
***MIDDLE PECOS GROUNDWATER
CONSERVATION DISTRICT
RULES***

Procedural Rules Initial Effective Date: January 7, 2004;
Amended August 18, 2004, and September 20, 2004

Substantive Rules Initial Effective Date: August 18, 2004;
Amended October 20, 2004, December 15, 2004, January 19, 2005, May 18, 2005,
October 26, 2005 and February 20, 2007

PECOS COUNTY, TEXAS

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INTRODUCTION

BACKGROUND AND PURPOSE

Texas faces a difficult challenge to develop water policies that serve county, state, and regional interests. The Texas Constitution authorizes the creation of groundwater conservation districts to plan, develop, and regulate the use of water. The Groundwater Conservation District is a local unit of government authorized by the Texas Legislature and ratified at the local level to manage and protect groundwater.

The MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT was created in the 76th Legislature, 1999 by S. B. 1911 and ratified in the 77th Legislature, 2001 by HB. 1258. The district was confirmed by qualified voters of Pecos County in November of 2001.

The boundaries of the MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT are coextensive with the boundaries of Pecos County, Texas. Aquifers underlying Pecos County are the Edwards-Trinity, the Cenozoic Pecos Alluvium, the Dockum, the Capitan Reef Complex, and the Rustler.

The District is governed by a board of eleven directors elected as follows:

- 1) One director shall be elected by the qualified voters of the entire district.
- 2) Two directors shall be elected from each of the four counties commissioner's precincts by the qualified voters of that precinct;
- 3) One director shall be elected from the city of Iraan by the qualified voters of that city; and
- 4) One director shall be elected from the city of Fort Stockton by the qualified voters of that city.

The district has the rights, powers, privileges, authority, functions, and the duties provided by the general law of the State, Chapter 36 of the Water Code, and the district's enabling legislation, H.B. 1258 and S.B. 1911.

The substantive rules of the Middle Pecos Groundwater Conservation District were initially adopted by the Board of Directors on August 18, 2004, at a duly posted public meeting in compliance with the Texas Open Meetings Act and following notice and hearing in accordance with Section 36.101 of the Texas Water Code. The District's rules are hereby adopted as the rules of this District in accordance with Section 59 of Article XVI of the Texas Constitution, Chapter 36 of the Texas Water Code, and the District's enabling act [Acts 1999, 76th Leg., R.S., Ch. 1331 (Senate Bill 1911), and Acts 2001, 77th Leg., R.S., Ch. 1299 (House Bill 1258)]. The procedural rules which initially took effect on January 7, 2004, were subsequently amended on August 18, 2004, and October 20, 2004. The substantive rules which initially took effect August 18, 2004, were subsequently amended October 20, 2004, December 6, 2004,

January 19, 2005 and April 13, 2005, and May 18, 2005. The effective date of the Historic and Existing Use Rules is September 1, 2004.

The District's rules are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State of the Texas. 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. 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.

PURPOSE OF THE DISTRICT

Groundwater Conservation districts provide to a local board the authority and responsibility to develop and implement comprehensive management plans to conserve, protect, and manage groundwater resources. The district board will strive to maintain a balance between protecting the rights of private landowners and the responsibility of protecting the water resources by directing their efforts toward preventing waste, collecting data, educating people about water conservation, and preventing irreparable harm to the aquifers. The Groundwater Conservation District accomplishes these goals by performing certain duties as described in Chapter 36 of the Texas Water Code.

MISSION STATEMENT

Develop and implement an efficient, economical and environmentally sound groundwater management program to protect, and maintain historical aquifer levels and enhance the water resources of the district, and to communicate and administer to the needs and concerns of the citizens of Pecos County.

SECTION 1. DEFINITIONS, PURPOSE, AND CONCEPTS OF THE RULES AND BYLAWS

RULE 1.1 DEFINITIONS OF TERMS

In the administration of its duties the District defines terms as set forth in Chapter 36 of the Texas Water Code unless otherwise modified or defined herein as necessary to apply to unique attributes of the District. The specific terms hereinafter defined shall have the following meaning in these rules.

“Abandoned Well” – a well that has not been used for a beneficial purpose for at least one year and/or a well not registered with the District. A well is considered to be in use in the following cases:

1. A non-deteriorated well which contains the casing, pump and pump column in good condition; or

2. A non-deteriorated well which has been capped.

“Act” – the District’s enabling legislation, the 76th Legislature, 1999, S.B 1911, ratified in the 77th Legislature, 2001, by H.B. 1258.

“Aquifer” – a geologic formation that will yield water to a well in sufficient quantities to make the production of water from this formation feasible for beneficial use.

“Beneficial Use” – shall mean "use for a beneficial purpose," which means use for:

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

(B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or

(C) any other purpose that is useful and beneficial to the user.

“Board” – the Board of Directors of the MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT.

“CRP” means the Conservation Reserve Program established by the United States Department of Agriculture, Farm Service Agency, pursuant to Title 7, Chapter 1410, of the Code of Federal Regulations.

“Capitan Limestone Aquifer” – the Capitan Reef Complex consists of the Capitan Reef and associated reefs and limestones which were deposited around the perimeter of the Delaware Basin during Permian time. The reef complex is composed of approximately 2,000 feet of massive, vuggy to cavernous limestone and dolomite, bedded limestone, and reef talus. In the study area, (located in the northern part of the Trans-Pecos region of West Texas, which is in the Great Plains physiographic province, and falls within the Rio Grande basin), the reef occurs in a 6 to 10 mile wide, south-southeast trending belt, extending from New Mexico through western Winkler, central Ward, and western Pecos Counties. Depth to the top of the reef ranges from 2,400 to 3,600 feet (Guyton and Associates, 1958). The Capitan Reef Complex yields small to large quantities of moderately to very saline water to wells in the study area that primarily have been used for secondary recovery of oil in Ward and Winkler Counties (Richey and others, 1985).

“Capping” – equipping a well with a securely affixed, removable device that will prevent the entrance of surface pollutants into the well.

“Casing” – a tubular structure installed in the excavated or drilled borehole to maintain the well opening.

“Cenozoic Pecos Alluvium Aquifer” – During the Cenozoic Era, a thick sequence of alluvial deposits accumulated in two large slumpage depressions. These depressions are herein referred to as the Monument Draw Trough, which developed along the eastern margin of the Delaware Basin, and the Pecos Trough, which occupies the south-central part of the Basin. The troughs

were formed by dissolution and removal of evaporates in the underlying Ochoan Series, which resulted in the collapse of the Rustler Formation and younger rocks into the voids (Maley and Huffington, 1953). Water saturated alluvial fill in these troughs is classified as the Cenozoic Pecos Alluvium.

“Conservation” – those water saving practices, techniques, and technologies that will reduce the consumption of water, reduce the loss of waste of water, improve the efficiency in the use of waste, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

“Dewatering Well” – shall mean a well used to remove groundwater from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.

“Director” – an elected or appointed member of the Board of Directors or the MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT.

“Discharge” – is the volume of water that passes a given point within a given period of time.

“District” – the MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT, (Middle Pecos GCD).

“District Act” means Chapter 1331, Acts of the 76th Legislature, Regular Session, 1999 (Senate Bill 1911); Chapter 1299, Acts of the 77th Legislature, Regular Session, 2001 (House Bill 1258), the non-conflicting provisions of Chapter 36, Water Code.

“District Management Plan” means the plan promulgated and adopted by the District, as may be amended and revised by the Board from time to time, pursuant to Sections 36.1071-36.1073 of the Texas Water Code.

“Dockum Group Aquifer” – the Dockum Group of Triassic age consists of upper and lower shaley units and a middle water-bearing sandstone unit often referred to as the “Santa Rosa.” Small to moderate quantities of fresh to moderately saline water are produced from the sandstone in Winkler, Ward, eastern Loving, and eastern Reeves Counties, primarily where the aquifer is relatively shallow. In parts of Pecos, Reeves, Ward, and Winkler Counties, where the sandstone is hydraulically connected to the Cenozoic Pecos Alluvium, the combination has been referred to as the Allurosa aquifer.

“District Office” – the main office of the District at such location as may be established by the Board.

“Domestic Use” – water used by and connected to a household for personal needs or for household purposes such as drinking, bathing, heating, cooking, sanitation or cleaning, and landscape irrigation. Ancillary use may include watering of domestic animals.

“Domestic Well” – a well providing groundwater for domestic use.

“Drill” - drilling, equipping, completing wells, or modifying the size of wells or well pumps/motors (resulting in an increase in pumpage volume) whereby a drilling or service rig must be on location to perform the activity.

“Edwards-Trinity (Plateau) Aquifer” – the Edwards-Trinity (Plateau) aquifer underlies the Cenozoic Pecos Alluvium in the study area, (located in the northern part of the Trans-Pecos region of West Texas, which is in the Great Plains physiographic province, and falls within the Rio Grande basin), in the southwest half of Reeves County and a portion of the Coynosa area in northwest Pecos County. The aquifer is composed of water-bearing lower Cretaceous sands and limestones that are hydraulically connected to the overlying alluvium. Wells completed in the aquifer produce small to moderate quantities of fresh to moderately saline water, which is generally similar to that of the overlying alluvium. The poorest quality water is the aquifer, with dissolved solids in excess of 3,000 milligrams per liter (mg/l), occurs in the southwestern part of Reeves County where the aquifer receives recharge from the sulfate-rich Rustler aquifer. Water from the Edwards-Trinity(Plateau) aquifer is mostly used for irrigation, with a lesser amount used for industrial purposes in western Reeves County.

“Exempt Well” means a well that is exempt pursuant to District Rule 11.3.

“Existing Well” – any well in the District that was drilled on or before the effective date of these rules.

“Fees” – charges imposed by the District pursuant to Rule, Order, or the Act.

“Groundwater Reservoir” – a specific subsurface water-bearing reservoir having ascertainable boundaries and containing groundwater.

“Historic and Existing Use Period” – means the period September 1, 1989, through the effective date of the rules amendment adopting “Historic and Existing Use” rules, September 1, 2004 and October 20, 2004; provided, however, that this period shall extend an additional consecutive 12-month period dating from September 1 – August 30 (“12-month period” or “year”) for each such year during which the applicant demonstrates continued beneficial use of water in that year and demonstrates continued beneficial use in each and every year between September 1, 1989, and September 1, 2004, up to an additional, consecutive fifteen years extending to September 1, 1974.

“Hydrogeological Report” – a report that identifies the availability of groundwater in a particular area and formation, and which also addresses the issues of quantity and quality of that water and the impacts of pumping that water on the surrounding environment including impacts to nearby or adjacent wells.

“Irrigation Use” – the application of water, not associated with agricultural irrigation use, to plants or land in order to promote growth of plants, turf, or trees. Irrigation use includes but is not limited to athletic fields, parks, golf courses, and landscape irrigation not tied to domestic use.

“Irrigation Well” – a well providing groundwater for irrigation use. (A non-exempt well.)

“Leachate Well” – shall mean a well used to remove contamination from soil or groundwater.

“Livestock” – domesticated horses, cattle, goats, sheep, swine, poultry, ostriches, emus, rheas, deer and antelope, and other similar animals involved in farming or ranching operations on land, recorded and taxed in the County as an agricultural land use. Dogs, cats, birds, fish, reptiles, small mammals, potbellied pigs, and other animals typically kept as pets are not considered livestock. Livestock-type animals kept as pets or in a pet-like environment are not considered livestock.

“Maximum Historic and Existing Use” – means the quantity of water put to beneficial use during the single 12-month period (September 1 – August 30) of maximum beneficial use during the Historic and Existing Use Period.

“Modify” – to alter the physical or mechanical characteristics of a well, its equipment, or production capabilities. This does not include repair of equipment, well houses or enclosures, or replacement with comparable equipment.

“Monitoring Well” – shall mean a well installed exclusively to measure some property of the groundwater or an aquifer that it penetrates, that does not produce more than 5,000 gallons per year.

“New Well” – any well that is not an existing well, or any existing well, which has been modified to increase water production after the effective date of these rules.

“Permit Amendment” – a minor or major change in the pumpage permit.

“Permittee” – a person who is required to obtain a permit from the District.

“Person” – includes a corporation, individual, organization, cooperative, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

“Plugging” – the permanent closure of a well in accordance with approved District standards.

“Pollution” – means the alteration, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

“Retail Water Utility” – means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state, facilities (such as a public water supply well) for providing potable water service for compensation.

“Rustler Aquifer” – the Rustler Formation underlies the entire study area, (located in the northern part of the Trans-Pecos region of West Texas, which is in the Great Plains physiographic province, and falls within the Rio Grande basin), and consists of 200 to 500 feet of anhydrite and dolomite with a basal zone of sandstone and shale. Slightly to moderately saline water occurs in the formation in most of Reeves and western Loving, Ward, and Pecos Counties and has mostly been used for irrigation and livestock supply. Elsewhere, the formation produces very saline to brine quality water that is used primarily for secondary oil recovery. Water in the aquifer occurs under artesian conditions, except in the out crop in the Rustler Hills to the west and in collapsed zones in the two troughs.

“Rules” – standards and regulations promulgated by the District.

“Seal” – the impermeable material, such as cement grout, bentonite, or puddling clay, placed in the annular space between the borehole wall and the casing to prevent the downhole movement of surface water or the vertical mixing of groundwater.

“Special Provisions” – conditions or requirements added to a permit, which may be more or less restrictive than the Rules as a result of circumstances unique to a particular situation.

“Spring” – a point(s) of natural discharge from an aquifer.

“Stratum” – a layer of rock having a similar composition throughout.

“Subsidence” – the lowering in elevation of the land surface caused by withdrawal of groundwater.

“Surface Completion” – sealing off access of undesirable water, surface material, or other potential sources of contamination to the wellbore by proper casing and/or cementing procedures.

“TCEQ” – Texas Commission on Environmental Quality.

“Transport of Groundwater” – pumping, transferring or exporting groundwater out of the District. The terms "transfer" or "export" of groundwater are used interchangeably within Chapter 36 and these Rules.

“User” – a person who produces, distributes, or uses water from the aquifer(s).

“Waste” – shall have the meaning provided for in District Rule 14.1.

“Water Table” – the upper boundary of the saturated zone in an unconfined aquifer.

“Water Tight Seal” – a seal that prohibits the entrance of liquids or solutions, including water, which may enter through the wellhead and potentially, contaminate the well.

“Water Well” – any drilled or excavated facility, device, or method used to withdraw groundwater from the groundwater supply.

“Well” – any artificial excavation or borehole constructed for the purposes of exploring for or producing groundwater, or for injection, monitoring, or dewatering purposes.

“Well Registration” – the creation of a record of the well by use and a well identification number for purposes of registering the well as to its geographic location and for notification to the well owner in cases of spills or accidents, data collection, record keeping and for future planning purposes. (See Section 9 of the District’s Rules).

“Well system” - means a well or group of wells owned, operated, or held under permit by the same permit holder.

“Withdraw or Withdrawal” – the act of extracting groundwater by pumping or any other method other than the discharge of natural springs.

RULE 1.2 PURPOSE OF RULES

The rules of the MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT (“District”) are promulgated and adopted under the District’s statutory authority to achieve the following purposes and objectives: to provide for conserving, preserving, protecting, and recharging of groundwater or of a groundwater reservoir or its subdivisions, in order to control subsidence, or prevent waste of groundwater. The District’s orders rules, regulations, requirements, resolutions, policies, guidelines or similar measures have been implemented to fulfill these objectives.

RULE 1.3 USE AND EFFECT OF RULES

These rules are used by the District as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act and Chapter 36 of the Texas Water Code. They shall not be construed as a limitation or restriction on the exercise of any discretion, where it exists, nor shall they be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law; nor shall 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 or Chapter 36.

RULE 1.4 AMENDING OF RULES

The Board may, following notice and hearing, amend or repeal these rules or adopt new rules from time to time, following the procedure set forth in the Rulemaking Section of these rules.

RULE 1.5 HEADINGS AND CAPTIONS

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

RULE 1.6 CONSTRUCTION

A reference to a title or chapter without further identification is a reference to a title or chapter of the Texas Water Code, unless the context of usage clearly implies otherwise. A reference to a section or rule without further identification is a reference to a section or rule in these rules, unless the context of usage clearly implies otherwise. Construction of words and phrases is governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code. The singular includes the plural, the plural includes the singular. The masculine includes the feminine, and the feminine includes the masculine.

RULE 1.7 SEVERABILITY

In case any one or more of the provisions contained in these rules shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other rules or provisions hereof, and these rules shall be construed as if such invalid, illegal, or unenforceable rule or provision had never been contained herein.

RULE 1.8 SEVERABILITY CLAUSE

If any section, sentence, paragraph, clause, or part of these rules should be held or declared invalid for any reason by a final judgment of the courts of this state or of the United States, such decision or holding shall not affect the validity of the remaining portions of these rules; and the Board does hereby declare that it would have adopted and promulgated such remaining portions irrespective of the fact that any other sentence, section, paragraph, clause, or part thereof may be declared invalid.

RULE 1.9 COMPLIANCE

All permittees and registrants of the district shall comply with all applicable rules and regulations of other governmental entities. Where District rules and regulations are more stringent than those of other governmental entities, the District rules and regulations shall control.

RULE 1.10 VERB USAGE

The verbs may, can, might, should, or could are used when an action is optional or may not apply in every case. The verbs will, shall, or must are used when an action is required. The verb cannot is used when an action is not allowed or is not achievable. Unless otherwise expressly provided for in these rules, the past, present, and future tense shall include each other.

SECTION 2. BOARD AND DISTRICT STAFF

RULE 2.1 MEETINGS

The Board shall meet at least once each quarter and may meet more 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 Act, Chapter 551, Government Code.

RULE 2.2 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.

RULE 2.3 ASSISTANT SECRETARY

A member of the District staff shall be appointed by the Board as Assistant Secretary to the Board to assist in meeting the responsibilities of the Board Secretary, if desired by the Board.

RULE 2.4 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.

SECTION 3. BOARD

RULE 3.1 PURPOSE OF BOARD

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

RULE 3.2 BOARD STRUCTURE, OFFICERS

The board may elect officers annually, but must elect officers at the first meeting following the May elections of each even numbered year. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these rules, and qualified under applicable State law. Vacancies in the office of director shall be filled by appointment of the board. If the vacant office is not scheduled for election for longer than two years at the time of the appointment, the board shall order an election for the unexpired term to be held as part of the next regularly scheduled director's election. The appointed director's term shall end on qualification of the director elected at that election.

RULE 3.3 EX PARTE COMMUNICATIONS

Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested hearing before the Board, with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. This rule does not apply to a Board member who abstains from voting on any matter in which ex parte communications have occurred or to communications between the Board and the staff, professional, or consultants of the district. Board members shall not knowingly conspire to meet in numbers less than a quorum for the purpose of secret deliberations.

SECTION 4. GENERAL PROCEDURAL PROVISIONS

RULE 4.1 DISTRICT ADDRESS

The District's mailing address is Drawer 1644, Fort Stockton, Texas 79735. The Board shall select or change the District Office and physical address by Board resolution.

RULE 4.2 COMPUTING TIME

In computing any period of time specified by these rules, by a presiding officer, by board orders, or by law, the period shall begin on the day after the act, event, or default in question, and shall conclude on the last day of that designated period, unless the last day is a Saturday, Sunday, or legal holiday on which the District office is closed, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday on which the District office is closed.

RULE 4.3 FILING OF DOCUMENTS AND TIME LIMIT

Applications, requests, or other papers or documents shall be filed either by hand delivery, mail, or telephonic document transfer to the District office. The document shall be considered filed as of the date received by the District for a hand delivery; as of the date reflected by the official United States Postal Service postmark if mailed; and, for telephonic document transfers, as of the date on which the telephonic document transfer is complete, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If a person files a document by facsimile, he or she must file a copy by mail within 3 calendar days.

RULE 4.4 METHODS OF SERVICE UNDER THE RULES

Except as otherwise provided for in these rules, and notice or document required by these rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier-receipted delivery, by certified or registered mail sent to recipient's last known address, by e-mail to the recipient's e-mail address on file with the District if written consent is granted by the recipient, or by telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 o'clock p.m. (as shown by the clock in the recipient's office) of the date on which it is due. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service.

Service by telephonic document transfer is complete upon transfer, except that any transfer commencing after 5:00 o'clock p.m. (as shown by the clock in the recipient's office) shall be deemed complete the following business day. If service or delivery is by mail, and the recipient has the right to perform some act or is required to perform some act within a prescribed period of time after service, three days will be added to the prescribed period. Where service by other methods has proved unsuccessful, the service shall be complete upon publication of the notice in a newspaper of general circulation in the district, or by such other method as may be approved by the Board. The person or person's attorney shall certify compliance with this rule in writing over signature and on the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of the fact of service.

RULE 4.5 USE OF FORMS

The General Manager will furnish forms and instructions for the preparation of any application, declaration, registration or other document that is required to be filed with the District on a form prepared by the District. The use of such forms is mandatory. Supplements may be attached if there is insufficient space on the form. If supplements are used, the data and information entered therein shall be separated into sections that are numbered to correspond with the numbers of the printed form.

RULE 4.6 MINUTES AND RECORDS OF THE DISTRICT

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

RULE 4.7 PROCEDURES NOT OTHERWISE PROVIDED FOR

If, in connection with any hearing, the Board determines that there are no statutes or other applicable rules resolving particular procedural questions then before the Board, the Board will direct the parties to follow procedures consistent with the purpose of these rules, the District Act, and Chapter 36 of the Texas Water Code.

**When is a hearing required. Rule 11.1.4. 36.114(b).

SECTION 5.

RULE 5.1 FINANCIAL POLICIES AND PROCEDURES

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

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.

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.

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) calendar 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.

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.

SECTION 6.

RULE 6.1 HEARINGS ON OTHER MATTERS

A public hearing may be held on any matter, beyond rulemaking 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. Not less than five calendar days prior to the date of a public hearing, the Board shall publish notice of the subject matter of the hearing, the time, date, and place of the hearing, in a newspaper of general circulation in the District, in addition to posting the notice in the manner provided by the Texas Open Meetings Act.

SECTION 7. RULEMAKING HEARINGS

RULE 7.1 GENERAL

Rulemaking hearing involving matters of general applicability that implement, interpret, or prescribe the law or district policy, or that describe the procedure or practice requirements of the District.

RULE 7.2 NOTICE AND SCHEDULING OF HEARINGS

- a) For all rulemaking hearings, the notice shall include the subject matter of the hearing, the time, date, and place of the hearing, location or Internet site at which a copy of the proposed rules may be reviewed or copied, and any other information deemed relevant by the General Manager or the Board.
- b) Not less than twenty calendar days prior to the date of the hearing, and subject to the notice requirements of the Texas Open Meetings Act the General Manager shall:
 - (1) post notice in a place readily accessible to the public at the district office;
 - (2) provide notice to the county clerk of Pecos County;
 - (3) publish notice in one or more newspapers of general circulation in the District;
 - (4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (c); and
 - (5) make available a copy of all proposed rules at a place accessible to the public during normal business hours, and post an electronic copy on the District's Internet site.
- c) A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.
- d) Failure to provide notice under Subsection (c) does not invalidate an action taken by the District at a rulemaking hearing.

- e) Any hearing may or may not be scheduled during the District’s regular business hours, Monday through Friday of each week, except District holidays. All hearings shall be held at the location set forth in the notice. Any hearing may be continued from time to time and date to date without notice after the initial notice.

RULE 7.3 RULEMAKING HEARINGS PROCEDURES

- a) General Procedures: The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. In conducting a rulemaking hearing, the Presiding Officer may elect to utilize procedures set forth in these Rules for permit hearings to the extent that and in the manner that the Presiding Officer deems most appropriate for the particular rulemaking hearing. The Presiding Officer will prepare and keep a record of the rulemaking hearing in the form of an audio or video recording or a court reporter transcription at his discretion.
- b) Submission of Documents: Any interested person may submit written statements, protests, or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing; provided, however, that the Presiding Officer may grant additional time for the submission of documents.
- c) Oral Presentations: Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- d) Conclusion of the hearings: At the conclusion of the hearing; the Board may take action on the subject matter of the hearing, take no action, or postpone action until a future meeting or hearing of the Board.

RULE 7.4 CONDUCT AND DECORUM

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.

RULE 7.5 CONTINUANCE

The Presiding Officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice. If a hearing or, other proceeding is continued and a time and place for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the Presiding Office before it is recessed, a notice of any further setting of the hearing or other proceeding will be delivered at a reasonable time to persons who request notice at the initial hearing, and any other person the Presiding Officer deems appropriate, but it is not necessary to post or publish a notice of the new setting.

RULE 7.6 REQUEST FOR REHEARING AND APPEAL

A decision of the Board concerning a hearing matter may be appealed by requesting a rehearing before the Board within 20 calendar days of the date of the Board's decision. Such a rehearing request must be mailed to the District in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal to District Court may be brought. The Board's decision is final if no request for rehearing is made within the specified time, upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within 45 calendar days thereafter. The failure of the Board to grant or deny the request for rehearing within 90 calendar days of the date of submission shall constitute a denial of the request.

SECTION 8. DISTRICT MANAGEMENT PLAN

The Board shall adopt a Management Plan that specifies the acts, procedures, performance and avoidance necessary to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste. The District shall use the Rules of the District to implement the Management Plan. The Board will review the plan at least every fifth year. If the Board considers a new plan necessary or desirable, based on evidence presented at a hearing, a new plan will be adopted. A plan, once adopted, remains in effect until amended, or until the adoption of a new plan.

SECTION 9. WATER WELL REGISTRATION

RULE 9.1 REGISTRATION

All water wells, existing and new, exempt and nonexempt, must be registered with the District and are required to comply with the District's registration requirements in these rules.

RULE 9.2 GENERAL REGISTRATION POLICIES AND PROCEDURES

9.2.1 No person shall drill, equip, modify, complete, operate, change type of use, plug, abandon, or alter the size of a well within the District without first pre-registering,

registering, and/or re-registering the well, as applicable, with the District on a form approved by the District, even though the well may be exempt from the requirement of a permit under District Rule 11.3. The District shall make forms available soon after the Effective Date of these rules. The registration form(s) required under this section shall be filed with the District no later than 120 calendar days from the date the forms are available by the District, or June 1, 2005, whichever date is later.

- 9.2.2 Pre-registration: For all proposed new exempt and nonexempt wells, the owner of the proposed new well owner, or the well operator or any other person acting on behalf of the owner of the proposed new well must file a Notice of Intent to Drill a New Well (Notice of Intent) prior to drilling the proposed new well. If it is believed by the person filing the Notice of Intent that the proposed new well will be exempt under District Rule 11.3, then the Notice of Intent must reflect the basis for the exemption, and must be approved by the District prior to drilling the new well. Within 5 (five) days from receipt of a Notice of Intent, the District's General Manager shall (1) determine whether the well is exempt under the District Rules, (2) complete the District Use Only section at the end of the Notice of Intent indicating whether the well is exempt, and (3) return a copy of the completed Notice of Intent by fax or mail to the address(es) and fax number(s) set forth in the Notice of Intent. If the District's determination is that the well is exempt, drilling may begin immediately upon receiving the approved Notice of Intent. The drilling of a new exempt well is subject to the rules of the District. Upon completion of the new exempt well, a registration form must be completed and filed. If the District's determination is that the well is nonexempt, a drilling permit application must be filed and approved by the District before drilling may begin.
- 9.2.3 Registration: All wells must be registered. Existing nonexempt and exempt wells shall be registered immediately. New nonexempt wells shall be registered immediately upon completion pursuant to a drilling permit. New exempt wells shall be registered immediately upon completion pursuant to an approved pre-registration.
- 9.2.4 Re-registration: If the owner or operator of a registered well plans to change the type of use of the groundwater, increase the withdrawal rate, or substantially alter the size of the well or well pump in a manner that does not require a permit, the well must be re-registered.
- 9.2.5 In the event of an emergency during the drilling of a new exempt well or with an existing well, as defined by the well driller or well service operator, as applicable, an exempt well may be reworked prior to re-registration. The registration requirement will be waived for a 48-hour period.
- 9.2.6 Term: A registration certificate is perpetual in nature, subject to cancellation for violation of these Rules.
- 9.2.7 Ownership Transfer: Prior to any ownership transfer of any well(s) covered by a registration, written notice must be given the District by the registration holder, and permit amendment shall be secured, if applicable. Any person who becomes the owner

of a previous registration must, within 45 (forty-five) calendar days from the date of the change in ownership, file a request for transfer of the registration.

SECTION 10. PRODUCTION LIMITATIONS

RULE 10.1 HISTORIC AND EXISTING USE PERMITS

The District shall designate the quantity of groundwater produced on an annual basis under a Historic and Existing Use Permit pursuant to the conditions of the District Act, Chapter 36 of the Texas Water Code, and these rules, provided, however, that the quantity that may be withdrawn shall not exceed the Maximum Historic and Existing Use demonstrated by the applicant, and determined by the Board.

RULE 10.2 PRODUCTION PERMITS

The District shall designate the quantity of groundwater produced on an annual basis under a Production Permit pursuant to the conditions of the District Act, Chapter 36 of the Texas Water Code, and these rules, provided, however, that the quantity shall not exceed an amount demonstrated by the applicant and determined by the Board to be necessary for beneficial use during the permit term, except as may be reduced if the District imposes restrictions under this section.

RULE 10.3 AQUIFER-BASED PRODUCTION LIMITS

10.3.1 The District may limit the total annual production and maximum annual rate of groundwater withdrawal for any aquifer within the District as the District determines to be necessary based upon the best available hydrogeologic, geographic, and other relevant scientific data, including but not limited to noted changes in the water levels, water quality, groundwater withdrawals, annual recharge, the loss of stored water in the aquifer, or future planning projections developed by or accessible to the District. In accordance with the District Management Plan, the total amount of authorized, annual production and the authorized rate of production from each aquifer shall be limited to ensure that groundwater may be used on a sustainable basis from each aquifer. The District may also develop, utilize, and/or adopt groundwater availability models in support of the District's management of the groundwater within its jurisdiction. The District may establish a series of index or monitoring wells to aid in this determination.

10.3.2 Using the best available hydrogeologic, geographic, and other relevant scientific information, 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 or the authorized rate of production either throughout the District or for a particular aquifer or its subdivision, based upon this data and the District's water resource management goals set forth in the District Management Plan.

10.3.3 The Board may set the allowable production of each permitted well. The Board has the right to modify a permit at any time if monitoring wells within the source aquifer show an

unacceptable level of decline in water quality of the aquifer, or as may be 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.

- 10.3.4 As determined by the District, if the total amount of production within an aquifer is less than or equal to the annual sustainable amount available for withdrawal, production amounts authorized under Historic and Existing Use and Production Permits may remain the same or be increased, as set forth under these rules.
- 10.3.5 As determined by the District, if the total amount of production within an aquifer is greater than the annual sustainable amount available for withdrawal, production amounts may be decreased proportionally among all permit holders producing from that aquifer, with any necessary reductions being applied first to Production Permits and, subsequently, if production is still greater than availability after reducing Production Permits in their entirety, to Historic and Existing Use Permits, as specifically set forth under Rule 10.4.

RULE 10.4 PROPORTIONAL ADJUSTMENT

- 10.4.1 The Board, by resolution, may establish proportional adjustment reductions to alter the amount of production allowed if reductions are required under these rules.
- 10.4.2 When establishing proportional adjustment restrictions, the Board shall first set aside an amount of groundwater equal to an estimate of total exempt use.
- 10.4.3 After setting aside an amount of groundwater for exempt use, to the extent of remaining groundwater availability, the Board shall allocate groundwater to Historic and Existing Use Permits according to the permitted or claimed Maximum Historic and Existing Use in each, depending upon whether the Historic and Existing Use Permit applied for has yet been issued. If there is insufficient groundwater availability to allow withdrawal under all Historic and Existing Use Permits, the Board shall allocate the groundwater availability first to the Historic and Existing Permits in an amount up to the Eligible Recharge Credit, on a pro rata basis relative to all other Historic and Existing Permits. The Eligible Recharge Credit shall mean 30% of the permitted or claimed Maximum Historic and Existing Use that is designated for and previously put to irrigation use in each Historic and Existing Use Permit or application, depending upon whether the Historic and Existing Use Permit application has yet been granted. The groundwater authorized for withdrawal pursuant to an Eligible Recharge Credit must be withdrawn from the same aquifer that has been recharged with groundwater allocated under the respective permit or application. The remaining groundwater availability shall then be allocated among the Historic and Existing Use Permits up to an amount authorized under each permit on an equal percentage basis until total authorized production equals groundwater availability district-wide or within a particular aquifer, if applicable. The Eligible Recharge Credit shall be applied in such a manner that the irrigation user's Existing and Historic Use Permit shall not be proportionally reduced to the extent of the

Eligible Recharge Credit. The only basis for proportionately reducing the Eligible Recharge Credit shall be in the event that 100% of the non-recharge credit portion of the Historic and Existing Use Permit allotments have been reduced, and there is only sufficient groundwater availability to supply exempt use. If it can be demonstrated and the Board takes official action to determine that the irrigation recharge is more or less than 30%, then the Eligible Recharge Credit shall be adjusted accordingly by Board resolution. No groundwater shall be authorized for production under Production Permits if there is insufficient water availability to satisfy all Historic and Existing Use Permits and exempt use, subject to Subsection 3.4.6 of this rule. The Eligible Recharge Credit for irrigation use under a Production Permit shall not be applied where there is equal to or less than enough groundwater to satisfy all Historic and Existing Use Permits and exempt use.

- 10.4.4 If there is sufficient groundwater to satisfy all Historic and Existing Use Permits and exempt use, the Board shall then allocate remaining water availability first to the existing Production Permit holders in an amount equal to their Eligible Recharge Credit, on a pro rata basis relative to all other Production Permits. The Eligible Recharge Credit shall mean 30% of the groundwater allocated under each Production Permit that is designated for and previously put to irrigation use. The groundwater authorized for withdrawal pursuant to an Eligible Recharge Credit must be withdrawn from the same aquifer that has been recharged with groundwater allocated under the respective Production Permit. The remaining groundwater availability shall then be allocated among the Production Permits up to an amount authorized under each permit on an equal percentage basis until total authorized production equals groundwater availability district-wide or within a particular aquifer, if applicable. The recharge credit shall be applied in such a manner that the irrigation user's Production Permit shall not be proportionally reduced to the extent of the recharge credit. The only occasion for proportionately reducing the Eligible Recharge Credit shall be in the event that 100% of the non-recharge credit portion of the Production Permit allotments have been reduced, and there is only sufficient groundwater availability to supply exempt use and Historic and Existing Use. If it can be demonstrated and the Board takes official action to determine that the irrigation recharge is more or less than 30%, then the recharge credit shall be adjusted accordingly. No groundwater may be authorized for production under new Production Permits if there is insufficient groundwater availability to satisfy all existing Production Permits, subject to Subsection 3.4.6 of this rule.
- 10.4.5 If there is sufficient groundwater to satisfy all Historic and Existing Use Permits, exempt use, and existing Production Permits, the Board may then allocate remaining groundwater availability to applications for new or amended Production Permits, subject to Subsection 3.4.6 of this rule.
- 10.4.6 When establishing proportional adjustment restrictions that contemplate the reduction of authorized production or a prohibition on authorization for new or increased production, the Board may also choose to proportionately reduce any existing Production Permits on a pro rata basis, excluding the authorized Eligible Recharge Credit, in order to make groundwater available for new applications for Production Permits in order to allocate to

each surface acre, a designated amount of groundwater. In doing so, the Board may elect to allocate more water to surface acreage recognized under existing Production Permits than to surface acreage associated with applications for new Production Permits.

RULE 10.5 LIMIT SPECIFIED IN PERMIT

The maximum annual quantity of groundwater that may be withdrawn under a Historic and Existing Use Permit or Production Permit issued by the District shall be no greater than the amount specified in the permit or the amended permit. 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 ten (10) calendar days after the date of sale of the well, the permit holder must notify the District in writing of the name of the new owner of a permitted well. Any person who becomes the owner of a currently permitted well must, within 45 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 nonexempt wells must be accurately measured either by meter or through a District-approved alternative measuring method, in accordance with District Rules and the Board-approved Meter Installation Schedule. All permitted wells must report their pumpage to the District quarterly. If the well is metered, the meter readings must be attached to the quarterly pumpage report 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 quarterly 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 transportation outside the district of groundwater produced within the District.

RULE 10.6 METERING AND REPORTING

- 10.6.1 New wells: A meter must be installed to meet the District's specifications, at the well owner's cost, on each new, permitted well that is capable of producing more than 25,000 gallons per day, at the time of completing the well, and prior to commencing the production of groundwater for beneficial use. Meters are not required to be installed on nonexempt wells that are drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons per day, as long as an alternative measuring method approved by the District is used to record and report groundwater production from this type of well.
- 10.6.2 Existing wells: A well that must be permitted and that exists as of the initial effective date of these rules requires a meter that meets the District's specifications or must comply with District Rule 10.6.3 and secure authorization for an alternative measuring method. The meter shall be installed in accordance with the Meter Installation Schedule to be adopted by Board resolution. The District may allocate funds for a portion or all of the meters required under this subsection, and may supply the meters. However, installation costs are to be paid by the well owner. The Meter Installation Schedule shall set forth the deadlines by which meters shall be required to be installed on existing wells, and shall be developed by the Board after consideration of relevant factors including but not limited to the District's budget, logistical requirements for installation, and the benefits of measuring groundwater production within the District.
- 10.6.3 Alternative measuring method: The District may authorize the use of an alternative measuring method in lieu of a meter if it can be demonstrated by the well owner that the alternative measuring method is capable of accurate measurement of groundwater withdrawal. The owner of an existing, nonexempt well may apply to the District for approval of an alternative measuring method of determining the amount of groundwater withdrawn. The District General Manager may authorize the alternative measuring method if the applicant well owner demonstrates that the alternative measuring method can accurately measure the groundwater withdrawn. Reporting shall still be required by an owner of a well who is using a District-approved alternative measuring method.
- 10.6.4 Exempt wells: Meters are not required to be installed on exempt wells. An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

- a) the total amount of water withdrawn during the month;
- b) the quantity of water necessary for mining activities; and
- c) the quantity of water withdrawn for other purposes.

10.6.5 The meter shall be read, and the meter reading and actual amount of pumpage recorded and reported each quarter on a form provided by the District. The permit holder subject to this reporting requirement shall keep accurate records of the amount of groundwater withdrawn and the purpose of the withdrawal, and such records shall be available for inspection by the District or its representatives. Where wells are permitted in the aggregate, metering and reporting are required on a well by well basis.

10.6.6 Immediate written notice shall be given to the District in the event a withdrawal exceeds the quantity authorized by this permit.

10.6.7 Meter accuracy to be tested. The District may require the applicant, at the applicant's expense, to test the accuracy of the meter and submit a certificate of the test results. If the tests reveal that a meter is not registering within an accuracy of 95%-105% of actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or well system, the applicant must take appropriate steps to remedy the problem, and to retest the meter within 90 calendar days from the date the problem is discovered.

10.6.8 Violation of Metering and Reporting Requirements: False reporting or logging of meter readings, intentionally tampering with or disabling a meter, or similar actions to avoid accurate reporting of groundwater use and pumpage shall constitute a violation of these rules and shall subject the person performing the action, as well as the well owner, and/or the primary operator who authorizes or allows that action, to such penalties as provided in the District Act and these rules.

10.6.9 Recordkeeping Required until Installation of Meter: Beginning on the Effective Date of this Rule, the owner of an existing well required to be metered that is not already metered shall be required to keep an accurate log of dates of operation of each well, the duration of such operation, and the purpose and place of use of the water produced until such time as the well owner installs a meter or secures an alternate measuring method. Such metering log shall be submitted to the District in writing and sworn to within ten (10) calendar days of the installation of the meter or approval of an alternate measuring method, whichever is earlier. Failure to provide the metering log as required by this rule or the provision of false information therein shall be a violation of these Rules and grounds for permit denial or revocation.

10.6.10 Meter Maintenance: Costs of meter maintenance shall be borne by the well owner or operator, if applicable.

SECTION 11. GENERAL PERMITTING POLICIES AND PROCEDURES

RULE 11.1 REQUIREMENT FOR PERMIT TO DRILL, OPERATE, OR ALTER THE SIZE OF A WELL OR WELL PUMP; PERMIT AMENDMENT

- 11.1.1 Permits Required: No person may drill, operate, equip, complete, or alter the size of a well or well pump without first obtaining a permit or approved pre-registration, as applicable, from the District as provided by statutory law and these rules.
- 11.1.2 Permit Amendment Required: A permit amendment is required prior to any deviation from the permit terms regarding the maximum amount of groundwater to be produced from a well, ownership of a well or permit, the location of a proposed well, the purpose of use of the groundwater, the location of use of the groundwater, or the drilling and operation of additional wells, even if aggregate withdrawals remain the same.
- 11.1.3 Absent an express reservation of rights in the transferor, the transfer of ownership of the well(s) designated by a permit is presumed to transfer ownership of the permit, and the transfer of the land and well site on which the well is located is presumed to transfer ownership of the well. The ownership of a permit may be transferred separately from the ownership of a well or place of use, subject to these Rules and permit conditions.
- 11.1.4 The District shall schedule a hearing for all activities for which a permit or permit amendment is required.

RULE 11.2 AGGREGATION OF WITHDRAWAL AMONG MULTIPLE WELLS

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

RULE 11.3 PERMIT EXCLUSIONS & EXEMPTIONS

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

- a) A well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 (ten) acres that is either 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 the effective date of this rule to a well to be drilled, completed, or equipped on a tract of land equal to or 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 equal to or less than 10 (ten) acres in size prior to the effective date of this rule; and

- (3) such tract is not further subdivided into smaller tracts of land after the effective date of this rule 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 100 feet from the property line and 100 feet from other wells.

- b) 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.
- c) A water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.
- d) An injection water source well permitted by the Railroad Commission for secondary or enhanced oil or gas recovery.
- e) A well exempted under Subsections (b), (c), and (d) above must be permitted and comply with all District rules if:
 - (1) the purpose of a well exempted under Subsection (b) is no longer 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;
 - (2) the withdrawals from a well exempted under Subsection (c) 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; or
 - (3) the purpose of a well exempted under Subsection (d) is no longer solely to supply water for secondary or enhanced oil recovery pursuant to the terms of the permit issued by the Railroad Commission of Texas.
- f) 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.
- g) A water well exempted under provisions a) through d) above shall:
 - (1) be pre-registered and registered in accordance with rules promulgated by the District; and

- (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.
- h) Monitoring wells
- i) Leachate wells
- j) Dewatering wells
- k) Registered wells observe exemptions that were in place at the time of filing the registration.
- l) A well exempt under this section will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt.

RULE 11.4 HISTORIC AND EXISTING PERMITS

- 11.4.1 The well owner of any existing operational well not exempt under Rule 11.3 is eligible to and must file an application for Historic and Existing Use on a form provided by the District no later than August 1, 2005. Upon the applicant's presentation of evidence of beneficial use of groundwater during the Historic and Existing Use Period, the Board, after notice and hearing as provided for in this Section, shall take action to grant or deny the application, in full or in part, and issue a Historic and Existing Use Permit, if warranted.
- 11.4.2 Prior to the District's decision on an application for Historic and Existing Use, the applicant is authorized to withdraw and put groundwater to beneficial use in an amount no greater than the Historic and Existing Use claimed or to be claimed in the application for Historic and Existing Use.
- 11.4.3 Increased use beyond the permit allotment specified in an Historic and Existing Use Permit from an existing, permitted well requires the submission and grant of an Production Permit application.

RULE 11.5 PERMITS REQUIRED TO DRILL A NEW WELL

- 11.5.1 Every person who drills a water well after the effective date of these rules, other than an exempt well as defined in Rule 11.3, must file a permit application on a form approved by the District.
- 11.5.2 Drilling Permit Requirement: The well owner, well operator, or any other person acting on behalf of the well owner must obtain a drilling permit from the District prior to drilling a new water well, perforating an existing well or increasing the size of a well

pump therein so that the well could reasonably be expected to produce 25,000 gallons per day or more, unless the well is an exempt well under District Rule 11.3.

RULE 11.6 PERMITS REQUIRED TO OPERATE A NEW WELL OR FOR INCREASED WITHDRAWAL AND BENEFICIAL USE FROM AN EXISTING WELL

11.6.1 Prior to or no later than 21 (twenty-one) calendar days after completion of a new water well, or reworking or re-equipping an existing water well, the well owner or well operator must file a completed Production Permit application on a form approved by the District.

RULE 11.7 PERMIT TERM

11.7.1 Drilling Permit Term: Unless specified otherwise by the Board or these rules, drilling permits are effective for a term ending 120 (one hundred twenty) calendar days after the date the permit is issued by the District, which may be extended by the General Manager with good cause shown.

11.7.2 Historic and Existing Use Permit and Production Permit Terms: Unless specified otherwise by the Board or these rules, an Historic and Existing Use Permit and Production 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 11.8 PERMIT RENEWAL

11.8.1 Permit Renewal: Renewal applications shall be provided by the District prior to expiration of the permit term, and shall be filed with the District no later than January 15th of the new year for which the permit renewal is requested. Production 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 that seeks renewal with the identical permit conditions in the existing permit 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, at the time of submitting documentation in support of annual permit renewal.

Any permit holder seeking renewal may appeal the General Manager's ruling by filing, within ten calendar 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 adjustment regulations or these rules, 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 may be renewed by the General Manager, subject to any changes necessary under proportional adjustment regulations, these rules, or the District's Management Plan.

11.8.2 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.

11.8.3 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.

11.8.4 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.

RULE 11.9 PERMIT APPLICATIONS

11.9.1 Requirements for All Permit Applications:

- a) Application forms and payment of applicable fees: Each original application for a Historic and Existing Use Permit, a water well drilling permit, Production permit, and permit amendment requires the filing of a separate application, payment of the applicable fees, if any, 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) the date the permit is to expire if no well is drilled;
 - 5) a statement of the purpose for which the well is to be used;
 - 6) a requirement that the water withdrawn under the permit be put to beneficial use at all times;
 - 7) the location of the use of the water from the well;
 - 8) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;
 - 9) 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;
 - 10) a declaration that the applicant will comply with the district's management plan;
 - 11) a drought contingency plan;
 - 12) a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the commission;
 - 13) if groundwater is proposed to be 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 transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
 - (iii) how the proposed transfer is consistent with the approved regional water plan and certified district management plan.
- b) Notice of filing of an application: All permit applicants must provide notice by publication in a newspaper of general circulation in the District, and by certified mail, return receipt requested, to all property owners within a one-fourth (1/4) mile radius of the existing well or proposed well that is the subject of the application (notification of any property owner receiving water solely by a retail water utility is not required of any applicant if notice is provided to the retail water utility). For Historic and Existing Use permits, the District will provide the newspaper notice; property owner notification by mail is not required.

- 1) All public notices covered by this section must include the following information on a form first approved by the District prior to issuance or publication:
 - (i) name and address of the applicant;
 - (ii) date the application was filed;
 - (iii) location and a description of the well that is the subject of the application; and
 - (iv) a brief summary of the information in the application.

- 2) The applicant must provide the District with the following information for the District to declare that the application is administratively complete:
 - (i) Information contained in Rule 8.9.1;
 - (ii) proof of publication of public notice;
 - (iii) proof of receipt by certified mail of the public notice to the property owners identified by Subsection (b)(1); and
 - (iv) a list of the names and addresses of the property owners notified by certified mail.

11.9.2 Drilling and Production Permit Applications: In addition to the requirements in Rule 11.9.1, all Drilling and Production Permit Applications and applications for amendment of Production Permits shall include the following:

- a) A location map of all existing wells within a half (1/2) mile radius of the proposed well or the existing well to be modified;
- b) A map or other document from the Pecos County Tax Appraisal District indicating the ownership and location of the subject property;
- c) A document indicating the location of the proposed well or the existing well to be modified, the subject property, and adjacent owners' physical and mailing addresses;
- d) Notice of any application to the 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;
- e) A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
- f) A hydrogeological report shall be attached to applications meeting the following conditions:
 - 1) Requests to operate a nonexempt well with an annual maximum permitted use of at least 1,000 acre feet.

- 2) Requests to amend and increase by at least 250 acre feet the annual maximum permitted use of a Production Permit.
- g) Hydrogeological reports required under Rule 11.9.2 (e) shall include the following information:
 - 1) Address the area of influence of the well for which a permit is being requested.
 - 2) 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.
 - 3) Be complete in a manner that complies with the guidelines adopted by the District for this purpose.
- h) An applicant subject to subsection (f) of this section shall agree to conduct a pumping test for each well for which a production permit is being requested, and to submit the results of the pumping test to the District within 30 days of the well coming on-line and beginning to produce groundwater for beneficial use.

11.9.3 Historic and Existing Use Permit Applications: In addition to the requirements in Rule 11.9.1, all Historic and Existing Use Permit applications shall include the following:

- a) a statement of the quantity, nature, and purpose of the beneficial use during the single year of the maximum beneficial use during the Historic and Existing Use Period (Maximum Historic and Existing Use);
- b) a statement of the nature and purpose of the proposed use and the amount of water to be beneficially used for each purpose;
- c) the location of each well and the estimated rate at which water will be withdrawn; and
- d) Notwithstanding anything to the contrary in these rules, an applicant who owns land that was enrolled in the United States Department of Agriculture, Farm Service Agency, Conservation Reserve Program, pursuant to Title 7 of the Code of Federal Regulations, Part 1410, during each year in the Historic and Existing Use Period and that was irrigated during at least two of the five calendar years immediately prior to the calendar year of the effective date of the contract between the landowner and the United States Department of Agriculture/Commodity Credit Corporation for enrollment of such land in the United States Department of Agriculture, Farm Service Agency, Conservation Reserve Program, may include those five calendar years immediately prior to the calendar year of the effective date of such contract in determining the applicant's Maximum Historic and Existing Use under these Rules.

RULE 11.10 PERMIT HEARINGS

11.10.1 All hearings shall be held before a quorum of the Board.

11.10.2 Notice and Scheduling of Hearing: Once the District has received an administratively complete application for a water well drilling permit, Production Permit, permit for Historic and Existing Use or a permit amendment and associated fees, the general manager will issue written notice on the application in accordance with these rules.

- a) Notices of all hearings of the District shall be prepared by the General Manager and shall, at a minimum, state the following information:
 - (1) the name and address of the applicant;
 - (2) the name or names of the owner or owners of the land if different from the applicant;
 - (3) the time, date, and location of the hearing;
 - (4) the address or approximate proposed location of the well, if different than the address of the applicant;
 - (5) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use; and
 - (6) any other information the Board or General Manager deems appropriate to include in the notice.
- b) Not less than 30 calendar days prior to the date of the hearing, notice shall be:
 - (1) posted by the General Manager at a place readily accessible to the public in the District Office;
 - (2) provided by the General Manager to the County Clerk of Pecos County, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the county courthouse;
 - (3) provided to the applicant by regular mail
- c) A person may request notice from the district of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.
- d) Failure to provide notice under Subsection (c) does not invalidate an action taken by the district at the hearing.

- e) Any hearing may or may not be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. All hearings shall be held at the location set forth in the notice.
- f) The General Manager shall set a permit hearing date within 60 calendar days after the date the administratively complete application is submitted. The permit hearing shall be held within 35 calendar days after the setting of the date. Within this same time frame, the General Manager shall post notice and set a hearing on the application before the District Board. The General Manager may schedule as many applications at one hearing as the General Manager deems necessary.

11.10.3 Authority of 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:

- a) set hearing dates, other than the initial hearing date for permit matters;
- b) convene the hearing at the time and place specified in the notice for public hearing;
- c) rule on motions and on the admissibility of evidence;
- e) establish the order for presentation of evidence;
- f) administer oaths to all persons presenting testimony;
- g) examine witnesses;
- h) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- i) conduct public hearings in an orderly manner in accordance with these rules;
- j) recess any hearing from time to time and place to place; and
- k) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer.

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

- a) Appearance: Protestants and non-protestant interested persons may present evidence, exhibits, or testimony, or make an oral presentation as allowed by the Presiding Officer. A person appearing in a representative capacity may be required to prove proper authority. Each person attending and participating in a hearing of the District must submit on a form provided by the District, prior to or at the commencement of the hearing, the following information: the person's name and address, who the person represents if other than himself, whether the person wishes to testify, whether the person is protesting the application, and any other information relevant to the hearing.
 - i) Protestants: A person desiring to protest an application for Historic and Existing Use shall file with the District a notice of protest no later than 15

days after newspaper notice, and shall serve the notice of protest on the applicant at the time of filing. A person desiring to protest an application for a Production Permit shall file with the District a notice of protest no later than 15 days after receipt of written, mailed notice or newspaper notice, whichever is later, and shall serve the notice of protest on the applicant at the time of filing. The notice of protest shall set forth the protestant's justiciable interest and how that justiciable interest would be adversely affected by the permit proposed by the application. The Board may take testimony and shall deliberate and take official action at the hearing to determine whether the protestant has sufficiently demonstrated their justiciable interest and how that justiciable interest would be adversely affected by the permit proposed by the application. If the Board finds that a protestant does not adequately establish that its justiciable interest is affected by the proposed permit, then the protestant shall not be allowed to participate in the hearing.

- ii) Non-protestant interested persons: A person may appear at a hearing in person or by representative provided the representative is fully authorized, in writing, to speak and act for the principal. Provided, however, any person desiring to protest an application must timely file a notice of protest and qualify pursuant to Subsection (a)(i) of this rule as a condition to participating in the hearing.
- 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 with good cause shown and if 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: When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form, but may be subject to cross-examination. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally.

11.10.5 Recording

(a) Contested Hearings: A record of the hearing in the form of an audio or video recording or a court reporter transcription shall be kept in a contested hearing. The Presiding Officer shall have the hearing transcribed by a court reporter upon a request by a party to a contested hearing. Court reporter transcription costs may be assessed against the party requesting the transcription or among the parties to the hearing. In assessing reporting and transcription costs, the Presiding Officer must consider the following factors:

1. the party who requested the transcript;
2. the financial ability of the requesting party to pay the costs;
3. the extent to which the requesting party participated in the hearing;
4. the relative benefits to the various parties of having a transcript;
5. the budgetary constraints of a governmental entity participating in the proceeding;
and
6. any other factor that is relevant to a just and reasonable assessment of costs.

(b) Uncontested Hearings: In an uncontested hearing, the Presiding Officer may substitute meeting minutes or the report required under Rule 8.10.7 for a method of recording the hearing.

11.10.6 Evidence; Broadening the Issues

- a) The Presiding Officer shall admit evidence if it is relevant to an issue at the hearing.

- b) The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
- c) No person will be allowed to appear in any hearing whose appearance, in the opinion of the Presiding Officer, is for the sole purpose of unduly broadening the issues to be considered in the hearing.

11.10.7Continuance: The Presiding Officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the Presiding Officer before it is recessed, a notice of any further setting of the hearing or other proceeding which shall include the date, hour, place and subject of the meeting will be provided by regular mail at a reasonable time to the parties, persons who submitted a hearing registration form under this Section, and any other person the Presiding Officer deems appropriate, but it is not necessary to post or publish a notice of the new setting, except as required by the Texas Open Meetings Act.

11.10.8Uncontested Hearings: If no persons timely protest the application and the General Manager proposes to grant the application, whether a partial or full grant, the application shall be considered uncontested. If, during a contested case hearing, all interested persons contesting the application withdraw their protests or are found by the Board not to have a justiciable interest affected by the application, or the parties reach a negotiated or agreed settlement which, in the judgment of the Board, settles the facts or issues in controversy, the proceeding will be considered an uncontested hearing.

11.10.9 Hearing Report: The Presiding Officer shall submit a report to the Board within 30 days after the date the hearing is finally concluded.. The report must include a summary of the subject matter of the hearing, 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 shall be provided to the applicant, each designated party, and each person who provided a comment. Any person who receives a copy of the report may submit to the Board written exceptions to the hearing report. The Presiding Officer may direct the General Manager or another District representative to prepare the hearing report and recommendations required by this Rule.

11.10.10Board Action: Within 60 calendar days after the final hearing date is concluded, the Board must take action on the subject matter of the hearing. In deciding whether or not to issue a drilling permit, Production 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; and
- 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.

The District may not impose any restrictions on the production of groundwater for use outside of the District other than imposed upon production for in-district use, and shall be fair, impartial, and nondiscriminatory. The district may periodically review the amount of water that may be transferred out of District and may limit the amount.

11.10.11 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 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 who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions from the board may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.
- (c) A request for rehearing must be filed in the district office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.
- (d) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- (e) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.
- (f) 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.

SECTION 12.

RULE 12.1 REWORKING AND REPLACING A WELL

- a) An existing well may be reworked or re-equipped in a manner that will not change the existing well status.
- b) A permit must be applied for and granted by the board if a party wishes to replace an existing well with a replacement well.
- c) A replacement well, in order to be considered such, must be drilled within a reasonable distance of the existing well as long as it meets the District's spacing requirements.
- d) In the event the application meets spacing and production requirements, the Board may grant such application without further notice.

SECTION 13. WELL LOCATION AND COMPLETION

RULE 13.1 RESPONSIBILITY

After an application for a well permit has been granted, the well, if drilled, must be drilled within a reasonable distance of the location specified in the drilling permit, and not elsewhere, provided, however, that spacing restrictions be met. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code. As described in the Texas Water Well Drillers' Rules, all well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of the rule prescribing the location of wells and proper completion.

RULE 13.2 LOCATION OF DOMESTIC, INDUSTRIAL, INJECTION, IRRIGATION WELLS

Location of wells should be as specified in *16 Texas Administrative Code, Chapter 76.1000*.

RULE 13.3 STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS

Standards of completion shall be as specified in *16 Texas Administrative Code, Chapter 76.1000*.

RULE 13.4 RE-COMPLETIONS

Standards shall be as specified in *16 Texas Administrative Code, Chapter 76.1003*.

RULE 13.5 SPACING REQUIREMENTS

- 13.5.1 Spacing and Location of Existing Wells: Wells drilled prior to the Effective Date of these rules are not subject to spacing requirements of this rule except that these existing wells shall have been drilled in accordance with state law in effect, if any, on the date such drilling commenced.
- 13.5.2 Spacing and Location of New Wells: All new permitted wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, except that wells shall not be located within 100 (one hundred) feet from a property line. Water well drillers shall indicate the method of completion performed on the Well Report (Texas Department of Licensing and Regulation Form #001 WWD, Section 10, Surface Completion). The District does not impose any additional requirements, but shall consider evidence submitted at the hearing on the permit application that demonstrates that the proposed new well(s) adversely impact and interfere with neighboring wells.
- 13.5.3 Exceptions to Spacing Requirements:
- a) The Board may grant exceptions to the spacing requirements of the District.
 - b) If an exception to the spacing requirements of the District is desired, a person shall submit an application to the Board. In the application, the applicant must explain the circumstances justifying an exception to the spacing requirements of the District. The application must include a plat or sketch, drawn to scale, one inch equaling 200 feet. The application and plat must be certified by some person actually acquainted with the facts who shall state that the facts contained in the application and plat are true and correct.
 - c) An exception may be granted by the Board after written notice has been given to the applicant and all owners of property or existing or permitted wells located within the minimum required distance from the proposed permitted well site, after a public hearing at which all interested parties may appear and be heard, and after the Board has decided that an exception should be granted. Provided, however, if all such owners execute a waiver in writing, stating that they do not object to the granting of the exception, the Board may proceed, upon notice to the applicant only and without hearing, and determine the outcome of the application. The applicant may waive notice or hearing or both.
 - d) If the applicant presents waivers signed by all landowners and well owners whose property or permitted wells would be located within the applicable minimum distance established under these Rules from the proposed well site stating that they have no objection to the proposed location of the well site, the Board, upon the General Manager's recommendation, may waive certain spacing requirements for the proposed well location.

SECTION 14. WASTE AND BENEFICIAL USE

RULE 14.1 DEFINITION OF WASTE

“Waste” means any one or more of the following:

- (a) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for municipal, industrial, 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, or is not used for such purposes with a reasonable degree of efficiency. Includes line losses in excess of those determined to be unavoidable.
- (c) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
- (d) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
- (e) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well other than the natural flow of natural springs unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality (“TCEQ”) under Chapter 26 of the Texas Water Code, *Water Quality Control*;
- (f) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge;
- (g) groundwater used for heating or cooling that is allowed to drain on the land surface as tailwater and not re-circulated back to the aquifer;
- (h) the loss of groundwater in the distribution system and/or storage facilities of the water supply system which should not exceed acceptable “system water losses” as defined by the American Water Works Association standard; or
- (i) Pursuant to Section 11.205 of the Texas Water Code, unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner’s land, it is waste and unlawful to willfully cause or knowingly permit the water to

run off the owner's land or to percolate through the stratum above which the water is found.

RULE 14.2 WASTEFUL USE OR PRODUCTION

14.2.1 No person shall intentionally or negligently commit waste.

14.2.2 Underground water shall not be produced within, or used within or without the District in such a manner as to constitute waste.

14.2.3 Any person producing or using groundwater shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of water.

RULE 14.3 POLLUTION OF GROUNDWATER

14.3.1 No person shall pollute or harmfully alter the character of the underground water of the District by means of salt water or other deleterious matter admitted from another stratum or strata or from the surface of the ground, or from the operation of a well.

14.3.2 No person shall pollute or harmfully alter the character of the underground water of the District by activities on the surface of the ground which cause or allow pollutants to enter the groundwater through recharge features, whether natural or manmade.

RULE 14.4 ORDERS TO PREVENT WASTE/POLLUTION

After providing notice to affected parties and opportunity for a hearing, the Board may adopt orders to prohibit or prevent waste or pollution. If the factual basis for the order is disputed, the Board shall direct that an evidentiary hearing be conducted prior to entry of the order. If the Board determines that an emergency exists requiring the immediate entry of an order to prohibit waste or pollution and protect the public health, safety, and welfare, it may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of fifteen (15) calendar days or until a hearing can be conducted.

RULE 14.5 REQUIRED EQUIPMENT ON WELLS FOR THE PROTECTION OF GROUNDWATER QUALITY

14.5.1 EQUIPMENT REQUIRED. The following equipment must be installed on all wells having a chemical injection, chemigation or foreign substance unit in the water delivery system: an in-line, automatic quick-closing check valve capable of preventing pollution or harmful alteration of the groundwater. Such equipment must be installed on all new wells at the time of completion. Such equipment shall be installed on all existing wells the next time the wells are serviced.

14.5.2 CHECK VALVES. The type of check valve installed shall meet the following specifications:

- a) Check valves must be equipped with a TCEQ-approved hazardous materials backflow device, and installed in a manner approved by Texas Department of Licensing and Regulation (“TDLR”).
- b) A vacuum-relief device shall be installed between the pump discharge and the check valve in such a position and in such a manner that insects, animals, floodwater, or other pollutants cannot enter the well through the vacuum-relief device. The vacuum-relief device may be mounted on the inspection port as long as it does not interfere with the inspection of other anti-pollution devices.

SECTION 15. INVESTIGATIONS AND ENFORCEMENT

RULE 15.1 NOTICE AND ACCESS TO PROPERTY

Board Members and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District agents or employees who are attempting to conduct an investigation under the District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in Texas Water Code Chapter 36.

RULE 15.2 CONDUCT OF INVESTIGATION

Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the well.

RULE 15.3 RULE ENFORCEMENT

15.3.1 If it appears that a person has violated, or is violating any provision of the District Rules, the Board of Directors may institute and conduct a suit in the name of the District for injunctive relief, recovery of a civil penalty of not more than \$10,000 per violation, or both injunctive relief and a civil penalty. Each day that a violation continues shall be considered a separate violation.

15.3.2 The District shall annually adopt a fee schedule.

RULE 15.4 SEALING OF WELLS

Following notice to the well owner and operator and upon resolution by the Board, the District may seal wells that are prohibited from withdrawing groundwater within the District to ensure that such wells are not operated in violation of the District Rules. A well may be sealed when: (1) no application has been made for a permit to drill a new water well which is not excluded or exempted; or (2) no application has been made for an Production permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or (3) the Board has denied, canceled or revoked a drilling permit or an Production permit.

The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District, and other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a well that has been sealed constitutes a violation of these rules and subjects the person performing that action, as well as any well owner or primary operator who authorizes or allows that action, to such penalties as provided by the District Rules.

RULE 15.5 CAPPING AND PLUGGING OF WELLS

15.5.1 The District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must remain capped until such time as the conditions that led to the capping requirement are eliminated. If well pump equipment is removed from a well and the well will be re-equipped at a later date, the well must be capped, provided however that the casing is not in a deteriorated condition that would permit co-mingling of water strata, in which case the well must be plugged. The cap must be capable of sustaining a weight of at least four hundred (400) pounds and must be constructed with a water tight seal to prevent entrance of surface pollutants into the well itself, either through the well bore or well casing.

15.5.2 A deteriorated or abandoned well must be plugged in accordance with the Texas Department of License and Regulation, Water Well Drillers and Pump Installers Rules (16 TAC Chapter 76). It is the responsibility of the landowner to see that such a well is

plugged to prevent pollution of the underground water and to prevent injury to persons and animals. Registration of the well is required prior to, or in conjunction with, well plugging.

Any person that plugs a well in the District must submit a copy of the plugging report to the District and the Texas Department of License and Regulation within thirty (30) calendar days of plugging completion.

15.5.3 If the owner or lessee fails or refuses to plug or cap the well in compliance with this rule and District standards within thirty (30) calendar days after being requested to do so in writing by an officer, agent, or employee of the District, then, upon Board approval, any person, firm, or corporation employed by the District may go on the land and plug or cap the well safely and securely, pursuant to TWC Chapter 36.118.

Reasonable expenses incurred by the District in plugging or capping a well constitutes a lien on the land on which the well is located.

The District shall perfect the lien by filing in the deed records an affidavit, executed by any person conversant with the facts, stating the following:

- a) the existence of the well;
- b) the legal description of the property on which the well is located;
- c) the approximate location of the well on the property;
- d) the failure or refusal of the owner or lessee, after notification, to close the well within thirty (30) calendar days after the notification;
- e) the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
- f) the expense incurred by the District in closing the well.

SECTION 16. FEES

RULE 16.1 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 16.2 GROUNDWATER TRANSPORT FEE

16.2.1 The District may impose a reasonable fee or surcharge, established by Board resolution, for transportation of groundwater out of the District using one of the following methods:

- a) a fee negotiated between the District and the 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 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.

If a production fee is assessed, this transport fee shall not exceed 10 percent of the amount of the fee assessed for the production of water for use within the district.

16.2.2 Payment of the Groundwater 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 16.3 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.