

BREWSTER COUNTY GROUNDWATER CONSERVATION DISTRICT RULES

January 18, 2018

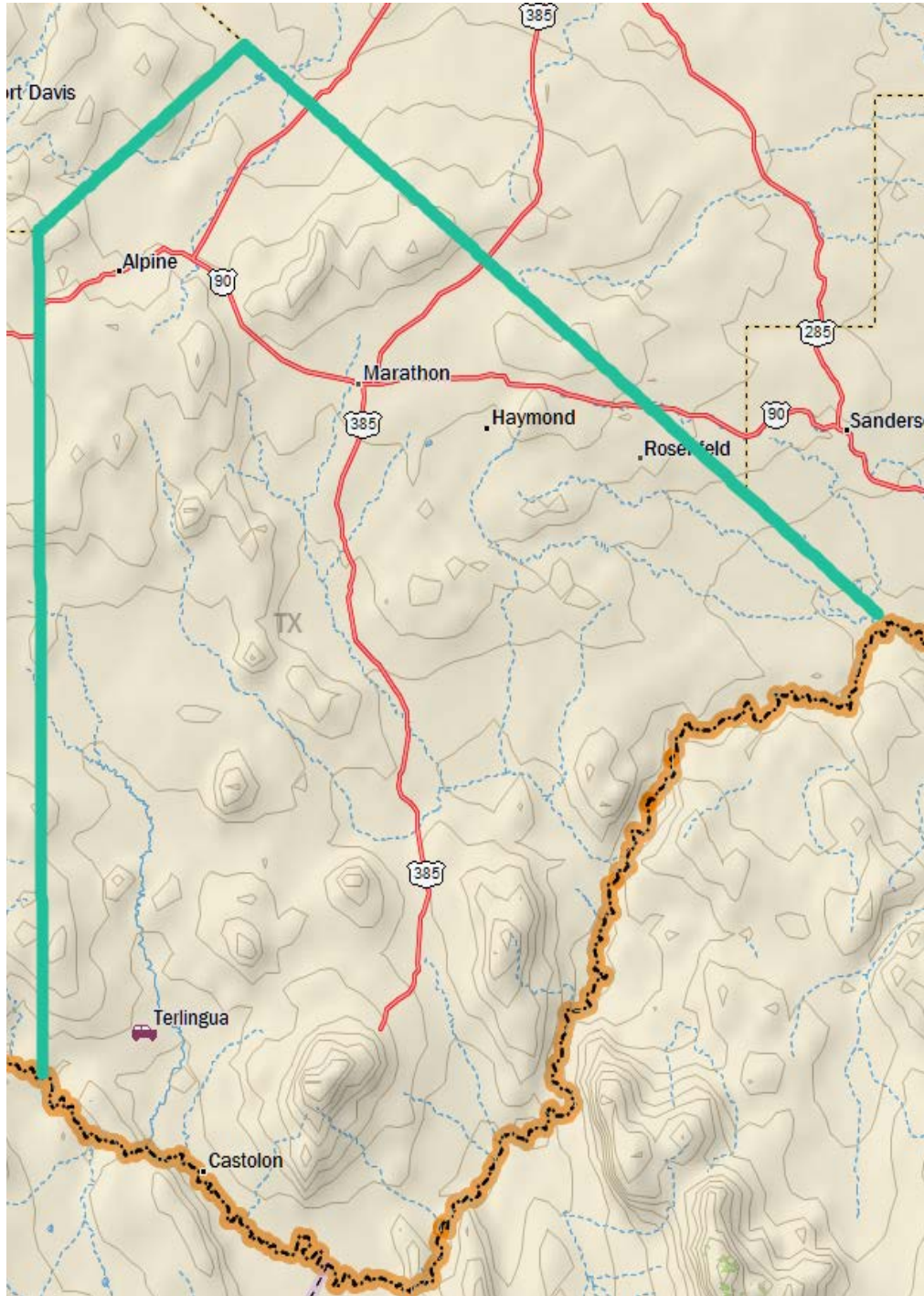


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CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

§ 1.001 Definitions of Terms

In the administration of its duties, the Brewster Groundwater Conservation District follows the definitions of words, terms, and phrases set forth in Chapter 8827 of the Special District Local Laws Code. In addition, the words, terms, and phrases used in these rules, when used in any other rule or regulation of the District and not defined therein, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The word “shall” is mandatory. The word “herein” means in these rules. The word “regulations” means the provisions of any applicable resolution, order, rule, regulation, or policy. Unless specified otherwise, references to times are to local (Central) time in Brewster County.

- (1) “Abandoned well” means a well that has not been in use for six consecutive months. A well is considered to be in use when the well is not a deteriorated well and contains the casing, pump, and pump column in good condition, or when the well is not a deteriorated well and has been properly capped.
- (2) “Acre-foot” means 325,851 U.S. gallons of water.
- (3) “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.
- (4) “Agricultural use” means a use or activity involving any of the following:
 - (A) cultivating the soil to produce crops for human food, animal feed, or planting seed, or for the production of fibers;
 - (B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers, or nonsoil media, by a nursery grower;
 - (C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
 - (D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
 - (E) wildlife management; and
 - (F) raising or keeping equine animals.
- (5) “Application Deadline” means the date of July 1, 2018, which is the date by which applications must be received by the District for production permits for all non-exempt wells that were drilled and in operation prior to the Date of Rules Adoption, and the date by which all existing exempt wells must be registered.
- (6) “Aquifer” means a geologic formation or group of saturated geologic units that will yield water to a well.

- (7) “Beneficial use” means the use of the amount of water that is necessary for a purpose authorized by law when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.
- (8) “Board” means the board of directors of the District.
- (9) “Brackish groundwater” means groundwater that has a dissolved solids content that is equal to or greater than 3,000 milligrams per liter.
- (10) “Business day” means a weekday, Monday through Friday, ending at 5:00 p.m. District holidays do not count as a business day.
- (11) “Casing” means a watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.
- (12) “Casing diameter” means the inside diameter of the casing of a well.
- (13) “Contested case hearing” means a proceeding before the District, or, where applicable, SOAH under § 36.416 (b), Texas Water Code, 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.
- (14) “Cottage Food Production Operation (CFPO)” means a person who meets the requirements of Section 437.001(2-b), of the Texas Health and Safety Code.
- (15) “Date of Rules Adoption” means January 18, 2018.
- (16) “Desired Future Condition (DFC)” means the quantitative description for a specific aquifer within the District, adopted in accordance with § 36.108, Texas Water Code.
- (17) “Deteriorated well” means a well or borehole that, because of its condition, will or may cause pollution of any water in the state, including any groundwater, or cause a public nuisance.
- (18) “Dewatering well” means a well used to remove water from a construction site or excavation, or to relieve hydrostatic pressure or uplift on permanent structures.
- (19) “District” means the Brewster County Groundwater Conservation District.
- (20) “District Act” means Chapter 8827 of the Special District Local Laws Code, as may be amended.
- (21) “District Office” means the location of the office of the District, as designated by the Board by written resolution. The location of the District Office may be changed from time to time by written resolution of the Board.
- (22) “Domestic use” means the private use of water to provide the daily water needs of a household, and includes water used on-site for: drinking, washing or culinary purposes; residential landscape watering, or

watering of a garden/orchard; watering of domestic animals; and for residential water recreation uses (e.g., swimming pool, hot tub). Domestic use does not include water used by, or to support, activities for which consideration is given or received or for which the product of the activity is sold except for products produced in accordance with a Cottage Food Productions Operation as defined under Chapter 437 of the Texas Food and Safety Code. Domestic use does not include use by or for a public water system.

(23) “Drilling permit” means a permit issued by the District allowing for the construction, drilling, installation, equipping, completion, reworking, alteration, or modification of a well, or other work designed for the production of groundwater.

(24) “Exempt well” means any well exempt from the requirement to obtain a permit under these rules.

(25) “Existing well” means a well which was in existence on, or for which drilling had commenced and was still in process, by Date of Rules Adoption, and is capable of having water withdrawn from it.

(26) “Federal Conservation Program” means the Conservation Reserve Program of the United States Department of Agriculture or any successor program.

(27) “GPM” means gallons per minute.

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

(29) “Groundwater exportation permit” means a permit authorizing a person to export groundwater produced from a well within the District’s boundaries pursuant to an authorization issued by the District to a place of use outside of the District’s boundaries.

(30) “Groundwater production” means to withdraw, pump, or otherwise obtain groundwater from an underground source.

(31) “Groundwater withdrawal” means groundwater production.

(32) “Hearing body” means the Board, any committee of the Board, or a hearing examiner that conducts a contested case hearing.

(33) “Hearing examiner” means the person appointed by the Board or otherwise designated according to law to conduct a contested case hearing or other proceeding.

(34) “Industrial use” means the use of water for or in connection with commercial or industrial activities, including but not limited to, manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, quarrying, commercial uses of water for tourism, entertainment, and motel or hotel lodging, generation of power, and other business activities.

(35) “Landowner” means the person who owns the land surface or the right to withdraw groundwater from wells located on such land surface.

- (36) “Managed Aquifer” means the portion or extent of the following major or minor aquifers as further described by the Texas Water Development Board: Capitan Reef, Edwards-Trinity, Igneous, Marathon, and Santa Elena Aquifers.
- (37) “Modeled Available Groundwater” means the amount of water that the executive administrator of the Texas Water Development Board determines may be produced on an average annual basis to achieve a DFC established under § 36.108 of the Texas Water Code.
- (38) “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.
- (39) “Monitoring well” means a well installed solely for the purpose of measuring some property of the groundwater or the aquifer it penetrates, and that does not produce more than 5,000 gallons of groundwater per year.
- (40) “Municipal use” means the use of water within or outside of a community or municipality and its environs, whether supplied by persons, municipalities, utilities, political subdivisions, or other water purveyors for domestic, recreational, industrial, or commercial uses, fire-fighting, sewer and drain flushing, swimming pools, maintenance of public property or for the watering of golf courses, parks and parkways, other public or recreational spaces.
- (41) “New well” means a well for which drilling commenced after Date of Rules Adoption.
- (42) “Non-exempt well” means a well not exempt from the requirement to obtain a permit under these rules.
- (43) “Open well” means a well or exploratory hole, dug or drilled for the purpose of exploring for or producing water from an aquifer that is not capped or covered as required by Chapter 36, Texas Water Code, and these rules.
- (44) “Open Meetings Law” means Chapter 551, Texas Government Code, as may be amended.
- (45) “Party” means each person admitted as a party in a contested case hearing.
- (46) “Permit” means a document issued by the District approving an application for a permit.
- (47) “Permitted well” means a well authorized to operate by a permit issued by the District.
- (48) “Person” means a corporation, individual, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.
- (49) “Pleading” means any document filed by a party in a contested case hearing.
- (50) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state, including groundwater, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose, including the alteration of

groundwater by saltwater or other deleterious matter admitted from another stratum or from the surface of the ground.

(51) “Presiding officer” means the Chair, Vice Chair, Secretary, or other Board member presiding at any hearing or other proceeding or a hearing examiner conducting any hearing or other proceeding on behalf of the District.

(52) “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.

(53) “Public Water Supply” a groundwater supply system that meets the requirements of 30 Texas Administrative Code § 290.38.

(54) “Qualified Land” means land in the District overlying productive portions of a Managed Aquifer, or severed groundwater rights associated with land overlying a Managed Aquifer, into which it is economically viable for a well to be drilled and produce groundwater at a reasonable flow and volume, and does not include land for which water rights were permitted in accordance with § 5.201(c)(2) or (3).

(55) “Registration” means a certificate issued by the District for a well that qualifies as an exempt well.

(56) “Replacement well” means any well drilled with the purpose of replacing a well.

(57) “Reworked well” means a well that has been altered, modified, repaired, or recompleted.

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

(59) “Section,” as related to land, means the numbered section of a survey or block as shown in a county’s real property records.

(60) “§ 36.121 municipal well” means any well within the District’s boundaries that is used solely to supply water to a municipality that has a population of 121,000 or less and for which the rights to the groundwater produced are owned by either: (a) a political subdivision that is not a municipality; or (b) a municipality that has a population of 115,000 or less, and the rights to the groundwater were purchased, owned, or held before May 26, 2001, regardless of the date the well is drilled or the water is produced.

(61) “Sewage wet well” means a sewage well which incorporates a reservoir in addition to a pump.

(62) “Solid waste” means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include: solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Texas Water Code; soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface

improvements; or waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under § 91.101, Texas Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or depressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.); and does include hazardous substances.

(63) “SOAH” means the State Office of Administrative Hearings.

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

(65) “TDLR” means the Texas Department of Licensing and Regulation.

(66) “Uncovered well” means an open well.

(67) “Waste” means any one of the following: production of groundwater at a rate and in an amount that causes or threatens to cause intrusion into an aquifer of water unsuitable for agricultural, gardening, domestic, or stock watering purposes; the flowing or producing of wells from an aquifer if the water produced is not used for a beneficial purpose; escape of groundwater from an aquifer to any other reservoir or geologic strata that does not contain groundwater; pollution or harmful alteration of groundwater in an aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground; willfully or negligently causing, suffering, or allowing groundwater produced from an aquifer to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or 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 TCEQ under Chapter 26, Texas Water Code, as may be amended; 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; or for water produced from an artesian well, “waste” has the meaning assigned by § 11.205, Texas Water Code, as may be amended.

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

(69) “Well operator” means the person who operates a well located on land owned by the well operator or owned by a third-party.

(70) “Well owner” means the person who owns a well and the land upon which a well is, or is proposed to be, located.

(71) “Well system” means a well or group of wells tied together by pipeline and/or storage facilities.

(72) “Withdraw” or “withdrawal” means producing or obtaining groundwater using man-made facilities by pumping or another method.

§ 1.002 Purpose of Rules

These rules are adopted to achieve the objectives of Article XVI, § 59, Texas Constitution, the District Act, Chapter 36, Texas Water Code; the District's approved groundwater management plan, and other general laws applicable to the District, as may be amended.

§ 1.003 Construction

Construction of words and phrases is governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code. References to a code or statutory provision or section in these rules shall include such code or statutory provision as amended, reordered, or re-codified. These rules shall be read, interpreted, and applied in a manner that is consistent with the District Act and, if any definition or provision of these rules conflicts with or is inconsistent with any definition or provision of the District Act, such definition or rule shall be construed and applied consistent with the District Act, which shall control.

§ 1.004 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.

§ 1.005 Methods of Service 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 email to the recipient's email address on file with the District, and shall be accomplished by 5:00 p.m. on the date on which it is due. Service by mail is complete upon delivery 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 of the above methods has been attempted and has failed, service may be completed by any other of the above-authorized methods of service. If personal service is not made or deemed to be made as above provided, if the location of a person to be served is unknown to the Board, if unknown persons may have a property interest in the matter at issue, or in addition to any other service made, notice may be given by publication and the service by publication is complete upon the notice being published in a newspaper of general circulation in the District. Further, upon approval by the Board, notice may be given in any manner authorized by the Texas Rules of Civil Procedure.

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

§ 1.006 Amendment of Rules

The Board may, following applicable notice, hearing, process, and procedural requirements set forth in these rules and in Chapter 36, Texas Water Code, amend these rules and adopt new rules from time to time. These rules, as amended, shall apply to all groundwater usage and production within the boundaries of District subject to the District's jurisdiction.

CHAPTER 2. BOARD

§ 2.001 Purpose of the Board

The Board was created to determine policy and regulate the withdrawal and use of groundwater within the boundaries of the District for conserving, preserving, protecting, and recharging the groundwater within the District, and to exercise the District's 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.

CHAPTER 3. DISTRICT STAFF

§ 3.001 General Manager

The Board may employ or contract with a person to serve as general manager of the District and to perform such services as the Board may from time to time specify. The Board may delegate to the general manager full authority to manage and operate the affairs of the District subject only to these rules and orders of the Board. The general manager, with approval of the Board, may employ all persons necessary for the proper handling of business and operation of the District, and their salaries will be set by the Board. If the position of general manager is vacant, the Board may appoint an interim manager, or act to manage the District and perform any function of the general manager identified by these rules. The interim manager may be a Board member other than the chair of the Board.

CHAPTER 4. DISTRICT RECORDS

§ 4.001 Minutes and Records of the District

All documents, reports, records, and minutes of the District are 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 charges for copies will be furnished by the District.

§ 4.002 Notice of Change of Address or Phone 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 ownership, well operator, mailing address, email, or telephone number within 30 days of such change.

CHAPTER 5. GROUNDWATER PRODUCTION

Subchapter A. General Provisions

§ 5.001 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 a manner that constitutes 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.

§ 5.002 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.

§ 5.003 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 evaporation, channel loss by percolation, or waste.

§ 5.004 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.

§ 5.005 General Provisions Applicable to Permits

- (a) A production permit is required to withdraw or produce groundwater from a non-exempt well.
- (b) A permit confers only the right to use the permit under the provisions of these rules. The permit's terms may be modified or amended pursuant to the provisions of these rules.
- (c) Withdrawal or production of groundwater from a non-exempt well must be measured by the owner or operator and reported to the District according to the requirements of Chapter 8 of these rules.
- (d) All well sites must be accessible to District representatives for inspection, and any owner or operator agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.
- (e) The application for a permit or permit amendment shall be in writing and sworn to by the applicant.
- (f) Within 30 days after the date of a change in ownership of a permit, the permittee must notify the District in writing of the name and address of the new owner. Any person who becomes the owner of a permit must, within 30 calendar days from the date of the change in ownership, file a notice of transfer of ownership or an application to amend the permit, as applicable.

(g) Violation of a permit's terms, conditions, requirements, or special provisions, including pumping, withdrawing, or producing groundwater in excess of the quantity authorized by a permit issued by the District, is a violation of these rules and is punishable by penalties as provided by these rules and any applicable law.

(h) For any applications submitted to the District for which the applicant has requested that such applications be processed concurrently, the District may process and the Board may consider such applications concurrently according to the standards and rules applicable to each.

(i) Any increase in the volume of groundwater produced or in the rate of withdrawal from a well or wells, or change in the purpose of use or place of use of groundwater of a production permit issued by the District, may not be made unless the Board has first approved a permit amendment authorizing the change.

Subchapter B. Groundwater Production Limitations

§ 5.101 Purpose

The purpose of this subchapter is to:

(a) establish the aggregate, annual volume of groundwater, including brackish groundwater, that may be produced from the Capitan Reef, Edwards-Trinity, Igneous, Marathon, and Santa Elena Aquifers from:

- (1) exempt wells; and
- (2) non-exempt wells withdrawing groundwater pursuant to production permits; and

(b) establish the procedures for implementing, if necessary, proportional adjustments to the volume of groundwater allowed to be produced in any given year pursuant to production permits.

§ 5.102 Groundwater Available for Production from the Capitan Reef, Edwards-Trinity, Igneous, Marathon, and Santa Elena Aquifers

(a) The aggregate, annual volume of groundwater that may be produced from the Capitan Reef, Edwards-Trinity, Igneous, and Marathon Aquifers from:

- (1) exempt wells, as estimated in the District's approved groundwater management plan, if available, or as estimated by the District, if not available; and
- (2) non-exempt wells operating pursuant to production permits,

shall be no greater than the amount necessary to achieve the DFC for each of the aquifers.

(b) The aggregate, annual volume of groundwater that may be produced from the Santa Elena Aquifer from:

- (1) exempt wells, as estimated in the District's approved groundwater management plan, if available, or as estimated by the District, if not available; and

- (2) non-exempt wells operating pursuant to production permits,

shall be no greater than the amount of groundwater that the District determines, by Board order, can be produced on an average annual basis for a five-year time period to achieve 0 feet of drawdown from the aquifer.

(c) The estimated volume of groundwater from each aquifer allotted for production from exempt wells shall equal the amount stated in the District's approved groundwater management plan, as may be amended.

(d) The volume of groundwater that may be produced from each aquifer by non-exempt wells shall not exceed the volume necessary to achieve the DFC for each aquifer less the estimated volume of groundwater from each aquifer allotted for production from exempt wells.

(e) Notwithstanding any other provision in these rules, the District shall, to the extent possible, manage the total volume of groundwater authorized to be withdrawn pursuant to permits and exempt withdrawals in order to achieve the DFC for that aquifer.

Subchapter C. Groundwater Production Permits

§ 5.201 Groundwater Production Permits

(a) The District may issue production permits to authorize groundwater withdrawals from non-exempt wells in accordance with § 5.102.

(b) Groundwater may not be produced from a non-exempt well from an aquifer subject to production limits under § 5.102 without a valid production permit.

(c) Production permits may be issued for the following categories:

(1) **Qualified Land:** the applicant's beneficial use without waste in an amount based on the amount of Qualified Land owned by the applicant;

(2) **Public Water Supply:** the applicant's beneficial use without waste by a Public Water Supply in a reasonable amount, which would not include water exempted under § 36.121, Texas Water Code;

(3) **Municipal/Industrial/Other Use:** the applicant's beneficial use without waste for municipal or industrial and other purposes of use, not including Public Water Supply, for a term not to exceed 10 years in an amount not to exceed 25 acre-feet per year, or for production permits in effect on the Date of Rules Adoption, the applicant's permitted amount.

§ 5.202 Authorized Uses

As specifically designated in a production permit, a person may beneficially use groundwater withdrawn from the aquifer for the following purposes of use:

(a) irrigation use;

- (b) municipal, including Public Water Supply;
- (c) industrial; and
- (d) other use.

§ 5.203 Filing Deadline for Applications for Production Permits

In order to obtain a production permit, the owner of a non-exempt well must submit and deliver an application for a production permit to the District by mail, hand delivery, or email to the District's email address by no later than 5:00 p.m., Application Deadline, or if after the Application Deadline, an application must be filed and a production permit obtained prior to the operation of the well.

§ 5.204 Applications for Production Permits.

(a) All production permit applicants must use the application form prescribed by the District and include all relevant information required by these rules. A single production permit application may, at the applicant's discretion, be submitted for multiple wells owned or operated by the applicant located in the same aquifer.

(b) In addition to the information specified in § 9.104 (Contents of and Requirements for All Applications, Registrations, and Notices of Transfer of Ownership), an application for a production permit shall contain the following:

- (1) Name and Address of Owner. The full name, physical and mailing addresses, email, telephone number, and fax number of the landowner and operator, as applicable.
- (2) Source of Supply. A statement identifying each aquifer that is a source of groundwater from the well. If the application is pursuant to § 5.201(c)(1) (Qualified Land) then the application must also include a report identifying each aquifer that is a source of groundwater from the well from a geologist or engineer licensed in the State of Texas. The report must document the amount of and ability to produce water from the portion of the aquifer under the applicant's land on which the well(s) will be located.
- (3) Rate of Withdrawal. The maximum rate of withdrawals, in gallons per minute, which the well is capable of producing from the aquifer determined using a method approved by the District.
- (4) Method of Withdrawal. A description of the method used to withdraw groundwater.
- (5) Ownership of Land. The deed and legal description for the tract of land on which the well is or will be located and for the place of use.
- (6) Place of Use. The place of use of groundwater to be withdrawn from the well.
- (7) 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.

- (8) Declaration of Amount of Proposed Use. A declaration by the applicant of the volume of groundwater that is proposed to be used without waste for a beneficial purpose.
 - (9) Term. Indicate whether a perpetual or temporary permit term is sought, indicating the length of time, if temporary.
 - (10) Well Address. The physical address of the property upon which the well(s) is located.
 - (11) Well Location. A legal description of the location of the well(s), 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.
 - (12) Maps. If requested by the District, a city or county map with the location of the property on which the well(s) is located highlighted and the location of the well(s) pinpointed.
 - (13) Compliance with Management Plan: A declaration that the applicant will comply with the District's approved groundwater management plan, as may be amended, and with the state and regional water plans.
 - (14) Compliance with Rules: A declaration that the applicant is in compliance with all applicable District rules in effect on or after the Date of Rules Adoption, and will comply with the District's rules.
 - (15) Waste and Conservation: A statement that the applicant agrees to avoid waste and achieve water conservation.
 - (16) Groundwater Quality: A statement that the applicant agrees to use reasonable diligence to protect groundwater quality.
 - (17) Other Information: Any other information determined to be necessary by the District.
 - (18) Information regarding availability, access to, and cost to obtain water from sources other than the aquifer identified by the applicant.
 - (19) The applicant may rely on any information previously submitted to the District as part of an earlier application for a production permit that meets any of the requirements of this rule.
- (c) All applicants for a production permit based on Qualified Land owned by the applicant shall include documentation identifying the contiguous acres of Qualified Land owned by the applicant for which a permit is sought, along with a record deed showing the applicant owns the land and legal description or survey showing the location of such acres.
- (d) All applicants for a production permit for municipal use, including for Public Water Supply, not based on ownership of Qualified Land owned by the applicant shall also include:
- (1) a report prepared by an engineer licensed in the State of Texas that provides the details and methods used to determine:

- (A) the applicant's monthly and annual water use on a per meter and per capita basis for the previous 10 years;
 - (B) the estimated future water needs of the applicant;
 - (C) the applicant's billing amounts, rate structure, and billing efficiency;
 - (D) the estimate of water lost through leaks, unmetered connections, and any other loss;
 - (E) the water conservation methods implemented during the previous 5 years and the methods planned for implementation in the next 5 years;
 - (F) the economic analysis of using surface water or conservation methods to avoid the need for increased groundwater use; and
 - (G) the economic analysis of using groundwater from other groundwater sources to avoid the need for increased groundwater use from the proposed aquifer; and
- (2) information documenting the place of use of groundwater withdrawn from each well, including, as applicable, a copy of the deed and legal description for the place of use or a copy of the map identifying the boundaries of the applicant's Certificate of Convenience and Necessity issued by TCEQ.
- (e) All applicants for a production permit for industrial use or another beneficial purpose of use not based on the ownership of Qualified Land owned by the applicant shall also include:
- (1) the applicant's monthly and annual water use for the previous 10 years;
 - (2) the estimated future water needs of the applicant;
 - (3) the amount of water used per unit of production and referenced to the typical amount of water used in the industry per unit of production (gallons per pound, gallons per item, gallons per unit processed, etc.);
 - (4) an estimate of water lost through leaks, unmetered uses, and any other loss;
 - (5) the water conservation methods implemented during the previous 5 years and those methods planned for implementation in the next 5 years;
 - (6) an economic analysis of using surface water or conservation methods to avoid the need for increased groundwater; and
 - (7) an economic analysis of using groundwater from other groundwater sources to avoid the need for increased groundwater use from the proposed aquifer.

(f) All applicants for a production permit for agricultural, irrigation, recreational, or wildlife use shall also include a report prepared by an engineer licensed in the State of Texas or the United States Department of Agriculture Natural Resources Conservation Service that includes:

- (1) the estimated future water needs of the applicant;
- (2) the amount of water used per unit of production (acre-feet per acre of crop, gallons per animal, acre-feet per acre of pond water surface, etc.);
- (3) the amount of water lost through evaporation, seepage, or runoff;
- (4) the amount of on-site surface water or rainfall usable for meeting proposed demands;
- (5) the amount of groundwater needed during a year with average rainfall and during a year with extreme drought (drought of record);
- (6) an estimate of water lost through leaks, unmetered uses, and any other loss;
- (7) the water conservation methods implemented during the previous 10 years and the methods planned for implementation in the next 10 years;
- (8) an economic analysis of using surface water or conservation methods to avoid the need for increased groundwater; and
- (9) an economic analysis of using groundwater from other groundwater sources to avoid the need for increased groundwater use from the proposed aquifer.

§ 5.205 Maximum Allowable Production under Production Permits

- (a) The annual production limits for production permits shall be as follows, to the extent groundwater is determined by the District to be available:
 - (1) for permits applied for under § 5.201(c)(1), the product of the applicable water allocation per acre factor, which is to be calculated as set forth in Subsection (b), multiplied by the number of contiguous acres of Qualified Land that are owned by the applicant; or
 - (2) for permits applied for under § 5.201(c)(2), the amount of groundwater determined to be reasonably necessary for the applicant's proposed beneficial use without waste;
 - (3) for permits applied for under § 5.201(c)(3), the amount of groundwater determined to be reasonably necessary for the applicant's proposed beneficial use without waste, not to exceed 25 acre-feet per year, or the applicant's permitted amount; and

subject to adjustment based on the total amount of groundwater available for withdrawals from non-exempt wells under § 5.102(c) and based on the amount of production authorized under issued production permits.

(b) The District shall calculate, and set forth in a Board order, as necessary, an applicable water allocation per acre factor for each aquifer based on the total amount of groundwater available for withdrawals from non-exempt wells pursuant to § 5.102(c), as follows:

$$WAFa = (MAGa - EPa - FPa) / QLa$$

WAFa = Water Allocation Factor, for one of the Managed Aquifers in units of annual acre-feet of groundwater production per acre of Qualified Land

MAGa = Modeled Available Groundwater for one of the Managed Aquifers in units of annual acre-feet of groundwater production

EPa = Existing Production, average annual acre-feet per year of groundwater production over a five-year time period for permitted Non-Exempt and Exempt Well Uses for the Managed Aquifer at the time of Date of Rules Adoption excluding § 5.201(c)(1) (Qualified Land) wells

FPa = Future Production, annual acre-feet per year of groundwater production to be available for future permitted Non-Exempt and Exempt Well uses after the Date of Rules Adoption for the Managed Aquifer excluding § 5.201d(c)(1) (Qualified Land) wells

(c) The maximum quantity of groundwater that may be withdrawn pursuant to a production permit is subject to change if necessary to ensure that the total volume of groundwater withdrawals permitted is managed on a long term basis to achieve the desired future condition of the aquifer.

(d) The Board may, in exceptional circumstances, consider a variance to the production limits set forth in Subsection (a)(3) in approving an application for a production permit, and a grant a variance for a term of up to 10 years, if the applicant submits a request for variance with the application for a production permit supported by evidence showing that unnecessary hardship would result from the strict application of the production limits, the hardship results from conditions particular to the property, the hardship is not the result of actions taken by the applicant, granting the variance is consistent with the intent of the rules, and substantial justice will be achieved.

§ 5.206 Basis for Action on Production Permit Applications

(a) Production permits may be issued for the following categories:

(1) Qualified Land: the applicant's beneficial use without waste in an amount based on the amount of Qualified Land owned by the applicant;

(2) Public Water Supply: the applicant's beneficial use without waste by a Public Water Supply in a reasonable amount; or

(3) Municipal/Industrial/Other Use: the applicant's beneficial use without waste for municipal, industrial, or other purposes of use for a term not to exceed 10 years in an amount not to exceed 25 acre-feet per year, unless a variance for a term not to exceed 10 years is granted, or the applicant's permitted amount for production permits in effect on the Date of Rules Adoption.

- (b) The Board shall grant an application for a production permit if the Board finds that:
- (1) the application is complete;
 - (2) the application was timely filed in accordance with § 5.203;
 - (3) the application complies with the rules of the District;
 - (4) all applicable fees and deposits have been paid;
 - (5) the applicant owns the proposed or existing well;
 - (6) the applicant owns the water rights for which a permit is sought;
 - (7) the applicant has a legal right to produce groundwater from the proposed or existing well;
 - (8) the wellhead is, or will be, physically located within the boundaries of the District;
 - (9) the withdrawals are proposed to be placed to a beneficial use;
 - (10) 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;
 - (11) except as provided in § 5.301(b), the place of use is located within the District's boundaries, unless the applicant also has obtained a groundwater exportation permit from the District;
 - (12) there is sufficient water available from the aquifer within the District under § 5.102 in order to issue the permit;
 - (13) the proposed production of water will not unreasonably affect existing groundwater or surface water resources or rights, including existing holders of permits issued by the District, and exempt well owners;
 - (14) operation of the well will not cause unreasonable interference between wells;
 - (15) the applicant is in compliance with any permits the applicant holds from the District and with District rules; and
 - (16) the application is consistent with the District's approved groundwater management plan, as may be amended, and with the state and regional water plans.
- (c) Aggregation of Withdrawals. The authorized withdrawal amount for a given production permit may be aggregated with the authorized withdrawal amounts for other production permits held by the same permittee and

within the same aquifer or aquifer subdivision. Where aggregated, 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.

§ 5.207 Contents of Production Permits

- (a) A production permit issued by the District shall include the following terms and conditions:
- (1) the name of the person or entity to whom the permit is issued;
 - (2) the date the permit is issued;
 - (3) the location of the well;
 - (4) the purpose of use for which the water produced from the well will be used;
 - (5) the specific location of the place of use of the water produced from the well;
 - (6) except as provided in § 5.301(b), 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;
 - (7) the requirements for the conveyance of water produced from the well to the place of use;
 - (8) the maximum rate of production in gpm, and any conditions relative thereto;
 - (9) the maximum amount of production in acre-feet per annum, and any conditions relative thereto;
 - (10) a perpetual term for Qualified Land, Public Water Supply permits and production permits in effect on the Date of Rules Adoption, and a term of up to ten years for other permits issued pursuant to § 5.201(c)(3) of these rules.
 - (11) 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 TDLR;
 - (12) metering and reporting requirements;
 - (13) a statement that the permit is subject to the Standard Permit Conditions set forth in § 5.208 of these rules; and
 - (14) a statement that the permit is subject to limitations or modifications as may be provided in the District's rules or other applicable law; and
 - (15) other terms and conditions as may be required by the Board.

(b) Within 30 days of issuance, the owner of a production permit shall record the permit with the Clerk of every county in which the well or wells and/or place of use are located, and a copy of each permit recorded shall be provided to the District.

§ 5.208 Standard Permit Conditions for Production Permits

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

- (a) the duty to beneficially use and avoid waste of groundwater;
- (b) the duty to conserve water in accordance with applicable law, and comply with the District's water conservation plan, as may be amended from time to time, and the permittee's plan approved by the District, as applicable;
- (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 production or consumption during times of drought in accordance with applicable law, and to comply with the District's drought management plan, as may be amended from time to time, and the permittee's plan approved by the District, as applicable;
- (e) the duty to comply with the District's approved groundwater management plan, as may be amended from time to time;
- (f) the duty to use diligence to protect groundwater quality within the District;
- (g) the duty to comply with the District's rules, as may be amended;
- (h) any permit review, renewal, or extension conditions;
- (i) 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;
- (j) the continuing right of the District to supervise and manage groundwater withdrawals and protect the aquifer;
- (k) the duty to install, equip, operate, maintain, and close (cap or plug) all wells in accordance with the District's rules, and other applicable federal, state, and local law;
- (l) the duty to comply with the District's rules relating to transfers and amendments of permits;
- (m) the duty to pay and be current in the payment of all applicable fees;
- (n) 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;

- (o) the duty to give notice to the District of any changes in name, address, email, or telephone number of the permittee, or the authorized representative, as applicable, in accordance with these rules;
- (p) the duty to comply with all of the terms and conditions of the permit;
- (q) the duty 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;
- (r) the right of the District to enter land under § 36.123, Texas Water Code, as may be amended;
- (s) the duty to comply with the metering and reporting requirements set forth in Chapter 8 of these rules;
- (t) the duty to comply with any proportional adjustments mandated by Subchapter B of Chapter 5 of these rules; and
- (u) any other conditions as the Board may deem appropriate.

§ 5.209 Groundwater Withdrawals in Violation of Production Permit Prohibited

No holder of a production permit may withdraw or use groundwater in a manner inconsistent with the terms of the permit, and any such production is illegal, wasteful per se, and a nuisance.

§ 5.210 Transfer of Ownership or Lease of Production Permit; Notice

Within 30 days after transfer of the ownership of all or part of a production permit, or all or part of a lease of the right to withdraw groundwater thereunder, the transferee shall file with the District a notice of the transfer of ownership on a form prescribed by the District, accompanied by evidence of the change of ownership. 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.

§ 5.211 Production Permit Transfers and Amendments and Renewals; Applications

- (a) A production permit may be amended as follows:
 - (1) purpose of use;
 - (2) place of use;
 - (3) the total volume of groundwater authorized to be withdrawn in acre-feet per annum; or
 - (4) rate of production in gpm;
 - (5) point of withdrawal; or

- (6) ownership in accordance with § 5.210.
- (b) Any person seeking to amend a permit as provided in Subsection (a)(1)-(5), must first file with the District an application to amend on a form prescribed by the District.
- (c) No permit amendment is effective until the amendment has been approved by the Board.
- (d) A production permit that is not perpetual may be renewed if the following conditions are met:
 - (1) an application to renew is filed with the District prior to the permit's expiration date;
 - (2) the applicant has timely paid all required fees to the District;
 - (3) the applicant is not subject to a pending enforcement action for a substantive violation of a District permit, order, or rule;
 - (4) the applicant has not failed to pay any civil penalty or to comply with an order resulting from a final adjudication of a permit, order, or rule of the District;
 - (5) the applicant is not requesting any change to the permit conditions that would require an application to amend to be filed under Subsection (b); and
 - (6) renewal of the production permit will not cause production in the District to exceed the maximum allowable production under production permits set forth in § 5.205.
- (e) If the conditions to obtain a renewal in Subsection (d) are not met, a new application for a production permit must be filed prior to the expiration of the permit.
- (f) A timely filed application to renew under Subsection (d)(1), or to amend a permit, will automatically extend the term of a production permit until the later of the expiration of the permit or final action on the application.

§ 5.212 Basis for Granting Applications to Amend Production Permits

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

- (7) the requirements in § 5.204, § 5.206, and § 5.211 are satisfied; and
- (8) 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.

§ 5.213 Proportional Adjustment of Production Permits based on Modeled Available Groundwater

If the aggregate volume of groundwater permitted for production annually pursuant to production permits exceeds the amount authorized to be produced under § 5.102, then the District, by Board order, shall proportionally reduce the authorized production amount of each and every production permit in order to equal the authorized production amount under § 5.102, and such order shall constitute a modification of each production permit.

§ 5.214 Reduction in Amount or Cancellation of Production Permit for Non-Use

(a) If all or part of the water authorized to be produced under a production permit has not been put to beneficial use at any time since the time the permit is issued and five years thereafter, then the permit is subject to cancellation by the District in whole or a reduction in the annual volume of production authorized by the permit.

(b) Prior to any cancellation or reduction, the District shall provide the opportunity for a hearing and give notice to the permittee at least 30 days before the date of the hearing.

(c) The District shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which production of water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized or proposed to be used, as shown by the records of the District. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.

(d) The District shall hold a hearing and shall give the permittee and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

(e) At the conclusion of the hearing, the District may cancel the permit in whole or in part to the extent that it finds that:

(1) the water or any portion of the water authorized to be produced under the permit has not been put to a beneficial use during the 5-year period; and

(2) the permittee has not used reasonable diligence in applying the water or the unused portion of the water to an authorized beneficial use or is otherwise unjustified in the nonuse.

Subchapter D. Groundwater Exportation Permits

§ 5.301 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 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 the Date of Rules Adoption, and continuing thereafter, so long as there is no increase in the annual amount exported after that date;

- (2) groundwater that is incorporated into a finished, manufactured product within the District and then exported for sale outside the District;
- (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's boundaries and the groundwater is placed to use solely on that tract, but including portions outside the District's boundaries;
- (4) groundwater that is produced from a non-exempt well located within the District and delivered by the permittee to end users pursuant to a certificate of convenience and necessity ("CCN"), where the CCN boundaries straddle the District boundaries; or
- (5) groundwater that is produced from a well within the District's boundaries that is used solely to supply water to a municipality that has a population of 121,000 or less and for which the rights to the groundwater produced are owned by either: (a) a political subdivision that is not a municipality; or (b) a municipality that has a population of 115,000 or less, and the rights to the groundwater were purchased, owned, or held before May 26, 2001, regardless of the date the well is drilled or the water is produced.

§ 5.302 Groundwater Exportation Permit 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 first file with the District an application to export groundwater on a form prescribed by the District and obtain a groundwater exportation permit from 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.
- (d) The District may not deny a permit under this subchapter based on the fact that the applicant seeks to export groundwater outside of the boundaries of the District, but may restrict a groundwater exportation permit to the annual production of groundwater and the purpose of use allowed under the associated groundwater production permit.

§ 5.303 Applications for Groundwater Exportation Permits

In addition to the information specified in § 9.104, an application for a groundwater exportation permit shall contain information reasonably related to the information to be contained in a groundwater exportation permit under §§ 5.304 and 5.305 and the elements to be considered by the Board in determining whether to grant or deny the application under § 5.304. The application shall be submitted on the form developed and prescribed by the District.

§ 5.304 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 a production 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, including consideration of feasible and practicable alternatives to the application;
- (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, subsidence, 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 or unreasonable environmental or economic effects on the District;
- (m) the proposed exportation is consistent with the applicable Regional Water Plans approved by the Texas Water Development Board; and
- (n) the proposed exportation is consistent with the District's approved groundwater management plan, as may be amended.

§ 5.305 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 does not include any existing or previously constructed facilities that were not constructed specifically for use in exporting the groundwater considered under the permittee's groundwater exportation permit application.

(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.

§ 5.306 Contents of Groundwater Exportation Permits

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

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

(b) the production permit number to be tied to the groundwater exportation permit;

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

(d) if not the permittee, the name, address, email, and telephone number of the owner of the land on which the well(s) 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(s) is to be used;

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

(h) the 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(s) for in-District use pursuant to the production limitations set forth in these rules, and any conditions or restrictions relative thereto;

(j) the metering and reporting requirements; and

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

§ 5.307 Standard Permit Conditions for Groundwater Exportation Permits

All groundwater 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 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 approved 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 the District of any changes in name, address, email, 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 duty 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.

§ 5.308 Withdrawals in Violation of Groundwater Exportation Permit Prohibited

No holder of a groundwater exportation permit may export groundwater in a manner inconsistent with the terms of the permit, and any production in violation of a groundwater exportation permit is illegal, wasteful per se, and a nuisance.

§ 5.309 Transfer of Ownership or Lease; Notice

Within 30 days after transfer of the ownership of all or part of a groundwater exportation permit, or all or part of a lease of the right to export thereunder, the transferee shall file with the District a notice of transfer of ownership on a form prescribed by the District, accompanied by evidence of the change of ownership. 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.

§ 5.310 Groundwater Exportation Permit Transfers or Amendments; Applications

(a) A groundwater exportation permit may be amended as follows:

- (1) purpose of use;
- (2) place of use;
- (3) the total volume of groundwater exported in acre-feet per annum;
- (4) rate of production in gpm;
- (5) point of withdrawal; or
- (6) ownership in accordance with § 5.309.

(b) Any person seeking to amend their permit as provided in Subsection (a)(1)-(5), must first file with the District an application to amend on a form prescribed by the District.

(c) No permit amendment is effective until the amendment has been approved by the Board.

§ 5.311 Basis for Granting Applications to Amend Groundwater Exportation Permits

The Board shall grant an application to amend a groundwater exportation permit if it finds that:

- (a) the requirements in § 5.304 are satisfied; 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.

Subchapter E. Wells Exempt from Permits

§ 5.401 Exempt Wells

- (a) The owner and/or operator of any of the following types of water wells is exempt from the duty to obtain a production permit:
- (1) a well drilled and operated solely for domestic use or for providing water for livestock, poultry, or wildlife, if the well is:
 - (A) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day, and located on a tract of land equal to or greater than 10 acres; or
 - (B) located on a tract of land less than 10 acres and for which there is no Public Water Supply water available at a reasonable cost and the well is equipped to be incapable of producing more than the product of 25,000 gallons per day multiplied by the number of deeded acres for the parcel of land divided by 10 acres in gallons per day;
 - (2) a well drilled solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig;
 - (3) a well drilled and authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, and the well is exempt from the requirement to obtain a production permit to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water;
 - (4) a § 36.121 well;
 - (5) a well that meets the requirements of § 5.401(a)(1) and is also used to provide water for a Cottage Food Production Operation, and the well owner has obtained a letter from the District indicating that the well owner meets the requirements of a Cottage Food Production Operation, and the well owner has paid any required administrative fees;
 - (6) a dewatering well that is less than 65 feet in depth that is used solely for the purpose of dewatering the ground within an active construction area for which notice is provided to the District by the driller before drilling has started;
 - (7) a monitoring well;
 - (8) a well that produces less than 1 acre-foot per year of groundwater and is equipped with a flow restriction device limiting the flow to less than 5 gallons per minute; and
 - (9) a well drilled into any aquifer not identified in § 5.102 of these rules.

(b) Notwithstanding Subsection (a), the District may require a well to be permitted pursuant to these rules if any of the applicable criteria in § 36.117(d), of the Texas Water Code is satisfied, including for a well meeting other requirements of a § 36.121 well, if the water is not used solely to supply a municipality that has a population of 121,000 or less.

(c) A person holding a permit issued by the Railroad Commission of Texas under Chapter 134 of the Texas Natural Resource 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 wells qualifying as exempt wells pursuant to Subsection (a) of this section shall be registered with the District 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 shall comply with the spacing requirements set forth in these rules and the well owner shall obtain a drilling permit from the District prior to any well being drilled.

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

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

(i) The owner and/or operator 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.

(j) An exemption provided under this section does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.

(k) Groundwater withdrawn under an exemption provided in accordance with this section and subsequently transported outside the boundaries of the District is subject to any applicable production and export fees under these rules.

§ 5.402 Loss of Exemption; Notice of Changed Circumstances

The owner and/or operator 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 and/or operator of the well shall give written notice to the District of the changed circumstances. If the Board determines that the changed circumstances have caused

the well to lose its exemption, then the Board will issue an order declaring the loss of exemption and advising the well owner and/or operator that the well is subject to District regulation, including the duty to obtain a permit, or other regulation, as may be applicable.

§ 5.403 Well Conversions

(a) If the owner and/or operator of a well for which a production permit has been issued desires to convert the well to one exempt from the duty to obtain a production permit, the owner and/or operator must claim the exemption by abandoning the production permit and registering the well as exempt as provided in § 5.501.

(b) If the owner and/or operator of a well exempt from the duty to obtain a production permit desires to convert the well to one for which a production permit is required, then the owner and/or operator must apply for and obtain a production permit.

Subchapter F. Registration of Wells

§ 5.501 Registration of Wells

(a) No person may operate a well within the boundaries of the District without first registering the well with the District using a registration form approved by the District, and obtaining written District approval of the registration and agreement that the well qualifies as exempt or will be authorized under a production permit. All registrations for existing wells shall be filed with the District on or before the Application Deadline.

(b) In addition to the information specified in § 9.104, a well registration shall contain the following, 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 where the water from the well will be used;
- (7) information relating to the size, source of power, and estimated production rate (in gpm) of the pump used or to be used in the well;
- (8) the depth or proposed depth of the well and the depth of the casing;

- (9) the internal diameter of the well casing;
 - (10) the approximate date that the well was or will be constructed;
 - (11) the name, address, email, and telephone number of the well driller who constructed or will construct the well, and related information;
 - (12) a copy of any well drilling and completion report, driller's logs, geophysical logs, or well equipping report which pertain to the well;
 - (13) 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;
 - (14) 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;
 - (15) if requested by the District:
 - (A) 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; and
 - (B) a map or plat of the property on which the well is located, drawn to scale, not greater than 1000 feet to an inch (1" = 1000') that shows the pinpoint location of the well;
 - (16) the maximum amount of groundwater that the well is or will be capable of withdrawing per day stated in gallons;
 - (17) where applicable, a copy of any permit issued by the Railroad Commission of Texas relevant to the well; and
 - (18) any other information deemed necessary by the Board in order to determine whether the well qualifies for exempt well status or a production permit.
- (c) 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 have been paid;
 - (5) the registration identifies a proposed or an existing well;

- (6) the wellhead is or will be physically located within the boundaries of the District;
- (7) the production from the well is proposed to be placed to a beneficial use;
- (8) the registrant has a legal right to make withdrawals from the well;
- (9) for new wells, the proposed well location complies with the spacing rules;
- (10) the registrant is in compliance with any permits the registrant holds from the District and with District rules;
- (11) 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;
- (12) 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
- (13) the well meets the criteria for exempt well status pursuant to § 5.401 of these rules or will be authorized by a production permit.

(d) 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 and/or operator of the well shall file an application for, as applicable, a production permit, to transfer a production permit, and/or a well drilling permit or cease all withdrawals from the well and close the well as appropriate, under these rules.

Subchapter G. Permits Issued Prior to the Date of Rules Adoption

§ 5.601 Permits Issued Prior to the Date of Rules Adoption

Any permit or authorization to produce water from a well issued by the District prior to the Date of Rules Adoption, remains in effect until the later of: (i) Board approval of a new production permit for the well if applied for by the Application Deadline; or (ii) or the date of expiration stated in the issued permit or written correspondence from the District.

Subchapter H. Interim Production Status

§ 5.701 Purpose of Interim Production Status

Effective on the Date of Rules Adoption, the District will require all non-exempt wells to obtain permits in order to produce groundwater from within the District's boundaries. This subchapter sets out a process whereby existing, non-exempt well owners and/or operators may pump and beneficially use groundwater from their wells provided that they comply with the requirements of this subchapter and other applicable provisions of these rules to obtain a permit to authorize production from their well.

The fact that a well owner and/or operator may qualify for interim production status pursuant to this subchapter shall have no relevance in any future proceedings on any production permit application proceedings by the well owner and/or operator and shall not in any way bind either the District or the well owner and/or operator with respect to any issue of fact or law that may arise in any pending or subsequent application for a groundwater production permit.

§ 5.702 Eligibility for Interim Production Status

In order to qualify for interim production status, the owner and/or operator of a non-exempt well not authorized to produce groundwater by a production permit must, by not later than the Application Deadline, and prior to the operation of the well, timely file with the District an application for a production permit. If the well owner and/or operator of a non-exempt well for which a permit has not been issued fails to timely apply for a production permit, then no withdrawals may be made from the well until such time as the owner or operator obtains a production permit to authorize withdrawals.

§ 5.703 Effect of the Interim Production Status Period

If a well owner or operator timely files an administratively complete application for a production permit, the well owner or operator may, during the period that interim production status remains in effect, withdraw and beneficially use that quantity of groundwater identified in the application which the District preliminarily finds is a reasonable amount that can be beneficially used without waste for the use proposed in the application. The District shall consider a public water system’s application for interim production status for 15% more than the system’s “maximum daily demand” under 30 TEX. ADMIN. CODE § 290.45 to be beneficial use without waste.

§ 5.704 Duration of Interim Production Status

(a) A non-exempt well may be operated pursuant to interim production status beginning on the date the District finds the reasonable amount that can be beneficially used without waste for the use proposed in an application determined by the District to be administratively complete.

(b) Interim production status for a non-exempt well shall cease, and no further withdrawals may be made from the well pursuant to interim production status, as follows:

- (1) if the person owning and/or operating the well files an administratively complete application for a production permit for the well on or before Application Deadline, or prior to withdrawing groundwater from the well, and the District ultimately denies the application, then interim production status for that well shall cease on the date the District issues its denial; or
- (2) if the person owning or operating the well files an administratively complete application for a production permit for the well on or before Application Deadline, or prior to withdrawing groundwater from the well, and the District grants the application, then interim production status for that well shall cease on the date the District issues a final order acting on the production permit application for the well; or
- (3) not later than 2 years after the Application Deadline.

§ 5.705 Interim Production Groundwater Withdrawal Conditions

Withdrawals of groundwater during interim production status are conditioned upon the well being in compliance with all applicable rules of the District, including the following:

- (a) well construction;
- (b) payment of groundwater production fees for requested production amount due with filing of application for production permit and annually thereafter for so long as interim production status continues;
- (c) well spacing; and
- (d) well operation.

CHAPTER 6. WELL MANAGEMENT

Subchapter A. General Provisions

§ 6.001 Responsibility for Well Management

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

§ 6.002 Well Construction and Pump Installation Standards

(a) All new wells located within the District’s boundaries shall be installed, equipped, operated, maintained, and closed in accordance with Chapters 1901 and 1902, Texas Occupations Code, and Chapter 76, 16 Texas Administrative Code, as may be amended, the Texas Department of Licensing and Regulation’s 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. In addition, all new wells located within the District’s boundaries that are completed so as to be capable of producing groundwater from the Managed Aquifers shall be located, drilled, equipped, and operated in accordance with 30 Texas Administrative Code § 290.41(c)(1)(A)-(D), (c)(2), (c)(3)(B) – (F)(i), (c)(3)(H) – (Q). To the extent that any of the applicable requirements cited in this section conflict, the well owner and/or operator, driller and/or pump installer shall comply with the requirement that is more protective of groundwater and the environment.

(b) Any existing well or pump that is altered, reworked, re-drilled, re-equipped, or replaced must be done in accordance with the standards in Subsection (a), irrespective of whether the well owner and/or operator is required to obtain a drilling permit from the District.

§ 6.003 Re-completions

(a) The landowner, well owner and/or operator shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the 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 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 may direct the landowner, well owner, and/or well operator to take steps to prevent the commingling of undesirable water and fresh water, or the loss of water.

Subchapter B. Well Spacing and Location Requirements

§ 6.101 Location of Wells

(a) All new wells must comply with the location requirements set forth in the Texas Department of Licensing and Regulation's rules in Chapter 76, 16 Texas Administrative Code, as may be amended.

(b) All new wells must be located a minimum horizontal distance of 50 feet from any property line.

(c) No new 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 waste from sewage treatment systems.

§ 6.102 Required Well Spacing

(a) Except for replacement wells, the minimum well spacing distance between a new non-exempt well and an existing permitted or registered well shall be the smaller of 750 feet or the distance equal to the radius of influence of the new well on the existing well. The radius of influence shall equal the radial distance the new well causes 1 foot of drawdown in the groundwater level after continuous pumping for 48 hours of the new well at the greater of the maximum permitted flow rate for the well or 25 gpm.

(b) The spacing requirements set forth in subsection (a) of this section are not applicable to any well that was completed on or before the Date of Rules Adoption. However, any modification to substantially increase the capacity of a well that was originally completed on or prior to the Date of Rules Adoption, requires approval of the Board.

§ 6.103 Applications for Variance from Well Spacing Limitations

In addition to the information specified in § 9.104, an application for variance from well spacing limitations shall contain the following:

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

- (b) Name and Address of Operator. The full name, address, email, and telephone number of the operator of the proposed well if not operated by the well owner.
- (c) Drilling Application Number. The drilling permit application number for the proposed well.
- (d) The names and addresses of owners of wells located within the applicable minimum well spacing distance mandated in § 6.102 from the proposed well.
- (e) Information about why the applicable well spacing requirements mandated in § 6.102 cannot be complied with, if applicable.
- (f) Information demonstrating that the operation of the proposed well will not substantially interfere with the use and enjoyment of wells located within the minimum well spacing distance mandated in § 6.102, if applicable.
- (g) Signed waivers from all owners of wells located within the applicable minimum well spacing distance mandated in § 6.102 from the proposed well stating that they have no objection to the District granting the requested variance, if applicable.
- (h) Any other information as may be required by the District.

§ 6.104 Variances from Well Spacing Limitations; Protesting Variance Applications

- (a) The Board may grant a variance from the well spacing limitations set forth in § 6.102 if the Board finds that:
 - (1) an administratively complete application for variance from well spacing limitations has been filed;
 - (2) the application complies with the rules of the District;
 - (3) all applicable fees have been paid;
 - (4) the applicant has shown good cause why the applicable well spacing limitations mandated in § 6.102 cannot be complied with; and
 - (5) the applicant has demonstrated that the operation of the proposed well will not substantially interfere with the use of wells located within the minimum well spacing distance mandated in § 6.102.
- (b) The Board may also grant a variance from the well spacing limitations set forth in § 6.102 if the Board finds that:
 - (1) an administratively complete application for a variance from the well spacing limitations has been filed;
 - (2) the application complies with the rules of the District;
 - (3) all applicable fees have been paid; and

(4) the applicant presents signed waivers from all owners of wells located within the applicable minimum well spacing distance mandated in § 6.102 from the proposed well stating that they have no objection to the District granting the requested variance.

(c) A well owner with a well located within the applicable minimum well spacing distance mandated in § 6.102 from the proposed well may protest the application for variance from spacing limitations pursuant to the procedures set forth in Subchapter D of Chapter 9. If the Board chooses to grant a variance to drill a well that does not meet the spacing limitations mandated in § 6.102, the Board may limit the production of the well to ensure that the well will not substantially interfere with the use and enjoyment of wells located within the minimum well spacing distance mandated in § 6.102.

(d) 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.

Subchapter C. Well Drilling Permits

§ 6.201 Well Drilling Permits Required

(a) Drilling, equipping, or completing any well or substantially altering the size of a well or well pump without a well drilling permit required by this subchapter is illegal.

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

(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.

§ 6.202 Applications for Well Drilling Permits

In addition to the information specified in § 9.104, an application for a well drilling permit shall contain the following:

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

(b) Name and Address of Operator. The full name, address, email, and telephone number of the operator of the well or proposed well if not operated by the well owner.

(c) 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).

- (d) Well Address. The physical address of the property upon which the well or proposed well is or is proposed to be located.
- (e) Well Location. A description of the actual or proposed location of the well, including: the county; section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines), and the latitude and longitude for the well based on readings from a global positioning satellite (GPS) accurate to within a horizontal distance of 50 feet
- (f) Map. A city or county map with the location of the property on which the well is or will be located highlighted and the location of the well pinpointed.
- (g) Purpose of Use. The proposed purpose of use for the water stated in definite terms.
- (h) Amount of Annual 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 or gallons.
- (i) Rate of Withdrawal. The maximum rate of withdrawal that the well will be capable of in gallons per minute.
- (j) Depth. The proposed depth of the well and proposed depth of cement casing.
- (k) Casing. The proposed depth of the cemented casing and cementing methodology.
- (l) Depth of Strata. The predicted depth to the top of the targeted water-bearing strata.
- (m) Pump. The size of the proposed pump and pumping method.
- (n) Proposed Construction Date. The approximate date that well construction operations are proposed to begin.
- (o) Identity of Well Driller. The name, address, email, telephone number and driller's license number of the well driller.
- (p) Water source. The applicant shall identify the intended source or sources of water for the well and name of aquifer(s) in which the well is screened.
- (q) Legal Basis of Right to Withdraw Groundwater. The applicant shall identify the legal basis under which groundwater will be withdrawn from the well (production permit) which the applicant either owns or is seeking to obtain.
- (r) Any other information as may be required by the District.

§ 6.203 Basis for Action on Well Drilling Permit Applications

The District's General Manager shall grant an application for a well drilling permit if the General Manager finds that:

- (a) the application is complete;
- (b) the application complies with the rules of the District;
- (c) all applicable fees 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;
- (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;
- (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;
- (n) the well is not located on land that was subdivided in violation of Chapter 232, Texas Local Government Code; and
- (o) the well will be installed, equipped, operated, maintained, or closed, as appropriate, consistent with applicable local, state, and federal law.

§ 6.204 Well Drilling Permit Does Not Authorize Withdrawals

No water may be withdrawn or produced from a well for which the District has issued only a well drilling permit, 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 or operator of such well first obtaining a production permit.

§ 6.205 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 District's General Manager, 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.

§ 6.206 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 200 yards 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 and location requirements. All test wells must, within 60 days, be completely plugged in compliance with applicable well plugging standards.

§ 6.207 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 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 the well is not due to the permittee's own lack of due diligence.

§ 6.208 Contents of Well Drilling Permits

Well drilling permits shall contain the following:

- (a) name, address, email, and telephone number of the permittee;
- (b) name, address, email, 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, and the latitude and longitude for the well based on readings from a global positioning satellite (GPS) accurate to within 50 feet;
- (g) identification of the legal authority to produce groundwater from the well (production permit) which the applicant either owns or is seeking to obtain;
- (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; screen, perforation, and filter pack intervals; 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 drill and test 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.

§ 6.209 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 withdrawals 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 the District of any changes in name, address, email, or telephone number of the permittee, or the authorized representative, the landowner, well owner, or well operator, as may be appropriate;
- (l) the duty to comply with all of the terms and conditions of the permit;
- (m) the duty 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
- (o) any other conditions as the Board may deem appropriate.

§ 6.210 Notice of Condition Affecting Groundwater Quality; Corrective Action

If at any time a well owner or operator 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 an aquifer within the District, then the owner and/or operator shall, within forty-eight (48) hours of learning of the fact(s), notify the District in writing of the well condition. The District may conduct an investigation and, if facts warrant, direct the owner and/or operator of the well, at the owner's or operator 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.

§ 6.211 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.

§ 6.212 Replacement of Wells

(a) A well owner or operator may rework, re-equip, re-drill or replace an existing permitted or registered well by filing an application to amend such permit or registration, and providing such information as may be required by the general manager, without notice and hearing under the following conditions:

- (1) The replacement well must be drilled within 100 feet of the original permitted location;
- (2) The replacement well shall not be located any closer to any other permitted well or authorized well site than the well being replaced, unless the new location complies with the minimum spacing requirements set out in Subchapter B of Chapter 6 of these rules;
- (3) The replacement well or pump shall not be changed to a larger size or capacity so as to increase the rate of production authorized in such permit; and
- (4) If a replacement well is drilled, the well owner or operator shall cease production from the existing permitted or registered well and ensure that the replaced well is, within 90 days:
 - (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 or applicable to a monitoring well under these rules.

§ 6.213 Transfer of Well Drilling Permit Prohibited

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

§ 6.214 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 drill or construct a water well unless the person first 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.

(b) The requirement to hold a well driller's license pursuant to Subsection (a) of this section does not apply to any person who personally drills, constructs or alters a water well on his own property for his own use.

(c) Except as otherwise provided in Subsection (d) of this section, within the District's boundaries, no person may install or repair a water well pump unless the person first 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.

(d) The requirement to hold a pump installer's license issued by the TDLR pursuant to Subsection (c) of this section does not apply to:

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

(2) 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 otherwise in the business of installation or repair of water pumps or equipment.

(e) Regardless of whether a license is required, all persons engaging in well drilling or pump installation or repair must comply with the applicable standards set forth in the TDLR's rules at 16 Texas Administrative Code §§ 76.701, 76.702, 76.1000, 76.1001, 76.1003, and 76.1004, as may be amended, and the District's rules. In the event that a specific provision in the District's rules conflicts with a specific provision in the TDLR's rules, the more stringent provision will govern.

§ 6.215 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.

§ 6.216 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, 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 D. Capping of Wells

§ 6.301 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 prevent waste, except when the well is in actual use by the owner or operator thereof and all withdrawals are applied to beneficial use.

(c) If the owner or operator 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 of an affidavit in the deed records of the county where the well is located, 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 operator, 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 E. Plugging of Abandoned or Deteriorated Wells

§ 6.401 Responsibility

It is the responsibility of the well owner and/or operator to plug or have plugged any well that is deteriorated or abandoned, in accordance with Chapter 1901, Texas Occupations Code, and Title 16, Chapter 76, Texas Administrative Code, as may be amended.

§ 6.402 Report on Plugging of Wells

The person that plugs a well shall, within thirty (30) days after plugging is complete, submit a copy of the plugging report (on forms furnished by the TDLR) to the District.

Subchapter F. Reworking and Replacing a Well

§ 6.501 Procedures

- (a) An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well's 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 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 100 feet of the existing well and shall not be drilled nearer to the property line than the original well.

CHAPTER 7. FEES

§ 7.001 Registration Fees

(a) For exempt wells completed so as, in the opinion of the District, to be capable of producing water from any of the aquifers, the District shall assess a non-refundable fee per well to file a well registration with the District per the approved fee schedule in effect at the time of registration.

(b) The applicable registration 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 District may refuse to accept the registration for filing and/or commence any other action to enforce payment as authorized by law.

§ 7.002 Application Fees

(a) The District shall, in an amount set by the Board, assess a non-refundable application fee. The application fee shall be assessed for the purpose of compensating the District for the administrative functions associated with the following applications:

- (1) a new, renewal, or amended production permit application;
- (2) wells that are exempt under § 5.401(a)(5) (Cottage Food Production Operation);
- (3) a new, renewal, or amended groundwater exportation permit application; and
- (4) a well drilling application.

(b) All required fees 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 District may refuse to accept the application for filing, or otherwise cease processing the application.

(c) If an application fee is determined by the District to be insufficient to cover the anticipated costs of processing the application, the District shall require the applicant to post additional funds in an amount determined to be sufficient to cover anticipated costs. The costs for which the District may require the posting of additional funds 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 the additional amounts, then the District may suspend processing the application, and may return the application. As application processing costs are incurred by the District, at the District'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 periodic accountings of billings against the deposit. If the additional deposit is determined by the District to be insufficient to cover the application processing costs, then the applicant may be required to pay additional fee deposits. Any unexpended and unobligated fee deposits will be promptly returned to the applicant after the Board issues a final order disposing of the application.

§ 7.003 Groundwater Production Fees

- (a) The District shall assess groundwater production fees as set forth in this chapter.
- (b) Except for withdrawals of groundwater made from an exempt well as defined under § 5.401, groundwater production fees shall be assessed by the District against all withdrawals of groundwater from within the boundaries of the District.
- (c) Annually, the groundwater production fees for agricultural use and non-agricultural uses for the fiscal year shall be calculated and assessed by resolution and order based on the District's adoption of a budget reflecting annual operating revenue requirements for the fiscal year. The groundwater production fee for agricultural use shall not \$1 per acre-foot annually. The District shall calculate the groundwater production fee for non-agricultural uses in accordance with § 36.205, Texas Water Code, on a per acre-foot basis as follows: the District's estimated net annual operating revenue requirements minus an estimate of the amount of other fees and revenues to be collected, divided by the amount of groundwater estimated to be withdrawn in acre-feet by non-agricultural users. The groundwater production fee shall be assessed against the amount of groundwater actually produced.
- (d) All persons making withdrawals of groundwater from a non-exempt well within the boundaries of the District are required to pay to the District the groundwater production fee as assessed pursuant to this section. Each non-exempt well owner and/or operator shall complete a groundwater use report as required by § 8.004, and return the completed report, along with payment of the applicable groundwater production fees, to the District by no later than January 15th for the previous year's withdrawals. The amount due becomes delinquent if payment in full is not received by the District by January 30th following the year for which the fees are due.

§ 7.004 Administrative Fees for Cottage Food Production Operations

Wells that are exempt under § 5.401(a)(5) shall pay an annual administrative fee to the District by no later than January 15th for the previous year's withdrawals. The amount due becomes delinquent if payment in full is not received by the District by January 30th following the year for which the fees are due.

§ 7.005 Limitation on Amount of Assessments

The District may not assess a total amount of groundwater production fees that is more than is reasonably necessary for the annual operating revenue requirements for the administration of the District as reflected in its adopted annual fiscal year budget.

§ 7.006 Enforcement for Nonpayment

If the District determines that a fee is delinquent, enforcement for nonpayment may be as follows:

- (1) by suspending the processing of any application that the person owing the fee, or his successor in interest, may have pending before the District; or
- (2) by commencing any action to enforce payment and collection of the delinquent fee as may be authorized by law.

§ 7.007 Prohibitions

No person may withdraw groundwater from within the boundaries of the District if the person, or his predecessor in interest, is delinquent in the payment of any fee that is due and payable to the District.

§ 7.008 Unauthorized Withdrawals

(a) Any person who withdraws groundwater from within the boundaries of the District without legal authority shall pay to the District the groundwater production fees in force and effect for the period of time during which the unauthorized withdrawals were made.

(b) If a person makes withdrawals of groundwater that are not being metered in accordance with Chapter 8 of these rules, the Board may assess groundwater production fees based on the amount of water the permittee is authorized to withdraw under a production permit.

§ 7.009 Groundwater Export Fees

(a) The District shall assess, and all persons exporting groundwater produced from a well within the District's boundaries to a place of use outside of the District's boundaries shall pay, a groundwater export fee on the metered volume of groundwater produced for export. The groundwater export fee will be in addition to any production fees assessed by the District. The groundwater export fee applies to and will be assessed on all groundwater produced as follows:

- (1) water actually exported from the District's boundaries to a place of use outside the District's boundaries;
- (2) operational water that is lost in the operation and maintenance of the export project and not actually exported from the District's boundaries; and
- (3) reject water processed in order to produce water of a suitable quality for export and not actually exported from the District's boundaries.

(b) The groundwater export fee shall be calculated and assessed in accordance with § 36.122 of the Texas Water Code.

(c) The District will bill and collect the groundwater export fee. The monthly groundwater exportation report shall constitute the groundwater export fee invoice. At the end of each month, the holder of a groundwater export permit shall complete a groundwater exportation report, using the District's form, reporting the total amount of groundwater exported during the immediately preceding month, and return the completed form, along with payment of the applicable groundwater export fees, to the District by no later than the 15th day after the end of the month for which the fees are assessed. The amount due becomes delinquent if payment in full is not received by the District by the 30th day after the end of the month for which the fees were assessed.

(d) No person may export groundwater outside the District's boundaries if the owner and/or operator 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.

(e) 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.

(f) Any person, who exports groundwater outside the District's boundaries without metering in accordance with Chapter 8 of these rules, shall pay to the District the export fee then in force and effect based on the maximum amount of water the person is authorized to export under a groundwater exportation permit.

(g) A groundwater export fee shall not be assessed against:

(1) groundwater produced from within the District that is incorporated into a finished, manufactured product within the District and then exported for sale outside of the District;

(2) groundwater produced from 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; and

(3) groundwater produced from within the District and supplied by a public water system to customers within the public water system's retail service area where that retail service area straddles the District's boundaries. This exception does not apply to any water produced within the District's boundaries by a public water system that is conveyed outside the District's boundaries for any use other than retail service to the public water system's own customers.

§ 7.010 Inspection and Plan Review Fees

The Board may, by rule, establish fees for the inspection of wells, meters, or other inspection activities; plan reviews; special inspection services requested by other entities; or other similar services that require involvement of District personnel or its agents. Fees may be based on the amount of the District's time and involvement, out-of-pocket costs, number of wells, well production, well bore, casing size, size of transporting facilities, or amounts of water transported.

CHAPTER 8. METERS AND REPORTING

§ 8.001 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 no later than the Application Deadline. For a new, non-exempt well, a meter shall be installed before any groundwater is withdrawn from the well.

(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 pumping during a permit term. 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.

(d) **Installation and maintenance:** Meters must be installed, operated, maintained, and repaired according to the manufacturer's published specifications, and shall ensure accuracy of not greater than plus or minus five percent. If no specifications are published, there must be a minimum length of five pipe diameters of straight pipe upstream of the meter and one pipe diameter of straight pipe downstream of the meter. These lengths of straight pipe must contain no check valves, tees, gate valves, back-flow preventers, blow-off valves, or any other fixture other than those flanges or welds necessary to connect 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.

(e) **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.

(f) **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, then appropriate steps must be undertaken 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.

§ 8.003 Pre-existing Meters and Alternative Measuring Methods

(a) By no later than the Application Deadline, 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.

(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, then 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.

§ 8.003 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.

§ 8.004 Meter Reading and Groundwater Use Reporting

The well owner and/or operator must read the meter associated with the well and record the meter readings and the actual amount of withdrawals 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 31st 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. 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 through December 31); (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.

CHAPTER 9. PROCEDURES BEFORE THE DISTRICT

Subchapter A. General

§ 9.001 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 rules, policies, and objectives.

§ 9.002 Applicability

This chapter applies to the processing of all applications or registrations filed with the District, and to the adoption of rules and management plans by the District.

§ 9.003 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 such time 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 District, no later than the day of filing.

Subchapter B. Requirements for Applications and Registrations

§ 9.101 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.

§ 9.102 Applicability

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

§ 9.103 Proper Applicant, Registrant, or Filer

If a well or a proposed well has one owner or operator, that owner or operator shall file the application, registration, or notice of transfer of ownership required to be filed with the District. If there is more than one owner or operator, a joint application, registration, or notice of transfer of ownership shall be filed by those owners or operators. In such an instance, the owners or operators shall select one among them to act for and represent the others in filing the application, registration, or notice of transfer of ownership. Written documentation of such a selection satisfactory to the District shall be filed with the application, registration or notice of transfer of ownership.

§ 9.104 Contents of and Requirements for All Applications, Registrations, and Notices of Transfer of Ownership

All applications, registrations, and notices of transfer of ownership filed with the District shall be typewritten or printed legibly in ink and shall include:

(a) The full name, physical and mailing addresses, email, and telephone number of the applicant, registrant, or transferee. If the applicant, registrant, or transferee is a partnership, the name of the partnership shall be followed by the words "a partnership." If the applicant, registrant, or transferee is acting as trustee for another, the trustee's name shall be followed by the word "trustee." If one other than the named applicant, registrant, or

transferee executes the application, registration, or notice of transfer of ownership, the person executing the application, registration, or notice of transfer of ownership shall provide their name, position, physical address, mailing address, email, and telephone number.

(b) Signature of Applicant, Registrant, or Transferee. The application, registration, or notice of transfer of ownership shall be signed as follows:

(1) If the applicant, registrant, or transferee is an individual, the application, registration, or notice of transfer of ownership shall be signed by the applicant, registrant, transferee, or a duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant, registrant, or transferee. If the applicant, registrant, or transferee is an individual doing business under an assumed name, the applicant, registrant, or transferee shall attach to the application, registration, or notice of transfer of ownership 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.

(2) Joint applications, registrations, and notices of transfer of ownership. A joint application, registration, or notice of transfer of ownership shall be signed by each applicant, registrant, or transferee, or each applicant's, registrant's, or transferee's duly authorized agent with written evidence of such agency submitted with the application, registration, or notice of transfer of ownership. If a well or proposed well is owned by two spouses, 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, registration, or notice of transfer of ownership with the District with written evidence of such representation to be submitted with the application, registration, or notice of transfer of ownership.

(3) If the application, registration, or notice of transfer of ownership is by a partnership, the application, registration, or notice of transfer of ownership shall be signed by one of the general partners. If the applicant, registrant, or transferee is a partnership doing business under an assumed name, the applicant, registrant, or transferee shall attach to the application, registration, or notice of transfer of ownership 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, registrant, or transferee is an estate or guardianship, the application, registration, or notice of transfer of ownership shall be signed by the duly appointed guardian or representative of the estate and a current copy of the letters testamentary issued or order appointing guardian by the court shall be attached to the application, registration, or notice of transfer of ownership.

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

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

(c) Attestation. Each applicant, registrant, or transferee shall subscribe and swear or affirm under oath that the facts set out in the application, registration, or notice of transfer of ownership 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 of transfer of ownership.

Subchapter C. Application and Registration Processing by the District

§ 9.201 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.

§ 9.202 Applicability

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

§ 9.203 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.

§ 9.204 Review for Administrative Completeness

(a) The general manager will conduct an initial review of each application or registration for administrative completeness and advise the applicant of the results of the review.

(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 District to take or recommend action on the application or registration, as appropriate.

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

§ 9.205 Return of Applications and Registrations Deemed Not Administratively Complete

(a) If the District determines that an application or registration is not administratively complete, the District 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 District 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 District will return the incomplete application or registration to the applicant or registrant.

§ 9.206 Technical Review

(a) After an application or registration is determined by the District 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 District within 30 days of the date the information is requested and the information is considered essential by the District, the District 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.

§ 9.207 General Manager's Proposed Action on Applications and Technical Summary

(a) Following completion of technical review, the general manager will determine whether to recommend granting or denying the application 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 § 9.304; and
- (9) any other information that the general manager determines to be appropriate.

(c) The general manager will provide the applicant with a copy of the general manager's statement, any proposed permit (or denial) and the technical summary.

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

(a) **Applicability.** This section applies to all registrations and applications to be considered by the Board, other than applications for production permits, groundwater exportation permits, and applications for a variance from well spacing limitations.

(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. 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 the District's designated business hours and may be provided by email.

(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 or registration and the proposed permit, approval, authorization or denial are presented to the Board. Oral presentations before the Board will be limited to 15 minutes each, excluding time for answering questions, unless the chair establishes other limitations. Before the Board meeting, the chair may allot time for oral presentations. Oral presentations and responses to questions will be directed to the Board.

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

(h) 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.

§ 9.209 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 production permits, groundwater exportation permits, and applications for a variance from well spacing limitations where, after the time for the filing of a hearing request provided in § 9.304:

- (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.

(b) Scheduling the Board Meeting. Following the expiration of the time to file a hearing request pursuant to § 9.304 of this chapter, and if all 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 the District's designated business hours and may be provided by email.

(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 15 minutes each, excluding time for answering questions, unless the chair establishes other limitations. Before the Board meeting, the chair 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.

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

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

(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 or well, if different from the applicant;
- (3) the name or names of the operator or operators of the land or well, if different from the applicant;
- (4) the date the application was filed and the number assigned to it;
- (5) the time, date and location of the hearing;
- (6) the address or approximate location of the well or proposed well;
- (7) 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;
- (8) a summary of the action on the application recommended by the general manager pursuant to § 9.207 of these rules;
- (9) a statement of the legal authority and jurisdiction under which the hearing is to be held;

- (10) a brief description of the technical summary;
 - (11) 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;
 - (12) 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 14 days prior to the date of the hearing pursuant to § 9.304;
 - (13) 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 14 days before the date of the hearing, in accordance with § 9.304; and
 - (14) any other information the Board or general manager considers relevant and appropriate.
- (c) The District shall, not less than 20 days before the date of the hearing:
- (1) Post the notice in a place readily accessible to the public at the District Office;
 - (2) Provide the notice for posting at the Brewster County Courthouse to the county clerk;
 - (3) Provide the notice:
 - (A) by regular mail to the applicant; and
 - (B) by regular mail, facsimile, or email to any person who has requested notice under Subsection (d) below; and
 - (4) Publish the notice at least once in a newspaper of general circulation in the District.
- (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 email 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.
- (e) The applicant, at the applicant's expense, shall give the notification by first class mail to the owner of any land contiguous to the land identified by the applicant in the application, or to the extent not already provided, to an owner of an operating water well within 750 feet of the proposed well, not less than ten (10) days before the hearing. The applicant will provide the District with proof of service including a list of names and addresses of the landowners and/or well owners that were notified.

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

(a) Applicability. This section applies only to applications for production permits, 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 District may schedule as many applications for consideration at one hearing as deemed desirable and feasible.

Subchapter D. Contested Case Hearing Procedures

§ 9.301 Purpose

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

§ 9.302 Applicability

This subchapter applies to matters subject to a contested case hearing under § 9.210 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.

§ 9.303 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.

§ 9.304 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 production permits, groundwater exportation permits, and applications for a variance from well spacing limitation.

(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 fourteen days before the date of the hearing specified in the notice made pursuant to § 9.210.

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

- (1) the name, address, email, daytime telephone number, and fax number 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, email, daytime telephone number, and fax number 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) a request for a contested case hearing;

(4) whether or not the requestor is seeking a hearing to be conducted by SOAH;

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

(6) 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.

§ 9.305 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 three 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. Responses shall be filed with the District, 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.

- (e) The Board may delegate to a presiding officer the processing of requests for contested case hearing.
- (f) The determination of whether a hearing request should be granted is not itself a contested case hearing.

§ 9.306 General Hearing Procedures in Contested Cases

(a) 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 §§ 36.416(b) and (c) and 36.4165, Texas Water Code, Subchapters C, D, and F, Chapter 2001, Government Code, and the applicable rules of practice and procedure of SOAH (Title 1, Chapter 155, Tex. Admin. Code, as may be amended) governing any contested case hearing of the District conducted by SOAH, as supplemented by this subchapter.

(b) At the Board’s determination, a contested case hearing of the District must be conducted by:

- (1) a quorum of the Board;
- (2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
- (3) a SOAH administrative law judge, if a contested case hearing is to be conducted by SOAH pursuant to § 9.304, or a delegation is made at the Board’s discretion.

(c) Except as provided by Subsection (d), the Board chair 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 chair 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.

(f) **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.

(g) **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.

(h) **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 District equipment for the public, but the District will arrange access to any 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.

(i) 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 § 9.210. 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 or email to all parties.

§ 9.307 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.

§ 9.308 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, email, telephone number, 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.

§ 9.309 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.

§ 9.310 Pre-Hearing Conferences

(a) The presiding officer may hold one or more pre-hearing conferences 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.

§ 9.311 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 § 9.304, 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 § 9.305.

§ 9.312 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.

§ 9.313 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.

§ 9.314 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.

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

§ 9.316 Certified Questions

- (a) At any time during a contested case hearing presided over by a hearings examiner or SOAH, on a motion by a party or on the hearings examiner’s or administrative law judge’s own motion, a question may be certified to the District.

(b) Issues regarding District policy, jurisdiction or the imposition of any sanction by the hearings examiner or SOAH 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 or administrative law judge 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 or administrative law judge 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 or administrative law judge. 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 or administrative law judge 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 request for written findings and conclusions, a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

§ 9.317 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 District may permit a document to be filed without a certificate of service but will require the certificate to be filed promptly thereafter.

§ 9.318 Privilege

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

§ 9.319 Objections to Evidence

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

§ 9.320 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.

§ 9.321 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.

§ 9.322 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.

§ 9.323 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.

§ 9.324 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.

§ 9.325 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.

§ 9.326 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.

§ 9.327 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.

§ 9.328 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.

§ 9.329 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 § 9.208. 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.

§ 9.330 Discovery

Discovery may 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.

§ 9.331 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.

§ 9.332 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.

§ 9.333 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 10th 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 10th 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 10th 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.

§ 9.334 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.

§ 9.335 Exceptions to the Proposal for Decision

Prior to Board action, any party in a contested case may file written exceptions to the proposal for decision. Upon review of the exceptions, the hearing examiner may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the proposal for decision and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the hearing examiner for further proceedings.

§ 9.336 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 at least 10 days' prior 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.

§ 9.337 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 chair establishes other limitations. Before the Board meeting, the chair may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the Board.

§ 9.338 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.

§ 9.339 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 request for written findings and conclusions in accordance with § 9.341 is filed with the District not later than the 20th 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 35th day after the date the Board received the request.

(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 there is a request for a continuance by a party, and 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.

§ 9.340 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.

(b) The District shall send a copy of the decision in a contested case by first-class mail or email 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 by first-class mail or email 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.

§ 9.341 Request for Findings and Conclusions; Motion for Rehearing

(a) Filing motion. Only a party to the contested case may file a request for written findings and conclusions or a motion for rehearing.

- (b) A request for written findings and conclusions shall be filed with the District within 20 days of the date of the Board's decision.
- (c) A motion for rehearing may also be filed with the District within 20 days of the date of the Board's decision.
- (d) If a timely request for written findings and conclusions is filed, a motion for rehearing shall be filed no later than the 20th day after the date the Board issues its written findings and conclusions.
- (e) Failure to timely file a request for written findings and conclusions or motion for rehearing shall result in the Board not considering the request or motion.
- (f) On or before the date of filing of a request for written findings and conclusions or motion for rehearing, the party filing the request or motion shall mail or deliver a true and correct copy of the request or motion to all parties with certification of service furnished to the District.
- (g) A request for written findings and conclusions or motion for rehearing shall contain:
- (1) the name and representative capacity of the person filing the request or motion;
 - (2) the style and official docket number assigned by the District;
 - (3) the date of the decision; and
 - (4) for motions for rehearing, the grounds for the motion, including a concise statement of each allegation of error.
- (h) On receipt of a timely filed request for written findings and conclusions, the Board shall make written findings and conclusions regarding a decision of the Board. The Board shall provide certified copies of its written findings and conclusions to each party to the contested case proceeding not later than the 35th day after the request was filed with the District.
- (i) Only a party to the contested case proceeding may reply to a request for written findings and conclusions or a motion for rehearing. A reply must be filed with the District within 20 days after the date the request for written findings and conclusions or motion for rehearing is filed.
- (j) A timely filed motion for rehearing will be scheduled for consideration during a Board meeting. If any party has timely filed a request for written findings and conclusions, the motion shall not be scheduled for consideration by the Board prior to the Board's issuance of its written findings and conclusions.
- (k) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision is nullified. The Board may reopen the hearing to the extent it deems necessary. If the Board grants a motion for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the motion is granted. Thereafter, the Board shall render its decision.

(l) The failure of the Board to grant or deny a motion for rehearing before the 91st day after the date the motion is submitted constitutes a denial of the motion by operation of law without further action by the Board.

§ 9.342 Decision Final

(a) In the absence of a timely filed request for written findings and conclusions or motion for rehearing, a decision of the Board is final on the expiration of the period for filing a request as provided in § 9.341(b).

(b) If a party files a timely request for written findings and conclusions or motion for rehearing, a decision of the Board is final on the later of the following dates:

(1) if no request for written findings and conclusions is filed and the motion for rehearing is denied, the date the Board denies the motion for rehearing, including a denial by operation of law;

(2) if no request for written findings and conclusions is filed and the motion for rehearing is granted, the date the Board issues its written decision after the rehearing;

(3) if no motion for rehearing is filed but a request for written findings and conclusions is filed, the date the Board issues its written findings and conclusions;

(4) if a request for written findings and conclusions is filed, and a party thereafter timely files a motion for rehearing, and the motion for rehearing is denied, the date the Board denies the motion, including a denial by operation of law;

(5) if a request for written findings and conclusions is filed, and a party thereafter timely files a motion for rehearing as provided in § 9.431(d), and the motion for rehearing is granted, the date the Board issues its written decision after the rehearing;

(6) if a motion for rehearing is filed, and a party thereafter timely files a request for written findings and conclusions as provided in § 9.431(b), and the motion for rehearing is subsequently denied after the Board issues its written findings and conclusions, the date the Board denies the motion, including a denial by operation of law; or

(7) if a motion for rehearing is filed, and a party thereafter timely files a request for written findings and conclusions as provided in § 9.431(b), and the motion for rehearing is subsequently granted after the Board issues its written findings and conclusions, the date the Board issues its written decision after the rehearing.

§ 9.343 Appeal of Final Decision

(a) Not later than the 60th day after the date on which the decision of the Board becomes final, parties affected by the final decision in a contested case hearing may appeal the District's decision by filing suit under § 36.251, Texas Water Code. Regardless of whether or not a motion for rehearing is timely filed, parties may not file suit under § 36.251 if a request for written findings and conclusions was not timely filed as provided in § 9.431(b).

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.

- (b) 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.

§ 9.344 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

§ 9.401 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 20th 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 Brewster County Clerk, to be posted at the County courthouse;

- (3) publish the notice in one or more newspapers of general circulation in the District;
 - (4) provide the notice by mail, facsimile, or email 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 its website.
- (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 website 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 20 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 indicating the person's name, address, and who the person represents, if the person or entity represented is not in attendance.
- (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 email 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 an advisory committee of experts, interested persons, or public representatives to advise the District about a contemplated rule or management plan provision.
- (i) 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.

(j) 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.

(k) A proposed rule becomes final and effective on the day it is adopted by the Board, unless otherwise specified by the Board.

§ 9.402 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 90th 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 10. WATER QUALITY

§ 10.001 Prohibition on Pollution of Groundwater

A person or entity may not pollute or contribute to the pollution of groundwater in the District, and as applicable, must follow all federal, state, and local environmental statutes, requirements, and regulations, including, but not limited to those imposed under the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, the Public Health Service Act, the Safe Drinking Water Act, the Federal Water Pollution Control Act (the Clean Water Act), the National Environmental Policy Act, the Atomic Energy Act and the Low-Level Radioactive Waste Policy Act, as those statutes, requirements or regulations are administered by the appropriate agency, including but not limited to the Texas Railroad Commission, the TCEQ, the Texas Department of State Health Services, or their successors, and the Environmental Protection Agency. In the event that applicable statutes, requirements, or regulations require that the person generating, transporting, applying, disposing or otherwise managing a waste or a sludge obtain a permit from an agency, and where those activities occur within the boundaries of the District, notice of the application must be provided to the District by the applicant within ten

days of the date of application. In no event may waste or sludge be permitted to be applied in any manner in any outcrop area of any aquifer within the District.

CHAPTER 11. INVESTIGATIONS AND ENFORCEMENT

§ 11.001 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, or 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, if any.

§ 11.002 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.

§ 11.003 Judicial Civil 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.

(c) Civil penalties for breach of any rule of the District shall be not less than \$100 per day per violation and not more than \$10,000 per day per violation.

(d) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaint filed in an appropriate court of jurisdiction.

§ 11.004 Enforcement Action by the General Manager

If the general manager determines that a person, or his predecessor in interest, is in violation of the District Act, these rules, or the terms or conditions of a permit, he may suspend the processing of any application or authorization that the person has pending before the District.

§ 11.005 Enforcement Action by the Board

If the Board determines that a person, or his predecessor in interest, violated, is violating, or is threatening to violate the District Act, these rules, or the terms or conditions of a permit, it may, after providing a 10-day written notice to the person and an opportunity for the person to appear and be heard at a meeting of the Board:

- (a) suspend the processing of any application or authorization that the person has pending before the District, until the violation is remedied;
- (b) suspend any permit or authorization issued by the District, which is held by that person, until the violation is remedied;
- (c) commence any action authorized by law to address the violation, including filing a civil suit in state district court seeking an injunction, a mandatory injunction, civil penalties, and attorney's fees and other costs associated with bringing a suit; or
- (d) enter into, or authorize the general manager to enter into, a settlement agreement with the person.

§ 11.006 Enforcement Related to Annual Groundwater Production Limitations

- (a) If the Board determines that the holder of a production permit has exceeded the annual authorized withdrawal amount in the permit, the Board may suspend taking enforcement action for a period of time in order to determine whether the holder of the permit has average annual withdrawals over a three-year period in excess of the permit's annual authorized withdrawal amount.
- (b) If the Board determines that the holder of a production permit has annual withdrawals over a three-year period in excess of the permit's annual authorized withdrawal amount, the general manager and the Board may commence any enforcement action authorized by these rules and other law to enforce the terms of the permit.