



*Clearwater Underground Water
Conservation District*

*excerpt of
RULES*

Proposed Amendments to Rules
(Set for Public Hearing on _____, 2016)

Proposed additions reflected in underlined text, and proposed deletions reflected in ~~strike-out~~.

** FOR CONVENIENCE OF REVIEW, ONLY THOSE RULES THAT ARE PROPOSED TO BE AMENDED OR REPEALED OR THAT ARE HELPFUL AND PROVIDE CONTEXT TO THE PROPOSED AMENDMENTS OR REPEAL HAVE BEEN INCLUDED IN THIS EXCERPT.

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~~The rules of the Clearwater Underground Water Conservation District were initially adopted by the Board of Directors on November 13, 2001, at a duly posted public meeting in compliance with the Texas Open Meetings Act and following notice and hearing in accordance with the Texas Water Code Sec. 36.101. In accordance with Section 59 of Article XVI of the Texas Constitution and Acts of the 71st Legislature, Regular Session, Chapter 525, 1989, and Chapter 36 of the Texas Water Code, and the District Act, these following rules are hereby ratified and adopted as the rules of this District by its Board. These rules which initially took effect on February 1, 2002, were subsequently amended on May 21, 2002, June 18, 2002, and February 24, 2004, and, in their present form, are effective as of March 1, 2004. Minor revisions occurred on October 18, 2004, December 14, 2004, March 29, 2005, April 26, 2005, June 21, 2005, December 13, 2005, February 20, 2007, April 20, 2010, January 11, 2011, August 9, 2011, and January 14, 2014.~~

The rules, regulations, and modes of procedure herein contained are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State and the rules of this District. These rules are to be construed to attain those objectives.

These rules may be used as guides in the exercise of discretion, where discretion is vested. However, these rules shall not be construed as a limitation or restriction upon the exercise of discretion conferred by law, nor shall they be construed to deprive the District or the Board of any powers, duties, or jurisdiction provided by law. Nothing in these rules shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by Section 36.002 of the Texas Water Code, recognizing, however, that Section 36.002 does not prohibit the District from limiting or prohibiting the drilling of a well for failure or inability to comply with minimum well spacing or tract size requirements adopted by the District; affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under Chapter 36 of the Texas Water Code or a special law governing the District; or require that a rule adopted by the District allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner. These rules will not limit or restrict the amount and accuracy of data or information that may be required for the proper administration of the law.

SECTION 1. DEFINITIONS AND CONCEPTS

RULE 1.1 DEFINITIONS OF TERMS

In these rules, the Clearwater Underground Water Conservation District follows the definitions of terms used in Chapters 32, 33, 35, and 36 of the Texas Water Code (TWC), unless a different definition is listed below. The following terms shall have the meanings listed below **[ONLY AMENDED OR REPEALED DEFINITIONS ARE INCLUDED]**:

“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 affected by the permit or permit amendment application to be considered, not including an interest common to members of the public. When used with respect to a Groundwater Management Area, “affected person” means:

- (1) an owner of land in the Groundwater Management Area;
- (2) a district in or adjacent to the Groundwater Management Area;
- (3) a regional water planning group with a water management strategy in the Groundwater Management Area;
- (4) a person who holds or is applying for a permit from a district in the Groundwater Management Area;
- (5) a person who has groundwater rights in the Groundwater Management Area;
- (6) or any other person defined as affected by a TCEQ rule.

“Aquifer Storage and Recovery Project” or “ASR Project” means a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the Project Operator.

“ASR” means aquifer storage and recovery.

“ASR Injection Well” means a Class V injection well used for the injection of water into a geologic formation as part of an ASR Project.

“ASR Recovery Well” means a well used for the recovery of water from a geologic formation as part of an ASR Project.

“Best available science” means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

“District Act” means the District’s enabling act, ~~Chapter 525, Acts of May 27, 1989, the~~ 71st Legislature, Regular Session, Chapter 524 (House Bill 3172), as amended by Act of April 25, 2001, 77th Legislature, Regular Session, Chapter 22 (Senate Bill 404), Act of May 7, 2009, 81st Legislature, Regular Session, Chapter 64 (Senate Bill 1755), and Act of May 27, 2015, 84th Legislature, Regular Session, Chapter 1196, Section 2 (Senate Bill 1336)(omnibus districts bill), and any additional amending statutes enacted subsequent to the most recent adoption of these

~~rules(1989, and the non-conflicting provisions of Chapter 36, Water Code.~~

~~“Management Plan” means the District’s Management Plan as approved and certified by the TWDBTexas Water Development Board.~~

~~“Modeled Available Groundwater” means the amount of water that the Executive Administrator of the TWDBTexas Water Development Board determines may be produced on an average annual basis to a achieve a Desired Future Condition established for the groundwater resources in the District.~~

~~“PA” means “Proportional Adjustment” as governed by these rules.~~

~~“PFD” means Proposal for Decision.~~

~~“Project Operator” means a person holding an authorization under this subchapter to undertake an ASR Project.~~

~~“TCEQ” means the Texas Commission on Environmental Quality.~~

~~“TWDB” means the Texas Water Development Board.~~

~~“SOAH” means the State Office of Administrative Hearings.~~

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RULE 1.2 PURPOSE OF RULES

The rules contained herein are the foundation for achieving the goals of the District Act and Management Plan ~~and implementing the District’s statutory mandate.~~

~~**[THE FOLLOWING INTERNAL REQUIREMENTS, WHICH ARE PROPOSED TO BE DELETED, WILL BE ADDRESSED IN DISTRICT’S BYLAWS OR POLICIES]:**~~

~~SECTION 2. BOARD~~

~~RULE 2.1 ELECTION OF DIRECTORS AND TAXING AUTHORITY~~

~~2.1.1 Election of directors: The Board shall call and conduct elections as provided by the District Act and other applicable law.~~

~~2.1.2 On August 21, 1999, the voters of Bell County confirmed creation of the District and granted the District the authority to levy and collect a property tax in an amount not to exceed one cent on each \$100 of valuation of property in the District to pay for the maintenance and operation of the District. If the Board desires, during its annual budget review, the Board may act to reduce or increase its tax rate, consistent with the Texas Tax Code and other applicable law.~~

~~RULE 2.2 BOARD STRUCTURE, OFFICERS~~

~~The Board consists of the members elected and qualified as required by the District Act. The Board will elect one of its members to serve as President, to preside over Board meetings and proceedings; one to serve as Vice President to preside in the absence of the President; and one to serve as Secretary to keep a true and complete account of all meetings and proceedings of the Board. The Board shall elect officers annually, on the third Tuesday in September of each year. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these rules.~~

~~RULE 2.3 FINANCIAL POLICIES AND PROCEDURES~~

~~2.3.1 The District's fiscal year shall begin on the first day of October.~~

~~2.3.2 All funds of the District, except petty cash, shall be deposited from time to time to the credit of the District in such banks or accounts as the Board may, from time to time, designate, and upon such terms and conditions as shall be fixed by the Board, unless otherwise required by orders or resolutions authorizing the issuance of the District's bonds or notes. The Board may, from time to time, authorize the opening and maintaining of general and special accounts within any such depository as it may designate, and may make such special rules and regulations with respect thereto as it may deem expedient. To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they shall be secured as provided by Texas Water Code Section 36.155. The depository shall be located within the District unless the Board determines that a suitable depository cannot be found within the District. The Board may also utilize the Texas Treasury Safekeeping Trust Company, commonly referred to as "TEXPOOL" as a depository.~~

~~2.3.3 All checks, drafts, notes, or other orders for the payment of money issued in the name of the District shall be signed by such officers or employees of the District as shall from time to time be authorized by resolution of the Board.~~

~~2.3.4 Prior to the commencement of the fiscal year, the Board shall adopt an annual budget. The budget shall contain a complete financial statement, including a statement, or estimate, if appropriate, of:~~

- ~~a) The outstanding obligations of the District;~~
- ~~b) The amount of cash on hand to the credit of each fund of the District;~~
- ~~c) The amount of money available to the District from all sources during the ensuing year;~~
- ~~d) The amounts of the balances expected at the end of the year in which the budget is being prepared;~~
- ~~e) The estimated amounts of revenues and balances available to cover the proposed budget; and~~

~~f) — The estimated tax rate that will be required.~~

~~Before the Board adopts its annual operating budget, it shall conduct a public hearing and shall make a proposed budget available to the public at least ten (10) days prior to the hearing. Any resident of the District shall be allowed to participate in the budget hearing, subject to reasonable time limitations. The District may not make expenditures in excess of the total budgeted expenditures for a fiscal year unless the Board amends the budget.~~

~~2.3.5 The Board shall prepare an annual audit of its affairs by an independent certified public accountant or a firm of independent certified public accountants, which audit shall be open to public inspection. Such auditors shall have no personal interest directly or indirectly in the fiscal affairs of the District and shall be experienced and qualified in the accounting and auditing of public bodies. The audit shall be performed in accordance with generally accepted auditing standards and shall satisfy all requirements imposed by Chapter 36, Texas Water Code. It is provided, however, that the District's auditors may undertake consulting services for the District in addition to their duties in connection with the annual audit.~~

~~RULE 2.4 MEETINGS~~

~~The Board shall meet at least once each quarter or as frequently as the Board may establish from time to time. At the request of the President, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held according to the Texas Open Meetings Law.~~

~~RULE 2.5 COMMITTEES~~

~~The President may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees. Committee members serve at the pleasure of the President.~~

~~SECTION 3. DISTRICT STAFF~~

~~RULE 3.1 GENERAL MANAGER~~

~~The Board may employ or contract with a person to manage the District, and title this person "General Manager." The General Manager shall have full authority to manage and operate the affairs of the district, subject only to Board orders. The Board will review the compensation and/or contract of the General Manager each year at the beginning of the third quarter of every fiscal year. The General Manager, with approval of the Board, may employ all persons necessary for the proper handling of business and operation of the District and their compensation will be set by the Board.~~

~~RULE 3.2 ASSISTANT SECRETARY~~

~~A member of the District staff shall be appointed by the General Manager or Board as assistant~~

| ~~secretary to the Board.~~

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RULE 7.3 AQUIFER-BASED PRODUCTION LIMITS

7.3.1 Using the best available hydrogeologic and geographic data, the District will continue to study and accumulate data on the various aquifers located within the boundaries of the District and their subdivisions, and may amend from time to time the limit on total annual production either throughout the District or for a particular aquifer or its subdivision in order to avoid impairment of and to achieve the Desired Future Condition(s), and may set these limits as set forth under the Management Area Rules. In coordination with the ~~TWDB Texas Water Development Board~~, the District may develop, utilize, and/or adopt groundwater availability models in support of the District's management of the groundwater within its jurisdiction, including but not limited to the establishment of a maximum annual rate of groundwater withdrawal for the Edwards (BFZ) and Trinity aquifers within the District.

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RULE 7.4 LIMIT SPECIFIED IN PERMIT

The maximum annual quantity of groundwater that may be withdrawn from each respective aquifer under a Historic and Existing Use Permit or Operating Permit issued by the District shall be no greater than the amount specified in the permit or the amended permit, subject to the Management Area Rules. Permits may be issued subject to conditions and restrictions placed on the rate and amount of withdrawal pursuant to the District's rules and permit terms necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence. The permittee, by accepting the permit, agrees to abide by any and all groundwater withdrawal regulations established by the District that are currently in place, as well as any and all regulations established by the District in the future. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment of and agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions.

In addition to any special provisions or other requirements incorporated into the permit, each permit is subject to the following standard permit provisions:

- (a) 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.
- (b) The permit terms may be modified or amended pursuant to the provisions of the District's rules or to comply with statutory requirements.
- (c) To protect the permit holder from the illegal use of a new landowner, within 10 calendar days after the date of sale, the permit holder must notify the District in writing the name of the new owner of a permitted well. Any person who becomes

the owner of a currently permitted well must, within 20 calendar days from the date of the change in ownership, file an application for a permit amendment to effect a transfer of the permit.

- (d) The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.
- (e) Withdrawals from all non-exempt wells must be accurately metered or measured through a District-approved alternative measuring method. All permitted wells must report their pumpage to the District monthly. If a meter is installed, the meter readings must then be provided to the District. Wells that are drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons per day are not required to have a meter or report monthly production if used for domestic purposes or for watering livestock or poultry.
- (f) The well site must be accessible to District representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.
- (g) The application pursuant to which this permit has been issued is incorporated in the permit, and the permit is granted on the basis of, and contingent upon, the accuracy of the information supplied in that application. A finding that false information has been supplied is grounds for immediate revocation of the permit.
- (h) Violation of a permit's terms, conditions, requirements, or special provisions is punishable by civil penalties as provided by the District's rules.
- (i) The permit may also contain provisions relating to the means and methods of exporttransportation of water produced within the district.

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8.1.3 Minor Permit Amendments:

- (a) Minor amendments include:
 - (1) Increases in permit allotment of 20% or less for permit holders permitted for more than 28 acre-feet annually, not to exceed 37 acre-feet;
 - (2) Increases of up to 5.5 acre-feet annually for permit holders permitted for 28 acre-feet or less;
 - (3) Increases in exporttransport of groundwater as follows:
 - (i) Permit holders exportingtransporting less than 1 ac-ft/year—up to 1 ac-ft;
 - (ii) Permit holders exportingtransporting 1 ac-ft/year or more—up to 20% of the approved exporttransport for the previous year, not to exceed 10 acre-feet annually; and
 - (4) Transfers of ownership of a permit or well without any change in use.
- (b) All other amendments are major amendments, and shall be subject to the requirements and procedures set forth in Section 8 of the District rules.
- (a1) An application for a minor permit amendment shall be made on a form provided

by the District. Application fees shall be established by the Board.

- (2b) The General Manager is authorized to deny or grant in full or in part a minor permit amendment as defined in Subsection (a) of this rule and may grant minor amendments without public notice and hearing. Such decision by the General Manager may be appealed to the Board of Directors. This appeal is a pre-requisite to filing suit against the District to overturn the General Manager's decision. Any minor amendment sent to the Board for consideration shall be set on the Board's agenda and shall comply with the notice requirements of the Texas Open Meetings Act.
- (3e) The General Manager is authorized to defer approval of an application for the increased use of groundwater that is otherwise eligible for administrative approval and require approval of the application by the Board of Directors.
- (4d) If two or more minor amendments are requested during any permit year for an increase in the permit allotment, and the combined increase in volume requested in the amendments exceeds the limits described in this rule, then the amendment which results in an increase in the permit allotment for the year in excess of the limits specified in Subsection (a) of this rule will be considered a major amendment subject to Section 8 of the District rules.
- (5e) Permittees requesting a minor amendment may be required to submit a hydrogeological report as described in Rule 8.9.2(f) based on aquifer conditions, type of modification, status of adjacent wells, local water use trends, and other aquifer management considerations.

RULE 8.2 AGGREGATION OF WITHDRAWAL AMONG MULTIPLE WELLS

A drilling permit application must be filed for each well that requires a drilling permit. However, one application may be filed for an Historic and Existing Use Permit or Operating Permit, or for renewal thereof, which consolidates two or more wells that will function as part of a well system.

RULE 8.3 PERMIT EXCLUSIONS ~~&~~ AND EXEMPTIONS

The District's permit requirements in these rules do not apply to:

- (a) Drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is located or to be located on a tract of land 10 (ten) acres or larger and drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day; provided, however, that this exemption shall also apply after March 1, 2004 to a well to be drilled, completed, or equipped on a tract of land less than 10 (ten) acres in size only if:
 - (1) the well is to be used solely for domestic use or for providing water for livestock or poultry on the tract;

- (2) such tract was platted, meets an exception to platting, or is otherwise lawfully configured prior to March 1, 2004 as a tract less than 10 (ten) acres in size; and
- (3) such tract is not further subdivided into smaller tracts of land after March 1, 2004 and prior to the drilling, completion, or equipping of the well.

A well qualifying for exemption under this subsection must observe a minimum distance of 50 feet from the property line (exception may be made if the property line is adjacent to a public road then the center of the road may be the measuring point used to determine the minimum setback of 50 feet per rule 11.5.5(b) and 100 feet from other wells if producing from the same aquifer. Refer to Section 11 for spacing requirements between wells producing from different aquifers.

- (b) A dewatering well.
- (c) A leachate well.
- (d) A test well.
- (e) A monitoring well.
- (f) Drilling a water well used solely for a closed loop geothermal system where water or other fluid is re-circulated inside a sealed system for heating and/or cooling purposes and no water is produced from the well.
- (g) Drilling a water well used 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 well is located on the same lease or field associated with the drilling rig.
- (h) Drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.
- (i) An injection water source well permitted by the Railroad Commission of Texas for secondary or enhanced oil or gas recovery.
- (j) A well used for an ASR Project, except as provided under District Rule 8.12A.1.
- (k) A well exempted under Subsections (g)~~and~~, (h), (i), and (j) above must be permitted and comply with all District rules if:
 - 1) the groundwater withdrawals that were exempted under Subsection (g) are no longer used 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; or

- 2) the groundwater withdrawals that were exempted under Subsection (h) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.
- (3) the groundwater withdrawals that were exempted under Subsection (i) are no longer used solely to supply water for secondary or enhanced oil recovery pursuant to the terms of the permit issued by the Railroad Commission of Texas;
- or
- (4) the groundwater withdrawals that were exempted under Subsection (j) exceed the amount specified in the ASR permit issued by TCEQ.

(j) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorized the drilling of a water well shall report monthly to the District:

- (1) the total amount of water withdrawn during the month;
- (2) the quantity of water necessary for mining activities; and
- (3) the quantity of water withdrawn for other purposes.

(k) A water well exempted under Subsections (a) through (h) above shall:

- (1) be registered in accordance with rules promulgated by the District;
- (2) 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 of harmful alteration of the character of the water in any groundwater reservoir; and
- (3) be subject to Rule 14.5 and shall be capped or plugged if it ceases to be used or if any of the conditions identified in Rule 14.5 occur.

A registration amendment is required prior to deviation in the purpose of use, change in ownership of the well, or any expansion in the size of the well or pump, even if the well retains its exempt status.

(l) A water well exempted under Subsections (b) and (c) shall observe a minimum distance of 50 feet from the property line and 100 feet from other wells.

(m) A water well exempted under Subsection (d) shall comply with and is subject to the spacing requirements set forth in Section 11 of these rules.

(n) A water well exempted under Subsections (e) and (f) shall comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code.

(o) Registered wells observe exemptions that were in place at the time of filing the registration.

(p) A water well exempt under Subsections (a) – (e) will lose its exempt status and must

immediately be permitted and comply with all District rules if the well is subsequently used for a purpose or in a manner that is not exempt.

- (qs) A report stating whether a water well is exempted under Subsections (b) – (e) continues to be qualified for the same exemption and continues to comply with the District’s rules shall be filed annually with the District. The notice shall be made on a form provided by the District, and shall be filed with the District no later than January 15th of each year. Notwithstanding this notice requirement, a well owner or operator must immediately comply with Subsection (p) if the well loses its exempt status.

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RULE 8.7 PERMIT TERM

- 8.7.1 Drilling Permit Term: Unless specified otherwise by the Board or these rules, drilling permits are effective for a term ending ~~120~~365 calendar days after the date the permit application is approved by the Board, which may be extended by the General Manager with good cause shown.
- 8.7.2 Historic and Existing Use Permit and Operating Permit Terms: Unless specified otherwise by the Board or these rules, an Historic and Existing Use Permit and Operating Permit are effective until the end of the calendar year in which they are issued. If renewed, such permits shall thereafter be effective for one-year terms from the initial expiration date unless specified otherwise by the Board. The permit term will be shown on the permit.

RULE 8.8 PERMIT RENEWAL OF HISTORIC AND EXISTING USE PERMITS AND OPERATING PERMITS

- 8.8.1 Permit Renewal: Renewal applications shall be provided by the District prior to expiration of the ~~permit term~~ of a Historic and Existing Use Permit and Operating Permit, and shall be filed with the District no later than January 15th of the new year for which the permit renewal is requested. Permits will not be renewed unless the well has been drilled at the time of the renewal application. The General Manager may rule on any renewal application without notice, hearing, or further action by the Board, or with such notice and hearing as the General Manager deems practical and necessary under the circumstances. ~~System water loss shall be reported to the District once annually, a~~ At the time of submitting documentation in support of annual permit renewal, a permit holder that is a public water systems shall also report system water loss, conjunctive use, total volume of exported water and the number of metered customers, if applicable.

Any applicant may appeal the General Manager’s ruling by filing, within 10 business days of notice of the General Manager’s ruling, a written request for a hearing before the Board. The Board will hear the applicant’s appeal at the next available regular Board meeting. The General Manager shall inform the Board of any renewal applications granted or denied. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager. The General

Manager may authorize an applicant for a permit renewal to continue operating under the conditions of the prior permit, subject to any changes necessary under proportional adjustmentPA regulations, these rules, or the District's Management Plan, for any period in which the renewal application is the subject of a hearing.

Permitted wells that are drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons per day and are used for domestic purposes or for watering livestock or poultry, may be renewed by the General Manager, subject to any changes necessary under proportional adjustmentPA regulations, these rules, or the District's Management Plan.

~~8.8.2 Basis for Renewal: While there is no automatic right of renewal, an application for renewal will be approved if the General Manager or Board finds that the applicant's continued use of groundwater will remain in compliance with the terms, provisions, and requirements of the applicant's current permit and the District Act and rules, subject to adjustment by the General Manger or Board for any new production limits or proportional adjustment requirements that may be applicable to the renewed permit.~~

~~8.8.3 Basis for Denial: The General Manager or Board may deny a renewal application only on grounds that the applicant is in violation of the District's rules, the District Act, or Chapter 36, Water Code, or that the applicant has a previous violation on record with the District, which has become a final order of the District's Board and is no longer subject to a motion for rehearing before the District, that has not been corrected or overturned by a court, including, but not limited to, being current on payment of all fees to the District. The District has the burden of proof regarding establishment of any such violation. This subsection shall not be interpreted in a manner that creates a standard in connection with the renewal of a permit that would preclude the District from lawfully revoking a permit for violation of the permit terms, the District's Rules or Act, or Chapter 36, Water Code.~~

8.8.4 Renewal Application Requirements: The District will timely provide a form for an application for renewal prior to expiration of the permit term. The renewal application will be a streamlined application and will not include all of the elements required for an original application.

8.8.5 The District shall, without a hearing, renew or approve an application to renew an Operating Permit before the date on which the permit expires, provided that:

- (a) the application is submitted in a timely manner; and
- (b) the permit holder is not requesting a change related to the renewal that would require a permit amendment under the District's rules.

8.8.6 The District is not required to renew a permit under District Rule 8.8.5 if the applicant:

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

- (b) is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; or
- (c) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or District rule; or
- (d) has not submitted to the District an annual system water loss report, annual ~~conjunctive~~conjunctive use report and a report of the volume of water exported for the calendar year.

8.8.7 If the District is not required to renew a permit under District Rule 8.8.5, the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

8.8.8 If the holder of an Operating Permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District Rule 8.1, the permit as it existed before the permit amendment process remains in effect until the later of:

- (a) the conclusion of the permit amendment or renewal process, as applicable; or
- (b) a final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.

8.8.9 If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under District Rule 8.8.5 without penalty, unless subsection 8.8.6 applies to the applicant.

8.8.10 The District may initiate an amendment to an Operating Permit, in connection with the renewal of a permit or otherwise, for the purpose of achieving a Desired Future Condition or another statutory purpose of the District. Any amendment initiated by the District shall be processed in accordance with Section 8 of the District's rules. If the District initiates an amendment to an Operating Permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

RULE 8.9 PERMIT APPLICATIONS

8.9.1 Requirements for All Permit Applications:

- (a) Application forms and payment of applicable fees: Each original application for conversion to an Historic and Existing Use Permit, a water well drilling permit, operating permit, and permit amendment requires the filing of a separate application, payment of the applicable fees, and issuance of notice as provided for in this Section. Application forms will be provided by the District and furnished

to the applicant upon request. All applications for a permit shall be in writing and sworn to, and shall include the following:

- (1) the name and mailing address of the applicant and the owner of the land on which the well will be located;
- (2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
- (3) the location of each well and the estimated rate at which water will be withdrawn;
- (4) a statement of the purpose for which the well is to be used;
- (5) the location of the use of the water from the well;
- (6) a declaration that the applicant will comply with the District's Rules and all groundwater use permits and plans promulgated pursuant to the District's Rules;
- (7) a water conservation plan or a declaration that the applicant will comply with the district's management plan;
- (8) a drought contingency plan, if the applicant is required to prepare a drought contingency plan by other law;
- (9) a water well closure plan or a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the commission; and
- (10) if groundwater is proposed to be ~~exported~~~~transferred~~ out of the District, the applicant shall describe the following issues and provide documents relevant to these issues:
 - (i) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
 - (ii) the projected effect of the proposed ~~export~~~~transfer~~ on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
 - (iii) how the proposed ~~export~~~~transfer~~ is consistent with the approved regional water plan and certified district management plan.

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8.9.2 Drilling and Operating Permit Applications: In addition to the requirements in Rule 8.9.1, all drilling and operating permit applications shall include the following:

- (a) A location map of all existing registered or permitted wells within a half (1/2) mile radius of the proposed well or the existing well to be modified;
- (b) A tax plat map indicating the location of the proposed well or the existing well to be modified, the subject property, and adjacent owners' physical addresses and mailing addresses;
- (c) Notice of any application to the ~~TCEQ~~~~Texas Commission on Environmental Quality~~ to obtain or modify a Certificate of Convenience and Necessity to provide

- water or wastewater service with water obtained pursuant to the requested permit;
- (d) A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose with accompanying information that demonstrates the amount of water necessary for the stated beneficial purpose;
 - (e) Operating permit applications meeting the following conditions shall include a hydrogeological report:
 - (1) Requests to operate a nonexempt well with an annual maximum permitted use of more than 37 acre-feet.
 - (2) Requests to modify to increase production or production capacity of a Public Water Supply, Municipal, Commercial, Industrial, Agricultural or Irrigation well with an outside casing diameter greater than 6 5/8 inches if such increase is greater than 37 acre-feet per year and/or the Board determines that such report is warranted based on aquifer conditions, type of modification, status of adjacent wells, local water use trends, and other aquifer management considerations.
 - (f) Hydrogeological reports required for operating permit applications under section 8.9.2 (e) of these rules shall:
 - (1) Describe the results of a pumping test of the well for which a permit is being requested.
 - (2) Address the area of influence of the well for which a permit is being requested.
 - (3) Include an assessment of the geology at the site of the well for which a permit is being requested and a description of the aquifer that will supply water to the well.
 - (4) Be completed in a manner that complies with the guidelines adopted by the District for this purpose.
 - (g) An applicant may apply to defer the pumping-test requirement under (f)(1) of this rule until after the operating permit has been granted. In an application for deferral, the applicant must demonstrate the following:
 - (1) that there will not be any adverse effects on existing wells located within a one-half (½) mile radius of the proposed well or the existing well to be modified; and
 - (2) that the information required under subsections (f)(2)-(4) is sufficient for the District to evaluate and take action on the operating permit application.

The General Manager may take action to approve or deny the application for deferral or submit it to the District's Board for action. If the application is granted, the applicant must submit a pumping test after issuance of the operating permit and within 60 (sixty) days of commencement of groundwater withdrawal and production for a beneficial use.

* * *

8.10.5 Presiding Officer/Hearings Examiner at Permit Hearings

- (a) Designation of Presiding Officer: A hearing must be conducted by a quorum of the Board or an individual to whom the Board has delegated in writing the responsibility to preside as Hearings Examiner over the hearing or matters related to the hearing. The Board President or the Hearings Examiner shall serve as the Presiding Officer for a permit hearing. If the hearing is conducted by a quorum of the Board and the Board President is not present, the Directors conducting the hearing may select another Director to serve as the Presiding Officer.
- (b) Authority of Presiding Officer: The Board President shall serve as the Presiding Officer for a permit hearing. If the Board President is not present, the directors conducting the hearing may select a director to serve as Presiding Officer. The Presiding Officer may conduct the hearing or other proceeding in the manner the Presiding Officer deems most appropriate for the particular hearing. The Presiding Officer has the authority to:
- (1) set hearing dates, other than the initial, preliminary hearing date for permit matters;
 - (2) convene the hearing at the time and place specified in the notice for public hearing;
 - (3) designate the parties regarding a contested application;
 - (4) rule on motions and on the admissibility of evidence;
 - (5) establish the order for presentation of evidence;
 - (6) administer oaths to all persons presenting testimony;
 - (7) examine witnesses;
 - (8) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 - (9) conduct public hearings in an orderly manner in accordance with these rules;
 - (10) recess any hearing from time to time and place to place;
 - (11) issue an order at any time before action by the Board that refers parties to a contested case hearing to an alternative dispute resolution procedure on any matter at issue in the hearing; determines how the costs of the procedure shall be apportioned among the parties; and appoints an impartial third party in accordance with Rule 8.10.6; and
 - (11) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer; and
 - (12) determine how to apportion among the parties the costs related to a contract for the services of a Presiding Officer and the preparation of the official hearing record.

* * *

8.10.7 Appearance; Presentation; Time for Presentation; Ability to Supplement; Conduct and Decorum; Written Testimony

- (a) Appearance: Any interested person, including the General Manager, may appear at a hearing in person or may appear by representative provided the representative is fully authorized to speak and act for the principal. Such person, if qualified to participate as a party with the requisite justiciable interest and timely filed request for contested case hearing pursuant to Rule 8.10.8-8.10.10 and 8.10.12-8.10.15, may present evidence, exhibits, or testimony, or make an oral presentation as determined by the Presiding Officer. A person appearing in a representative capacity may be required to prove proper authority.
- (b) After the Presiding Officer calls a hearing to order, the Presiding Officer shall announce the subject matter of the hearing and the order and procedure for presentations.
- (c) The Presiding Officer may prescribe reasonable time limits for the presentation of evidence and oral argument.
- (d) If requested and allowed in the sole discretion of the Presiding Officer, any person who appears at a hearing and makes a presentation before the Board may supplement that presentation by filing additional written evidence with the Board within 10 calendar days after the date of conclusion of the hearing. Cumulative, repetitive, and unduly burdensome evidence filed under this subsection will not be considered by the Board. A person who files additional written material with the Presiding Officer under this subsection 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 hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.
- (e) Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will 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.
- (f) Written testimony: The Presiding Officer may allow testimony to be submitted in writing, either in narrative or question and answer form, and may require that the written testimony be sworn to. On the motion of a party to a hearing, the Presiding Officer may exclude written testimony if the person who submits the testimony is not available for cross-examination in person or by phone at the hearing, by deposition before the hearing, or other reasonable means.

* * *

8.10.9 Requirement for Contested Case Hearing Requests: A request by an affected person for a contested case hearing must substantially comply with the following:

- (a) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (b) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language how and why the requestor believes his personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority will be affected by the activity in a manner not common to members of the general public;
- (c) set forth the grounds on which the person is protesting the application;
- (d) request a contested case hearing;
- (e) be timely under Rule 8.10.11; and
- (f) provide any other information required by the public notice of application.

8.10.10 Contested Case Hearing Request on More than One Application: If a person or entity is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

8.10.11 Contested Case Hearings Conducted by the State Office of Administrative Hearings:

- (a) Upon a request by the applicant or other party to a contested case hearing, the District shall contract with the State Office of Administrative Hearings to conduct the hearing. The Board shall determine whether the hearing will be held in Travis County or at the District office or other regular meeting place of the Board.
- (b) The party that requests that the hearing be conducted by the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall make a deposit with the District in an amount that is sufficient to pay the estimated contract amount before the hearing begins. If the total cost for the contract exceeds the amount deposited by the paying party at the conclusion of the hearing, the party that requested the hearing shall pay the remaining amount due to pay the final price of the contract. If there are unused funds remaining from the deposit at the conclusion of the hearing, the unused funds shall be refunded to the paying party. The District may assess other costs related to hearings conducted under this rule as authorized under Chapter 36 or the District Rules.
- (c) The Presiding Officer shall make a decision as to whether a person qualifies as a party to hearing under Rule 8.10.9 at a preliminary hearing held before the case is referred to the State Office of Administrative Hearings.
- (d) If the District contracts with the State Office of Administrative Hearings under this rule, the hearing shall be conducted in accordance with Subchapters C, D, and F, Chapter 2001, Government Code and the procedural rules of the State Office of Administrative Hearings. The District's referral to SOAH shall be in writing and

shall include a copy of the permit application; all evidence admitted at preliminary hearings; the District's rules and other relevant policies and precedents; the District Management Plan; the District Act; and guidance and the District's policy interpretations regarding its regulations, permitting criteria, and other relevant law to be addressed in a Proposal for Decision and Findings of Fact and Conclusions of Law to be prepared by SOAH. The District or Presiding Officer may not attempt to influence the Finding of Facts or the Administrative Law Judge's application of the law in a contested case except by proper evidence and legal argument. SOAH may certify one or more questions to the District's Board seeking the District Board's guidance on District precedent or the District Board's interpretation of its regulations or other relevant law, in which case the District's Board shall reply to SOAH in writing.

- (e) At the conclusion of a hearing conducted under this rule, the State Office of Administrative Hearings shall issue a proposal for decision in accordance with Section 2001.058, Government Code. The District's Board shall conduct a hearing within 45 calendar days of receipt of SOAH's Proposal for Decision and Findings of Fact and Conclusions of Law, and shall act on the application at this hearing or no later than 60 calendar days after the date that the Board's final hearing on the application is concluded in a manner consistent with Section 2001.058, Texas Government Code. At least 10 calendar days prior to this hearing, the Presiding Officer shall provide written notice to the parties of the time and place of the Board's hearing under this subsection by mail and fax, for each party with a fax number.
- (f) The Board has the authority to make a final decision on the application after considering the proposal for decision issued by the State Office of Administrative Hearings. The Board may change a finding of fact or conclusion of law made by the Administrative Law Judge, or may vacate or modify an order issued by the Administrative Law Judge, only if the Board determines:
 - (A) that the Administrative Law Judge did not properly apply or interpret applicable law, District rules, written policies, or prior administrative decisions;
 - (B) that a prior administrative decision on which the Administrative Law Judge relied is incorrect or should be changed; or
 - (C) that a technical error in a finding of fact should be changed.

8.10.12 Deadline for Contested Case Hearing Requests: A ~~hearing request to be qualified as a party in a contested case hearing and a request for a SOAH hearing are~~ is considered timely if ~~they~~ comply with Rule 8.10.9 and: (a) ~~it is~~ are submitted in writing to and received by the District prior to the date of the preliminary hearing ~~and action by the Board~~ on the application; or (b) the person appears before the Board at the preliminary hearing and ~~opposes the application~~ (i) requests to be qualified as a party to a contested case hearing and (ii) if qualified as a party, requests that the hearing be conducted by SOAH. Requests for contested case hearings made under Rule 8.10.11 shall be made in writing by facsimile, mail, hand delivery, or electronic mail no later than 14 days prior

~~to the date the evidentiary hearing on the application is scheduled to begin. The District shall conduct a preliminary hearing to determine the party status of a person that has requested a contested case hearing be held on the application prior to the commencement of the evidentiary hearing on the application.~~

- 8.10.13 Action on Contested Case Hearing Requests: The written or oral submittal of a hearing request does not, in itself, mean that a hearing will be declared to be a contested case. The Presiding Officer will evaluate the contested case hearing request at a preliminary hearing ~~scheduled to determine party status and the procedural schedule for the hearing~~ and may: (a) determine that a hearing request does not meet the requirements of Rules 8.10.9 ~~and/or 8.10.12~~ and deny the request; (b) determine that the person requesting the hearing is not an affected person related to the application and deny the hearing request; ~~or~~ (c) determine that a hearing request meets the requirements of Rule 8.10.9 and designate the matter as a contested hearing upon determining that the person is an affected person; ~~or (d) refer the case to an evidentiary hearing.~~ The Presiding Officer may hold a hearing on any issue related to the determination of whether to declare a matter as a contested case. The Presiding Officer shall make a decision on party status under Rule 8.10.9 at a preliminary hearing held prior to the commencement of the evidentiary hearing on the application. Unless the District is required to contract with the State Office of Administrative Hearings under Rule 8.10.11, the District may conduct the preliminary hearing to determine party status and the procedural schedule for the hearing on the same day as the evidentiary hearing on the application.
- 8.10.14 A matter is considered to be contested if a hearing request is made pursuant to Rule 8.10.9, made in a timely manner pursuant to Rule 8.10.11~~12~~, and declared as such by the Presiding Officer. Any case not declared a contested case under this Rule is an uncontested case.

* * *

- 8.10.22 ~~Hearing Report~~Proposal for Decision: The Presiding Officer shall determine whether to submit a ~~hearing report~~Proposal for Decision (“PFD”) to the Board under this Rule. If the Presiding Officer determines to submit a ~~hearing report~~PFD, it must: (1) ~~be~~ submitted within 30 calendar days after the date the hearing is finally concluded; and (2) 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. A copy of the ~~report~~PFD shall be provided by the Presiding Officer or General Manager to the applicant, ~~and~~ each designated party; ~~and each person who provided a comment, each of whom~~ The applicant and any designated party may submit to the Board written exceptions to the ~~hearing report~~PFD. The Presiding Officer may direct the General Manager or another District representative to prepare the ~~hearing report~~PFD and recommendations under this Rule. The Board shall consider the PFD at a final hearing. Additional evidence may not be presented during this final hearing, however, the parties may present oral argument to summarize the evidence, present legal argument, or argue an exception to the PFD. A final hearing may be continued in accordance with Rule 8.10.19 and Section 36.409, Texas Water Code.

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8.10.24 Board Action: Within 60 calendar days after the final hearing date is concluded, the Board must take action on the subject matter of the hearing. For hearings conducted by ~~the State Office of Administrative Hearings~~SOAH, the Board shall make the final decision on the application within the timeframe established in Rule 8.10.11, 60 days after the issuance of the proposal for decision by the State Office of Administrative Hearings. In deciding whether or not to issue a drilling permit, operating permit, Historic and Existing Use permit, or a permit amendment, and in setting the permitted volume and other terms of a permit, the Board must consider whether:

- (a) the application contains accurate information;
- (b) the water well(s) complies with spacing and production limitations identified in these rules;
- (c) the proposed use of water does or does not unreasonably affect existing groundwater and surface water resources or existing permit holders;
- (d) the proposed use of water is dedicated to a beneficial use;
- (e) the proposed use of water is consistent with the District's water management plan;
- (f) the applicant agrees to avoid waste and achieve water conservation;
- (g) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure; and
- (h) for those hearings conducted by the State Office of Administrative Hearings, the Board shall consider the proposal for decision issued by the State Office of Administrative Hearings.

8.10.25 The District, to the extent possible, shall issue permits up to the point the total volume of exempt and permitted groundwater production will achieve an applicable Desired Future Condition. In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve an applicable Desired Future Condition and shall consider:

- (a) the Modeled Available Groundwater calculations determined by the Executive Administrator of the TWDB Texas Water Development Board;
- (b) the Executive Administrator of the TWDB's Texas Water Development Board's estimate of the current and projected amount of groundwater produced under the exemptions in District Rule 8.3;
- (c) the amount of groundwater authorized under permits previously issued by the District;
- (d) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and
- (e) yearly precipitation and production patterns.

8.10.26 Request for Rehearing and Appeal:

- (a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the Board not later than the 20th calendar day after the date of the Board's decision. Alternatively, an applicant in an uncontested hearing may request a contested case hearing if the District's decision includes a special condition that was not part of the application as finally submitted or grants a maximum amount of groundwater production that is less than the amount requested in the application. The District's decision reached after conducting a contested case hearing under the alternative procedure provided under this Rule may be appealed by requesting written findings and conclusions or a rehearing before the Board not later than the 20th calendar day after the date of the Board's decision.
- (b) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the person-party who requested them, and to each person who provided comments or each designated party, not later than the 35th calendar day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions from the board party to the contested case hearing may request a rehearing before the Board not later than the 20th calendar day after the date the Board issues the findings and conclusions.
- (c) A request for rehearing must be filed in the ~~district~~ District office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.
- (d) If the hearing on the application was uncontested and the decision of the Board on the application is materially inconsistent with the relief sought in the application, the applicant shall be afforded an opportunity to submit a request for a contested case in conjunction with the request for rehearing. If the request for rehearing is timely filed, the accompanying request for a contested case hearing shall be deemed timely filed for all purposes under these Rules.
- (e) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th calendar day after the date the request is granted.
- (f) The failure of the Board to grant or deny a request for rehearing before the 91st calendar day after the date the request is submitted is a denial of the request.
- (g) A decision by the board on a permit or permit amendment application is final:
 - (1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
 - (2) if a request for rehearing is filed on time, on the date:
 - (A) the board denies the request for rehearing; or
 - (B) the board renders a written decision after rehearing.

8.10.27 ~~Export~~~~Transport~~ of Groundwater out of District: If the place of use of the groundwater is outside the district's boundaries, the applicant must request approval for ~~export~~~~transport~~ of groundwater outside district boundaries. Upon a request for groundwater ~~export~~~~transport~~, the Board shall consider the following factors, in addition to the factors set forth in this Section-:

- (a) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;
- (b) the projected effect of the proposed ~~export~~~~transfer~~ on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and
- (c) the approved regional water plan and certified district management plan.

The district may periodically review the amount of water that may be ~~exported~~~~transferred~~ under the permit and may limit the amount.

8.11 Emergency Order Authorizing Temporary Non-Exempt Production for Demonstrated Emergency Need

- (a) A person can request in writing that the District issue an emergency order authorizing the production of groundwater for a non-exempt use without a permit for a temporary period of time during which the person can submit an operating permit application and the District can process and take action on the operating permit application. This request must be in writing and include sufficient factual detail of the emergency situation; the quantity of groundwater needed (in gallons or acre feet); the proposed source of the groundwater (identify the aquifer); the location of the well from which the groundwater will be produced; the period of time proposed for the requested emergency authorization. This request must be submitted to the District's office by any means that ensures receipt by the District.
- (b) Upon receipt and consideration of the written request for an emergency order under this rule, the District's Board President or General Manager may issue an emergency order partially or fully granting the request. An order issued under this rule will provide a time limit during which it is effective, which may not exceed 75 calendar days.
- (c) Upon issuance of an order under this rule, the requestor is not required to hold a permit but must use its best efforts to prepare and submit an operating permit application. The beneficiary of the emergency order authorization must submit an operating permit application to the District within 20 calendar days of issuance of the emergency order.
- (d) If neither the District's Board President nor General Manager issues an order under this rule after reviewing the request, the requestor's remedy is to submit an operating permit application.
- (e) If an emergency order is issued, the District's Board must be notified of the circumstances and relief granted at the District's next Board meeting.

8.12 AQUIFER STORAGE AND RECOVERY (ASR)

8.12.1 Applicability of District's Rules to ASR Projects

- (a) As a general matter, TCEQ has exclusive jurisdiction over the regulation and permitting of ASR Injection Wells. However, the District has concurrent jurisdiction over an ASR Injection Well that also functions as an ASR Recovery Well. The District is entitled to notice of and may seek to participate in an ASR permitting matter pending at TCEQ and, if the District qualifies as a party, in a contested hearing on an ASR application.
- (b) The provisions of District Rule 8.12.1 apply to an ASR Recovery Well that also functions as an ASR Injection Well.
- (c) A Project Operator shall:
 - (1) register an ASR Injection Well and ASR Recovery Well associated with the ASR Project if a well is located in the District;
 - (2) submit to the District the monthly report required to be provided to TCEQ under Section 27.155, Texas Water Code, at the same time the report is submitted to TCEQ; and
 - (3) submit to the District the annual report required to be provided to TCEQ under Section 27.156, Texas Water Code, at the same time the report is submitted to TCEQ.
- (d) If an ASR Project recovers an amount of groundwater that exceeds the volume authorized by TCEQ to be recovered under the project, the Project Operator shall report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by District Rule 8.12.1(c)(2).
- (e) Except as provided by District Rule 8.12.1(f), the District may not require a permit for the drilling, equipping, operation, or completion of an ASR Injection Well or an ASR Recovery Well that is authorized by TCEQ.
- (f) Each ASR Recovery Well that is associated with an ASR Project is subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells will exceed the volume authorized by TCEQ to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR Recovery Well that exceeds the volume authorized by TCEQ to be recovered.
- (g) A Project Operator may not recover groundwater from an ASR Project in an amount that exceeds the volume authorized by TCEQ to be recovered under the project unless the Project Operator complies with the applicable requirements of the District as described by this rule.

- (h) The District may not assess a production fee or export fee or surcharge for groundwater recovered from an ASR Recovery Well, except to the extent that the amount of groundwater recovered under the ASR Project exceeds the volume authorized by TCEQ to be recovered.
- (i) The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an ASR Project in the planning for and monitoring of the achievement of a Desired Future Condition for the aquifer in which the wells associated with the project are located.

SECTION 9. MANAGEMENT AREAS

RULE 9.1 DESIGNATION OF MANAGEMENT AREAS

Using the best available hydrogeologic and geographic data, the Board may by resolution divide the District into areas for the administration of groundwater management and regulation in the District. These management areas shall serve as areas for which the District shall determine water availability, authorize total production, and implement proportional reduction of production among classes of permit holders on an aquifer-by-aquifer basis, and within which the District shall allow the transfer of the right to produce groundwater within the same aquifer as set forth in these rules. The District shall attempt to delineate management areas along boundaries that, to the extent practicable, will promote fairness and efficiency by the District in its management of groundwater, while considering hydrogeologic conditions, the various aquifers within the District and their subdivisions.

RULE 9.2 ADJUSTMENT OF WITHDRAWAL AMOUNT BASED ON AVAILABILITY OF GROUNDWATER IN MANAGEMENT AREA

9.2.1 Every five years after the initial designation of management areas, the District shall use the best available scientific information, including but not limited to the ~~TWDB's Texas Water Development Board's~~ Groundwater Availability Model for the area and information regarding the saturation rate of aquifers within the District, to determine the annual amount of recharge available for withdrawal from each aquifer in each management area, based upon the District Management Plan, the amount of water discharged through springs, the loss of stored water in each aquifer, and the amount of actual annual production from permittees, registrants, and exempt users from each aquifer in each management area. The District may establish a series of index or monitoring wells to aid in this determination.

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RULE 9.3 WHEN NEW OPERATING PERMITS MAY BE ISSUED

In a management area where the Board has already established ~~proportional adjustment~~PA regulations for an aquifer or aquifers under Rule 9.4, new Operating Permits may be issued by the District for production from a particular aquifer or aquifers in the management area only if the management area contains groundwater available for permitting from the applicable aquifer after the District has made any and all ~~proportional adjustments~~PA~~s~~ to existing permits

authorizing withdrawal from that aquifer in a manner that will not impair and is consistent with the achievement of the Desired Future Condition(s), as specifically set forth under Rule 9.4, or if the District otherwise allocates production based upon surface acreage owned or controlled with respect to the right to produce groundwater.

RULE 9.4 PROPORTIONAL ADJUSTMENT

9.4.1 The Board, by resolution, may establish proportional adjustment PA reductions to alter the amount of production allowed on an aquifer-by-aquifer basis if reductions are required under Section 7 of these rules, in order to avoid impairment of and to achieve the Desired Future Condition(s), and/or if reductions are required within one or more management areas, as set forth under these rules.

9.4.2 When establishing proportional adjustment PA restrictions, the Board shall first set aside an amount of groundwater equal to an estimate of total exempt use for each aquifer. If the proportional adjustment PA restrictions are to be imposed for a particular aquifer in a particular management area, the Board shall first set aside an amount of groundwater equal to an estimate of total exempt use for each aquifer within that particular management area.

* * *

9.4.6 When establishing proportional adjustment PA restrictions that contemplate the reduction of authorized production or a prohibition on authorization for new or increased production from one or more aquifers, the Board may also choose to proportionately reduce any existing Operating Permits on an aquifer-by-aquifer and pro rata basis in order to make groundwater available for new applications for Operating Permits in order to allocate to each surface acre, by aquifer and management area if applicable, a designated amount of water. In doing so, the Board may elect to allocate more water to surface acreage recognized under existing Operating Permits than to surface acreage associated with applications for new Operating Permits. Notwithstanding any rule to the contrary, the Board may also limit the production under any Operating Permit for a well located in a particular aquifer and management area to an acre-foot per surface acre allocation based upon only surface acreage that overlies the same aquifer and management area, regardless of whether all such surface acreage is contiguous to the well site, and based upon the determination of availability within the particular aquifer located within the management area under this Rule.

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SECTION 11. WELL LOCATION—~~AND~~, COMPLETION AND WATER QUALITY ASSESSMENT

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RULE 11.3 STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS

11.3.1 Special Standards of Completion for ~~all wells in identified TWDB Grids~~: All wells drilled and completed by licensed pump installers and well drillers ~~in accordance with TDLR Official notice (May 21, 2003)~~ will complete all wells within the districts jurisdiction in grids 58-03-3, 58-03-9, 58-04-2, 58-04-7, 58-03-6, 58-04-1, 58-04-5, 58-04-8 by the minimum enhanced alternative construction specifications when drilled to a depth to produce from the Hensell Sand Layer (commonly referred to as the Middle Trinity Aquifer). The Upper Glen Rose Strata (commonly referred to as the Upper Trinity Aquifer) must be sealed off by drilling a 3-inch larger borehole than the outside diameter of the casing, setting packers necessary and sufficient to hold cement, and placing a minimum twenty five (25) feet of cement or bentonite plug in the annulus from the top of the Hensell Sand. The cement or bentonite plug is to prevent commingling of the Upper Glen Rose strata with the Hensell Middle Trinity Strata. Upon final completion of well drilling and pump installation the water quality must be assessed by the well driller and pump installer to assure that commingling of injurious groundwater is not occurring.

11.3.2 Special Standards of completion for Water Wells Encountering Undesirable Water or Constituents (per Texas Water Well Drillers and Pump Installers Administrative Rule, Chapter 76.101, (Effective March 1, 2013), *with CUWCD additional expectations as follows*:

- (a) If a licensed well driller and/or licensed pump installer encounters injurious water or constituents and the well is not plugged and reported to the CUWCD staff and/or made into a completed monitoring well as defined in §76.10(33), the licensed well driller shall ensure that the well drilled, deepened, or altered is forthwith completed in accordance with the following:
 - (1) When injurious water or constituents are encountered in a water well, the injurious water or constituents shall be sealed off and confined to the zone(s) of origin. It is a defense to prosecution for violation of this section that the driller and/or pump installer responsible was not aware of having encountered injurious water or constituents.
 - (2) When injurious water or constituents are encountered in a zone overlying fresh water, the driller shall case the water well from an adequate depth below the injurious water or constituent zone to the land surface to ensure the protection of water quality.
 - (3) The annular space between the casing and the wall of the borehole shall be pressure grouted with positive displacement technique or the well is tremmie pressured filled provided the annular space is three inches larger than the casing, setting packers necessary and sufficient to hold cement, and placing a minimum twenty five (25) feet of cement or bentonite plug in the annulus below the injurious water or bad water constituent zone to the land surface to ensure the protection of groundwater. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts

per million (milligrams per liter) or if hydrocarbons are present.

- (4) When injurious water or constituents are encountered in a zone underlying a fresh water zone, the part of the wellbore opposite the injurious water or constituent zone shall be filled with pressured cement or bentonite grout to a height that will prevent the entrance of the injurious water or constituents into the water well. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.
- (5) For class V injection wells, which encounter injurious water or constituents, the driller must comply with applicable requirements of the TCEQ Texas Commission on Environmental Quality 30 TAC, Chapter 331.

11.3.3 Water quality assessment: At the time of well completion, the Pump Installer and Well Driller are each responsible for coordinating to secure a groundwater sample from the newly completed well and comply with other water quality testing and reporting requirements established by the District. These written requirements will specify the scope of testing, set forth the water quality testing protocols, and ensure integrity of the testing and chain of custody of the sample. A copy of the written requirements of the sampling, testing, and reporting will be made available by the District's General Manager.

* * *

RULE 13.4 HEARINGS ON DESIRED FUTURE CONDITION(S)

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

- (a) the proposed Desired Future Condition(s) and a list of any other agenda items;
- (b) the date, time, and location of the meeting or hearing;
- (c) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
- (d) the name of the other groundwater districts in the Groundwater Management Area; and
- (e) information on how the public may submit comments.

Notice required under this rule shall be posted and published in the same manner as that for rulemaking hearings in Rule 13.3.

RULE 13.5 HEARINGS ON OTHER MATTERS

A public hearing may be held on any matter, beyond rulemaking, Desired Future Conditions, enforcement, and permitting, within the jurisdiction of the Board, if the Board deems a hearing to be in the public interest or necessary to effectively carry out the duties and responsibilities of the District.

RULE 13.6 APPEAL OF DESIRED FUTURE CONDITIONS

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

- (1) evidence that the petitioner is an affected person;
- (2) a request that the District contract with SOAH to conduct a hearing on the petitioner's appeal of the reasonableness of the Desired Future Condition;
- (3) evidence that the districts did not establish a reasonable Desired Future Condition of the groundwater resources within the relevant Groundwater Management Area.

(b) Not later than 10 calendar days after receiving a petition described by Subsection (a), the District's Presiding Officer shall determine whether the petition was timely filed and meets the requirements of Rule 13.6(a) and, if so, shall submit a copy of the petition to the TWDB. If the petition was untimely or did not meet the requirements of Rule 13.6(a), the District's Presiding Officer shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than 60 calendar days after receiving a petition under Rule 13.6(a), the District shall:

- (1) contract with SOAH to conduct the requested hearing; and
- (2) submit to SOAH a copy of any petitions related to the hearing requested under Rule 13.6(a) and received by the District.

(c) A hearing under District Rule 13.6 must be held:

- (1) at the District office or Bell County Courthouse unless the District's Board provides for a different location; and
- (2) in accordance with Chapter 2001, Texas Government Code, and SOAH's rules.

Not less than 10 calendar days prior to the date of the hearing, notice may be provided by regular mail to landowners who, in the discretion of the General Manager, may be affected by the application.

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

- (1) state the subject matter, time, date, and location of the hearing;
- (2) be posted at a place readily accessible to the public at the District's office;
- (3) be provided to the County Clerk of Bell County, whereupon the County

- Clerk shall post the notice on a bulletin board at a place convenient to the public in the County Courthouse; and
- (4) be sent by certified mail, return receipt requested; hand delivery; first class mail; fax; email; FedEx; UPS; or any other type of public or private courier or delivery service to:
- (A) the petitioner;
 - (B) any person who has requested notice in writing to the District;
 - (C) each nonparty district and regional water planning group located within the same Groundwater Management Area as a district named in the petition;
 - (D) TWDB's Executive Administrator; and
 - (E) TCEQ's Executive Director.

If the District is unable to provide notice by any of these forms of notice, the District may tape the notice on the door of the individual's or entity's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the person or entity resides or in which the person's or entity's office is located.

- (e) Before a hearing is conducted under this rule, SOAH shall hold a prehearing conference to determine preliminary matters, including:
- (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
 - (2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and
 - (3) each affected person that shall be named as a party to the hearing.
- (f) The petitioner shall pay the costs associated with the contract for the hearing conducted by SOAH under this rule. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, SOAH may assess costs to one or more of the parties participating in the hearing and the District shall refund any money exceeding actual hearing costs to the petitioner. SOAH shall consider the following in apportioning costs of the hearing:
- (1) the party who requested the hearing;
 - (2) the party who prevailed in the hearing;
 - (3) the financial ability of the party to pay the costs;
 - (4) the extent to which the party participated in the hearing; and
 - (5) any other factor relevant to a just and reasonable assessment of costs.
- (g) On receipt of the SOAH Administrative Law Judge's findings of fact and conclusions of law in a proposal for decision, which may include a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter and the District's findings of fact and conclusions of law. The

District may change a finding of fact or conclusion of law made by the Administrative Law Judge, or may vacate or modify an order issued by the Administrative Law Judge, as provided by Section 2001.058(e), Texas Government Code.

- (h) If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the Administrative Law Judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.
- (i) If the District in its final order finds that a Desired Future Condition is unreasonable, not later than the 60th calendar day after the date of the final order, the District shall coordinate with the districts in the Groundwater Management Area at issue to reconvene in a joint planning meeting for the purpose of revising the Desired Future Condition found to be unreasonable in accordance with the procedures in Section 36.108, Texas Water Code.
- (j) The Administrative Law Judge may consolidate hearings requested under this rule that affect two or more districts. The Administrative Law Judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

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14.3.6 After conclusion of the show cause hearing and decision by the Board, the District may commence suit. Any suit shall be filed in a court of competent jurisdiction in Bell County. If the District prevails in a suit brought under this Section, the District may seek the Court's statutorily mandatory award of and the court shall grant, in the interests of justice and as provided by Subsection 36.066(h), Texas Water Code, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the Court ~~in the enforcement proceeding.~~

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SECTION 15. FEES

RULE 15.1 PERMIT APPLICATION FEE AND OTHER FEES

The Board, by resolution, may establish a schedule of fees for administrative acts of the District, including but not limited to the cost of reviewing and processing permit applications, renewal applications, and the cost of permit hearings, and such administrative fees shall not unreasonably exceed the cost to the District for performing such administrative acts. Applications shall not be accepted for filing or processing or hearings scheduled until receipt by the District of all applicable fees established by Board resolution.

RULE 15.2 GROUNDWATER EXPORTTRANSPORT FEE

15.2.1 The District may impose a reasonable fee or surcharge, established by Board resolution,

for ~~export~~transportation of groundwater out of the District using one of the following methods:

- (a) a fee negotiated between the District and the ~~exporter~~transporter; or
- (b) a rate not to exceed the equivalent of the district's tax rate per hundred dollars of valuation for each thousand gallons of water ~~exported~~transferred out of the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation.

15.2.2 Payment of the Groundwater ~~Export~~Transport Fee shall be made no later than the expiration of the permit term for a permit that contemplates use of groundwater outside of the District.

RULE 15.3 RETURNED CHECK FEE

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