he has leased or rented, for his own use; or

(3) any person who is a ranch or farm employee whose general duties include personally installing or repairing a water well pump or equipment on his employer's property for his employer's use, but who is not employed or in the business of installation or repair of water pumps or equipment.

(c) Regardless of whether a license is required for any given well or pump, all persons engaging in any of the activities identified in § 6.15 must comply with the applicable standards set forth in 16 Texas Administrative Code §§ 76.701, 76.702, 76.1000, 76.1001, 76.1003, and 76.1004.

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**§ 6.43 Notice of Commencement of Well Installation**

No later than 3 days prior to commencement of the activities authorized in a well drilling permit, the well driller shall give notice to the District of the intent to commence, so that a representative of the District may attend and observe the activities, at the District's discretion.

**§ 6.45 Confirmation and Posting of Drilling Permits and Registrations**

Any well driller engaged to drill or otherwise construct a well within the District shall, before undertaking any drilling or construction operations, confirm with the District that any required well drilling permit or other permit or registration has been issued for the well and is in effect. In addition, at all times during well drilling or construction operations, the driller shall post a copy of any permit or registration for the well at a location at the well site that can be easily seen by visitors to the well site.

**§ 6.47 Well Records, Reports, and Logs**

The driller of any well within the District, regardless of whether the well qualifies or does not qualify as an exempt well pursuant to § 5.55, shall keep and maintain for at least three years an accurate driller's log for each such well. The driller shall file a copy of each driller's log, a report detailing the drilling, equipping, and completing of the well and, if performed, any electric or geophysical log, pump test results, water quality sampling results, and well video surveys with the District within 60 days after the date the well is completed. The report shall include copies of all information about the well submitted to any agency of the State of Texas. Within 60 days after capping or plugging any well, the well driller shall submit a copy of the state plugging report to the District.

**Subchapter E. Capping of Wells**

**Section**

6.49 Capping Requirements

**§ 6.49 Capping Requirements**

(a) Every owner or operator of any land within the District upon which is located any open or uncovered well shall be required to cap or close the well with a covering capable of preventing the entrance of surface pollutants into the well and of sustaining a weight of at least four-hundred (400) pounds, except when said well is in actual use by the owner or operator thereof.

(b) In addition, every owner or operator of any land within the District upon which is located a flowing artesian water well shall be required to cap or close the well with a covering capable of preventing any flow and therefore preventing waste, except when the well is in actual use by the owner or operator thereof.

(c) If the owner or lessee fails or refuses to close or cap the well in compliance with this Section, the District, or its employees or agents, may go on the land and close or cap the well safely and securely. Reasonable expenses incurred by the District in closing or capping a well constitute a lien on the land on which the well is located. The lien arises and attaches upon recordation, in the deed records of the county where the well is located, of an affidavit, executed by any person conversant with the facts, stating the following:

- (1) the existence of the well;
- (2) the legal description of the property on which the well is located;
- (3) the approximate location of the well on the property;
- (4) the failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;
- (5) the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
- (6) the expense incurred by the district in closing the well.

**Subchapter F. Plugging of Abandoned or Deteriorated Wells**

**Section**

6.51	Responsibility
6.53	Penetration of Abandoned or Deteriorated Well
6.55	Penetration of Undesirable Water
6.57	Report on Plugging of Wells

**§ 6.51 Responsibility**

It is the responsibility of the landowner to plug or have plugged a well that is deteriorated or abandoned.

**§ 6.53 Penetration of Abandoned or Deteriorated Well**

If a well that does not penetrate any undesirable water zone(s) is deteriorated or abandoned, all removable casing shall be removed from the well and the entire well pressure filled with cement to the land surface. In lieu of filling the entire well with cement to the land surface, one of the following procedures may be followed:

(a) The well may be filled with mud, as defined herein, followed by a cement plug not less than ten (10) feet in length, extending down from the land surface; or

(b) The cement plug may be started from a depth of four (4) feet below land surface and extended not less than ten (10) feet in length.

(c) Wells in potable water formations may be filled with rock or gravel through the water bearing formation, then filled with mud to a level twenty (20) feet below ground level to ten (10) feet below ground level. Dirt or top soil shall be filled to the surface of the well. Hand dug wells may be filled with rock or gravel through the water bearing formation, then filled with mud to a level twenty (20) feet below ground level and cemented from twenty (20) feet below ground level to eighteen (18) feet below ground level, then filled with dirt to the surface of the well.

**§ 6.55 Penetration of Undesirable Water**

If a well that penetrates any undesirable water zone(s) is deteriorated or abandoned, all removable casing shall be removed from the well and the entire well pressure filled with cement to the land surface. In lieu of filling the entire well with cement to land surface, one of the following procedures may be followed:

(a) Either the zone(s) contributing undesirable water or the fresh water zone(s) shall be isolated with cement plugs and the remainder of the well bore filled with mud to form a base for a cement plug not less than ten (10) feet in length, extending down from the land surface; or

(b) The cement plug may be started from a depth of four (4) feet below the land surface and extended down not less than ten (10) feet in length.

**§ 6.57 Report on Plugging of Wells**

The person that plugs such a well shall, within thirty (30) days after plugging is complete, submit a copy of the plugging report (on forms furnished by the Texas Department of Licensing | and Regulations) to the District.

**Subchapter G. Reworking and Replacing a Well**

**Section**  
6.59 Procedures

**§ 6.59 Procedures**

(a) An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well status.

(b) A permit must be applied for and the board will consider approving the permit, if a party wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe and ~~gpm~~ gallons per minute rate by reworking, re-equipping, or re-drilling such well.

(c) A permit must be applied for and granted by the board if a party wishes to replace an existing well with a replacement well.

(d) A replacement well, in order to be considered such, must be drilled within ten (10) yards (30 feet) of the existing well and shall not be drilled nearer to the property line than the original well.

**CHAPTER 7. DISTRICT PLANNING**

**Section**

- 7.1 District Management Plan
- 7.3 Joint Planning in Management Area

**§ 7.1 District Management Plan**

(a) Following notice and hearing utilizing the procedures set forth in Subchapter E of Chapter 11, the District shall, in coordination with surface water management entities on a regional basis, periodically develop a comprehensive management plan which addresses the following management goals, as applicable:

- (1) to providing the most efficient use of groundwater;
- (2) to controlling and preventing waste of groundwater;
- (3) to controlling and preventing subsidence;
- (4) to addressing conjunctive surface water management issues;
- (5) to addressing natural resource issues;
- (6) to addressing drought conditions;

(7) to addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(8) to address in a quantitative manner the desired future conditions of the groundwater resources established pursuant to § 36.108, ~~Tex~~Texas Water Code, provided such desired future conditions have been identified at the time of the management plan's adoption and are applicable to the District.

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(b) The management plan, or any amendments to the plan, shall be developed by the District using the District's best available data and shall, once adopted, be forwarded to Regional Water Planning Group L for use in its planning processes.

(c) In the management plan, the District shall:

- (1) identify the performance standards and management objectives under which the District will operate to achieve the management goals identified under Subsection (a);
- (2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including

specifications and proposed rules;

(3) include estimates of the following:

(A) managed available groundwater in the District based on the desired future condition that has been established under § 36.108, Texas Water Code, provided such desired future conditions have been selected at the time of the management plan's adoption and provided the desired future conditions have been selected at the time of the management plan's and provided the desired future conditions are applicable to the district if any;

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(B) the amount of groundwater being used within the District on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the District;

(D) for each aquifer over the District has regulatory responsibility, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer over which the District has regulatory responsibility and between aquifers in the District, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

(d) The District shall adopt rules necessary to implement the management plan.

(e) The District shall adopt amendments to the management plan as it deems necessary. Amendments to the management plan shall be adopted after notice and hearing utilizing the procedures set forth in Subchapter E of Chapter 11, and shall otherwise comply with the requirements of this section.

(f) In developing its management plan, the District shall use the groundwater availability modeling information provided by the executive administrator of the Texas Water Development Board together with any available site-specific information that has been provided by the District to the executive administrator for review and comment before being used in the plan.

(g) The District shall submit a copy of any management plan adopted by it to the

executive administrator of the Texas Water Development Board for review and approval. Any such management plan becomes effective upon approval by the executive administrator or, if appealed, on approval by the Texas Water Development Board.

(h) The District may review the plan annually and must review and readopt the plan with or without revisions at least once every five years. The District shall provide any readopted or amended plan to the executive administrator not later than the 60th day after the date on which the plan was readopted or amended. Approval of the preceding management plan remains in effect until:

(1) the District fails to timely readopt a management plan;

(2) the District fails to timely submit the District's readopted management plan to the executive administrator; or

(3) the executive administrator determines that the readopted management plan does not meet the requirements for approval, and the District has exhausted all appeals to the Texas Water Development Board or appropriate court.

### **§ 7.3 Joint Planning in Management Area**

(a) Upon adoption of the District's management plan and approval of the plan by the Texas Water Development Board, the District shall forward a copy of its new or revised management plan to all other groundwater conservation districts in any groundwater management area that encompasses any portion of the District. The District's board, individually, and in conjunction with the boards of the other groundwater conservation districts within a groundwater management area, shall periodically consider and compare the management plans of all the districts then in force in that management area.

(b) The presiding officer of the board, or the presiding officer's designee, shall meet at least annually with the presiding officers or their designees from every other district located in whole or in part in the District's management area to conduct joint planning and to review the management plans and accomplishments for the management area. In reviewing the management plans, the districts shall consider:

(1) the goals of each management plan and their impact on planning throughout the management area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and

(4) the degree to which each management plan achieves the desired future

conditions established during the joint planning process, provided such desired future conditions have been selected at the time of the review and provided the desired future conditions are applicable to the District.

(c) Not later than September 1, 2010, and every five years thereafter, the District, in conjunction with the other groundwater conservation districts within a groundwater management area, shall consider groundwater availability models and other data or information for the management area and establish desired future conditions for the relevant aquifers within the management area. In establishing the desired future conditions of the aquifers under this section, the districts shall consider uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another. The districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d) The desired future conditions must be adopted by a two-thirds vote of the district representatives present at a meeting:

(1) at which at least two-thirds of the districts located in whole or in part in the management area have a voting representative in attendance; and

(2) for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, [Texas](#) Government Code.

(e) The District shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process, provided such desired future conditions have been selected at the time of the management plan's adoption and provided the desired future conditions are applicable to the District.

(f) A joint meeting under this section must be held in accordance with Chapter 551, [Texas](#) Government Code. Notice of the meeting shall also be given in accordance with the requirements for notice of District board of directors meetings under that Act.

## CHAPTER 8. FEES AND DEPOSITS

### Section

- 8.1 Registration Fees
- 8.3 Application Fees; Deposits
- 8.5 Groundwater Export Fees

#### § 8.1 Registration Fees

The general manager shall assess a \$10 non-refundable fee per well to file a well registration with the District. The fee must accompany the registration form and be paid at the time of filing. If the registrant fails to pay the fee at the time of filing, the general manager shall refuse to accept the registration for filing.

#### § 8.3 Application Fees; Deposits

(a) The general manager shall assess a \$50 non-refundable fee per well for the following applications:

- (1) a new or amended operating permit application;
- (2) a new or amended groundwater exportation permit application; or
- (3) a new or amended well drilling application.

(b) Except as allowed by subsection (f) of this section, the general manager shall not assess a fee to file an application to convert an existing Leona Gravel Aquifer operating permit.

~~(bc)~~ The general manager shall assess a \$25.00 non-refundable fee to file any other application with the District.

~~(ed)~~ An applicant for a well drilling permit shall also submit to the District a \$50.00 per well deposit. The deposit will be refunded to the applicant by the District only if and when:

- (1) the application is denied; or
- (2) if the application is granted, upon the receipt of a correctly completed driller's log for the well.

~~(de)~~ All required fees and deposits must accompany the application form and be paid at the time of filing. If the applicant fails to pay the fee at the time of filing, the general manager shall refuse to accept the application for filing.

~~(ef)~~ If an application fee is determined by the general manager to be insufficient to

cover the anticipated costs of processing an application, the general manager shall require the applicant to post an additional application fee deposit in an amount determined to be sufficient to cover anticipated costs. The costs for which the District may seek an additional application fee include but are not limited to the cost for public notices, legal fees, expert fees, hearing facility rental fees, and other expenses. If the applicant fails to pay an additional deposit, then the general manager shall suspend processing the application, and may return the application to the applicant. As application processing costs are incurred by the District, at the general manager's discretion, the District may incur costs itself and seek reimbursement from the additional deposited funds, or may expend deposited funds directly to pay for additional application processing costs. The applicant shall be provided a monthly accounting of billings against the deposit. If the additional deposit is determined by the general manager to be insufficient to cover the application processing costs, then the applicant may be required to pay additional application fee deposits. Any unexpended and unobligated application fee deposits will be promptly returned to the applicant after the board issues a final order disposing of the application.

#### **§ 8.5 Groundwater Export Fees**

(a) The District shall assess, and all persons exporting groundwater produced from a well within the District's boundaries and from a source other than the Edwards Aquifer to a place of use outside of the District's boundaries shall pay, a groundwater export fee.

(b) The groundwater export fee for a given permit will be selected by the District using one of the following methods:

(1) an annual fee negotiated between the District and the owner of the groundwater export permit;

(2) an annual rate negotiated between the District and the owner of the groundwater export permit that does not exceed 1.25 cents per thousand gallons of the maximum annual amount of groundwater permitted for transfer outside of the District; or

(3) an annual rate not to exceed the equivalent of the District's tax rate per hundred dollars of valuation for each thousand gallons of groundwater transferred outside of the District or 2.50 cents per thousand gallons of water transferred outside of the District, if the District assesses a tax rate of less than 2.50 cents per hundred dollars of valuation.

(c) The general manager will bill and collect the groundwater export fee. The annual groundwater exportation report shall constitute the groundwater export fee invoice. The holder of a groundwater export permit shall file the completed groundwater exportation report form with the District not later than January 15 of the year following the year reported on. Payment of the groundwater export fee shall accompany the groundwater exportation report. The groundwater export fee for a given calendar year becomes due and payable on January 1<sup>st</sup> of the following year, and payment will be considered delinquent if not received in full by the District by the close of business on January 15<sup>th</sup>.

(d) For any export fee that is delinquent, if payment in full is not received on or

before 10 days after the date the amount becomes delinquent, then the general manager shall assess, for every month thereafter that the invoice remains delinquent, an administrative penalty of 5%. Additionally, each day that an export fee is delinquent constitutes a separate violation of the District's rules.

(e) No person may export groundwater outside the District's boundaries if the owner of the well from which the exported groundwater is produced is delinquent in the payment of any fee that is due and payable to the District.

(f) Any person who, without any legal authority, exports groundwater outside the District's boundaries shall pay to the District the export fee then in force and effect for the period of time during which the unauthorized exports were made.

(g) Unless otherwise directed, Any person who exports groundwater outside the District's boundaries shall pay to the District the groundwater export fee then in force and effect based on the maximum amount of water the person is authorized to export under a groundwater export permit.

## **CHAPTER 9. AQUIFER STORAGE AND RECOVERY PROJECTS**

### **Section**

9.1	Permit Required
9.3	Application
9.5	Board Consideration
9.7	Permit Conditions

### **§ 9.1 Permit Required**

(a) No injection well may be drilled in any applicable aquifer for the purpose of storing surface water or groundwater without first obtaining a permit from the District.

(b) The permit may be for any term proscribed by the board and may be renewed at the end of the term.

(c) The permit will be processed in accordance with these rules.

### **§ 9.3 Application**

(a) An application for an Aquifer Storage and Recovery injection well must include the following:

(1) all information required for an application for a Class V injection well before the Texas Commission on Environmental Quality;

(2) a map or plat showing the injection facility and the aquifer in which the water will be stored; and

(3) a map or plat showing the location of all water wells completed to the same aquifer within a five mile radius of the proposed injection site.

(b) The applicable application fee must accompany the application.

### **§ 9.5 Board Consideration**

(a) The board shall consider the following:

(1) whether the introduction of water into the aquifer will alter the physical, chemical, or biological quality of native groundwater to a degree that would render the groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property, or require treatment prior to beneficial use; and

(2) whether the water stored can be successfully withdrawn without causing undue hardship to the aquifer or any user thereof.

(b) The board may consider all relevant facts including the following:

(1) the location and depth of the aquifer in which the stored water will be located,

(2) the nature and extent of the surface development and activity above the stored water; and

(3) the ability of the permittee to determine the compatibility of the stored water with the resident water and monitor the impact on the receiving aquifer.

**§ 9.7 Permit Conditions**

(a) The board may include any permit conditions necessary to ensure the safety, quality, and quantity of groundwater available for withdrawal by other well owners.

(b) Violation of any permit condition may result in cancellation of the permit, civil penalties, or both.

## **CHAPTER 10. RECHARGE FACILITIES**

### **Section**

10.1	Application and Permitting Requirements
10.3	Rules for Filing Applications
10.5	Information to Be Provided in Application
10.7	Notice of Hearing
10.9	Hearing
10.11	Monitoring and Reporting
10.13	Responsibility
10.15	Exemptions

### **§ 10.1 Application and Permitting Requirements**

Applications shall be made to and permits must be obtained from the board before installing and/or operating a recharge facility as defined herein. Such applications shall be on forms provided by the District and shall be in accordance with and contain the information called for in the form of application.

### **§ 10.3 Rules for Filing Applications**

The application shall be executed by a party having knowledge of the facts called for on the form.

### **§ 10.5 Information to Be Provided in Application**

The following information will be provided in or must be submitted with the application, along with any applicable application fee:

- (a) The name and address of the applicant.
- (b) The name and address of the fee owner(s) of the land upon which the recharged facility will be located.
- (c) The legal description of the exact proposed location of the recharge facility.
- (d) The time schedule for construction and/or operation of the facility.
- (e) The names and addresses of the property owners within one-half (1/2) mile of the proposed recharge facility location, and the location of any wells on those properties.
- (f) A complete construction and operations plan that will include, but is not limited to, information as to:

- (1) a technical description of the facility to be used for recharge.
- (2) the source of the water to be recharged.
- (3) the quality of the water to be recharged.
- (4) the volume of water to be recharged.
- (5) the rate at which the water will be recharged.
- (6) the information into which water will be recharged.

(g) Scientific evidence showing that the proposed operation will not:

- (1) endanger the structural characteristics of the formation receiving the recharged water;
- (2) cause pollution;
- (3) cause waste

(h) Any additional information that may be required by the board.

**§ 10.7 Notice of Hearing**

(a) Not less than thirty (30) days before the date set for District consideration of an application, the District shall mail notice by first-class mail, postage prepaid to:

- (1) the applicant, the records of whose application has been filed with the District; and
- (2) the property owners within one-half (1/2) mile of the proposed recharge facility location.

(b) Because of the potential to impact areas outside a one-half (1/2) mile radius, notice of the application shall be published by the District in a newspaper of general circulation in the county in the District.

(c) The notice shall contain the following:

- (1) the name and address of the applicant;
- (2) the date on which the application was filed;
- (3) the time and place of the hearing;

- (4) the location of the proposed recharge facility; and
- (5) a brief summary of the information included in the application.

**§ 10.9 Hearing**

A hearing on an application may be held without the necessity of issuing further notice other than the time and place where the board meeting is to take place. Hearings shall be conducted in accordance with provisions stipulated in these rules.

**§ 10.11 Monitoring and Reporting**

The operator of a recharge facility shall be required to keep records and make reports to the District regarding the operation of the recharge facility. Reports to the District shall be made on a monthly basis, beginning at the time a permit to operate is issued. Such reports shall include, but are not limited to:

- (a) Volumes of water recharged through the recharge facility;
- (b) The source of the water recharged through the recharge facility;
- (c) The quality of the water recharged through the recharge facility; and
- (d) Additional information as may be specifically required by a permit to operate a recharge facility.

**§ 10.13 Responsibility**

The owner of a recharge facility shall assume and shall be charged with strict liability for the prevention of pollution and waste, as these terms are defined herein, from such facility, as well as damage to the recharged formation by reason of the operations of said facility.

**§ 10.15 Exemptions**

Recharge facilities existing on or before the effective date of the rules are exempt.

## **CHAPTER 11. PROCEDURES BEFORE THE DISTRICT**

### **Subchapter A. General Provisions**

#### **Section**

- 11.1 Purpose
- 11.3 Applicability
- 11.5 Service of Documents

### **Subchapter B. Requirements for Applications and Registrations**

#### **Section**

- 11.7 Purpose
- 11.9 Applicability
- 11.11 Proper Applicant or Registrant
- 11.13 Contents of and Requirements for All Applications and Registrations

### **Subchapter C. Application and Registration Processing by the District**

#### **Section**

- 11.15 Purpose
- 11.17 Applicability
- 11.19 Initial Action on Applicants and Registrations
- 11.21 Review for Administrative Completeness
- 11.23 Return of Applications and Registrations Deemed Not Administratively Complete
- 11.25 Technical Review
- 11.27 General Manager's Proposed Action on Applications and Registrations and Technical Summary
- 11.29 Action by Board on Applications or Registrations Where There is No Right to a Contested Case Hearing
- 11.31 Action by board on Applications Where There is a Right to a Contested Case Hearing but None was Requested or Requests were Withdrawn
- 11.33 Notice of Permit Hearings Where There is a Right to a Contested Case Hearing
- 11.35 Scheduling of Permit Hearings Where There is a Right to a Contested Case Hearing

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#### **Section**

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- 11.39 Applicability
- 11.41 Persons Entitled to Request a Contested Case Hearing
- 11.43 Timing, Form and Contents of Requests for Contested Case Hearing
- 11.45 Processing of Hearing Requests
- 11.47 General Hearing Procedures in Contested Cases
- 11.49 Conduct and Decorum

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11.55	Pre-Hearing Conferences
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**Subchapter E. Procedures for Adoption of Rules and Management Plan**

**Section**

11.123	Rulemaking and Management Plan Hearing Procedures
11.125	Emergency Rulemaking

## **Subchapter A. General Provisions**

### **Section**

11.1	Purpose
11.3	Applicability
11.5	Service of Documents

### **§ 11.1 Purpose**

The purpose of this chapter is to provide for the procedures to be followed in the processing of applications and registrations, and other types of approvals or actions that may be taken by the District. These rules should be interpreted to simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of the District's groundwater management rules, policies, and objectives.

### **§ 11.3 Applicability**

This chapter applies to the processing of all applications or registrations filed with the District, and to rulemaking by the District.

### **§ 11.5 Service of Documents**

(a) Except as otherwise provided in these rules, all documents filed, served, or delivered under this chapter or these rules, must be served as follows:

(1) by delivering a copy to the person to be served, or the person's duly authorized agent or attorney of record, either in person or by agent or by carrier-receipted delivery or by United States mail, to the person's last known address;

(2) by facsimile to the recipient's current facsimile number; or

(3) by email to the recipient's email address.

(b) Service by mail shall be complete upon deposit of the document, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by facsimile or email is complete upon transfer and shall be accomplished by 5:00 p.m. (as shown by the clock of the local time of the recipient) of the date on which it is due. Any transfer after 5:00 p.m. shall be deemed served on the following day. Service by facsimile or email must be followed by serving the original document in person, by mail or by carrier-receipted delivery within three days. Where service by the methods listed in subsection (a) has proved unsuccessful, the service shall be complete upon publication of notice in a newspaper.

(c) Whenever a person has the right or is required to do some act within a prescribed

period after the service of a document upon the person, and the document is served by mail or by facsimile, three days shall be added to the prescribed period. This subsection does not apply when documents are filed for consideration at a board meeting.

(d) A document served under this rule must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The person or the person's attorney of record shall certify compliance with this rule in writing by signature on the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of service.

(e) Nothing herein shall preclude any person from offering proof that the notice or instrument was not received or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the District may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions herein relating to the method of service of notice are in addition to all other methods of service prescribed by these rules.

(f) In contested case hearings, copies of all documents filed with the presiding officer shall be served on all parties, including the general manager, no later than the day of filing.

**Subchapter B. Requirements for Applications and Registrations**

**Section**

11.7	Purpose
11.9	Applicability
11.11	Proper Applicant or Registrant
11.13	Contents of and Requirements for All Applications and Registrations

**§ 11.7 Purpose**

The purpose of this subchapter is to provide for the procedures to be followed for applications and registrations that may be filed with the District.

**§ 11.9 Applicability**

This subchapter applies to any application or registration filed with the District.

**§ 11.11 Proper Applicant or Registrant**

If a well or a proposed well has one owner, that owner shall file the application or registration required to be filed by the District. If there is more than one owner, a joint application or registration shall be filed by those owners. In such an instance, the owners shall select one among them to act for and represent the others in filing the application or registration. Written documentation of such a selection satisfactory to the District shall be filed with the application or registration. For the purposes of this section, unless ownership of the well by the lessee, assignee, or easement holder is clearly established in documents defining the relationship between the parties, a lessee or assignee of the surface estate, or an easement holder, is not considered to be the owner of a well.

**§ 11.13 Contents of and Requirements for All Applications and Registrations**

All applications and registrations filed with the District shall be typewritten or printed legibly in ink and shall include:

(a) The full name, physical and mailing addresses, and telephone number of the applicant or registrant. If the applicant or registrant is a partnership, the name of the partnership shall be followed by the words "a partnership." If the applicant or registrant is acting as trustee for another, the trustee's name shall be followed by the word "trustee." If one other than the named applicant or registrant executes the application or registration, the person executing the application or registration shall provide their name, position, physical address, mailing address and telephone number.

(b) Signature of Applicant or Registrant. The application or registration shall be signed as follows:

(1) If the applicant or registrant is an individual, the application or registration shall be signed by the applicant, registrant or a duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant or registrant. If the applicant or registrant is an individual doing business under an assumed name, the applicant or registrant shall attach to the application or registration an assumed name certificate filed with the county clerk of the county in which the principal place of business is located or the Secretary of State.

(2) Joint applications and registrations. A joint application or registration shall be signed by each applicant or registrant or each applicant's or registrant's duly authorized agent with written evidence of such agency submitted with the application or registration. If a well or proposed well is owned by both husband and wife, each person shall sign the application or registration. Joint applicants or registrants shall select one among them to act for and represent the others in pursuing the application or registration with the District with written evidence of such representation to be submitted with the application or registration.

(3) If the application or registration is by a partnership, the application or registration shall be signed by one of the general partners. If the applicant or registrant is a partnership doing business under an assumed name, the applicant or registrant shall attach to the application or registration an assumed name certificate filed with the county clerk of the county in which the principal place of business is located or with the Secretary of State.

(4) If the applicant or registrant is an estate or guardianship, the application or registration shall be signed by the duly appointed guardian or representative of the estate and a current copy of the letters testamentary issued by the court shall be attached to the application or registration.

(5) If the applicant or registrant is a corporation, public district, county, municipality or other corporate entity, the application or registration shall be signed by a duly authorized official. Written evidence in the form of bylaws, charters, or resolutions specifying the District of the official to take such action shall be submitted along with the application or registration. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(6) If the applicant or registrant is acting as trustee for another, the applicant or registrant shall sign as trustee and in the application or registration shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary.

(c) Attestation. Each applicant or registrant shall subscribe and swear or affirm under oath that the facts set out in the application or registration are accurate before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the application, registration or notice. This requirement does not apply to well registrations.

**Subchapter C. Application and Registration Processing by the District**

**Section**

11.15	Purpose
11.17	Applicability
11.19	Initial Action on Applicants and Registrations
11.21	Review for Administrative Completeness
11.23	Return of Applications and Registrations Deemed Not Administratively Complete
11.25	Technical Review
11.27	General Manager's Proposed Action on Applications and Registrations and Technical Summary
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11.31	Action by board on Applications Where There is a Right to a Contested Case Hearing but None was Requested or Requests were Withdrawn
11.33	Notice of Permit Hearings Where There is a Right to a Contested Case Hearing
11.35	Scheduling of Permit Hearings Where There is a Right to a Contested Case Hearing

**§ 11.15 Purpose**

The purpose of this subchapter is to provide the procedures to be followed in the processing of applications and registrations filed with the District.

**§ 11.17 Applicability**

This subchapter applies to the processing of all applications or registrations filed with the District.

**§ 11.19 Initial Action on Applications and Registrations**

All applications and registrations received by the District shall be stamped or marked "received" with the date of receipt clearly indicated.

**§ 11.21 Review for Administrative Completeness**

(a) The general manager will conduct an initial review of each application or registration for administrative completeness within 21 business days of the receipt of the application or registration by the District and payment of applicable fees.

(b) In reviewing an application or registration for administrative completeness, the general manager will assess whether the application or registration contains the necessary information in legible form to allow:

(1) the District staff to conduct a technical review, if appropriate; and

(2) the general manager to take or recommend action on the application or registration, as appropriate.

(c) Upon determining that an application or registration is administratively complete, the general manager will notify the applicant or registrant by mail.

**§ 11.23 Return of Applications and Registrations Deemed Not Administratively Complete**

(a) If the general manager determines that an application or registration is not administratively complete, the general manager will notify the applicant or registrant of any such deficiencies by letter. Illegible applications or registrations will be returned to the filer.

(b) The applicant or registrant may submit any additional necessary information in response to a letter sent by the general manager pursuant to Subsection (a) of this section, within 30 days of receipt of the letter noting the deficiencies.

(c) If the additional necessary information is not forthcoming within 30 days of the date of receipt of the letter noting the deficiencies, the general manager will return the incomplete application or registration to the applicant or registrant.

**§ 11.25 Technical Review**

(a) After an application or registration is determined by the general manager to be administratively complete, District staff will commence a technical review of the application or registration as necessary and appropriate.

(b) The applicant or registrant shall be notified in writing of any additional material necessary for a complete technical review. If the applicant or registrant provides the information within 30 days of the date it is requested, District staff will complete the technical review of the application or registration. If the necessary additional information is not received by the general manager within 30 days of the date the information is requested and the information is considered essential by the general manager, the general manager may return the application to the applicant or registration to the registrant. Decisions to return an application to the applicant or registration to the registrant during the technical review will be made on a case-by-case basis.

(c) The general manager or his or her designee is entitled to enter public or private property at any reasonable time and upon reasonable notice for the purpose of inspecting, investigating or verifying conditions or information submitted in connection with an application or a registration.

**§ 11.27 General Manager’s Proposed Action on Applications and Registrations and Technical Summary**

(a) Following completion of technical review, the general manager will determine whether to recommend granting or denying the application or registration and will prepare a written statement summarizing the recommendation and the reasons for that recommendation. If the general manager recommends full or partial granting of a permit or permit amendment application, the general manager shall also prepare a draft permit. The general manager’s recommendation and any draft permits are subject to change by the general manager or board during the course of the proceedings on the application. The statement and proposed permit shall be available for public review and inspection.

(b) In conjunction with the proposed permit or denial, the general manager will prepare a technical summary that will include the following, as appropriate:

- (1) the applicant’s name and address;
- (2) a summary of the application;
- (3) the location of each point of withdrawal;
- (4) the reasons and technical basis for the recommended action;
- (5) if applicable, a summary of the proposed permit;
- (6) the proposed purpose(s) of use;

(7) notice that the general manager may modify his or her recommendation, or seek additional information from the applicant, in the course of the District’s proceeding on the application;

(8) as may be authorized by this chapter, a statement that the applicant, or other affected persons may file a request for a contested case hearing on the application on or before the deadline set forth in § 11.43; and

(9) any other information that the general manager determines to be appropriate.

(c) The general manager will, by certified mail, return receipt requested, provide the applicant with a copy of the general manager’s statement, any proposed permit (or denial) and the technical summary.

**§ 11.29 Action by Board on Applications or Registrations Where There is No Right to a Contested Case Hearing**

(a) Applicability. This section applies to all applications and registrations other than

applications for operating permits, applications for groundwater exportation permits, and applications for variance from well spacing limitations. This section applies to an application to convert an existing Leona Gravel Aquifer operating permit.

(b) Scheduling the Board Meeting. Following technical review and the referral of the proposed action to the board, the general manager will schedule the presentation of the application or registration and the proposed permit, approval, authorization or denial to the board. The board may reschedule the presentation of the application or registration and the proposed permit, approval, authorization or denial.

(c) Notice of Board Meeting. At least 10 days prior to the board meeting, the District will notify the applicant or registrant of the date of the board meeting referred to above via certified mail/return-receipt requested. If rescheduled by the board, the District will send notice of the rescheduled meeting date to the applicant or registrant no later than ten days before the rescheduled meeting. In addition, the District will provide public notice that the application or registration and the permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Open Meetings Act. Except to the extent that such items contain information excepted from public disclosure under the Public Information Act, copies of the application or registration and the proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the offices of the District during regular business hours.

(d) Consolidation or Severance of Matters. Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) Oral Presentation Before the Board. The applicant or registrant and the general manager or his or her designee may make an oral presentation at the board meeting at which the application and the proposed permit, approval, authorization or denial are presented to the board. Oral presentations before the board will be limited to 5 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions will be directed to the board.

(f) Public Comment. In addition, public comment on the application or registration and the proposed permit, approval, authorization or denial will be accepted.

(g) Upon consideration of the application or registration and the proposed permit, approval, authorization or denial at its meeting, the board may issue an order granting or denying an application or registration in whole or in part, dismissing proceedings, amending or modifying a proposed permit, or taking any other appropriate action.

**§ 11.31 Action by Board on Applications Where There is a Right to a Contested Case Hearing But None Was Requested or Requests Were Withdrawn**

(a) Applicability. This section applies only to all applications for operating permits, applications for groundwater exportation permits, and applications for variance from well spacing limitations where, after the time for the filing of a hearing request provided in § 11.43 of this chapter:

- (1) no timely hearing request has been received;
- (2) all timely hearing requests have been withdrawn; or
- (3) the judge has remanded the application because of settlement.

This section does not apply to an application to convert an existing Leona Gravel Aquifer operating permit.

(b) Scheduling the Board Meeting. Following the expiration of the time to file a hearing request pursuant to § 11.43 of this chapter, and if any of the conditions stated in subsection (a)(1)-(3) of this section have been met, the District will schedule the presentation of the application and the proposed permit, approval, authorization or denial to the board. The board may reschedule the presentation of the application and the proposed permit, approval, authorization or denial.

(c) Notice of Board Meeting. At least 10 days prior to the board meeting, the District will notify the applicant of the date of the board meeting referred to above via certified mail/return-receipt requested. If rescheduled by the board, the District will send notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting. In addition, the District will provide public notice that the application and the proposed permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Open Meetings Act. Copies of the application and the proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the offices of the District during regular business hours.

(d) Consolidation or Severance of Matters. Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) Oral Presentation Before the Board. The applicant and the general manager or his or her designee may make an oral presentation at the board meeting in which the application and the proposed permit, approval, authorization or denial are presented to the board. Oral presentations before the board will be limited to 5 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions will

be directed to the board.

(f) Public Comment. In addition, public comment on the application and the proposed permit, approval, authorization or denial will be accepted.

(g) Upon consideration of the application and the proposed permit, approval, authorization or denial at its meeting, the board may issue an order granting or denying an application in whole or in part, dismissing proceedings, amending or modifying a proposed permit, or taking any other appropriate action.

**§ 11.33 Notice of Permit Hearing Where There is a Right to a Contested Case Hearing**

(a) Applicability. This section applies only to applications for operating permits, applications for groundwater exportation permits, and applications for variance from well spacing limitations. This section does not apply to an application to convert an existing Leona Gravel Aquifer operating permit.

(b) A notice of hearing on an application for a permit shall be prepared by the District. At a minimum, the notice shall state the following information:

- (1) the name and address of the applicant;
- (2) the name or names of the owner or owners of the land, if different from the applicant;
- (3) the date the application was filed and the number assigned to it;
- (4) the time, date and location of the hearing;
- (5) the address or approximate location of the well or proposed well;
- (6) a brief explanation of the permit or permit amendment sought, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
- (7) a summary of the action on the application recommended by the general manager pursuant to § 11.27 of these rules;
- (8) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (9) a brief description of the technical summary;
- (10) a statement that a copy of the proposed action, technical summary, and application are available for inspection by the public at the offices of the District;

(11) a statement that the application will be presented to the board for action at the hearing unless a request for a contested case hearing is submitted at least 10 days prior to the date of the hearing pursuant to § 11.43 of this chapter; and

(12) a statement that the applicant or another affected person may request a contested case hearing on the application by filing a request with the District, at least 10 days before the date of the hearing, in accordance with § 11.43 of this chapter.

(13) any other information the board or general manager considers relevant and appropriate.

(c) The District shall, not less than 30 days before the date of the hearing:

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

(2) Provide the notice to the Medina County Clerk;

(3) Provide the notice:

(A) By regular mail to the applicant; and

(B) By regular mail, facsimile, or electronic mail to any person who has requested notice under subsection (d) below.

(d) Any person may request to receive written notice of permit hearings by submitting a request to the District in writing. The request must identify with as much specificity as possible the types of permit hearings for which written notice is requested. The request remains valid for the remainder of the calendar year in which the request is received by the District, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service of notice by first class mail, facsimile, or e-mail to a person required pursuant to Subsection (c)(3)(B), above, in accordance with the information provided by that person is proof that notice was provided by the District. Failure to provide notice under Subsection (c)(3)(B) does not invalidate an action taken by the District at the hearing.

**§ 11.35 Scheduling of Permit Hearings Where There is a Right to a Contested Case Hearing**

(a) Applicability. This section applies only to applications for operating permits, applications for groundwater exportation permits, and applications for variance from well spacing limitations.

(b) Hearings on applications for permits may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays and may be held in conjunction with a regularly scheduled board meeting. All permit hearings will be held

at the District Office, unless the board directs otherwise. The district may from time to time schedule additional dates, times, and places for permit hearings by resolution adopted at a regular board meeting. The general manager is instructed by the board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings. The District may schedule as many applications for consideration at one hearing as deemed desirable and feasible.

## **Subchapter D. Contested Case Hearing Procedures**

### **Section**

11.37	Purpose
11.39	Applicability
11.41	Persons Entitled to Request a Contested Case Hearing
11.43	Timing, Form and Contents of Requests for Contested Case Hearing
11.45	Processing of Hearing Requests
11.47	General Hearing Procedures in Contested Cases
11.49	Conduct and Decorum
11.51	Hearing Registration Forms
11.53	Opportunity for Hearing and Participation; Notice of Hearing
11.55	Pre-Hearing Conferences
11.57	Designation of Parties
11.59	Right to Counsel
11.61	Interpreters for Deaf or Hearing Impaired Parties and Witnesses
11.63	Informal Disposition of Contested Hearing
11.65	Hearing Conducted by Hearings Examiner
11.67	Certified Questions
11.69	Service of Documents Filed in a Contested Permit Hearing
11.71	Privilege
11.73	Objections to Evidence
11.75	Burden of Proof
11.77	Assessing Costs
11.79	Rights of Designated Parties
11.81	Persons Not Designated Parties
11.83	Ex Parte Communications
11.85	Evidence
11.87	Written Testimony
11.89	Requirements of Exhibits
11.91	Official Notice; District Evaluation of Evidence
11.93	Agreement of Parties; Remand to Board
11.95	Discovery
11.97	Documents in District Files
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11.101	Closing the Record
11.103	Proposal for Decision
11.105	Scheduling a Meeting for the Board
11.107	Oral Presentation Before the Board
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11.111	Decision
11.113	Notification of Decisions and Orders
11.115	Motion for Rehearing
11.117	Decision Final and Appealable
11.119	Appeal of Final Decision
11.121	Costs of Record on Appeal

**§ 11.37 Purpose**

The purpose of this subchapter is to provide for the procedures to be applied to contested case hearings before the District.

**§ 11.39 Applicability**

This subchapter applies to matters subject to a contested case hearing under § 11.33 for which a timely request for contested case hearing is pending before the District and the request has not been withdrawn because of settlement or for some other reason.

**§ 11.41 Persons Entitled to Request a Contested Case Hearing**

The following persons may request a contested case hearing on an application subject to this subchapter:

- (a) the applicant; and
- (b) any other affected person.

**§ 11.43 Timing, Form and Contents of Requests for Contested Case Hearing**

(a) A request for a contested case hearing may only be made for applications for operating permits, applications for groundwater exportation permits, and applications for variance from well spacing limitations.

(b) A request for a contested case hearing must be in writing and be filed by United States mail, facsimile, or hand delivery to the District by no later than 10 days before the date of the hearing specified in the notice made pursuant to § 11.33 of these rules.

(c) A hearing request must substantially include the following:

(1) the name, address, daytime telephone number, fax number, and email address of the person filing the request. If the request is made by a corporation, partnership, or other business entity, the request must identify the entity and one person by name, physical and mailing address, daytime telephone number, fax number, and email address, who shall be responsible for receiving all documents on behalf of the entity;

(2) the basis for the contention that the person will be injured and has a personal justiciable interest in the matter such that a contested case hearing is appropriate;

(3) request a contested case hearing;

(4) provide any other information requested in the notice of hearing; and

(5) the person filing the request shall subscribe and swear or affirm under oath that the facts set out in the request are true and correct before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the request.

(d) Where a request for a contested case hearing is filed by a person other than the applicant, a copy of that request must be served on the applicant at or before the time that the request is filed with the District. The request shall include a certificate indicating the date and manner of service and the name and address of all persons served.

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

#### **§ 11.45 Processing of Hearing Requests**

(a) Except as provided in Subsection (d), the general manager shall schedule any timely filed contested case hearing request for board consideration. At least five days prior to the board hearing, the general manager shall provide notice to the applicant and other persons making a timely hearing request of the hearing. The board may receive relevant oral testimony or documentary evidence at a board hearing during which the contested case hearing request is evaluated.

(b) The hearing request will be the initial matter considered at the hearing on the permit application.

(c) Persons may submit a written response to the hearing request no later than two days before the hearing at which the board shall consider the request. Responses shall be filed with and served on the general manager, the applicant and any persons filing a hearing request in connection with that matter. The response should address the question of whether the person requesting the contested case hearing has a personal justiciable interest related to the application at issue.

(d) The board shall evaluate the hearing request and any written responses thereto at the scheduled board hearing and shall determine that the person requesting the hearing:

(1) does not have a personal justiciable interest related to the application and deny the hearing request and not admit the person as a party to the hearing; or

(2) has a personal justiciable interest relating to the application, refer the application to a contested case hearing, and admit the person as a party to the hearing.

(d) The board may delegate to a presiding officer the processing of requests for contested case hearing.

(e) The determination of whether a hearing request should be granted is not itself a

contested case hearing.

**§ 11.47 General Hearing Procedures in Contested Cases**

(a) Except for a hearing referred to SOAH, the procedures provided in this subchapter apply to contested case hearings. If the board refers a contested case hearing to SOAH, then the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Texas Government Code, and the applicable rules of practice and procedure of SOAH (Title 1, Chapter 155, ~~Tex. Admin. Texas Administrative~~ Code, as may be amended) govern any contested case hearing of the District conducted by SOAH, as supplemented by this subchapter.

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(b) A contested case hearing of the District must be conducted by either:

(1) a quorum of the board;

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

(3) a SOAH administrative law judge.

(c) Except as provided by Subsection (d), the board president or the hearings examiner shall serve as the presiding officer at the hearing.

(d) If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select another director to serve as the presiding officer.

(e) Authority of presiding officer: The presiding officer may conduct the hearing in the manner the presiding officer deems most appropriate for the particular proceeding. The presiding officer has the authority to:

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

(2) set hearing dates;

(3) designate the parties;

(4) establish the order for presentation of evidence;

(5) administer oaths to all persons presenting testimony;

(6) examine persons presenting testimony or comments;

(7) ensure that information and testimony are introduced as conveniently and

expeditiously as possible, without prejudicing the rights of any party to the proceeding;

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

(9) exercise the procedural rules of the District;

(10) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;

(11) require the taking of depositions and compel other forms of discovery under these rules;

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

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

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

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

(16) recess any hearing from time to time and place to place; and

(17) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of the presiding officer.

(e) **Alignment of Parties in a Contested Case Hearing; Number of Representatives Heard:** Parties in a contested case hearing may be aligned according to the nature of the hearing and their relationship to it. The presiding officer may require the participants of an aligned class to select one or more persons to represent them in the hearing or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.

(f) **Appearance by Applicant or Movant:** The applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to so appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the presiding officer deems it necessary in order to fully develop the record.

(g) **Reporting:** Contested case hearings will be recorded by audio or video recording or, at the discretion of the presiding officer, may be recorded by a certified court reporter

transcription. The District does not prepare transcripts of hearings or other proceedings recorded on audio cassette tape on District equipment for the public, but the District will arrange access to the recording. On the request of a party to a contested case hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

If a proceeding other than a contested case hearing is recorded by a reporter, and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original of any transcript will be filed with the District and placed in the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.

(h) Continuance: The presiding officer may continue hearings in a contested case hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice under § 11.33. If the presiding officer continues a contested case 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 all parties.

#### **§ 11.49 Conduct and Decorum**

Every person participating in or observing a contested case hearing, or other associated proceeding, must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants or observers. 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 shall first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.

#### **§ 11.51 Hearing Registration Forms**

Each individual attending who provides comments or testimony in a contested case hearing shall submit a hearing registration form providing the following information: name, address, who the person represents, if the person is not there in person's individual capacity, whether the person plans to testify or provide comments, and any other information relevant to the hearing.

#### **§ 11.53 Opportunity for Hearing and Participation; Notice of Hearing**

In a contested case, each party is entitled to an opportunity:

- (a) for hearing; and
- (b) to respond and to present evidence and argument on each issue involved in the case.

**§ 11.55 Pre-Hearing Conferences**

(a) The presiding officer may hold a pre-hearing conference at which the presiding officer may consider any matter which may expedite the hearing or otherwise facilitate the hearing process.

(b) Matters Considered. Matters which may be considered at a pre-hearing conference include, but are not limited to:

- (1) the withdrawal of protest;
- (2) the designation of parties;
- (3) the formulation and simplification of issues;
- (4) the necessity or desirability of amending applications or other pleadings;
- (5) the possibility of making admissions or stipulations;
- (6) the scheduling of discovery;
- (7) the identification of and specification of the number of witnesses;
- (8) the filing and exchange of prepared testimony and exhibits; and
- (9) the procedure at the hearing.

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

**§ 11.57 Designation of Parties**

The following persons shall be designated as parties in a contested case hearing:

- (a) The general manager of the District is a party in all contested case hearings;
- (b) The applicant is a party in a contested case hearing on its application; and
- (c) Any person who timely requested a contested case hearing pursuant to § 11.43,

and who has been determined by the presiding officer to be a person entitled to a contested case hearing under the standard set forth in § 11.45.

**§ 11.59 Right to Counsel**

(a) Each party to a contested case hearing may have the assistance of legal counsel before the District.

(b) A party to a contested case hearing may choose not to have the assistance of legal counsel.

**§ 11.61 Interpreters for Deaf or Hearing Impaired Parties and Witnesses**

(a) In a contested case hearing, the District shall provide an interpreter whose qualifications are approved by the Texas Office for Deaf and Hard of Hearing Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(b) In this section, “deaf or hearing impaired” means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

**§ 11.63 Informal Disposition of Contested Case Hearing**

An informal disposition may be made of a contested case hearing by:

- (a) stipulation;
- (b) agreed settlement;
- (c) consent order; or
- (d) default.

**§ 11.65 Hearing Conducted by Hearings Examiner**

(a) This section applies only to contested case hearings presided over by a hearings examiner.

(b) A hearings examiner who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing.

(c) The District shall provide the hearings examiner with the District rules or policies applicable to the matter under consideration in the hearing.

(d) The District may not attempt to influence the findings of fact or the hearings examiner’s application of law in a contested case hearing except by proper evidence and legal

argument.

(e) The District may change a finding of fact or conclusion of law made by the hearings examiner, or may vacate or modify an order issued by the hearings examiner, only if the District determines:

(1) that the hearings examiner did not properly apply or interpret applicable law, District rules or policies provided under Subsection (c), or prior administrative decisions;

(2) that a prior administrative decision on which the hearings examiner relied is incorrect or should be changed; or

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

The District shall state in writing the specific reason and legal basis for a change made under this subsection.

#### **§ 11.67 Certified Questions**

(a) At any time during a contested case hearing presided over by a hearings examiner, on a motion by a party or on the hearings examiner's own motion, the hearings examiner may certify a question to the District.

(b) Issues regarding District policy, jurisdiction or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are among the types of issues appropriate for certification. Policy questions for certification purposes include, but are not limited to:

(1) the District's interpretation of its rules and applicable statutes;

(2) which rules or statutes are applicable to a proceeding; or

(3) whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(c) If a question is certified, the hearings examiner shall submit the certified issue to the general manager. The general manager will place the certified issue on the agenda of the earliest possible meeting of the board, in compliance with the Open Meetings Act and other applicable law. The general manager will give the hearings examiner and parties notice of the meeting at which the certified question will be considered. The parties to the proceeding may file with the District briefs on the certified question. Briefs shall be filed with the parties with a copy served on the hearings examiner. The general manager will provide copies of the certified question and any briefs to the board. The hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.

(d) The District will issue a written decision on the certified issue within 30 days following the meeting at which the certified issue is considered. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

**§ 11.69 Service of Documents filed in a Contested Case Hearing**

(a) Service of all Documents Required. For any document filed with the District or the judge in a contested case hearing, the person filing that document must serve a copy on all parties to the contested case including the general manager at or before the time that the request is filed.

(b) Certificate of Service. 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. The docket clerk may permit a document to be filed without a certificate of service but will require the certificate to be filed promptly thereafter.

**§ 11.71 Privilege**

In a contested case hearing, the District shall give effect to the rules of privilege recognized by law.

**§ 11.73 Objections to Evidence**

An objection to an evidentiary offer in a contested hearing may be made and shall be noted in the record.

**§ 11.75 Burden of Proof**

The burden of proof is on the applicant to establish, by a preponderance of the evidence, that the applicant is entitled to have the application granted.

**§ 11.77 Assessing Costs**

Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may make a recommendation to the board regarding the assessment of the costs incurred by the District for the hearing, including the District's expenditures for attorney's fees and technical experts, and any reporting and transcription costs to one or more of the parties. If the hearing is conducted by the board, a hearing report with recommendations need not be filed, and the board may directly assess the District's hearing costs and reporting and transcription costs to one or more of the parties. The presiding officer must consider the following factors in assessing the District's hearing costs and the reporting and transcription costs:

- (a) the party who requested the transcript;
- (b) the financial ability of the party to pay the costs;

- (c) the extent to which the party participated in the hearing;
  - (d) the relative benefits to the various parties of having a transcript;
  - (e) the budgetary constraints of a governmental entity participating in the proceeding;
- and
- (f) any other factor that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of the District's hearing costs and reporting or transcription costs is an issue, the presiding officer must provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs must be included in the hearing presiding officer's report to the board.

**§ 11.79 Rights of Designated Parties**

Subject to the direction and orders of the presiding officer, parties have the right to conduct discovery; present a direct case; cross-examine witnesses; make oral and written arguments; obtain copies of all documents filed in the proceeding; receive copies of all notices issued by the District concerning the proceeding; and otherwise fully participate in the proceeding.

**§ 11.81 Persons Not Designated Parties**

At the discretion of the presiding officer, a person not designated as a party to a proceeding may submit a comment or statement, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the presiding officer as evidence and shall not form part of the administrative record on the matter.

**§ 11.83 Ex Parte Communications**

Except as otherwise provided below, the presiding officer or a member of the board assigned to render a decision or to make findings of fact or conclusions of law on a contested permit application may not communicate, directly or indirectly, about any issue of fact or law during the pendency of the contested case with any representative of the District or other designated party to the contested case, except on notice and opportunity for all parties to participate. This rule does not apply to a board member who abstains from voting on any matter in which he or she engaged in ex parte communications. A member of the board may communicate ex parte with other members of the board consistent with the requirements of other law, such as the Open Meetings Act. A member of the board or the presiding officer may communicate ex parte with a District employee who has not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the District employee in evaluating the evidence.

**§ 11.85 Evidence**

The presiding officer shall admit evidence that is relevant to an issue at the hearing. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The Texas Rules of Evidence may be referred to in order to determine the admissibility and introduction of evidence in contested case hearings. However, evidence not admissible under the Texas Rules of Evidence may be admitted if the evidence is:

- (a) necessary to ascertain facts not reasonably susceptible of proof under those rules;
- (b) not precluded by statute; and
- (c) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

In addition, evidence may be stipulated to by agreement of all parties.

**§ 11.87 Written Testimony**

(a) When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially thereby, the presiding officer may allow testimony in a contested case hearing to be received in written form.

(b) The written testimony of a witness, either in narrative or question and answer form, must be sworn to by the witness and may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness must be available, in person, by phone, or by other reasonable means, for clarifying questions and cross-examination, and the prepared testimony will be subject to objection. On the motion of a party, the presiding officer may exclude written testimony if the person who submits the testimony is unavailable for cross-examination by phone, a deposition before the hearing, or other reasonable means.

**§ 11.89 Requirements for Exhibits**

(a) Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.

(b) Abstracts of Documents. When documents are numerous, the presiding officer may receive in evidence only those which are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

(c) Introduction and Copies of Exhibits. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the presiding officer and to each of the parties, unless the presiding officer rules otherwise.

(d) Excluding Exhibits. In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.

**§ 11.91 Official Notice; District Evaluation of Evidence**

(a) In connection with a contested case hearing, the presiding officer may take official notice of:

(1) all facts that are judicially cognizable; and

(2) generally recognized facts within the area of the District's specialized knowledge.

(b) 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.

(c) Each party is entitled to be given an opportunity to object to material that is officially noticed.

**§ 11.93 Agreement of Parties; Remand to Board**

(a) No agreement between parties or their representatives affecting any pending matter shall be considered by the presiding officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the prehearing conference or the hearing and entered of record.

(b) An agreed disposition of a contested case may be made by stipulation, settlement, consent order, or the withdrawal of all requests for a contested case hearing so that no facts or issues remain controverted. Upon settlement of a matter, the presiding officer shall remand the matter to the board. If the person requesting the contested case hearing defaults, then the presiding officer may also deem the request for a contested case hearing to have been withdrawn by the person and remand the case to the board. Applications remanded under this section shall be considered to be uncontested and shall be considered under § 11.29. The presiding officer shall summarize the evidence, including findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing. Any stipulations, settlements, consent orders, withdrawals of requests for contested case hearing, orders, findings of default, presiding officer summary of the proceedings, and other relevant documents shall be presented to the board for its consideration.

**§ 11.95 Discovery**

Discovery shall be conducted upon such terms and conditions, and at such times and places, as directed by the presiding officer. Unless specifically modified by this subchapter or by order of the presiding officer, discovery shall be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer.

**§ 11.97 Documents in District Files**

Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.

**§ 11.99 Oral Argument**

At the discretion of the presiding officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The presiding officer may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the board for final decision, further oral arguments may be heard by the board if the board did not preside over the hearing.

**§ 11.101 Closing the Record**

At the conclusion of the presentation of evidence and any oral argument, the presiding officer may close the record or, if the board has not taken final action on the application, keep it open and allow the submission of additional testimony by a person who testified at the hearing, or exhibits, briefs, or proposed findings and conclusions from one or more of the parties. Any supplementation of the record must be filed not later than the 10<sup>th</sup> day after the date of the final hearing. A person who files additional written material with the presiding officer under this section must also provide the material, not later than the 10<sup>th</sup> day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested case hearing. A person who receives additional written material under this section may file a response to the material with the presiding officer not later than the 10<sup>th</sup> day after the date the material was received. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer.

**§ 11.103 Proposal for Decision**

Except for contested cases presided over by a quorum of the board, no later than 30 days following the completion of the contested case hearing, the presiding officer shall submit a proposal for decision to the District and serve a copy on the applicant and each designated party to the contested case. A proposal for decision shall 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 for board action on the subject matter of the hearing. The presiding officer, when submitting the proposal for decision, shall notify the parties of the deadlines for the filing

of exceptions and replies.

**§ 11.105 Scheduling a Meeting of the Board**

(a) After receiving the proposal for decision or proposed order, the general manager shall schedule the presentation of the proposal for decision or proposed order to the board. The general manager shall provide notice to the parties of the date of the board meeting at which the proposal for decision or proposed order will be presented and considered. The board may reschedule the presentation of the proposal for decision or proposed order. The general manager shall send notice of the rescheduled meeting date to the parties no later than 10 days before the rescheduled meeting.

(b) Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

**§ 11.107 Oral Presentation Before the Board**

(a) Any party to the contested case hearing may make an oral presentation at the board meeting in which the proposal for decision in that case is presented to the board.

(b) Any party to the contested case hearing may make an oral presentation at the board meeting in which the proposed order in that case is considered by the board.

(c) Oral presentations before the board shall be limited to 5 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the board.

**§ 11.109 Reopening the Record**

The board, on the motion of any party to a contested case or on its own motion, may order the presiding officer to reopen the record for further proceedings on specific issues in dispute. The order shall include instructions as to the subject matter of further proceedings and the presiding officer's duties in preparing supplemental materials or revised proposals based upon those proceedings for the board's adoption.

**§ 11.111 Decision**

(a) No later than 60 days after the date of the final hearing on the application is concluded, the board shall render its decision. The decision, if adverse to any party, must be in writing or stated in the record. If a written request is filed with the District not later than the 20<sup>th</sup>

day after the date of the board's decision, then the board's decision must be in writing and shall include findings of fact and conclusions of law separately stated regarding the decision of the board. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35<sup>th</sup> day after the date the board received the request. A party who receives a certified copy of the findings and conclusions from the board may request a rehearing before the board not later than the 20<sup>th</sup> day after the date the board issues the findings and conclusions.

(b) The board's decision shall be rendered no later than 60 days after the date the final hearing on the application is concluded, unless the board determines that there is good cause for continuing the proceeding.

(c) The board may change a finding of fact or conclusion of law made by the presiding officer, or may vacate or modify an order issued by the presiding officer, only if the board determines:

(1) that the presiding officer did not properly apply or interpret applicable law, District rules, written policies provided to the presiding officer by the District, or prior administrative decisions:

(2) that a prior administrative decision on which the presiding officer relied is incorrect or should be changed; or

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

#### **§ 11.113 Notification of Decisions and Orders**

(a) The District shall notify all parties in a contested case either personally or by certified mail, return-receipt requested, of any decision or order.

(b) The District shall send a copy of the decision or order in a contested case by first-class mail to attorneys of record and shall keep an appropriate record of the mailing. If a party is not represented by an attorney, the District shall send a copy of the decision or order by first-class mail to the party and shall keep an appropriate record of the mailing.

(c) A party or attorney of record notified by mail under Subsection (b) is presumed to have been notified on the third day after the date on which the notice is mailed.

#### **§ 11.115 Motion for Rehearing**

(a) Filing motion. Only a party to the contested case may file a motion for rehearing. The motion shall be filed with the general manager within 20 days after the date the party or his or her attorney of record is notified of the decision or order. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the District. The motion shall contain:

- (1) the name and representative capacity of the person filing the motion;
- (2) the style and official docket number assigned by the District;
- (3) the date of the decision or order; and
- (4) a concise statement of each allegation of error.

(b) Reply to motion for rehearing. Only a party to the contested case proceeding may reply to a motion for rehearing. A reply to a motion for rehearing must be filed with the general manager within 20 days after the date the motion for rehearing is filed.

(c) Ruling on motion for rehearing.

(1) Upon the request of a board member, the motion for rehearing shall be scheduled for consideration during a board meeting. Unless the board rules on the motion for rehearing, the failure of the board to grant or deny a request for rehearing before the 91<sup>st</sup> day after the date the request is submitted constitutes a denial of the request by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The board may reopen the hearing to the extent it deems necessary. If the board grants a request for rehearing, the board shall schedule the rehearing not later than the 45<sup>th</sup> day after the date the request is granted. Thereafter, the board shall render a decision or order as required by this subchapter.

#### **§ 11.117 Decision Final and Appealable**

In the absence of a timely filed motion for rehearing, a decision or order of the board is final and appealable on the expiration of the period for filing a motion for rehearing. If a party files a timely motion for rehearing, a decision or order of the board is final and appealable on the date: (1) the board denies the motion for rehearing; (2) the motion is denied by operation of law, or (3) the board renders a written decision after rehearing.

#### **§ 11.119 Appeal of Final Decision**

(a) A filing of a timely motion for rehearing is a prerequisite to appeal.

(b) Not later than the 60<sup>th</sup> day after the date on which the decision of the board becomes final, an applicant or a party to a contested case hearing may appeal the District's decision by filing suit under § 36.251, Texas Water Code. An applicant or a party to a contested case hearing may not file suit against the District under § 36.251 if a request for rehearing was not filed on time.

(c) The record. The record in a contested case shall include the following:

- (1) all pleadings, motions and intermediate rulings;

- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings on them;
- (5) summaries of the results of any conferences held before or during the hearing;
- (6) proposed findings, exceptions and briefs;
- (7) any decision, opinion or report issued by the presiding officer;
- (8) pre-filed testimony;
- (9) all memoranda or data submitted to or considered by the presiding officer; and
- (10) the final order and all interlocutory orders.

**§ 11.121 Costs of Record on Appeal**

A party who appeals a final decision in a contested case shall pay all costs of preparation of the record of the proceeding that is required to be transmitted to the reviewing court. A charge imposed as provided by this section is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

**Subchapter E. Procedures for Adoption of Rules and Management Plan**

**Section**

- 11.123 Rulemaking and Management Plan Hearing Procedures
- 11.125 Emergency Rulemaking

**§ 11.123 Rulemaking and Management Plan Hearing Procedures**

(a) The District shall adopt rules and its management plan following the notice and hearing procedures set forth in this subchapter.

(b) Not later than the 20<sup>th</sup> day before the date of a rulemaking or management plan hearing, the general manager shall provide notice of the public hearing as follows:

(1) post a notice in a place readily accessible to the public at the District office;

(2) provide a copy of the notice to the county clerk of Medina County to be posted at the County courthouse;

(3) publish the notice in one or more newspapers of general circulation in Medina County;

(4) provide the notice by mail, facsimile, or electronic mail to any person who has requested the notice pursuant to Subsection (g); and

(5) make available a copy of the proposed rule or management plan at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on a generally-accessible Internet site.

(c) The notice shall include the following information:

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

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

(3) the procedures for submitting oral or written comments, and a location or Internet site at which a copy of the proposed rules or management plan may be reviewed or copied, if any.

(d) The general manager may designate a person to be the presiding officer to conduct the public hearing. The presiding officer shall conduct a rulemaking or management

plan hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule or management plan as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments. The District shall allow at least 30 days for submission of written public comments on a proposed rule or management plan before adopting the proposed rule or plan.

(e) Any person participating in a rulemaking hearing must submit to the District a registration form identifying the person's name, address, and who the person represents, if not in attendance or his or her behalf.

(f) The presiding officer shall prepare and keep a record of each rulemaking or management plan hearing in the form of an audio or video recording or a court reporter transcription.

(g) A person may submit to the District a written request for notice of a rulemaking or management plan hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking or management plan hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(h) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about a contemplated rule or management plan provision and may appoint advisory committees of experts, interested persons, or public representatives to advise the District about a contemplated rule or management plan provision.

(i) Failure to provide notice under Subsection (b)(4) does not invalidate an action taken by the District at a rulemaking or management plan hearing.

(j) Oral Presentations. Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer may establish the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

(k) Adoption of Proposed Rules or Management Plan. After the conclusion of the hearing and the time period for submission of written comments, the board shall consider all timely written comments and shall, in the order adopting the rule or plan, state the District's responses to the written comments.

(l) A proposed rule becomes final and effective on the day it is adopted by the board, unless otherwise specified by the board.

**§ 11.125 Emergency Rulemaking**

(a) The District may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

(1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its findings under Subsection (a).

(b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90<sup>th</sup> day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by the Open Meetings Law.

## **CHAPTER 12. INVESTIGATIONS AND ENFORCEMENT**

### **Section**

12.1	Right to Enter Land
12.3	Conduct of Investigation
12.5	Rule Enforcement
12.7	Sealing of Wells

### **§ 12.1 Right to Enter Land**

Any District board member or District employee, agent or representative is entitled to enter any public or private property within the boundaries of the District at any reasonable time for the purpose of inspecting or investigating conditions relating to the quality or quantity of groundwater or in regard to the compliance with the District Act, Chapter 36 of the Texas Water Code, any rule, permit, or order of the District. Such persons acting under this authority who enter private property shall, prior to entry, give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the property, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any board Member or District agents or employees who are attempting to conduct an investigation under the District Rules constitutes a violation of these rules and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in Texas Water Code § 36.102.

### **§ 12.3 Conduct of Investigation**

Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the property.

### **§ 12.5 Rule Enforcement**

(a) The District may enforce the District Act or its Rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, in the same action, civil penalties recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court.

### **§ 12.7 Sealing of Wells**

Following notice and an opportunity to be heard, the District may, seal wells that are

prohibited from withdrawing groundwater within the District by the District Rules to ensure that a well is not operated in violation of the District Rules.

A well may be sealed when: (1) no application has been made for a well construction permit to drill a new water well which is not excluded or exempted; or (2) no application has been made for an operating permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or (3) the board has denied, canceled or revoked an application for a well construction permit or an operating permit.

The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District, and other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a well that has been sealed constitutes a violation of these rules and subjects the person performing that action, as well as any well owner or operator who authorizes or allows that action, to such penalties as provided by the District Rules.

**CHAPTER 13. METERS**

**Section**

13.1 Meters Required

13.3 Pre-existing Meters and Alternative Measuring Methods

13.5 Removal and Disabling of Meters

13.7 Meter Reading and Groundwater Use Reporting

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**§ 13.1 Meters Required**

(a) Duty to Install: The owner and/or operator of a non-exempt well located within the District shall equip the well with a meter meeting the specifications of these Rules and shall operate and maintain the meter to measure the instantaneous flow rate and cumulative amount of groundwater withdrawn from the well. For an existing, non-exempt well, a meter shall be installed by the owner and/or operator by no later than [redacted] [date that is six months from the effective date of new rules]. For a new, non-exempt well, a meter shall be installed before any groundwater is withdrawn from the well. Upon installing a new meter on a new or existing well, the owner and/or operator of the well shall register the meter with the District. All registrations under this Chapter shall identify the manufacturer and model of the meter, and the serial number of the particular meter installed.

(b) Approved Meters: Meters must be mechanically driven, digital, totalizing water meters. The digital totalizer must not be resettable by the permittee and must be capable of a maximum reading greater than the maximum expected pumpage during the expected lifetime of the meter. 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.

(c) Installation and maintenance: Meters must be installed, operated, maintained, and repaired according to the manufacturer’s published specifications, and shall ensure an accuracy of not greater than plus or minus five percent. 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 straight pipe to the meter. The pipe must be completely full of water throughout the area of the meter. All installed meters must measure only groundwater but must not measure Edwards groundwater.

(d) Bypasses: All bypasses must be metered. A bypass is any pipe of any size connected to the discharge pipe between the well and the meter.

(e) Meter accuracy to be tested: The District may require the permittee, at the permittee’s expense, to test the accuracy of the meter and submit a certificate of the test results. The certificate must be on a form provided by the District. The District may further require that the test be performed by a third party qualified to perform meter tests. Certification tests will be

required no more than once every three years for the same meter and installation. If the test results indicate an accuracy outside the 95% - 105% of the actual flow, appropriate steps must be taken by the permittee to repair or replace the meter within 90 calendar days from the date of the test. The District, at its own expense, may undertake further random tests and other investigations for the purpose of verifying meter readings. If the District's tests or investigations reveal that a meter is not registering within an accuracy of 95% - 105% of actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or well system, the permittee must reimburse the District for the costs of those tests and investigations and the permittee must take appropriate steps to remedy the problem within 90 calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement accuracy is impaired, the District may require the permittee, at the permittee's expense, to take appropriate steps to remedy any problem, and to retest the meter within 90 calendar days from the date the problem is discovered and reported to the permittee.

### **§ 13.3 Pre-existing Meters and Alternative Measuring Methods**

(a) By no later than [redacted] [date that is six months from the effective date of new rules], the owner and/or operator of an existing, non-exempt well shall register with the District any meter or alternative measurement(s) method installed and in use on the well as of the effective date of these rules. All registrations under this Chapter shall identify the manufacturer and model of the meter, and the serial number of the particular meter installed.

(b) All meters existing on the effective date of these Rules and registered in accordance with Subsection (a) of this section shall be inspected by the District for compliance with the meter specifications set forth in these Rules. If the meter complies with these specifications, the District shall approve the meter in writing and advise the owner or operator of the approval. If the meter does not comply with these specifications, the District will issue a notice of deficiency and direct the owner and/or operator of the meter to install a new meter or modify the existing meter in compliance with these Rules within 45 days.

(c) If at any time the well owner or operator has reason to believe that a condition, of any kind whatsoever, may exist that affects the accuracy of a meter, the well owner and/or operator shall, within seven days of learning of the fact(s), notify the District that the accuracy of the meter may be in question. Such notification shall be in writing.

(d) The District may conduct an investigation and, if facts warrant, direct the well owner and/or operator, at the well owner and/or operator's cost, to evaluate and test the accuracy of the meter and take appropriate corrective action, including replacement, to restore the accuracy and proper working condition of the meter in conformance with the requirements of these Rules.

### **§ 13.5 Removal and Disabling of Meters**

(a) A meter may not be removed or otherwise disabled, including for routine maintenance, unless the well owner or operator gives the District prior notice, in writing, of the

intent to remove or disable the meter. Except in cases of routine maintenance, such notice must be approved in writing by the District before the meter is removed or disabled.

(b) A meter may be removed or otherwise disabled only by the well owner or operator or his or her authorized representative.

(c) During a period that a meter is removed or otherwise disabled, groundwater may not be withdrawn from the well, unless the District has approved an alternative measuring method.

**§ 13.7 Meter Reading and Groundwater Use Reporting**

(a) The well owner and/or operator must read the 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 during reasonable business hours. Before January 31<sup>st</sup> of each year, each non-exempt well owner and/or operator must submit to the District an annual groundwater use report, on a form provided by the District.

(b) The report shall provide the following:

(1) name of the well owner and/or operator;

(2) the well number;

(3) the total amount of groundwater produced by the well or aggregate system during the immediately preceding calendar year (January 1<sup>st</sup> through December 31<sup>st</sup>);

(4) the total amount of groundwater produced by the well or aggregate system during each separate month of the immediately preceding calendar year;

(5) the purpose for which the groundwater was used; and

(6) any other information requested by the District as indicated on the report form.

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