

# BREWSTER COUNTY GROUNDWATER CONSERVATION DISTRICT RULES

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BCGWCD@GMAIL.COM  
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# **BREWSTER COUNTY GROUNDWATER CONSERVATION DISTRICT RULES**

## **SECTION 1. DEFINITIONS AND CONCEPTS**

### **RULE 1.1 DEFINITIONS OF TERMS:**

The Brewster County Groundwater Conservation District adopts the following definitions:

**“Abandoned Well”** means

(1) a well or borehole that has not been used for the production of water for at least one year and which is likely to cause pollution of groundwater. A well is considered to be in use and not abandoned if:

(a) it is a water well in good condition which contains casing, pump, and pump column in good condition, or

(b) it is a well in good condition that has been capped.

(2) a water well or borehole that is not in compliance with Texas law, the District Rules, the Texas Water Well Driller’s Act, or the rules of the Texas Natural Resource Conservation Commission or of the Texas Water Development Board.

**“Acre-foot”** means the volume of water necessary to cover one acre of land to a depth of one foot (325,851 gallons).

**“Aquifer”** means a specific subsurface water-bearing reservoir or series or system of reservoirs containing groundwater, whether or not connected, having ascertainable boundaries.

**“Beneficial Purpose”** means agricultural, gardening, domestic, stock raising, wildlife, municipal, mining, manufacturing, industrial, commercial, or recreational purposes; exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or any other purpose that is useful and beneficial to the user.

**“Board”** means the Board of Directors of the District.

**“Commercial Use”** means the sale or transfer of water for a valuable consideration.

**“County”** means Brewster County, Texas.

**“Desired Future Condition”** means a quantitative description, adopted in accordance with Section 36.108, Texas Water Code, of the desired condition of the groundwater resources in a Groundwater Management Area at one or more specified future times.

**“District”** means the Brewster County Groundwater Conservation District.

**“District Act”** means House Bill 787 of the 77th Session of the Texas Legislature.

**“District Office”** means the office of the District as established by the Board.

**“Draw Down”** means the difference in the levels of water in a well before pumping and after pumping.

**“Domestic Well”** means a well producing water exclusively used by an individual or a household for drinking, washing, or culinary purposes; irrigation of lawns, a family garden or orchard; watering domestic animals; and water recreation; for which no monetary consideration is given or received.

**“Drilling permit”** means a permit for a water well issued or to be issued by the District allowing a water well to be drilled within the District.

**“Exempt well”** means any well used solely for Domestic/Residential uses or for providing water for livestock and wildlife or poultry on a tract of land larger than ten (10) acres if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day or 17.36 gpm, unless it is aggregated with other wells on the well owner’s property.

**“Export Permit”** means an authorization issued by the District allowing the export or transportation of groundwater out of the District.

**“Groundwater”** means water percolating below the surface of the earth within the District.

**“Groundwater Management Area”** means an area designated and delineated by the Texas Water Development Board as suitable for the management of groundwater resources.

**“Hearing”** means any public proceeding conducted by the Board relating to a permit, application, amendment to these Rules or the District Management Plan, or any other proposed action of the Board.

**“Hearing Body”** means the Board, any committee of the Board, or a Hearing Examiner at any hearing held under the authority of the Rules, the District Act, or Chapter 36 of the Water Code.

**“Hearing Examiner”** means a person appointed by the Board of Directors to conduct a hearing or other proceeding. A Hearing Examiner must be a licensed attorney.

**“Hearing Rules”** means the civil procedure and evidence rules for district courts in Texas as amended and in effect at the time.

**“Historic Use”** means documented, specific beneficial use during any 4 years within a 20 year period.

**“Geothermal well”** means a well used to circulate water or other fluids through the earth as a heat source or heat sink.

**“Landowner”** means the person who owns the surface of the land.

**“Mailing address”** means such mailing address of the District as may be set by the Board from time to time, and which is, at the time of the adoption of the Rules, P. O. Box 465, Alpine, Texas 79831.

**“Managed Available Groundwater”** refers to the term used by the Texas Water Development Board in some of its models and associated reports, model runs, and other written documents, and which was defined by statutory law in existence prior to the 2011 legislative session, during which the 82nd Legislature replaced the concept of Managed Available Groundwater with Modeled Available Groundwater.

**“Management Plan”** means the Management Plan of the District referred to in Section 7 of these Rules and as may be supplemented or amended from time to time.

**“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 the Desired Future Conditions established for the Aquifers in the District.

**“Monitoring Well”** means a well utilized to measure some property of the groundwater or aquifer it penetrates.

**“Open Meetings Act”** means Chapter 551, Texas Government Code.

**“Operating Permit”** means a permit issued by the District for a water well, allowing groundwater to be withdrawn from a water well for a designated period.

**“Non Exempt Well”** means any well that is not an exempt well.

**“Person”** includes an individual, corporation, limited liability company, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

**“Presiding Officer”** means the Chairman, Vice-Chairman, Secretary, or other member of the Board presiding at any hearing or other proceeding of the District, or a Hearing Examiner conducting any hearing or other proceeding.

**“Pollution”** means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the District, that renders the water harmful, detrimental, or

injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness of the water for lawful or reasonable purpose

**“Public Information Act”** means Chapter 552, Texas Government Code.

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

**“Static level”** means the level at which water stands in a well that is not being pumped.

**“Surface Water”** means water within the District in the Rio Grande and in creeks and impoundments from rains, runoff from rains, and springs.

**“Sustainability”** means the withdrawal of groundwater from an aquifer at a rate that is equal to or less than the estimated recharge from all sources of recharge, natural and artificial.

**“Transfer Permit”** is a permit authorizing, the transfer of groundwater for a beneficial use on property not owned by well owner, or for beneficial use by an individual or entity other than the well owner.

**“Waste”** means:

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

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

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

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

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

(F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205 of the Texas Water Code.

“**Water meter**” means a water flow measuring device that can accurately record the amount of groundwater produced during a measured time.

“**Well**” means any facility, device, or method used to withdraw groundwater from an aquifer within the District.

“**Well Operator**” means the person who operates a well or a water distribution system supplied by a well.

“**Well Owner**” means the person who owns the land upon which a well is located or is to be located.

“**Well System**” means a group of wells tied to the same distribution system.

“**Withdraw**” means extracting groundwater by pumping or by another method.

## **RULE 1.2 PURPOSE OF RULES**

The Rules are adopted to, (1) accomplish the mission and goals of the District as stated in the District’s Management Plan, (2) to implement the Management Plan, and (3) to provide guidance to landowners and to well owners and operators regarding how the groundwater resources of the County will be managed by the District in cooperation with landowners and well owners and operators. The Board will review the Rules as often as it deems necessary and after the Management Plan has been revised at least every five years. A plan, once adopted, remains in effect until the adoption of a new plan.

## **RULE 1.3 USE AND EFFECT OF RULES**

The District uses the Rules as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They will not be construed as a limitation or restriction on the exercise of any discretion; nor will they be construed to deprive the District or the Board of any powers, duties, or jurisdiction conferred by law; nor will they be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act. The Rules will be administered in order to allow the District to perform its duties with flexibility and fairness.

## **RULE 1.4 AMENDING OF RULES**

The Board may, following a hearing, amend the Rules or adopt new rules from time to time and at any time. Notice, for purpose of amending the Rules, shall be as may be required for open meetings under the Texas Open Meetings Act

#### **RULE 1.5 HEADINGS AND CAPTIONS**

The captions in the Rules are for convenience or reference only and shall not define, limit, or qualify the provisions of the Rules.

#### **RULE 1.6 METHODS OF SERVICE UNDER THE RULES**

Except as otherwise expressly provided in the Rules, any notice or documents required by the 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, by telephonic document transfer to the recipient's current telecopier number, or by email. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three days will be added to the prescribed period. Service by email will be deemed complete only if the recipient acknowledges receipt. Where service by one or more methods has been attempted and failed, the service is complete upon publication of the notice in a newspaper of general circulation in the County.

#### **RULE 1.7 SEVERABILITY**

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

#### **RULE 1.8 EQUITABLE TREATMENT**

The District shall treat landowners, well owners, and well operators equally, including, without limitation, landowners, well owners, and well operators who are residents of the District and those who are not residents of the District. Landowners, well owners, and well operators may apply to the District for discretion in the enforcement of the Rules on the grounds of adverse economic effects or unique local conditions. In exercising discretion or granting a waiver of any Rule, the Board shall consider the potential for adverse affects on adjacent landowners. The exercise of discretion by the Board shall not be construed as limiting the power of the Board.

### **SECTION 2. BOARD**

## **RULE 2.1 PURPOSE OF BOARD**

The Board was created to manage, protect, and conserve the groundwater resources of Brewster County, Texas, while protecting private property rights and promoting constructive and sustainable development in Brewster County. To accomplish that mission, it will determine policy and may regulate the withdrawal of groundwater within the boundaries of the District. The Board may designate the General Manager to serve as the agent for the Secretary/Treasurer. It will exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.

## **RULE 2.2 BOARD STRUCTURE, OFFICERS**

The Board consists of the members appointed and qualified as required by the District Act. The Board will elect one of its members to serve as Chairman, to preside over Board meetings and proceedings; one to serve as Vice Chairman to preside in the absence of the Chairman, and one to serve as Secretary/Treasurer to keep a true and complete account of all meetings and proceedings of the Board and to account for the expenditure of the funds of the District. The Board will elect officers at its first meeting after the members have been qualified and annually at the first meeting in each calendar year after that, and at the first meeting after any vacancy occurs in the officers. Members and officers of the Board serve until their successors are appointed and sworn in accordance with the District Act and the Rules.

## **RULE 2.3 MEETINGS**

The Board will hold a regular meeting at least every month if necessary and at least once each quarter as the Board may establish from time to time by resolution. At the request of the Chairman, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held in accordance with the Texas Open Meetings Act.

## **RULE 2.4 COMMITTEES**

With the advice and consent of the Board, the Chairman may establish committees for formulation of policy recommendations to the Board, and the Chairman will appoint the chair and membership of the committees. Committee members serve at the pleasure of the Board. Committee members may include people who are not members of the Board if their expertise would help the Board. Unless or until the recommendations of a committee are adopted by the Board no act or recommendation of a committee shall be deemed an action by the Board.

## **RULE 2.5 APPLICABILITY OF ROBERT'S RULES OF ORDER**

Except as otherwise provided in these Bylaws, meetings of the Board and hearings conducted by the Board shall be conducted under the provisions of *Robert's Rules of Order*. However, failure to follow *Robert's Rules of Order* because of an incorrect ruling by the Chair, made in good faith, shall not constitute grounds for appeal of or objection to an action of the Board.



## **RULE 2.6 EX PARTE COMMUNICATIONS**

Board members' communications with each other must meet all requirements of the Open Meetings Act.

## **RULE 2.7 FINANCING OF DISTRICT OPERATIONS**

Annually, prior to the initial budget workshop of the Commissioners Court of Brewster County, the Board will establish a budget for its operations in the coming year. No ad valorem taxes will be a part of the District's budget, except that the contribution of Brewster County will be funded in any manner the Brewster County Commissioners Court may determine.

## **SECTION 3. ADMINISTRATION**

### **RULE 3.1 GENERAL MANAGER**

The Board may employ a General Manager. The General Manager will have no power, duty, or responsibility to bind the Board. The General Manager will be in charge of the day-to-day operations of the District, gathering information and performing such District functions as may be assigned by the Board. The Board will determine the salary and review the position of General Manager each year prior to the beginning of the next fiscal year. The General Manager, with approval of the Board, may employ all persons necessary for the proper handling of the business and operation of the District, and their salaries will be set by the Board. If no General Manager has been employed by the Board the Presiding Officer will perform the duties of General Manager.

### **RULE 3.2 MINUTES AND RECORDS OF THE DISTRICT**

All documents, reports, records, and minutes of the District will be available for public inspection and copying at the District Office in accordance with the Texas Public Information Act.

## **SECTION 4. DRILLING PERMITS**

**RULE 4.1** A well owner, well operator, or any other person acting on behalf of the well owner or well operator (including, without limitation, a well driller), must file an application for a water well drilling permit ("the application") before a well may be drilled, including the deepening of an existing well.

**RULE 4.2** The application shall include:

(1) the name, address, and telephone numbers of the well owner (and of the well operator if different from the owner),

- (2) the location of the proposed well, using GPS coordinates,
- (3) distance from the well owner's property line,
- (4) distance from the nearest known well
- (5) legal description and size of tract
- (6) a certification that any sewage or waste facility, including, septic tanks and drain fields, or any other source of contamination together with a description of the relevant facility, if known, is greater than the distances shown below:
- (7) the proposed use of the well,
- (8) if applicable, a certification that the well (a) will be drilled and equipped to produce less than 25,000 gallons per day, (b) is on a tract larger than ten acres, and (c) will be used solely for Domestic use or for providing water for livestock, wildlife, or poultry.
- (9) Sworn certification by the driller that the driller has in effect a liability policy in an amount of at least \$250,000, per individual claim and \$1,000,000, per occurrence to protect landowners and the groundwater of Brewster County from any negligence of the driller.
- (10) Sworn certification by the driller that all requirements of the Texas Commission on Environmental Quality will be complied with, (refer to Texas Department of Licensing and Regulation) and is that the driller is registered with the District.
- (11) A non-refundable check in the amount of \$100. Cash will not be accepted.

#### **RULE 4.3 DURATION OF DRILLING PERMITS**

#### **RULE 4.4 GRANT OF DRILLING PERMIT**

If the application meets all the requirements of the Rules, the District shall issue a drilling permit ("a drilling permit"), and the applicant may then proceed, at his own risk, to drill the well. In the event the General Manager or the Chairman determines that there is good cause to grant an application for a drilling permit before the next meeting of the Board, the General Manager or the Chairman may grant the application subject to the Board's ratification. The application and drilling permit shall constitute registration of the well with the District.

### **SECTION 5. PERMITS AND REGISTRATION**

**RULE 5.1** Registration of Wells: All wells, whether exempt or non exempt must be registered with the District. All existing wells shall be registered with the District on or before January 14, 2015. All new wells shall be registered within ninety (90) days of completion.

A well registration in accordance with this Section shall include the information required for a drilling permit, together with the static level in the well and the total depth of the well. After an

existing well is registered, the Board may issue an operating or production permit if the registration indicates that the well is in compliance with the law and these Rules. The District will make well registration forms available to area title companies for use at closing.

**RULE 5.2 Operating or Production Permit Requirement:** Within ninety (90) days after a well is drilled, unless it is an exempt well, the well owner or well operator must file an operating or production permit application prior to operating the well. The operating permit shall be approved by the Board if it is in compliance with the Rules. The application for an operating or production permit shall include the information required for a drilling permit, together with the following;

- (1) static level,
- (2) total depth,
- (3) copy of the drilling permit
- (4) Estimated amount and rate of withdrawal, per month, and per year.
- (5) Description of well, casing, and equipment.
- (6) Legal status: Is applicant a Corporation, Partnership, Sole Proprietorship, Non-Profit/ For Profit Public Water Supply Corporation. Will the well operate under a Certificate of Convenience and Necessity issued by Texas Council on Environmental Quality.
- (7) If water is to be transferred off premise to an end user(s), applicant will submit description of who, where and for what purpose.
- (8) Any other information reasonably required by the district
- (9) Certification that:
  - A. New operating wells will be equipped with equipment to measure static and pumping levels to facilitate well monitoring.
  - B. All wells will be cased according to standards described by the Texas Department of Licensing and Regulation Section 1901 Water Well Drillers and Pump Installers Law, and by any additional standards promulgated by Brewster County Groundwater District.
  - C. All non-exempt operating wells will be metered.
  - D. Well operator will provide monthly and annual production reports to the District
  - E. Well operator may be required to participate in District well monitoring program

- F. Well capacity as equipped does not exceed district production limits (7.1)
- G. 4. Well owner/operator will abide by district rules and management plan.
- H. The District may require a pump test to District specifications before granting an operating permit.

### **RULE 5.3 District's Responsibility Prior to Granting Operating Permit**

Prior to granting an operating permit, the District shall,

1. Publish on the District web site, giving the date and time of the next District meeting where the application will be considered.

The District shall include an agenda item on the next agenda giving the date and time

2. Identify owners and/or operators of registered wells within ½ mile of proposed operating well, and give direct notice to such parties that an application for the well operating permit has been submitted, and provide the date and time of the next District meeting at which the application will be considered. The District may request that an applicant assist in the identification and notification of such persons or entities; a permit may not be granted until registered well owners within ½ mile have been notified.

**RULE 5.4. Renewal of Operating Permit:** An operating permit for a non-exempt well must be renewed (1) every two years or (2) whenever a well is re-equipped to produce **water or a change of ownership or change of use.**

**RULE 5.5 Permit Applications:** Each original application for a water well drilling permit, operating permit, and permit renewal requires a separate application. Application forms will be provided by the District and furnished to the applicant upon request.

**RULE 5.6 Decision and Issuance of Permit:** In deciding whether or not to issue a permit, and in setting the terms of the permit, including production limits and spacing requirements, if any, the Board will grant the permit if the well complies with the Rules.

**RULE 5.7 Aggregation of Withdrawal:** In issuing an operating permit, the authorized withdrawal or production, if any, for a given well may be aggregated with the authorized withdrawal or production, if any, from other permitted wells designated by the District. **Sections 6 and 7** will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production. This will allow a well owner or well operator, with multiple wells which supply a single well system,

to apply for an operating permit for the well system, and the well owner or operator will not be required to apply for a separate operating permit for each individual well.

**RULE 5.8 OPERATING PERMIT PROVISIONS:**

All permits are granted subject to the Rules, orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit, each permit issued must contain the following standard permit provisions:

“This permit is granted in accordance with the provisions of the Rules of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with the Rules of the District.”

**RULE 5.9 EXCLUSIONS AND EXEMPTIONS:**

A drilling permit and well registration are required for all new wells in the District. An operating permit is not required for an exempt well as defined in Rule 1.1.

**SECTION 6. SPACING REQUIREMENTS**

**RULE 6.1 REQUIRED SPACING**

A new well may not be drilled within at least two hundred and eight (208) feet from the property line of any adjoining landowner..

**RULE 6.2 EXCEPTIONS TO SPACING REQUIREMENTS**

**6.2.1** If the applicant presents waivers signed by the adjoining landowner or landowners whose property line (or lines) is closer to the proposed well than required by Rule 6.1.1 and 4.1.2, stating that they have no objection to the proposed location of the well site, the spacing requirements will not apply to the new proposed well location.

Rule 6.2.2.

If the topography, or the size of the tract the well is on, reasonably prohibits a landowner from drilling a new well in compliance with the spacing requirements of this Section 6, and if the only feasible location for a well is closer to the property line or to an existing well than would be required by Rules 6.1.1. and 6.1.2., the requirements of this Section 6 will not apply.

**6.2.3.** If the applicant for a drilling permit is reentering an existing well to deepen or rework it, the spacing requirements of this Rule will not apply, and the Board shall grant the permit.

**6.2.4.** Providing an applicant can show good cause why a new well should be allowed to be drilled closer than the required spacing, the issue of spacing requirements will be considered during a contested proceeding. In the event of a contested proceeding, all adjoining landowners and all well owners or well operators within one-quarter (1/4) mile of the proposed well will be afforded the opportunity to participate and may be represented by counsel.

**6.2.5.** Existing wells are not subject to the spacing requirements of this Section 6.

**6.2.6.** The Board may grant exceptions to the spacing requirements of this Section 6. when the Board shall determine that such exceptions are necessary either to protect private property rights, prevent waste, or to prevent confiscation of property.

## **SECTION 7. PRODUCTION LIMITATIONS AND FEES**

### **RULE 7.1 MAXIMUM ALLOWABLE PRODUCTION**

**7.1.1** Because the District's goal is the long-term sustainability of the aquifers within the District, in order to minimize, as far as practicable, the draw-down of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, and in order to protect the aquifers in the District.

**7.1.2** Any owner of land or the owner's lessee or assignee may petition the Board for a production permit greater than the guidelines listed below. The petitioner may produce evidence similar to those listed in Section 5 7.2.2. if the Board is unable to reach a decision without evidence, the Board may require the petitioner to produce reasonable evidence that the proposed use will not cause a draw-down of the water table within the common aquifer, a reduction of artesian pressure, subsidence, interference between wells, a degradation of water quality, or waste.

No applicant may produce more than 163,000 gallons of water (or approximately ½ acre-foot) per year per acre of contiguous land owned by that person (or per acre of land from which that person owns the right to produce water). Nevertheless, any person producing water for Domestic purposes or to provide water for livestock and wildlife or poultry who owns less than four acres may produce 653,000 gallons of water (or approximately two acre-feet) per year without being in violation of this production limitation.

**The District may use the following guidelines which will be considered on each application:**

- 1 163,000 gallons (approximately one-half (1/2) acre foot) of water per year is a reasonable amount of water for an average family to use for domestic use.
- 2 650,000 gallons of water per year is a reasonable amount of water for a domestic, non-commercial garden .
- 3 10,000 gallons of water per year is a reasonable amount of water for one animal unit .
- 4 1.3 million gallons of water per year is a reasonable amount of water for irrigation of one acre.
- 5 2.6 million gallons of water per year per acre of land owned or leased is a reasonable amount of water for commercial use.

## **RULE 7.2 PETITION TO LIMIT PRODUCTION**

**7.2.1.** In accordance with the District’s goal of the long-term sustainability of the aquifers within the District, a landowner owning land over a common aquifer within the District (whether in whole or in part) (“the Petitioners”) may petition the District to request a review by the District of the relevant operating permits because of petitioners’ allegations that production from one or more wells owned by the same person or by related persons and being used for the same or similar purposes (other than Domestic use or providing water for livestock and wildlife or poultry) is causing a draw-down of the water table within the common aquifer, a reduction of artesian pressure, subsidence, interference between wells, a degradation of water quality, or waste.

**7.2.2.** The Petitioners will have the burden of proving that the wells of which they have complained are causing a draw-down of the water table within the common aquifer, a reduction of artesian pressure, subsidence, interference between wells, a degradation of water quality, or waste. Petitioners shall introduce:

**7.2.2.1** evidence of historical use in accordance with Section 36.116(b) of the Water Code, and

**7.2.2.2** hydrological evidence,

**7.2.2.3** The opinions of experts supporting their petition

If the Petitioners fail to introduce evidence of historical use and hydrological evidence and the opinions of experts, the District shall reject the petition with prejudice against its being re-filed by the same Petitioners unless the Petitioners can demonstrate that conditions have changed and that they had good cause for failing to introduce evidence in connection with the prior petition.

**7.2.3.** The District may retain its own experts if the District reasonably doubts the impartiality or scientific justification of the experts and opinions offered. The District shall consider and weigh all expert testimony and evidence.

**7.2.4.** In addition to historical and hydrological evidence, the District shall consider the economic impact of imposing production limits, as well as the economic and environmental impacts of not imposing limits if the District determines that the wells of which the Petitioners have complained are causing a draw-down of the water table, a reduction of artesian pressure, subsidence, interference between wells, a degradation of water quality, or waste.

**7.2.5.** If, after notice and hearing, the District determines that the production of which the Petitioners have complained is causing a draw-down of the water table, a reduction of artesian pressure, subsidence, interference between wells, a degradation of water quality, or waste, the District may change the operating permit or permits for the wells causing the draw-down of the water table, the reduction of artesian pressure, subsidence, interference between wells, the degradation of water quality, or waste in accordance with Section 36.116(a)(2)(A) of the Water Code by setting production limits. Any limits on production that may be set in accordance with

this Rule 7.2.5 may also be incorporated into the operating permits for the wells of Petitioners and any other landowners in the same area that are drawing from the same horizons and shall apply to production from the wells of the Petitioners and the other landowners whose permits may have been changed, as well as to production from the wells complained of. No limits that may be set in accordance with this Rule 7.2 will be more than are reasonably necessary to achieve the goal of long-term sustainability of the aquifer or aquifers affected.

### **RULE 7.3 AGREEMENT TO LIMIT PRODUCTION**

Landowners of contiguous tracts within the District aggregating at least 20,000 acres may, by contract:

- (1) limit production from their wells,
- (2) impose production limits more stringent than those imposed by Rules 7.1 or 7.2, and
- (3) allocate between wells and between landowners the production of groundwater that might be allowed under Rule 7.1 or Rule 7.2 from all wells in the area subject to the contract.

The contract may, as between the contracting landowners, recognize the doctrine of correlative rights and prohibit the so-called Rule of Capture as a defense against damages from overproduction. The contract shall be filed with the District, and if the contracting landowners request a review of their operating permits, the District, after giving notice to all adjoining landowners who are not parties to the contract, should hold a hearing on the requested modification of the relevant operating permits. The contracting landowners shall introduce:

- (1) evidence of historical use in accordance with Section 36.116(b) of the Water Code
- (2) hydrological evidence and
- (3) The opinions of experts supporting their contract.

If any adjoining landowner protests the proposed modification of the operating permits, each protesting landowner may introduce similar evidence to refute the evidence of the contracting landowners. If the evidence establishes that the contract will adequately protect the long-term sustainability of the aquifers within the District, the District may incorporate the contract into the operating permits of the contracting landowners, and the District may not impose other production limits under Rule 7.2. The notice contemplated by this rule shall be sent in accordance to Rule 1.6 to each adjoining landowner who has a well registered with the District at the address given in the well registration form.

### **RULE 7.4 RULES FOR PRODUCTION LIMITATION**

The District may limit production by amending these Rules instead of by modifying operating permits if it appears, from the evidence produced, that the draw-down of the water table within the common aquifer, the reduction of artesian pressure, subsidence, interference between wells, a



degradation of water quality, or waste will occur in an ascertainable geographic area. The area for which production limits may be imposed under this Rule 7.4 shall be defined with specificity, and all landowners within the area shall be notified of the new rule limiting production.

#### **RULE 7.5 LIMITATIONS ON PRODUCTION LIMITS**

Any limitations on production, whether established by permit modification under Rule 7.2 or by the adoption of a new rule under Rule 7.4, shall be no more than shall be necessary to prevent the draw-down of the water table within the common aquifer, the reduction of artesian pressure, subsidence, interference between wells, a degradation of water quality, or waste. Any limitations on production may be limited to a specific time period within which additional data may be generated. All limitations on production shall treat all affected landowners and well owners as equally as practicable.

#### **RULE 7.6 PRODUCTION FEES**

The District may assess annual production fees on non-exempt wells as authorized by law.

### **SECTION 8. EXPORT OF GROUNDWATER OUT OF THE DISTRICT**

#### **RULE 8.1 PERMIT REQUIRED**

Groundwater produced from within the District may not be transported outside the District's boundaries unless the Board has issued the well owner an export permit. An application fee is required.

#### **RULE 8.2 APPLICABILITY**

A groundwater export permit is not required for export of groundwater that is part of a manufactured product or agricultural produce, or if the groundwater is to be used on property that straddles the District boundary line.

#### **RULE 8.3 APPLICATION**

An application for an export permit must be filed in the District office and must include the following information:

- 8.3.1.** The name, mailing address, and phone number of the applicant;
- 8.3.2.** A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
- 8.3.3.** A water-conservation plan;
- 8.3.4.** A drought-management plan;

**8.3.5.** The location of the well(s) (relative to section lines or by GPS coordinates) and expected or proposed rates of withdrawal;

**8.3.6.** Proof of notification of all landowners adjacent to the property where the well or wells from which water is proposed to be exported are located and all well owners within one-half mile of any of the proposed production wells.

#### **RULE 8.4 HEARING AND PERMIT ISSUANCE**

**8.4.1.** Applications for export permits are subject to the hearing procedures provided by the Rules.

**8.4.2** In determining whether to issue an export permit, the Board shall consider:

**8.4.2.1.** the availability of water in the district and in the proposed receiving area during the period for which the proposed water transfer is requested;

**8.4.2.2.** availability of feasible and practicable alternative supplies to the applicant;

**8.4.2.3.** the amount and proposed use of the transferred water in the proposed receiving area;

**8.4.2.4.** the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District;

**8.4.2.5.** the projected environmental and economic effects on the District;

**8.4.2.6.** the compatibility of the proposed transfer with the approved regional water plan and District's management plan; and

**8.4.2.7.** other facts and considerations considered relevant or necessary by the District's Board for protection of the public health and welfare and conservation and management of natural resources in the District.

#### **RULE 8.5 EXPORT FEES:**

The District may impose all fees on the export of water as allowed by law, including those fees authorized by Sections 36.122 and 36.205 of the Texas Water Code.

#### **RULE 8.6 DURATION OF PERMIT:**

Export Permits issued will be valid for a time period of up to five years or as may be required by law.

#### **RULE 8.7 CONSTRUCTION OF EXPORT FACILITIES:**

Construction of an export facility, including without limitation, pipelines, storage facilities, and booster pumps, must commence within three (3) years of the issuance of the permit, or the permit will be invalid.

**RULE 8.8 EQUAL TREATMENT OF WELLS:**

Except as may be allowed by law and by these Rules, the District may not discriminate against exporters of water. However, the District recognizes that in-District use of water may have a dramatically different impact on the aquifers of the District, as well as the environment and the economy of the District, than the export of water, and the Board will consider impacts in determining whether to grant, deny, or modify a permit for export.

**SECTION 9. TRANSFER OF GROUNDWATER WITHIN THE DISTRICT**

**RULE 9.1. PERMIT REQUIRED**

A permit shall be required for groundwater to be transferred within the District for a beneficial use on property not owned by well owner, or for beneficial use by an individual or entity other than the well owner if the well is a non-exempt.

**RULE 9.2. APPLICABILITY**

A groundwater transfer permit is not required for the transfer of groundwater that is part of a manufactured product or agricultural produce.

**RULE 9.3. APPLICATION**

An application for a transfer permit must be filed in the District office and must include the following information:

- 9.3.1.** The name, mailing address, and phone number of the applicant;
- 9.3.2.** A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
- 9.3.3.** A water-conservation plan;
- 9.3.4.** A drought-management plan;
- 9.3.5.** The location of the well(s) (relative to section lines or by GPS coordinates) and expected or proposed rates of withdrawal;
- 9.3.6.** Proof of notification of all landowners adjacent to the property where the well or wells from which water is proposed to be transferred are located and all well owners within one-half mile of any of the proposed production wells.

**RULE 9.4 HEARING AND PERMIT ISSUANCE**

**9.4.1.** Applications for transfer permits are subject to the hearing procedures provided by the Rules.

**9.4.2.** In determining whether to issue a transfer permit, the Board shall consider:

**9.4.2.1.** the availability of water in the district and in the proposed receiving area during the period for which the proposed water transfer is requested;

**9.4.2.2.** availability of feasible and practicable alternative supplies to the applicant;

**9.4.2.3.** the amount and proposed use of the transferred water in the proposed receiving area;

**9.4.2.4.** the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District;

**9.4.2.5.** the projected environmental and economic effects on the District;

**9.4.2.6.** the compatibility of the proposed transfer with the approved regional water plan and District's management plan; and

**9.4.2.7.** other facts and considerations considered relevant or necessary by the District's Board for protection of the public health and welfare and conservation and management of natural resources in the District.

#### **RULE 9.5 TRANSFER FEES:**

The District may impose all fees on the transfer of water within the District as are provided by these Rules for the export of water outside of the District and as allowed by law, including those fees authorized by Sections 36.122 and 36.205 of the Texas Water Code.

#### **RULE 9.6 DURATION OF PERMIT:**

Transfer permits issued will be valid for a time period of up to five years or as may be required by law.

### **SECTION 10. REWORKING AND REPLACING A WELL**

#### **RULE 10.1 PROCEDURES:**

If a well owner or well operator intends to increase the rate of production of an existing well by reworking, re-equipping, or re-drilling the well, the well owner or well operator shall apply for a drilling permit as if it were a new well. If an existing well is reworked, re-equipped, or re-drilled in a manner that will not change the existing production quantity, no new permit will be required. If a well is exempt under the Rules, no permit will be required for re-equipping it.

## **SECTION 11. WASTE AND BENEFICIAL USE**

### **RULE 11.1 DEFINITION OF WASTE:**

Waste shall be defined as set forth in Section 1, Rule 1.1, and by Section 36.001(8) of the Water Code or by any amendment to it. In the event of a conflict, the Water Code shall prevail.

### **RULE 11.2 WASTE PREVENTION:**

Groundwater shall not be produced within the District or used within or without the District in such a manner as to constitute waste.

### **RULE 11.3 USE FOR A BENEFICIAL PURPOSE:**

All groundwater in the District shall be used for a beneficial purpose, which includes agricultural, gardening, domestic, stock raising, wildlife, municipal, mining, manufacturing, industrial, commercial, or recreational purposes; exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or any other purpose that is useful and beneficial to the user.

## **SECTION 12. ABANDONED WELLS**

### **RULE 12.1 OWNER TO CAP ABANDONED WELLS**

Every owner or operator of any land within the District, upon which is located any abandoned well or any open or uncovered well is, and shall be, required to close or cap the well within thirty (30) days after the owner or operator became aware that the well was abandoned or open or uncovered, as set forth in this Rule and in accordance with Chapter 36, Texas Water Code and subsequent changes thereto. The District may require the owner or lessee of land on which an abandoned or an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least four hundred (400#) pounds, except when the well is in actual use.

## **SECTION 13. HEARINGS, NOTICE, AND ENFORCEMENT**

### **RULE 13.1 CONDUCT OF HEARINGS:**

All hearings on any matter the Board may consider will be conducted informally if the matter is uncontested. Any contested hearings will be conducted in accordance with the Hearing Rules.

### **RULE 13.2 CONCLUSION OF THE HEARING; REPORT:**

The findings and conclusions of all hearings will be reduced to writing and filed with the records of the District. At the request of the participant, any participant in any hearing will be given a copy of the findings and conclusions.

### **RULE 13.3 FINAL DECISION; APPEAL:**

Any party who is affected by a decision of the Board made as a result of a hearing, and who is dissatisfied by the decision of the Board, may request a rehearing. If the rehearing is denied, or if the decision is affirmed after rehearing, the affected party may appeal to the district court.

**RULE 13.4 NOTICE AND ACCESS TO PROPERTY:**

An agent or employee of the District may not enter private property without the permission of the landowner or the landowner's agent except to inspect a permitted well and to ensure compliance with the District Rules. If a landowner or a landowner's agent refuses to allow District agents and employees to enter the property to inspect a permitted well and to ensure compliance with the Rules, the Board may revoke any permits held by the landowner previously issued by the Board or deny any permits pending before the Board.

**RULE 13.5 ENFORCEMENT:**

The District may enforce these Rules in any manner authorized by the Texas Water Code.