

Rules of the High Plains Underground Water Conservation District No. 1

(As Amended March 13, 2015)



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RULE 1: DEFINITIONS

Unless the context hereof indicates a contrary meaning, the words hereinafter defined shall have the following meaning:

- (a) "Abandoned well" means a well that has been abandoned by the owner by filing an abandoned well form with the District and (1) capped or plugged in compliance with District rules or (2) properly equipped in such a manner that it cannot produce more than 25,000 gallons of water per day or 17.5 gallons of water per minute. Once a well is abandoned, its permit and well site are void.
- (b) "Administratively complete application" means an application (1) for which all information requested by the District has been fully and accurately provided; (2) that complies with District rules; (3) for which all applicable fees have been paid; (4) where the applicant is in compliance with any permits the applicant holds from the District and with District rules; (5) where all necessary field and site visits have been conducted, and (6) that has been recommended for approval by the General Manager.
- (c) "Allowable Production Rate" means the amount of groundwater that non-exempt well(s) or well systems are authorized to produce from the Aquifer(s) of the District during each calendar year beginning on January 1, 2015.
- (d) "Applicant" means a person seeking action by the District such as requesting a permit, an exception to the District rules, or a hearing.
- (e) "Approved well site" means a location approved through issuance of a permit.
- (f) "Aquifer(s) of the District" means all or part of any water bearing stratum or formation underlying the District's boundaries.
- (g) "Board" means the governing body of the District.
- (h) "Beneficial use" or "Beneficial purpose" shall have the same meaning as found in the Texas Water Code §36.001(9), as amended.
- (i) "Conservation" means those water saving practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
- (j) "Contiguous Acre" means an acre of land within the District and all additional acreage within the District, which is either (a) abutting acreage that physically touches, including corner-to-corner, or (b) non-abutting acreage if the two properties are connected by a common underground water pipeline system. In addition, the same person shall have the right to produce groundwater from the

contiguous acreage through deed, easement, contract, lease, or any other legally recognized agreement. A municipality may include the acreage within its city limits.

- (k) "Deteriorated well" or "Deteriorating well" means a well that, in the discretion of the District, because of its condition will cause or is likely to cause property damage, personal injury, or risk to health, safety, or life and/or the contamination of groundwater.
- (l) "District" means the High Plains Underground Water Conservation District No. 1.
- (m) "District personnel" means any person employed, empowered, or authorized by or contracted to do business for the District.
- (n) "Double Cropping" means the practice of planting and harvesting more than one irrigated crop per irrigated acre each year. Harvesting includes either mechanically harvesting or grazing of livestock. The following practices will not be considered double cropping: (1) cover crops for conservation purposes only, (2) crop rotation programs that average one irrigated crop per irrigated acre each year, (3) grazing and mechanically harvesting the same crop, and (4) subsequent crops which replace a crop destroyed by weather in the same year.
- (o) "Exempt use" means the use of a well that is exempt from obtaining a permit under Texas Water Code §36.117(b)(1)(A)(B),(2), and (3).
- (p) "General Manager" means the General Manager of the District or the General Manager's designee.
- (q) "Groundwater" means water percolating below the surface of the earth.
- (r) "Illegal well" means any well drilled, completed, equipped or operated in violation of District rules.
- (s) "Management Goal" means the District's Desired Future Condition of the Aquifer(s) of the District. A Desired Future Condition is a quantitative description of the desired condition of the groundwater resources in a management area at one or more specified future times.
- (t) "Management Plan" means the most recently adopted District management plan, as required under Texas Water Code §36.1071.
- (u) "Meter" means a water production measuring device authorized under Rule 5.
- (v) "Open or uncovered well" means any artificial excavation drilled or dug for the purpose of exploring for or producing water from the Aquifer(s) of the District and is not capped or covered in compliance with District rules.
- (w) "Owner" means and includes any person, private or public, that has a legal right to capture and produce water from a property, except as those rights may be limited or altered by Texas Water Code Chapter 36, as may be amended, or District rules, either by ownership, contract, lease, easement, or any other estate in the water.
- (x) "Permit" means authorization granted by the Board to construct, drill, operate, install, equip, complete, or other work designed for the production of groundwater from the Aquifer(s) of the District.

- (y) "Permitted well" means a pre-District, existing, or new well that is drilled and equipped to produce more than 25,000 gallons of water per day or 17.5 gallons per minute and that has a record of the location of the well on file with the District, regardless of whether or not the well was exempt under a previous version of the District's rules.
- (z) "Person" means any legal entity, including but not limited to, individual, partnership, firm, any type of corporation, estate, guardianship, trust or any type of municipality.
- (aa) "Proposed well site" means the location of a proposed well as recorded on an application filed with the District until such application is granted by the Board. A proposed well site is not a permit to drill.
- (bb) "Registered Well" means a well that is drilled and/or equipped to produce no more than 25,000 gallons of water per day or 17.5 gallons per minute and that has a record of the location of the well on file with the District.
- (cc) "Valid well" means the location of (1) a permitted well or (2) a registered well.
- (dd) "Waste" shall have the same meaning contemplated under Chapter 36 of the Texas Water Code, including without limitation as defined in Texas Water Code §36.001(8), as amended.
- (ee) "Water" is used synonymously with groundwater.
- (ff) "Well" means any artificial excavation located within the boundaries of the District through which groundwater can be removed from the aquifer.
- (gg) "Well owner" or "Well operator" means the person who owns a possessory interest in the land upon which a well or well system is located or to be located, or the person who operates a well or well system.
- (hh) "Well system" means a well or group of wells tied to the same water distribution system(s).
- (ii) "Year" means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.

RULE 2: GENERAL PROVISIONS

2.1 Repeal of Prior Regulations and Notice of Possible Future Changes to Rules

All previous rules and regulations of the District have been reviewed and evaluated, and except as they are herein republished, are repealed. District rules may be changed depending upon changes to applicable laws, rules, regulations, management plans, and other conditions or circumstances dictating change. The District, through appropriate procedure, may amend, suspend, or repeal, in part or in whole, these rules to accommodate the above-referenced need for change to the rules.

2.2 Savings 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.

2.3 Time Limits

Applications, requests, or other papers or documents required or allowed to be filed under state law or District rules must be received for filing at the District's principal office in Lubbock, Texas within the time limit, if any, for such filing. The date of receipt and not the date of posting is determinative.

2.4 Show Cause Orders and Complaints

The Board, either on its own motion or upon receipt of sufficient written protest or complaint, and after due notice to all interested parties is given, may cite any person operating a well to appear before the Board in a public hearing and require that person to show cause why the operating authority or permit should be not suspended, canceled, or otherwise restricted and limited, for failure to comply with the orders or rules of the District or the relevant statutes of the state.

2.7 Final Orders of the Board

The orders of the Board in any proceeding other than permit hearings and rulemaking hearings shall become the final order of the Board on the day it is entered by the Board.

2.8 Surveys

The District may make surveys of the Aquifer(s) of the District and surveys of the facilities in order to determine the quantity of water available for production and use and to determine the improvements, developments, and recharging needed by Aquifer(s) of the District.

2.9 Research

The District may carry out any research projects deemed necessary by the Board.

2.10 Collection of Information

The District may collect any information the Board deems necessary, including information regarding groundwater, water conservation, and the practicability of recharging the Aquifer(s) of the District.

2.11 Publication of Plans and Information

The District may publish plans and the information it develops, and encourage users of groundwater to adopt and use them.

2.12 Effective Date

These rules take effect on the date of their original adoption and an amendment to these rules takes effect on the date of its original adoption, unless the Board specifies otherwise.

2.13 Rules Enforcement

- (a) If it appears that a person has violated, or is violating any provision of the District Rules, the Board may institute and conduct a suit in the name of the District for injunctive relief, or to recover civil penalties through the provisions of §36.102 Texas Water Code.
- (b) The Board shall, by resolution, adopt a Litigation Policy to implement Rule 2.13(a).

RULE 3: WASTE AND BENEFICIAL USE

3.1 Wasteful Use of Water Prohibited

- (a) No person may produce or use groundwater from the Aquifer(s) of the District in such a manner to constitute waste.
- (b) No person may operate a well at a rate of production higher than the maximum allowable production granted in a permit, District rules, or other applicable law. Beginning on January 1, 2015, no person may operate a well producing groundwater from the Aquifer(s) of the District in excess of the Allowable Production Rate set forth under Rule 5. All such unauthorized production is illegal, wasteful per se, and a nuisance.
- (c) All persons shall use reasonable diligence to convey water from the wellhead where produced to the place of use in order to prevent waste. No person may transport groundwater in an open, unlined ditch or channel.

3.2 Groundwater Contamination Prohibited

- (a) No person may pollute or harmfully alter the character of the Aquifer(s) of the District by means of salt water or other deleterious matter admitted from some other stratum or strata or from the surface of the ground.
- (b) Groundwater contamination issues may be investigated by the District.

RULE 4: EXEMPTIONS; PERMITS; REGULATION OF WELLS AND WELL SPACING

4.1 Jurisdiction of the District; Wells Exempt from Permitting

- (a) The District has jurisdiction to manage and reasonably regulate within its geographic boundaries the production of groundwater; the quantity and quality of groundwater; and the use of water produced from wells from the Aquifer(s) of the District.
- (b) The District may not require a permit for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than it is currently permitted for.
- (c) The permitting requirements of these rules do not apply to:

(1) Drilling or operating a well that is completed or equipped to produce no more than 25,000 gallons of groundwater per day, or 17.5 gpm.

(2) Drilling a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig

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

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

(e) The owner of a well that is exempt from permitting under this rule may register the well with the District.

4.2 Well Registration

(a) A well exempt from permitting that was drilled prior to the enactment date of these rules may be registered with the district.

(b) A new well exempt from permitting may be registered with the district.

(c) A person seeking to register a new or existing exempt well shall do so on a form prescribed by the District.

(d) The District shall review well registration applications containing the information in Subsection (c) of this rule for completeness, and may require that the application be accompanied by a fee, the amount of which will be determined from time to time by Board resolution.

4.3 Well Validation

(a) No person may drill, equip, or operate an illegal well.

(b) The Board may issue a certificate of validation for wells drilled and equipped within the District for which the owner has not applied for a permit, for a well that was exempt under a previous version of the district's rules, or for wells not otherwise properly permitted.

(c) Certification of validation for a well may only be issued after the location of the well and wellhead has been determined by a field survey conducted by District personnel and found to be compliant with all District rules.

4.4 Permit Required

(a) No person may drill or operate a well that is not exempt from permitting under Rule 4.1(c), or increase the rate of production above the maximum allowable for which the well is permitted without first being granted a permit by the Board.

(b) Any person seeking to perform any of the activities identified in Subsection (a) must file with the District an application on forms prescribed by the District.

(c) If the General Manager recommends the granting of the application and if there is no contest thereon or conflicting application, the applicant may thereupon proceed at their own risk to drill such well. Should the applicant proceed to drill such well prior to the application having been officially granted by the Board, applicant proceeds entirely at their own risk and solely assumes responsibility for potentially losing a well site, all expenses associated with the drilling and equipping of said well, potential expenses of the District associated with any legal proceeding relating to said well, and any and all other risks of any type which might be associated with said well. The application shall not, however, be officially granted until the same shall have been passed upon and granted by the Board.

4.5 Considerations for Granting or Denying a Permit

(a) Before granting or denying a permit, the District shall consider whether: (1) the application conforms to the requirements of state law and District rules and is accompanied by the prescribed fees; (2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders; (3) the proposed use of groundwater is dedicated to any beneficial use; (4) the proposed use of water is consistent with the District's management plan; (5) the applicant has agreed to avoid waste and achieve water conservation; (6) and 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.

(b) The District shall consider and act on each administratively complete application for a permit. If an application is incomplete, the District will notify the applicant what information is needed. The application will expire if it is still incomplete following 90 days of the date of the District's request.

4.6 Time During Which a Permit is Valid

A permit shall expire and be void and of no force or effect if the well is not completed and the well log is not filed with the District within 240 days from issuance of the permit.

4.7 Elements of Permit

(a) The following information must be provided by the applicant to the District on forms prescribed by the District: (1) name, mailing address, and telephone number of the applicant; (2) name, mailing address, and telephone number of the owner of the land on which the well will be located; (3) property lines; (4) the legal description of the property on which the well will be drilled; (5) the location of the well; (6) the aquifer from which withdrawals will be made; (7) the estimated rate of withdrawal in gallons per minute; (8) a statement of the nature and purpose of the proposed use of the groundwater; (9) installation and completion date; (10) the conditions and restrictions, if any, placed on the rate and amount of withdrawal; and (11) all other information as may be required by the Board.

(b) The following information must be provided by the District: (1) the location of the nearest valid well to the proposed well site, and (2) the location of the proposed well site as determined from field survey by District personnel.

(c) The applicant's signature on the application shall indicate that the applicant: (1) has legal authority to bind the owner to all obligations imposed by the District, (2) has legal authority to drill or cause to be drilled a well at the proposed well site; (3) has received a copy of the District's rules and agrees to comply with said rules; (4) agrees that all information provided by the applicant is correct and true and in compliance with District rules; (5) will install, equip, operate, maintain, or close the well in compliance with district rules; (6) is solely responsible for the drilling of the well at the approved well site identified in the application; for informing the driller of the approved well site; for ensuring the well is drilled within a ten-yard radius of the approved well site; and to abide by all District rules should it become necessary to drill the proposed well at a location other than the approved well site but within the ten-yard radius noted above; (7) will provide the District with a completed well log on forms prescribed by the District immediately upon installation of the permanent pump and prior to the production of groundwater from the well, except for such production as may be necessary to the drilling and testing of such well; (8) agrees that the well may be used as a District observation well as determined by District personnel; and (9) agrees that upon any violation of this agreement, the Board may order that the well may no longer be used until the problem is permanently resolved to the satisfaction of the Board.

(d) A permit may be 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 in the application may be grounds to refuse or deny the application or for immediate revocation of the permit.

(e) Violation of a permit's terms, conditions, requirements, or special provisions is a violation of District rules and is punishable as provided by state law or District rules.

(f) The applicant shall pay a fee—the amount of which will be determined from time to time by the Board.

4.8 Authorization to Regulate Spacing of Wells

(a) The District by rule may regulate the spacing of wells in order to minimize the drawdown of the water table, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste.

(b) For better management of the groundwater resources located within District boundaries or if the District determines that conditions in or use of an aquifer differ substantially from one geographic region of the District to another, the District may adopt different rules for each aquifer, subdivision of the aquifer, or geologic strata located in whole or in part within the boundaries of the District or each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the District's boundaries.

4.9 Minimum Spacing Requirements

(a) All wells permitted subsequent to the date of enactment of this rule shall meet the following distance and production limitations:

Table 1 Minimum Spacing of Wells in the Ogallala/Edwards-Trinity (High Plains) Aquifer

Well Production	Minimum Distance from nearest valid well or proposed well site located in the Ogallala /Edwards-Trinity (High Plains) Aquifer	Minimum Distance from nearest property line
17.5 to 70 gpm	100 yards	25 yards
>70 up to 165 gpm	200 yards	50 yards
>165 up to 265 gpm	300 yards	75 yards
>265 up to 390 gpm	350 yards	87.5 yards
>390 up to 560 gpm	400 yards	100 yards
>560 up to 1,000 gpm	500 yards	125 yards
>1,000 gpm	540 yards	135 yards

Table 2 Minimum Spacing of Wells in the Dockum Aquifer

Well Production	Minimum Distance from nearest valid well or proposed well site located in Dockum Aquifer	Minimum Distance from nearest property line
17.5 up to 70 gpm	100 yards	25 yards
>70 up to 165 gpm	200 yards	50 yards
>165 up to 265 gpm	300 yards	75 yards
>265 up to 500 gpm	880 yards	100 yards
>500 gpm	1760 yards	135 yards

(b) It is fraud upon the District and on the adjacent landowners for any applicant to willfully give erroneous information in the application. If any owner willfully produces a permitted well at a higher rate than represented in the application and/or approved in the permit, such action may be enjoined by the Board.

(c) The Board may require the owner of a well with a production capacity that exceeds the allowable capacity for the minimum well spacing distance to be re-equipped to limit its production capacity in order to bring it into compliance with the applicable production and minimum distance requirements set forth in this rule.

4.10 Place of Drilling Wells

After an application for a permit has been granted, the well, if drilled, must be drilled within ten yards of the location specified in the permit, and not elsewhere. If the well is drilled more than ten yards from the approved well site granted by the Board, it will be an illegal well. The District may enjoin the drilling or operation of the well pursuant to Texas Water Code §36.102, as amended.

4.11 Replacing Wells

(a) No person may replace a well without first obtaining a permit from the District.

(b) A replacement well must be drilled within fifty yards of the well being replaced.

(c) A replacement well must comply with the minimum well spacing requirements, other than the Minimum Distance from nearest property line requirements, for the maximum allowable production granted for the well being replaced, otherwise the replacement well shall be considered a new well.

(d) A replacement well may not be permitted for a capacity greater than the maximum allowable production for which the well being replaced was permitted.

(e) A properly drilled and located replacement well is a valid well. Within 240 days of the issuance of the permit, the owner must declare in writing to the District which one of these two wells will be produced. If the owner does not notify the District within 240 days, then it will be conclusive that the replacement well is the well the owner desires to retain.

(f) Immediately after determining which well will be retained for production, the other well shall be abandoned in accordance with District rules.

(g) An application to replace an existing well may be granted by the Board without notice or hearing.

4.12 Exceptions to Minimum Spacing Requirements

(a) In order to protect property rights and carry out the goals of the District, the Board may grant exception(s) to minimum spacing requirements.

(b) Any person requesting an exception to minimum spacing requirements shall submit (1) a request for exception on a form prescribed by the District, and (2) a non-refundable fee, the amount of which will be established from time to time by the Board.

(c) The request shall contain the name and address of all property owners within a distance of the proposed well equal to the minimum property and well spacing requirements for the projected maximum allowable production for which the well is to be permitted.

(d) The Board may grant a request for exception to minimum spacing requirements if the Board finds that: (1) all information requested by the District has been fully and accurately provided; (2) the application complies with all other District rules; (3) the applicant is in compliance with any permits the applicant holds from the District and with District rules; (4) a statement that the person requesting the exception does so with full knowledge of its import and effect; (5) all applicable fees have been paid; and (6) all necessary field and site visits have been conducted.

(e) Notice shall be provided to all affected property owners. These property owners may appear and present evidence at a public hearing, at which time the Board in its discretion may grant an exception within ten days of the date of the hearing. Unless the conditions in Subsection (f) have been met, the Board may grant an exception only after written notice and hearing.

(f) An exception may be granted by the Board, without notice and hearing, if all persons notified execute a written waiver stating that they do not object to the granting of such exception.

RULE 5: IMPLEMENTATION OF THE DESIRED FUTURE CONDITION MANAGEMENT GOAL; PRODUCTION LIMITATIONS

SUBCHAPTER A: PURPOSE

5.1 Purpose

The purpose of Rule 5 is to implement the District's Desired Future Condition for all Aquifer(s) of the District.

SUBCHAPTER B: ALLOWABLE PRODUCTION RATE

5.2 Applicability

The requirements of Rule 5, Subchapter B, shall apply to all wells not exempt from permitting (non-exempt well) under these rules and that withdraw groundwater from any Aquifer(s) of the District, whether valid or illegal.

5.3 Allowable Production Rate for Wells

- (a) Beginning on January 1, 2015, and continuing thereafter, all persons who own or operate a non-exempt well that withdraws groundwater from any Aquifer of the District are required to limit the total amount of production from the non-exempt well to the Allowable Production Rate of 1.50 acre-feet per Contiguous Acre per year.
- (b) A Contiguous Acre may only be counted one time for purposes of determining the amount of groundwater production to be authorized under this rule.
- (c) Only those acres that meet the definition of Contiguous Acre in Rule 1(j) shall be counted for purposes of determining the Allowable Production Rate from a particular tract of land. If an owner or operator has separate tracts of land that together do not meet the definition of Contiguous Acre, the District shall count each tract separately so that each individual tract has a separate Allowable Production Rate. The Allowable Production Rate for separate tracts of land that do not meet the definition of Contiguous Acre shall not be combined and produced from one tract.

5.4 Authority to Establish a Conservation Reserve

- (a) A well owner or operator may establish a conservation reserve under Rule 5.3.
- (b) A well owner or operator may reserve all or a portion of their annual Allowable Production Rate.
- (c) In order to reserve all or a portion of the Allowable Production Rate under this rule, a well owner or operator must apply to the District on a form prescribed by the Board at the time the well owner or operator submits an annual production report.
- (d) The Board may request additional information from the applicant.
- (e) The District shall keep records of the amount of water each owner or operator has been approved by the District to reserve from the Allowable Production Rate under Rule 5.3 for a particular year.

(f) The reserve shall not be assigned or transferred to other acreage without District approval and withdrawals from the reserve shall not exceed 0.50 acre-feet per acre per year.

(g) Beginning January 1, 2015 an eligible well owner or operator shall have an initial Conservation Reserve of 0.50 acre-feet per acre. The initial Conservation Reserve is available only to well owners or operators who timely submit the initial Production Report in accordance with these rules, and document usage under 5.8(b),(c),(d),(f) or a water meter.

SUBCHAPTER C: RECORDING AND REPORTING REQUIREMENTS

5.5 Applicability

The recording and reporting requirements of this Subchapter shall apply to all non-exempt wells.

5.6 Aggregate Reporting Requirement

If an owner or operator chooses to record the use of groundwater by meter(s), then the owners or operators shall install and meter the well system so as to measure the total groundwater production from all non-exempt wells included in the well system. The provisions of Rule 5.9 apply to meters measuring aggregate production from well systems.

5.7 Recording Requirements

Beginning on January 1, 2015, all non-exempt wells are required to begin recording the use of groundwater through a meter or through the use of an approved alternative measuring method as prescribed by Rule 5.8. Metering is required for any well that is not authorized to produce using an approved alternative reporting method.

5.8 Alternative Reporting Methods

An owner or operator shall report the use of groundwater as measured by meter(s), or one of the following alternative methods:

(a) One Irrigated Crop. An owner or operator of property producing groundwater solely for agricultural purposes may certify that they will not engage in the practice of double cropping as defined in Rule 1(n). Certification under this provision shall satisfy the requirements of Rule 5.3 subject to verification by the District.

(b) Energy Consumed. An owner or operator of property producing groundwater may certify the amount of energy consumed by producing said groundwater in accordance with the methods developed and published by the Board.

(c) Nozzle Packages. An owner or operator of property producing groundwater for use through a center pivot or drip irrigation system may certify: (a) the nozzle package flow rate, and (b) the hours of use. Hours of use may be reported by (a) the hour-meter or (b) computer recording system such as PivoTrac Monitoring, AgSense, Wagnet or similar type system approved by the Board.

(d) Confined Animal Feeding Operation (CAFO). An owner or operator of property producing groundwater for use in a Confined Animal Feeding Operation may certify the average number of animals

on feed during a year, multiplied by a water use value (gallons per head per day) for a particular animal type. (Annual use = Average number of animals per day x Daily Water Intake x 365).

<u>Confined Animal Feeding Operation Type</u>	<u>Gallons Per Head Per Day</u>
Beef Cattle	12.5
Dairy Heifer	12.5
Dairy Cow	55
Poultry	0.045
Swine	8

(e) Maximum Production Capacity. Certification of the production rate on contiguous acres of 0.93 gallons per minute per acre or less demonstrates the subject property is unable to exceed the Allowable Production Rate. This certification, once verified by the District, will be effective until such time that the irrigation system's capacity is altered.

(f) Other Approved List of Alternative Reporting Methods. An owner or operator of a non-exempt well may apply to the Board for approval of any alternative reporting method or additional meters not included in the list developed by the District. The Board will approve or deny such applications, after notice and an opportunity for a hearing.

(g) If an owner or operator of property producing groundwater solely for agricultural purposes fails to choose one of the above reporting methods, they will be deemed to have elected Rule 5.8(a), subject to verification by the District.

5.9 Meter Installation and Sealing

If an owner or operator chooses to record the use of groundwater by meter(s):

(a) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's specifications. All owners or operators of non-exempt wells shall notify the District in writing on a form prescribed by the District that a meter has been installed on the well or well system. District staff may inspect the meter installation to ensure that the meter was installed in accordance with the manufacturer's specifications and may seal the meter. Well owners or operators shall notify the District prior to removing the seal.

(b) A meter must be capable of a maximum reading greater than the maximum expected production during the recording year. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for cold-water meters.

(c) A seal on a meter may be removed for meter repairs and the non-exempt well may be operated provided that the District is notified prior to removal of the seal and all necessary repairs are completed in a timely manner. The readings on the meter must be recorded immediately prior to removal and at the time of reinstallation. The record of production must include an estimate of the amount of groundwater

withdrawn during the period the meter was inoperable. Upon completion of the meter repairs, the District shall be notified and District staff may inspect the re-installation of the meter and reinstall the seal.

(d) The owner or operator of a non-exempt well is responsible for the purchase, installation, operation, maintenance, and repair of the meter associated with the well or well system.

(e) Unmetered bypasses are prohibited.

(f) Meter readings shall be recorded and groundwater production reported as required under Rule 5.10.

5.10 Production Reports

(a) Beginning on January 1, 2015, all owners or operators of non-exempt wells shall begin recording and reporting groundwater use through the use of a fully functional meter that meets the requirements of these rules or through the use of an approved alternative measuring method under the provisions of Rule 5.8.

(b) Annual production reports must be submitted to the District. All production reports submitted to the District shall include the following information: (1) the number of Contiguous Acres owned or controlled for the right to produce groundwater from the permitted well and whether the number of Contiguous Acres has changed from the last production report submitted to the District; (2) The method of recording or measuring groundwater production as prescribed under 5.6, 5.7, 5.8, and 5.9; and (3) all other information requested by the District in the reporting form and mechanism described under Subsection (c).

(c) Reports shall be submitted to the District. The report shall be submitted using a form developed by the District for such purpose.

(d) Meter readings or readings from alternative measuring methods for annual water use must be recorded prior to January 15 of each year and shall be included in the production report submitted to the District no later than March 1 of each calendar year.

(e) Upon request by the District, the permittee must provide documentation for each contiguous acre claimed, that (1) the acre is owned by the permittee, (2) the acre is leased in fee simple by the permittee, or (3) the permittee has obtained all groundwater production rights for that acre through a groundwater lease or purchase.

RULE 6: WELL CONSTRUCTION AND MAINTENANCE; WELL LOG; WELL OPERATION

6.1 Responsibility to Protect Groundwater Quality

All owners or operators shall use reasonable diligence and conform to these rules in order to prevent the pollution or harmful alteration of groundwater in the Aquifer(s) of the District.

6.2 Responsibility for Well Construction and Management

(a) Owners shall be responsible for the installation, equipping, operation, maintenance, and closure of their wells, and all costs associated therein.

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

(c) Any existing well or pump that is altered, re-worked, re-drilled, re-equipped or replaced must be done in compliance with the standards in this rule, regardless of whether the owner is required to obtain a permit from the District.

(d) Well construction and maintenance issues may be investigated by the District.

6.3 Requirement of Driller's Log, Casing, and Pump Data

(a) The District requires that complete records be kept of the drilling, equipping, or completing of wells and the production and use of groundwater. The District requires that accurate drillers' logs of wells be kept and filed with the District in accordance with TWC §36.112.

(b) No person may produce water from any well hereafter drilled, equipped, or completed within the District, except for testing of such well and equipment, until the District has been furnished an accurate driller's log. Permits may not be issued if the applicant has failed to return the well log and the description of the permanently installed pump for other permits within 240 days of the date issued.

6.4 Open, Uncovered or Deteriorated Wells Prohibited

(a) Open or uncovered wells are prohibited. The District shall require the owner or operator to either close or cap said well according to District policy and procedures.

(b) Deteriorated wells are prohibited. The District shall require the owner or operator to either repair or destroy said well according to District policy and procedures.

(c) If the owner or operator fails or refuses to close, cap, repair or destroy the well in compliance with District rules, District personnel may go on the land and close or cap the well safely and securely.

(d) Reasonable expenses incurred by the District in closing or capping a well constitute a lien upon the land which the well is located. The lien arises and attaches upon recordation of an affidavit, executed by district personnel, in the deed records of the county where the well is located stating the following: (1) the existence of the well; (2) the legal description of the property on which the well is located; (3) the

approximate location of the well on the property; (4) the failure or refusal of the owner, after notification, to cap, close, repair or destroy the well in compliance with District policies and procedures; (5) the closing of the well by the District; and (6) the expenses incurred by the District in closing the well.

6.5 Right to Inspect and Test Wells and Gather Information

(a) District personnel are entitled to enter any public or private property within the District's boundaries at any reasonable time to carry out technical and other routine investigations necessary for the implementation of the district rules, or for certain studies beneficial to the district's purposes.

(b) Inhibiting or prohibiting access to District personnel attempting to conduct an investigation under District rules constitutes a violation of District rules and subjects the person inhibiting or prohibiting access, as well as any other person authorizing or allowing such action, to penalties allowed in Texas Water Code §36.102.

(c) An application for a permit may be suspended or cancelled by the Board if the applicant refuses to grant District personnel access to real property to gather information necessary to complete an application.

(d) The operation of any well may be enjoined by the Board immediately upon the refusal to allow the gathering of information as provided above from such well.

6.6 Sealing Wells

(a) The District may seal wells that are prohibited from withdrawing groundwater by District rules or Board order when the District determines that such action is: (1) reasonably necessary to assure that a well is not operated in violation of District rules or Board orders, and (2) the owner has failed to take corrective action following notice from the district. A well may be sealed when (1) no application has been made for a permit to drill a new well; (2) misrepresentations have been made by the owner, orally or in writing, regarding the well; (3) the owner has violated any provision of the state law or District rules; (4) it is operated at a higher rate of production than the maximum allowable production granted for the well; (5) the well was not drilled within ten yards of the proposed well site specified in the permit; or (6) the Board has denied, cancelled, or revoked a permit.

(b) The well may be sealed by physical means, including plugging or rendering inoperable, and tagged to indicate that the well has been sealed by order of the District. The District may recover costs incurred for sealing a well under this rule from the owner. Other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

(c) 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 groundwater from a well that has been sealed constitutes a violation of District rules and subjects the person performing that action, as well as, any owner who authorizes or allows that action, to such penalties as provided by state law and District rules.

(d) The owner may appeal the decision of the District to seal the well by filing a written request for a hearing before the Board, in which case the Board will hear the owner's appeal at the next regular Board meeting for which notice has not already been published. The owner may also take corrective action to address the cause for which the District sealed the well and thereafter request the District to remove the seal.

RULE 7: CONTESTED CASE HEARING PROCEDURES

7.1 Applicability

Contested case hearings may be requested in connection with the following applications: (1) permits, and (2) amendment to any existing permit.

7.2 Processing Applications; Determination of Administrative Completeness

(a) Completeness of an Application. An application shall be considered administratively complete if it includes all required information; is signed; is accompanied by payment of all applicable fees, including any penalties or past due fees; and includes any maps, documents, or supplementary information requested within the Rules or by the Board or staff. A determination of administrative completeness will be made by the General Manager.

(b) Action on Incomplete Applications. The District will not take action on an application that is not administratively complete or has not proceeded in a manner consistent with District Rules. An application may be rejected as not being administratively complete if the District finds that substantive information required by the application or District staff is missing, false, or incorrect. Incomplete applications will be returned to the applicant with a list of deficiencies and may be reconsidered once the deficiencies are corrected.

(c) Action on Administratively Complete Applications. The General Manager will schedule administratively complete applications for a public hearing, and shall publish notice of the public hearing in accordance with these rules.

7.3 Procedural Options Available to Applicants

(a) Applicants filing applications subject to a contested case hearing may respond to the proposed action of the general manager in the following manner:

(1) not filing a notice of request for contested case hearing and:

- a. if the applicant agrees with the proposed action, and no other affected person requests a contested case hearing, and the matter will be taken directly to the Board for final action as an uncontested matter.
- b. if the applicant disagrees with the proposed action, and no other affected person requests a contested case hearing, the applicant may offer to settle the matter. If the matter is settled, the application may be taken directly to the Board

for final action. If the matter is unable to be settled, the application may be taken directly to the Board for final action as a contested matter, although one not referred to contested case hearing. The applicant, general manager, and other affected persons may present their respective positions to the Board and allow the Board to take final action at the Board meeting without a contested case hearing.

(2) filing a notice of request for contested case hearing.

(b) The Board will process a protest against an application by first determining if the protestant is entitled to a contested case hearing. In the event a protest is filed and approved, any settlement under one of the alternatives in Subsection (a) requires the consent of the protestant. Persons have a personal justiciable interest in and are entitled to a contested case hearing on applicable applications if that person owns a registered or permitted well that may be adversely impacted if the protested application is granted.

(c) Applicants choosing not to file a request for a contested case hearing and instead pursue one of the alternatives in Subsection (a), waive any right to a contested case hearing upon the expiration of the filing deadline.

(d) The Board is not bound by a settlement agreed to by the parties.

7.3 Requests for Contested Case Hearing

(a) A request for a contested case hearing or a protest against an application must be in writing and be filed before the end of the public hearing on that application for which notice was properly provided.

(b) A contested case hearing request must substantially comply with the following:

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

(2) state the basis upon which the person is entitled to a contested case hearing;

(3) state the issues the requestor or protestant wishes to contest;

(4) state whether the person requesting the contested case hearing is the applicant for that permit or an applicant for or holder of another groundwater withdrawal permit.

(5) request a contested case hearing;

(6) provide any other information requested in the notice of proposed action and technical summary; and

(7) be verified by an affidavit.

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

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

7.4 Processing of Hearing Requests

(a) After a hearing request is timely filed, the District staff will schedule a preliminary hearing to consider the request.

(b) At least 20 days prior to the preliminary hearing, the District staff will provide notice to the applicant, general manager, and any persons who timely filed a hearing request.

(c) Affected persons may submit a written response to the hearing request no later than 10 days before a Board meeting at which the Board will evaluate that request. Responses must be filed with the District and served on the general manager, the applicant, and any other persons who timely filed a hearing request in connection with that matter.

(d) The person requesting a hearing may submit a written reply to a response no later than 5 days before the scheduled Board meeting at which the Board will evaluate the hearing request. All replies shall be filed with the District and served on the same day on the general manager, the applicant, and any other person who timely filed a hearing request.

(e) The Board may refer the hearing request to the State Office of Administrative Hearings (SOAH) instead of scheduling the hearing before the Board. Following the hearing, SOAH will provide a proposal for decision to the Board of Directors for action by the Board.

7.5 Action by Board

(a) The determination of whether a hearing request should be granted is not a contested case hearing.

(b) The Board will evaluate the hearing request at a scheduled Board meeting and may determine that the person requesting the hearing:

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

(2) has a personal justiciable interest relating to the application and schedule the application to a contested case hearing.

(c) If the Board grants the request for a contested case hearing, the Board shall assign a hearings examiner or delegate the matter to SOAH. The hearings examiner shall:

(1) schedule a preliminary hearing;

(2) at least 21 days after the preliminary hearing, schedule an evidentiary hearing; and

(3) following the evidentiary hearing, prepare a proposal for decision including proposed findings of fact and conclusions of law, and transmit that proposal to the Board.

(d) The Board shall schedule a final hearing where it will consider the evidence and testimony presented during the evidentiary hearing and the hearings examiner's proposal for decision.

- (e) Following the final hearing, the Board may:
 - (1) grant the application;
 - (2) grant the application with conditions; or
 - (3) deny the application.

7.6 Delegation to SOAH

- (a) By order, the Board may delegate to SOAH the authority to conduct hearings designated by the Board.
- (b) If the Board refers a contested case hearing to SOAH, then the applicable rules of practice and procedure of SOAH (1 Texas Administration Code Ch. 155) govern any contested case hearing of the District, as supplemented by this subchapter.
- (c) If the Board refers a contested case hearing to SOAH, the administrative law judge who conducts the contested case hearing shall serve as the hearings examiner and consider applicable District rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.
- (d) If the Board refers a contested case hearing to SOAH, the District may not attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.
- (e) If requested by the applicant or other party to a contested case, a district shall contract with the State Office of Administrative Hearings to conduct the hearing. The party must file such a request not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by SOAH. The party requesting the hearing before the SOAH shall pay all costs associated with the contract for the hearing, and shall, before the hearing begins, deposit with the district an amount sufficient to pay the contract amount. At the conclusion of the hearing, the district shall refund any excess money to the paying party.

7.7 Conducting a Contested Case Hearing by SOAH

- (a) When an application is referred to contested case hearing by the Board, the District will file all applicable documents to have the matter referred to SOAH.
- (b) In referring the case to contested case hearing, the District will:
 - (1) notify the administrative law judge of the applicable burden of proof for the applicant to establish all of the prima facie elements;
 - (2) identify for the administrative law judge any additional issues that have been raised in the request(s) for contested case hearing; and
 - (3) provide the administrative law judge with a written statement of applicable rules and policies of the District.

7.8 Service of Documents

- (a) For any document filed with the District or the hearings examiner in a contested case, the person filing that document must serve a copy on all parties at or before the time that the request is filed.
- (b) A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The District may authorize a document to be filed without a certificate of service but will require the certificate be served within three days thereafter.

7.9 Continuances

- (a) The Board may continue a hearing related to a contested case under the jurisdiction of the Board from time to time and from place to place.
- (b) The notice of the hearing must indicate the times and places at which the hearing may be continued.
- (c) If a hearing is not concluded on the day it begins, the Board shall, to the extent possible, proceed with the hearing on each subsequent working day until the hearing is concluded.

7.10 Designation of Parties

The following are parties in all contested cases:

- (a) the general manager;
- (b) the applicant; and
- (c) a person who is granted a contested case hearing by Board action.

7.11 Discovery

Discovery in contested case proceedings will be governed by Chapter 2001, Subchapter D, and Texas Government Code and Title 1, Section 155.31, Texas Administration Code, as supplemented by this subchapter. Depositions in a contested case shall be governed by Texas Government Code §§ 2001.096-2001.102.

7.12 Expenses of Witness or Deponent

- (a) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or a proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary or proper for the purposes of the contested case, is entitled to receive compensation in accordance with the provisions of Sec. 2001.103, Government Code.
- (b) Amounts required to be reimbursed or paid shall be reimbursed or paid by the party at whose request the witness appears or the deposition is taken.

7.13 Evidentiary Matters

- (a) Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.

- (b) The rules of privilege recognized by law shall be given effect.
- (c) An objection to an evidentiary offer may be made and shall be noted in the record.
- (d) Evidence may be received in writing if:
 - (1) it will expedite the hearing; and
 - (2) the interests of the parties will not be substantially prejudiced.
- (e) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.
- (f) A party may conduct cross-examination required for a full and true disclosure of the facts.
- (g) Witnesses may be sworn and their testimony taken under oath.
- (h) Official notice may be taken of:
 - (1) all facts that are judicially cognizable; and
 - (2) generally recognized facts within the area of the District's specialized knowledge. Each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed-including staff memoranda or information. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledge of District staff may be used in evaluating the evidence.

7.14 Depositions and Subpoenas

- (a) On its own motion, or on the written request of a party, and on deposit of an amount that will reasonably ensure payment of the estimated total amount, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested matter pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case will be in writing and directed to the Board.
- (b) A party requesting the issuance of a commission requiring deposition or a subpoena will file an original of the request with the District. District staff will arrange for the request to be presented to the Board at its next meeting.
- (c) In the case of a deposition, the Board will issue a commission addressed to the officer authorized by statute to take a deposition, requiring that the deposition of a witness be taken. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purpose of the proceeding. Additionally, the commission will require the officer to whom it is addressed to examine the witness before the officer on the date and at the place named in the commission; and take answers under oath to questions asked the witness by a party to the proceeding, the District, or an attorney for a party or the District. The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.

(d) In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the District will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers, or other objects that may be necessary or proper for the purpose of the proceeding.

7.15 Ex-Parte Communications

(a) For applications for which there is a right to a contested case hearing, a member of the Board may not, at any time after the application has been filed and before the Board has taken final action, communicate, directly or indirectly, about any issue of fact or law with any representative of the District or other designated party to the application, except on notice and opportunity for all parties to participate.

(b) Subsection (a) does not apply if:

(1) the Board member abstains from voting on a matter in which he or she engaged in ex-parte communications;

(2) the communications are by and between members of the Board consistent with the Texas Open Meetings Act;

(3) the communications are with District staff who have not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the staff in evaluating the evidence; or

(4) the communications are with legal counsel representing the Board of Directors.

7.16 Remand to Board

(a) A hearing examiner may remand an application to the Board as follows:

(1) all timely hearing requests have been withdrawn;

(2) all parties to a contested case reach a settlement so that no facts or issues remain controverted; or

(3) the party or parties requesting the hearing defaults.

(b) After remand, the application will be uncontested, and the applicant will either be deemed to have agreed to the action proposed by the general manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration. District staff will set the application for consideration at a Board meeting.

7.17 Informal Dispositions and Alternative Dispute Resolution

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

(1) stipulation;

(2) agreed settlement;

(3) consent order; or

(4) default.

(b) The hearings examiner may require the parties enter into mediation or other alternative dispute resolution process. The hearings examiner may also determine how the costs of the alternative dispute procedure shall be apportioned among the parties, appoint an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

7.18 Certified Questions

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

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

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

(2) the portion of the Act, the District rules, or other statutes that are applicable to a proceeding; and

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

(c) If a question is certified, the hearings examiner shall submit the certified issue to the District. District staff will place the certified issue on the agenda of a meeting of the Board. The District will give the hearings examiner and parties 30 day notice of the meeting at which the certified question will be considered. Within ten days after the certified question is filed with the District, parties to the proceeding may file briefs. Within ten days of the filing of such briefs, parties may file responses. Briefs and responses shall be filed with the District with copies served on the hearings examiner. The District will provide copies of the certified questions and any briefs and responses to the Board. The hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.

(d) The Board will take action and issue a written decision on the certified issue and provide copies to the parties and the hearings examiner. A decision on a certified issue is not subject to a motion for rehearing, appeal, or judicial review prior to the issuance of the District's final decision in the proceeding.

7.19 Scheduling of a Meeting of the Board

(a) After receiving the proposal for decision or other disposition from the hearings examiner, District staff shall schedule the presentation of the proposal to the Board. The District shall provide 10 day notice to the parties of the date of the final hearing before the Board at which the proposal will be presented and considered. The Board may reschedule the presentation of the proposal. The District will send notice of the rescheduled meeting date to the parties no later than 10 days before the rescheduled meeting.

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

(c) On the written request of a party to a contested case, the oral proceedings before the Board at which the proposal for decision is presented and oral presentations are made, may be transcribed by a court reporter. A party that desires a transcript of the proceedings shall bear the cost, or the costs will be equally divided between all parties requesting a transcript. If the District desires a transcript, it will bear the costs.

7.20 Reopening the Record

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

7.21 Decision

- (a) The decision, if adverse to any party, must be in writing or stated in the record and will include findings of fact and conclusions of law separately stated.
- (b) Findings of fact may be based only on the evidence and on matters that are officially noticed. If set forth in statutory language, findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (c) If a party submits proposed findings of fact, the decision will include a ruling on each proposed finding.
- (d) If a contested case is presided over by a majority of the Board, then the Board's decision shall be rendered not later than the 60th day after the date on which the hearing is finally closed. If the Board refers a contested case to SOAH, then the Board's decision will be rendered no more than 120 days after the date that the proposal for decision is presented at a final hearing, unless the Board determines that there is good cause for extending the deadline.

7.22 Notification of Decisions

- (a) District staff will notify all parties in a contested case of any decision or order.
- (b) District staff will send a copy of the decision in a contested case to attorneys of record, or the parties.
- (c) A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the notice is mailed.

7.23 Motion for Rehearing

(a) For any matter considered during a contested case hearing, only a party to the contested case proceeding may file a motion for rehearing. The motion shall be filed with the District by no later than the 20th day after the date of the Board's decision. On or before the date of filing of a motion for rehearing, the party filing the motion shall mail or deliver a copy of the motion to all parties with certification of service furnished to the District. The motion shall contain:

- (1) the name and representative capacity of the person filing the motion;
 - (2) the style and official docket number assigned by the hearings examiner;
 - (3) the date of the decision or order; and
 - (4) the grounds for the motion, including a concise statement of each allegation of error.
- (b) Only a party to the contested case proceeding may reply to a motion for rehearing. A reply must be filed with the District within 20 days after the date the motion for rehearing is filed.
- (c) The motion for rehearing will be scheduled for consideration during a Board meeting. A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The Board may reopen the hearing to the extent it deems necessary. If the Board grants a motion for rehearing, District staff shall schedule the rehearing not later than the 45th day after the date the motion is granted. Thereafter, the Board shall render a decision or order.
- (d) The failure of the Board to grant or deny a motion for rehearing before the 91st day after the date the motion is submitted constitutes a denial of the motion by operation of law.

7.24 Agreement to Modify Time Limits

The parties to a contested case hearing, with the approval of the hearing examiner, may agree to modify any time limit prescribed by these rules related to conducting contested case hearings.

7.25 Decision Final and Appealable

In the absence of a timely motion for rehearing, a decision or order of the Board is final on the expiration of the period for filing a motion for rehearing. If a party files a timely motion for rehearing, a decision or order of the Board is final and appealable on the date:

- (1) the Board denies the motion for rehearing, including a denial by operation of law; or
- (2) the Board renders a written decision after rehearing.

7.26 Appeal of Final Decision

(a) Not later than the 60th day after the date on which the decision became final and appealable, parties affected by the final decision of the Board in a contested case may file suit under Texas Water Code § 36.251, to appeal the decision. A party may not file suit if a motion for rehearing was not timely filed.

- (b) The record in a contested case hearing shall include the following:
- (1) all pleadings, motions and intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and rulings on them;
 - (5) summaries of the results of any conferences held before or during the hearing;
 - (6) proposed findings, exceptions and briefs;

- (7) any decision, opinion or report issued by the hearings examiner;
- (8) pre-filed testimony;
- (9) all memoranda or data submitted to or considered by the hearings examiner; and
- (10) the final order and all interlocutory orders.

7.27 Costs of Record on Appeal

A party who appeals a final decision in a contested case shall pay all costs of preparation of the record of the proceeding that is required to be transmitted to the reviewing court. A charge imposed is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

RULE 8: RULEMAKING HEARING PROCEDURES

8.1 Purpose of Rulemaking Hearings

- (a) The District may make and enforce rules to implement the District management plan and the provisions of Chapter 36 Texas Water Code.
- (b) Except as provided by Texas Water Code §36.1011, after notice and hearing, the Board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the Board.
- (c) The Board shall compile its rules and make them available for use and inspection at the District's principal office.

8.2 Notice

- (a) Not later than the 20th day before the date of a rulemaking hearing, the General Manager or Board shall (1) post notice in a place readily accessible to the public at the District's principal office, (2) provide notice to the county clerk of each county in the District, (3) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located, (4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d), and (5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy of a generally accessible internet website.
- (b) The notice provided under Subsection (a) must include (1) the time, date, and location of the rulemaking hearing, (2) a brief explanation of the subject of the rulemaking hearing, and (3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.
- (c) Failure to provide notice under Subsection (a)(4) does not invalidate an action taken by the District at a rulemaking hearing.
- (d) 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 electronic mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

8.3 Hearing Procedures

(a) The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing at the sole discretion of the presiding officer. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.

(b) The District may use an informal conference or consultation to obtain opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the District about contemplated rules.

(c) The District may require each person who participates in a rulemaking hearing to submit a hearing registration form stating (1) the person's name, (2) the person's address, and (3) whom the person represents, if the person is not at the hearing in the person's individual capacity.

(d) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

8.4 Emergency Rules

(a) A Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board (1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days notice and (2) prepares a written statement of the reasons for its finding under Subsection (a)(1).

(b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Texas Government Code.