

# **SOUTHERN TRINITY GROUNDWATER CONSERVATION DISTRICT RULES**

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# SOUTHERN TRINITY GROUNDWATER CONSERVATION DISTRICT RULES

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## CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

### § 1.1 Definitions of Terms

In the administration of its duties, the Southern Trinity Groundwater Conservation District follows the definitions of words, terms and phrases set forth in Chapter 8821 of the Special District Local Laws Code, Chapters 35 and 36 of the Texas Water Code, Chapters 1901 and 1902 of the Texas Occupations Code. In addition, the following words, terms and phrases, when used in these rules, and when used in any other rule or regulation of the District and not defined therein, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word “shall” is always mandatory. The word “herein” means in these rules. The word “regulations” means the provisions of any applicable resolution, order, rule, regulation or policy.

(1) “Abandoned well” means a well that has not been in use for six consecutive months. A well is considered to be in use when the well is not a deteriorated well and contains the casing, pump, and pump column in good condition, or when the well is not a deteriorated well and has been properly capped.

(2) “Acre-foot” means the amount of water necessary to cover one acre of land one foot deep; 325,851 U.S. gallons of water.

(3) “Affected person” means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District’s regulatory authority and is or may be affected by the application in question. An interest common to members of the general public does not qualify as a personal justiciable interest.

(4) “Agricultural use” means a use or activity involving any of the following:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed, or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers, or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(E) wildlife management; and



(F) raising or keeping equine animals.

(5) “Aquifer” means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(6) “Aquifer management zone” means the geographic surface area located within the District’s boundaries in which the amount of groundwater production from non-exempt wells is predominantly from a single and identical water bearing geologic strata of either the Hensell or the Hosston strata (geologic member) of the Trinity group of geologic formations.

(7) “Beneficial Use” means the use of the amount of water that is necessary for a purpose authorized by law when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(8) “Best Management Practice (BMP)” means any of the water conservation practices that are identified in Texas Water Development Board Report 362.

(9) “Board” means the board of directors of the District.

(10) “Brazos River Alluvium Aquifer” means the water-bearing alluvial sediments occurring in floodplain and terrace deposits of the Brazos River. The Brazos River Alluvium Aquifer is defined by the Texas Water Development Board as a minor aquifer.

(11) “Business day” means a weekday, Monday through Friday, excluding District holidays.

(12) “Casing” means a watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

(13) “Casing diameter” means the inside diameter of the casing of a well.

(14) “Conjunctive Use” means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

(15) “Contested case hearing” means a proceeding before the District, or where appropriate, the State Office of Administrative Hearings, in which the legal rights, duties or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(16) “Contract user” means a person who withdrew or purchased groundwater during the Existing and Historic Use Period pursuant to a contract or other legal right from an existing well on land owned by another.

(17) “Desired Future Condition (DFC)” means the desired, quantified condition of groundwater resources for a specific aquifer within the District as defined in the District’s Groundwater Management Plan and implemented by the District.

(18) “Deteriorated well” means a well or borehole that because of its condition, will cause, or may cause, pollution of any water in the state, including any groundwater, or cause a public nuisance.

(19) “Dewatering well” means a well used to remove water from a construction site or excavation, or to relieve hydrostatic pressure or uplift on permanent structures.

(20) “District” means the Southern Trinity Groundwater Conservation District.

(21) “District Act” means the Chapter 8821 of the Special District Local Laws Code, as may be amended.

(22) “District Office” means the location of the office of the District, as designated by the Board by written resolution. The location of the District Office may be changed from time to time by written resolution of the Board.

(23) “Domestic Use” means the private use of water to provide the daily water needs of a household, and includes water used on-site for: drinking, washing or culinary purposes; residential landscape watering, or watering of a family garden/orchard; watering of domestic animals; and for residential water recreation uses (e.g., swimming pool, hot tub). Domestic use does not include water used by, or to support, activities for which consideration is given or received or for which the product of the activity is sold. Domestic use does not include use by or for a public water system.

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

(25) “Evidence of Historic or Existing Use” means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by District rule that regulates groundwater based on Historic Use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of Evidence of Historic or Existing Use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

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

(27) “Existing and Historic Use Period” means the time period from January 1, 2000, through December 31, 2009.

(28) “Existing well” means a well which:

(A) was in existence on or for which drilling had commenced on December 31, 2009;

(B) is capable of having water withdrawn from it; and

(C) was properly constructed in accordance with the District's Rules and applicable state law.

(29) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture or any successor program.

(30) "Groundwater" means water percolating beneath the earth's surface within the boundaries of the District.

(31) "Groundwater Production" means to withdraw, pump, or otherwise obtain groundwater from an underground source.

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

(33) "Hearing body" means the board, any committee of the board, or a hearing examiner that conducts a contested case hearing.

(34) "Hearing examiner" means the person appointed by the board or the State Office of Administrative Hearings to conduct a contested case hearing or other proceeding.

(35) "Hensell Management Zone" means the geographic surface area shown on Exhibit A and general located in the northwestern portion of McLennan County.

(36) "Historic Use" means the lawful production and placing to beneficial use, without waste, of groundwater during the Existing and Historic Use Period.

(37) "Historic Use Production Permit" means a permit authorizing a landowner or operator to produce groundwater based on a landowner or his or her contract user or predecessor in interest's production and beneficial use of groundwater without waste during the Existing and Historic Use Period.

(38) "Hosston Management Zone" means the geographic surface area shown on Exhibit B and general located in the central and southeastern portion of McLennan County.

(39) "Industrial use" means the use of water for or in connection with industrial activities, including but not limited to, manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, quarrying, and similar activities.

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

(41) "Leachate well" means a well used to remove contamination from soil or groundwater.

(42) “Livestock use” means the watering of animals, including beasts or poultry, but does not include the watering of any animal that is stabled, confined, or fed at a facility that is defined by Texas Commission on Environmental Quality Rules as an “animal feeding operation” or a “concentrated animal feeding operation.”

(43) “Modeled Available Groundwater” or “MAG” means the amount of groundwater that is determined by the executive administrator of the Texas Water Development Board to be produced on an annual basis in a given aquifer to achieve a Desired Future Condition under Section 36.108, Texas Water Code for that aquifer.

(44) “Maximum Historic Use (MHU)” or “MHU” means the maximum amount of groundwater that an applicant for an Historic Use Production Permit proves was produced and beneficially used without waste from the applicant’s non-exempt well during any one calendar year of the Existing and Historic Use Period.

(45) “Meter” means a water flow measuring device that can, within +/- 5% of accuracy, measure the instantaneous rate of flow and record the amount of groundwater produced from a well during a measure of time.

(46) “Monitoring Well” means a well installed solely for the purpose of measuring some property of the groundwater or the aquifer it penetrates, and that does not produce more than 5,000 gallons of groundwater per year.

(47) “Municipal use” means water supplied to retail or wholesale end users by persons, municipalities, utilities, political subdivisions, or other water purveyors for domestic, industrial, or commercial uses, and fire fighting, sewer and drain flushing, swimming pools, and maintenance of public property.

(48) “New well” means a well for which drilling commenced after December 31, 2009.

(49) “Non-agricultural use” means the beneficial use of groundwater withdrawn from within the boundaries of the District for any use other than agricultural use.

(50) “Non-exempt well” means a well not exempt from the requirement to obtain a permit under these rules.

(51) “Non-Historic Use Production Permit” means a permit authorizing a landowner or operator to produce groundwater that is not based on Historic Use.

(52) “Open well” means a well, or exploratory hole, dug or drilled for the purpose of exploring for or producing water from the aquifer that is not capped or covered.

(53) “Open Meetings Law” means Chapter 551, Texas Government Code, as may be amended.

(54) “Party” means each person admitted as a party in a contested case hearing.

(55) “Permit” means a document issued by the District approving an application for a permit.

(56) “Permitted well” means a groundwater withdrawal well authorized to operate by a permit issued by the District.

(57) “Person” means a corporation, individual, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

(58) “Pleadings” means any document filed by a party in a contested case hearing.

(59) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state, including groundwater, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose, including the alteration of groundwater by saltwater or other deleterious matter admitted from another stratum or from the surface of the ground.

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

(61) “Protestant” means any person opposing, in whole or in part, an application for which a request for a contested case hearing may be filed under the District’s Rules.

(62) “Public Information Act” means Chapter 552, Texas Government Code, also referred to as the “Open Records Law,” as may be amended from time to time.

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

(64) “Replacement well” means any well drilled in accordance with the requirements of these rules with the purpose of replacing a well and drilled within 150 feet of the well to be replaced.

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

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

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

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

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

(70) “Solid waste” means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

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

(B) does include hazardous substances.

(71) “Trinity Aquifer” means the water-bearing geological group comprised of the Paluxy, Glenn Rose, Hensell, Pearsall, Cow Creek, Hammett, Sligo, and Hosston geologic formations. The Trinity Aquifer is defined by the Texas Water Development Board as a major aquifer.

(72) “Total aquifer storage” means the total calculated volume of groundwater that an aquifer is capable of producing.

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

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

(A) production of groundwater at a rate and in an amount that causes or threatens to cause intrusion into an aquifer of water unsuitable for agricultural, gardening, domestic, or stock watering purposes;

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

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

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

(E) willfully or negligently causing, suffering, or allowing groundwater produced from an aquifer to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality under Chapter 26, Texas Water Code, as may be amended;

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

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

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

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

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

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

(79) “Windmill” means a wind-driven or hand-driven device that uses a piston pump to withdraw groundwater.

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

**Exhibit A.**



Exhibit A.: Hensell Management Zone (shown as hatched area)



**Exhibit B.**

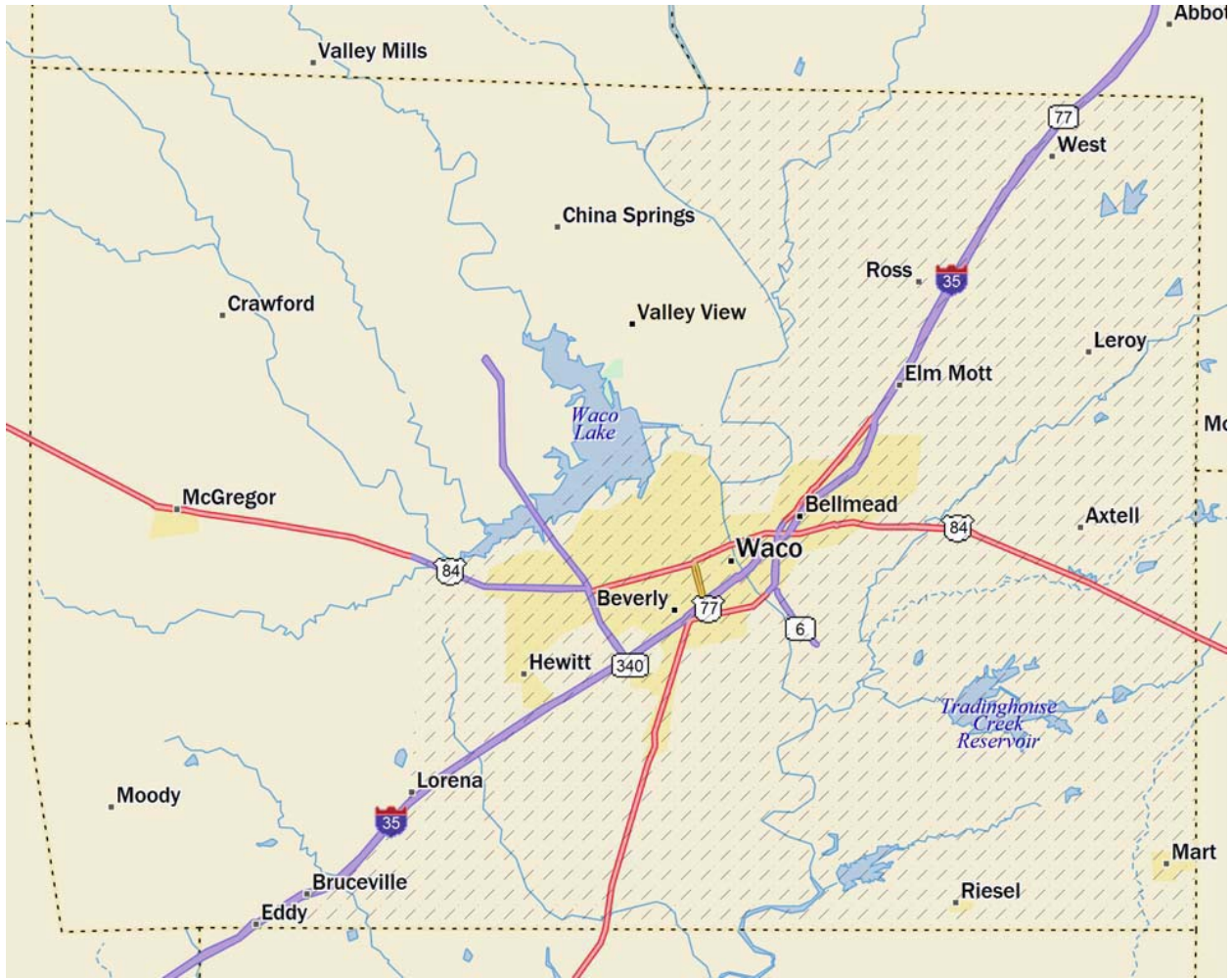


Exhibit B.: Hosston Management Zone (shown as hatched area)

### **§ 1.3 Purpose of Rules**

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

### **§ 1.5 Construction**

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

### **§ 1.7 Headings and Captions**

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

### **§ 1.9 Methods of Service under the Rules**

Except as otherwise expressly provided in these rules, any notice or documents required by these rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, by electronic mail to the recipient's electronic mail address on file with the District, or by telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 p.m. (local time) of the date on which it is due. Service by mail is complete upon delivery in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three days will be added to the prescribed period.

Where service by one or more of the above methods has been attempted and has failed, service may be completed by any other of the above-authorized methods of service. If personal service is not made or deemed to be made as above provided, if the location of a person to be served is unknown to the board, if unknown persons may have a property interest in the matter at issue, or in addition to any other service made, notice may be given by publication and the service by publication is complete upon the notice being published in a newspaper of general circulation in the District. Further, upon approval by the board, notice may be given in any manner authorized by the Texas Rules of Civil Procedure.

The person or the person's attorney of record shall certify compliance with this rule in writing over signature on the filed document. A certificate by a person or the person's attorney of

record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of the fact of service. Nothing herein shall preclude any person from offering proof that the notice or instrument was not received and upon so finding, the District may extend the time for taking the action required of such party or grant such other relief as it deems just. In contested case hearings, copies of all documents filed with the presiding officer shall be served on all parties, including the District, no later than the day of filing.

**§ 1.11 Severability**

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

**§ 1.12 Amendment of Rules**

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

## **CHAPTER 2. BOARD**

### **§ 2.1 Purpose of the Board**

The board was created to determine policy and regulate the withdrawal and use of groundwater within the boundaries of the District for conserving, preserving, protecting and recharging the groundwater within the District, and to exercise the District's rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act and Chapter 36, Water Code. The board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.

### **§ 2.3 Ex Parte Communications**

Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested case that is before the board, with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. A board member may not communicate ex parte with other members of the board. This rule does not apply to a board member who abstains from voting on any matter in which ex parte communications have occurred.

## **CHAPTER 3. DISTRICT STAFF**

### **§ 3.1 General Manager**

The board may employ or contract with a person to serve as general manager of the District and to perform such services as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the District subject to these rules and orders of the board. The general manager, with approval of the board, may employ all persons necessary for the proper handling of business and operation of the District, and their salaries will be set by the board.

If the position of general manager is vacant, the board may appoint an interim manager, or act to manage the District and perform any function of the general manager identified by these rules.

## **CHAPTER 4. DISTRICT RECORDS**

### **§ 4.1 Minutes and Records of the District**

All documents, reports, records, and minutes of the District are available for public inspection and copying consistent with the requirements of the Public Information Act. Copying charges may be assessed by the District. A list of charges for copies will be furnished by the District.

### **§ 4.3 Certified Copies**

Requests for certified copies must be in writing. Certified copies will be made under the direction of the board. Certification charges may be assessed by the District.

### **§ 4.5 Notice of Change of Address or Phone Number**

Applicants, registrants, permittees, and other persons with a permit with or a matter or proceeding before the District shall give written notice to the District of any change of ownership, well operator, contact person for District matters, electronic mail address, mailing address or telephone number within 30 days of such change.

## **CHAPTER 5. GROUNDWATER PRODUCTION**

### **Subchapter A. General Provisions**

#### **§ 5.1 Beneficial Use; Prohibition on Waste**

Groundwater produced within the District may only be used for a beneficial purpose. No person may produce or use groundwater in a manner that constitutes waste. Any person producing or using groundwater from within the District shall employ all reasonable methods to identify, prevent and stop the waste of water.

#### **§ 5.3 Operation of Well at Higher Than Authorized Rate or Amount Prohibited**

No person may operate a well within the District's boundaries at a rate of production higher than the rate authorized or for a greater annual amount than authorized by a permit, these rules, or other applicable law.

#### **§ 5.5 Conveyed Water; Pipelines**

All persons shall use reasonable diligence to convey water from the wellhead where produced to the place of use in order to prevent evaporation, channel loss by percolation, or waste. Water conveyed greater than a distance of one-half mile from the wellhead where produced must be conveyed through a pipeline.

#### **§ 5.7 Permits Subject to Revocation**

All permits granted by the District are based upon and contingent upon the accuracy of the information supplied by the applicant. A finding that false information has been supplied is grounds for immediate revocation of the permit.

#### **§ 5.9 General Provisions Applicable To Withdrawals**

(a) A valid Historic Use Production Permit or Non-Historic Use Production Permit is required to withdraw or produce groundwater from a non-exempt well.

(b) A permit confers only the right to use the permit under the provisions of these rules. The permit's terms may be modified or amended pursuant to the provisions of these rules.

(c) Withdrawal or production of groundwater from a non-exempt well must be measured by the owner or operator and reported to the District according to the requirements of Chapter 8 of these rules.

(d) All well sites must be accessible to District representatives for inspection, and any permittee agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.

(e) The application for a permit or permit amendment shall be in writing and sworn to by the applicant.

(f) Within 30 days after the date of a change in ownership of a permit, the permittee must notify the District in writing of the name of the new owner. Any person who becomes the owner of a permit must, within 30 calendar days from the date of the change in ownership, file a notice of transfer of ownership or an application to amend the permit, as applicable.

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

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

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



## **Subchapter B. Groundwater Production Limitations**

### **§ 5.101 Purpose**

The purpose of this subchapter is to:

(a) establish the aggregate, annual volume of groundwater that may be produced from:

(1) exempt wells; and

(2) non-exempt wells that withdraw groundwater from the Trinity Aquifer or the Brazos River Alluvium Aquifer operating pursuant to Historic Use Production Permits and Non-Historic Use Production Permits;

(b) establish the procedures for implementing, if necessary, proportional adjustments to the volume of groundwater allowed to be produced in any given year pursuant to Historic Use Production Permits; and

(c) establish the procedures for implementing, if necessary, proportional adjustments to the volume of groundwater allowed to be produced in any given year pursuant to Non-Historic Use Production Permits.

### **§ 5.103 Groundwater Available for Production from the Trinity Aquifer**

(a) The aggregate, annual volume of groundwater that may be produced from the Trinity Aquifer is based on combined withdrawals from:

(1) exempt wells, as estimated in the District's approved Groundwater Management Plan; and

(2) non-exempt wells operating pursuant to Historic Use Production Permits and Non-Historic Use Production Permits shall be no greater than the volume of Modeled Available Groundwater for the Trinity Aquifer (MAG<sub>Trinity</sub>), except as provided in Subsection (d), below.

(b) The estimated volume of groundwater from the Trinity Aquifer allotted for production from exempt wells shall equal that amount as stated in the District's approved Groundwater Management Plan, as may be amended (Exempt<sub>Trinity</sub>) and shall include the amounts from exempt wells in both the Hensell and Hosston Management Zones.

(c) The volume of groundwater that may be produced from the Trinity Aquifer by non-exempt wells (Non-Exempt<sub>Trinity</sub>) shall not exceed the volume of Modeled Available Groundwater for the Trinity Aquifer (MAG<sub>Trinity</sub>) less the estimated volume of groundwater from the Trinity Aquifer allotted for production from exempt wells (Non-Exempt<sub>Trinity</sub> ≤ MAG<sub>Trinity</sub> - Exempt<sub>Trinity</sub>). This amount shall equal the combined volume of Modeled Available Groundwater for the Hensell Management Zone of the Trinity Aquifer (MAG<sub>Trinity (Hensell)</sub>) and the volume of Modeled Available Groundwater for the Hosston Management Zone of the Trinity Aquifer

( $MAG_{Trinity (Hosston)}$ ).

(d) The volume of groundwater that may be produced from the Hensell Management Zone by non-exempt wells ( $Non-Exempt_{Trinity (Hensell)}$ ) shall not exceed the volume of Modeled Available Groundwater for the Hensell Management Zone ( $MAG_{Trinity (Hensell)}$ ) less the estimated volume of groundwater from the Hensell Management Zone allotted for production from exempt wells ( $Non-Exempt_{Trinity (Hensell)} \leq MAG_{Trinity (Hensell)} - Exempt_{Trinity (Hensell)}$ ).

(e) The volume of groundwater that may be produced from the Hosston Management Zone by non-exempt wells ( $Non-Exempt_{Trinity (Hosston)}$ ) shall not exceed the volume of Modeled Available Groundwater for the Hosston Management Zone ( $MAG_{Trinity (Hosston)}$ ) less the estimated volume of groundwater from the Hosston Management Zone allotted for production from exempt wells ( $Non-Exempt_{Trinity (Hosston)} \leq MAG_{Trinity (Hosston)} - Exempt_{Trinity (Hosston)}$ ).

(f) Unless a lower production amount is deemed appropriate for a given applicant due to the factors identified in Section 5.211(a) below, each Historic Use Production Permit for the Trinity Aquifer shall initially authorize the permittee to produce his or her Maximum Historic Use (MHU). If, after all Historic Use Production Permit applications have been finally decided by the District, the aggregate of the annual volume of groundwater permitted for production pursuant to the Historic Use Production Permits exceeds the volume calculated in Subsection (c) above ( $Non-Exempt_{Trinity}$ ), then the District shall, by written order no later than January 1, 2014, proportionally reduce the authorized production amount of each and every Historic Use Production Permit in order to equal the  $Non-Exempt_{Trinity}$  amount, and such order shall effectively modify each Historic Use Production Permit.

(g) If after all Historic Use Production Permit applications have been finally decided by the District, the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits from the Trinity Aquifer ( $HUPP_{Trinity}$ ) is less than the volume calculated in Subsection (c) above for  $Non-Exempt_{Trinity}$ , then the District may grant Non-Historic Use Production Permits for the Trinity Aquifer ( $NHUPP_{Trinity}$ ) in an aggregate annual volume equal to or less than the difference between the volume calculated in Subsection (c) above and the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits for the Trinity Aquifer ( $NHUPP_{Trinity} \leq Non-Exempt_{Trinity} - HUPP_{Trinity}$ ). No Non-Historic Use Production Permit applications shall be considered by the District until all Historic Use Production Permit applications have been finally decided by the District.

(h) If after the reissuance of all Historic Use Production Permits and Non-Historic Use Production Permits authorizing withdrawals from the Trinity Aquifer in accordance with Section 5.222, the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits from the Hensell Management Zone ( $HUPP_{Trinity (Hensell)}$ ) is less than the volume calculated in Subsection (c) above for the  $Non-Exempt_{Trinity (Hensell)}$ , then the District may grant Non-Historic Use Production Permits for the Hensell Management Zone ( $NHUPP_{Trinity (Hensell)}$ ) in an aggregate annual volume equal to or less than the difference between the volume calculated in Subsection (c) above and the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits from the Hensell Management Zone ( $NHUPP_{Trinity (Hensell)} \leq Non-Exempt_{Trinity (Hensell)} -$

HUPP<sub>Trinity (Hensell)</sub>).

(i) If after the reissuance of all Historic Use Production Permits and Non-Historic Use Production Permits authorizing withdrawals from the Trinity Aquifer in accordance with Subsection (g), the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits from the Hosston Management Zone (HUPP<sub>Trinity (Hosston)</sub>) is less than the volume calculated in Subsection (c) above for the Non-Exempt<sub>Trinity (Hosston)</sub>, then the District may grant Non-Historic Use Production Permits for the Hosston Management Zone (NHUPP<sub>Trinity (Hensell)</sub>) in an aggregate annual volume equal to or less than the difference between the volume calculated in Subsection (c) above and the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits from the Hosston Management Zone ( $\text{NHUPP}_{\text{Trinity (Hosston)}} \leq \text{Non-Exempt}_{\text{Trinity (Hosston)}} - \text{HUPP}_{\text{Trinity (Hosston)}}$ ).(j) The aggregate of the annual volume of groundwater production permitted pursuant to Historic Use Production Permits and Non-Historic Use Production Permits, if any, is subject to additional proportional reduction by written order of the District as may be necessary in order to achieve the Modeled Available Groundwater, as it may be amended, or any Desired Future Condition of the Trinity Aquifer. If any additional proportional reduction is necessary, such reduction shall be first applied to Non-Historic Use Production Permits, even to the extent, if necessary, that Non-Historic Use Production Permits will be entirely voided, before any proportional reduction is made to Historic Use Production Permits.

(j) The aggregate of the annual volume of groundwater production permitted pursuant to Historic Use Production Permits and Non-Historic Use Production Permits, if any, is subject to additional proportional reduction by written order of the District as may be necessary in order to achieve the Modeled Available Groundwater, as it may be amended, or any Desired Future Condition of the Trinity Aquifer. If any additional proportional reduction is necessary, such reduction shall be first applied to Non-Historic Use Production Permits, even to the extent, if necessary, that Non-Historic Use Production Permits will be entirely voided, before any proportional reduction is made to Historic Use Production Permits.

### **§ 5.107 Groundwater Available for Production from the Brazos River Alluvium Aquifer**

(a) The aggregate annual volume of groundwater that may be produced from the Brazos River Alluvium Aquifer from:

(1) exempt wells, as estimated in the District's approved Groundwater Management Plan; and

(2) non-exempt wells operating pursuant to Historic Use Production Permits and Non-Historic Use Production Permits shall be no greater than the volume of Modeled Available Groundwater for the Brazos River Alluvium Aquifer (MAG<sub>Alluvium</sub>), except as provided in Subsection (d), below.

(b) The estimated volume of groundwater from the Brazos River Alluvium Aquifer allotted for production from exempt wells shall equal that amount as stated in the District's approved Groundwater Management Plan, as may be amended (Exempt<sub>Alluvium</sub>).

(c) The volume of groundwater that may be produced from the Brazos River Alluvium Aquifer by non-exempt wells (Non-Exempt<sub>Alluvium</sub>) shall not exceed the volume of Modeled Available Groundwater for the Brazos River Alluvium Aquifer (MAG<sub>Alluvium</sub>) less the estimated volume of groundwater from the Brazos River Alluvium Aquifer allotted for production from exempt wells (Non-Exempt<sub>Alluvium</sub> ≤ MAG<sub>Alluvium</sub> - Exempt<sub>Alluvium</sub>).

(d) Unless a lower production amount is deemed appropriate for a given applicant due to the factors identified in Section 5.211(a), below, each Historic Use Production Permit for the Brazos River Alluvium Aquifer shall initially authorize the permittee to produce his or her Maximum Historic Use (MHU). If, after all Historic Use Production Permit applications have been finally decided by the District, the aggregate of the annual volume of groundwater permitted for production pursuant to the Historic Use Production Permits exceeds the volume calculated in Subsection (c) above (Non-Exempt<sub>Alluvium</sub>), then the District shall, by written order, proportionally reduce the authorized production amount of each and every Historic Use Production Permit in order to equal the Non-Exempt<sub>Alluvium</sub> amount, and such order shall effectively modify each Historic Use Production Permit.

(e) If, after all Historic Use Production Permit applications have been finally decided by the District, the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits (HUPP<sub>Alluvium</sub>) is less than the volume calculated in Subsection (c) above (Non-Exempt<sub>Alluvium</sub>), then the District may grant Non-Historic Use Production Permits (NHUPP<sub>Alluvium</sub>) in an aggregate annual volume equal or to less than the difference between the volume calculated in Subsection (c) above and the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits (NHUPP<sub>Alluvium</sub> ≤ Non-Exempt<sub>Alluvium</sub> - HUPP<sub>Alluvium</sub>). No Non-Historic Use Production Permit applications shall be considered by the District until all Historic Use Production Permit applications have been finally decided by the District.

(f) The aggregate of the annual volume of groundwater production permitted pursuant to Historic Use Production Permits and Non-Historic Use Production Permits, if any, is subject to additional proportional reduction by written order of the District as may necessary in order to achieve the Modeled Available Groundwater, as it may be amended, or any Desired Future Condition of the Brazos River Alluvium Aquifer. If any additional proportional reduction is necessary, such reduction shall be first applied to Non-Historic Use Production Permits, even to the extent, if necessary, that Non-Historic Use Production Permits will be entirely voided, before any proportional reductions are made to Historic Use Production Permits.

## **Subchapter C. Groundwater Production Permits**

### **§ 5.201 Types of Groundwater Production Permits**

The District may issue the following types of groundwater production permits:

- (1) Historic Use Production Permits (HUPPs); and
- (2) Non-Historic Use Production Permits (NHUPPs).

Groundwater may not be produced from a non-exempt well within the District without holding a valid HUPP or NHUPP.

### **§ 5.203 Authorized Uses**

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

- (a) irrigation use; and
- (b) municipal/industrial/other use.

### **§ 5.205 Filing Deadline for Applications for Historic Use Production Permits**

In order to obtain an Historic Use Production Permit, the owner of a non-exempt well that was completed and operational prior to January 1, 2010, and that produced and used groundwater in any year during the Existing and Historic Use Period, was required to submit an application to the District for an Historic Use Production Permit by no later than 5:00 p.m., May 1, 2010. HUPP applications arriving at the District Office after that deadline will be returned to the applicant. Failure to file an application for a HUPP by 5:00 p.m. on May 1, 2010 shall preclude the well owner from making any future claim or application to the District for Historic Use of groundwater under these rules. Failure to file an application for a HUPP by 5:00 p.m. on May 1, 2010 for a well or wells shall preclude the owner or any operator from producing groundwater from the well or wells unless such owner or operator obtains a Non-Historic Use Production Permit, if available, converts the well to an exempt well or monitoring well, or obtains a transfer of production rights from the holder of a HUPP.

### **§ 5.207 Applications for Historic Use Production Permits (HUPPs)**

All HUPP applicants must use the application form prescribed by the District and include all relevant information required by these rules. A single HUPP application may, at the applicant's discretion, be submitted for multiple wells owned or operated by the applicant. In addition to the information specified in § 9.107, an application for an Historic Use Production Permit shall contain the following:

- (a) Name and Address of Owner. The full name, physical and mailing addresses, telephone number, fax number, and electronic mail address of the landowner and operator, as applicable.

(b) Source of Supply. A statement identifying which aquifer(s) is/are the source of groundwater from the well.

(c) Rate of Withdrawal. The maximum rate of withdrawal, in gallons per minute, that the well is capable of producing.

(d) Method of Withdrawal. A description of the method used to withdraw groundwater.

(e) Declaration of Historic Use. A declaration of the amount of groundwater claimed to have been used in each year of the Existing and Historic Use Period, identifying the total amount of groundwater that the applicant or his or her contract user or predecessor in interest, withdrew and beneficially used without waste, and, if applicable, the number of acres irrigated without waste, during each calendar year of the Existing and Historic Use Period, calculated in accordance with the following guidelines, as may be applicable:

(1) For an applicant whose use during the Existing and Historic Use Period has been affected by a requirement of, or participation in, the federal conservation program, a credit for Beneficial Use shall be given for the amount that would have been withdrawn and beneficially used during the Existing and Historic Use Period by such applicant but for the operation of the federal conservation program. The credit may be based on irrigation use on comparable acres on a similarly-situated farm that is not in the federal conservation program.

(2) If, during the Existing and Historic Use Period, more than one user applied groundwater for a Beneficial Use on the same land, then all such Beneficial Use shall inure solely to the benefit of and may only be claimed by the landowner who last withdrew and used the water or whose contract user last withdrew and used the water during the Existing and Historic Use Period.

(f) Purpose of Historic Use. The purpose(s) for which the groundwater was used during the Existing and Historic Use Period.

(g) Purpose of Future Use: The purpose(s) for which the groundwater will be used.

(h) Crop Type. For irrigation applications, the crop type and acreage of all crops irrigated during the Existing and Historic Use Period.

(i) Irrigated Acreage. For irrigation applications, the deed and legal description of irrigable land irrigated to produce an agricultural crop during the Existing and Historic Use Period, including the year irrigated.

(j) Ownership of Well Land: The deed and legal description for the tract of land on which the well is located.

(k) Federal Conservation Plan Documentation: For irrigation applications, where applicable, documentation regarding enrollment of each tract of land in the federal conservation program.

(l) Well locations: The number and location of each well owned by the applicant and for which the applicant claims groundwater was withdrawn and placed to Beneficial Use during the Existing and Historic Use Period.

(m) Place of Use: The place of use of groundwater withdrawn from each well, including, as applicable, a copy of the deed and legal description for the place of use or a copy of the map identifying the boundaries of the applicant's Certificate of Convenience and Necessity (CCN).

(n) Other Users: If the groundwater was withdrawn from the well or placed to a Beneficial Use by a contract user or predecessor in interest, then the name, address and telephone number of each contract user or predecessor in interest, and copies of the legal documents establishing the legal right of the contract user or predecessor in interest to withdraw and/or place groundwater from the well to Beneficial Use.

(o) Year Drilled: The year in which the well was drilled.

(p) Photograph: A photograph of the well taken approximately 100 feet from the wellhead.

(q) Well or Driller's Log: A copy of the State Well Report and, if available, any geophysical logs for the well.

(r) Plans: Any potable water supply entity shall provide a copy of its water conservation plan and drought contingency plan prepared for the TCEQ.

(s) Compliance with Management Plan: A declaration that the applicant will comply with the District's Groundwater Management Plan.

(t) Compliance with Rules: A declaration that the applicant is in compliance with all applicable District rules in effect since December 7, 2007, and will comply with the District's rules.

(u) Surface Water Bodies: The name of any surface water, including lakes, streams, or rivers, within 1,000 feet of the well.

(v) Waste and Conservation: A statement that the applicant agrees to avoid waste and achieve water conservation.

(w) Groundwater Quality: A statement that the applicant agrees to use reasonable diligence to protect groundwater quality.

(x) Other Information: Any other information determined to be necessary by the District.

#### **§ 5.211 Basis for Action on Historic Use Production Permit Applications**

(a) The Board shall grant an application for an Historic Use Production Permit if the

Board finds that:

- (1) the application is complete;
- (2) the application was timely filed in accordance with Section 5.205;
- (3) the application complies with the rules of the District;
- (4) all applicable fees and deposits have been paid;
- (5) the applicant owns the proposed or existing well and the place of use;
- (6) the applicant has a legal right to produce groundwater from the proposed or existing well;
- (7) the wellhead is, or will be physically located, within the boundaries of the District;
- (8) the withdrawals are proposed to be placed to a Beneficial Use;
- (9) except as provided in Section 5.401(b), the place of use is located within the District's boundaries, unless the applicant also has obtained or applied for a groundwater exportation permit from the District;
- (10) the applicant is in compliance with any permits the applicant holds from the District and with District rules;
- (11) the activities of the applicant constituting the purpose of use for which the groundwater will be beneficially used will be managed to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of groundwater from, and achieve the conservation of groundwater in and produced from, the aquifer;
- (12) the proposed production of water will not unreasonably affect existing groundwater or surface water resources or existing holders of permits issued by the District;
- (13) operation of the well will not cause unreasonable interference between wells;
- (14) the application is consistent with the District's certified groundwater management plan, as may be amended; and
- (15) the applicant proves the Beneficial Use of groundwater without waste during the Existing and Historic Use Period.

(b) Aggregation of Withdrawals. The authorized withdrawal amount for a given Historic Use Production Permit may be aggregated with the authorized withdrawal amounts for other Historic Use Production Permits held by the same permittee. Where aggregated, the total authorized withdrawal amount will be assigned to the wells in aggregate, rather than allocating to



each well its pro-rata share of production.

(c) An Historic Use Production Permit issued by the District will initially authorize the permittee to produce his or her Maximum Historic Use (MHU), unless the District finds that a lower production amount is appropriate for a given applicant based upon the factors listed in Subsection (a), above. The initial production amount specified in an Historic Use Production Permit may subsequently be proportionally reduced by the District as provided in Subchapter B of this chapter.

(d) The Board shall not issue Historic Use Production Permits for lands for which the Board determines the applicant, his predecessor in interest, or a contract user did not beneficially use groundwater without waste during the Existing and Historic Use Period.

(e) The Board shall determine the volume of Maximum Historic Use (MHU) of groundwater by an applicant as follows:

(1) for irrigation purposes, it shall be the number of acres of Existing and Historic Irrigated Land proven to have been irrigated during any one year of the Existing and Historic Use Period multiplied by 2.5 acre-feet per acre;

(2) for all other non-exempt uses, it shall be the maximum amount of groundwater proven to have been produced and beneficially used in a non-wasteful manner in any one calendar year during the Existing and Historic Use Period or for a municipal historical user within a certificate of convenience and necessity (CCN) who has less than one full year of use by some end users within the CCN, it shall be the maximum amount of groundwater proven to have been produced and beneficially used in a non-wasteful manner during part of the calendar year during the Existing and Historic Use Period calculated on an annualized basis; or

(3) for any land that was enrolled in the federal conservation program during the Existing and Historic Use Period, it shall be the number of acres of Existing and Historic Irrigated Land proven to have been land that was both irrigated for production prior to enrollment in the federal conservation program, and enrolled or participating in the program during any year in the Existing and Historic Use Period, multiplied by 2.5 acre-feet per acre.

(f) Existing and Historic Irrigated Land shall be classified by the District as the acres of land that are irrigable and which were irrigated to produce an agricultural crop during one or more years of the Existing and Historic Use Period.

(g) The following measures shall be used by the District to determine if land within the District's boundaries is irrigable:

(1) the land is classified by the United States Department of Agriculture Farm Services Agency as "cropland" that is land that is capable of being farmed with normal farming equipment and any other requirements of the Farm Services Agency;

(2) the land is classified by the United States Department of Agriculture Natural Resources Conservation Services as "Additional Farmland of Statewide Importance" according to the procedures of Part 657.5 Identification of Important Farmlands (7 CFR 657); or

(3) any other method or methods determined by the Board to reasonably determine if land is irrigable.

(h) One or more of the following measures may be used by the District to determine if land classified by the District as irrigable was irrigated to produce an agricultural crop during the Existing and Historic Use Period:

(1) crop production reports from a governmental agency that are determined by the District to contain sufficient information to identify:

(A) the location of the land on which the agricultural crop was produced;

(B) that an agricultural crop was produced on such land;

(C) that such land was irrigated to produce the agricultural crop; and

(D) the year or years that the agricultural crop was produced;

(2) aerial photographs or imagery that were produced by or obtained from an agency of the United States or the State of Texas and are determined by the District to be:

(A) of sufficient quality to accurately determine the location of the irrigated field;

(B) properly documented as to source and date when the photograph was taken; and

(C) of sufficient quality that the irrigated land shown in the photograph can be correlated by the District to a legal description of the land and the appraisal district property identification number associated with such land;

(3) crop production reports from any reasonable source that are determined by the District to contain sufficient information to identify:

(A) the location of the land on which the agricultural crop was produced;

(B) that an agricultural crop was produced on such land;

(C) that such land was irrigated to produce the agricultural crop; and

(D) the year or years that the agricultural crop was produced;

(4) aerial photographs or imagery that were produced by or obtained from any source and are determined by the District to be:

(A) of sufficient quality to accurately determine the location of the irrigated field;

(B) properly documented as to source and date when the photograph was taken; and

(C) of sufficient quality that the irrigated land shown in the photograph can be correlated by the District to a legal description of the land and the appraisal district property identification number associated with such land; and

(5) any other method or methods determined by the Board to reasonably determine if irrigable land has been irrigated.

**§ 5.213 Contents of Historic Use Production Permits**

(a) An Historic Use Production Permit issued by the District shall include the following terms and conditions:

- (1) the name of the person or entity to whom the permit is issued;
- (2) the date the permit is issued;
- (3) the location of the well;
- (4) the purpose of use for which the water produced from the well will be used;
- (5) the specific location of the place of use of the water produced from the well;
- (6) the aquifer and aquifer management zone, if applicable, from which withdrawals are authorized to be made;
- (7) except as provided in Section 5.401(b), if the place of use is not within the District's boundaries, the permittee must obtain a groundwater exportation permit from the District prior to the withdrawal of groundwater under the permit;
- (8) the requirements for the conveyance of water produced from the well to the place of use;
- (9) the maximum rate of production in gpm, and any conditions relative thereto;
- (10) the maximum amount of production in acre-feet per annum, specifying the authorized withdrawal amount by aquifer management zone, if applicable, and any conditions relative thereto;
- (11) a water well closure plan or a declaration that the applicant will comply with well plugging requirements and report closure to the District and the Commission;
- (12) metering and reporting requirements;

(13) a statement that the permit is subject to the Standard Permit Conditions set forth in Section 5.215 of these rules; and

(14) a statement that the permit is subject to limitation or modification as may be provided in the District's Rules or other applicable law; and

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

(b) Within 30 days of issuance, an Historic Use Production Permit shall be recorded with the Clerk of every county in which the well or wells or place of use are located and a copy shall be provided to the District.

(c) Within 30 days of reissuance pursuant to Section 5.222, the District, on behalf of the permit holder, will file a reissued Historic Use Production Permit for recordation in the deed records of every county in which the well or wells or place of use are located and a copy shall be provided to the permit holder.

#### **§ 5.215 Standard Permit Conditions for Historic Use Production Permits**

All Historic Use Production Permits issued by the District shall be subject to the following conditions:

(a) the duty to beneficially use and avoid waste of groundwater;

(b) the duty to conserve water in accordance with applicable law, and comply with the District's water conservation plan, as may be amended from time to time, and the permittee's plan approved by the District, as applicable;

(c) the duty to properly close (cap or plug) all wells in accordance with applicable law, and comply with the District's well closure plan, if any, as may be amended from time to time, and the permittee's plan approved by the District, as applicable;

(d) the duty to file all applicable reports with the District, and other appropriate federal, state, or local governments;

(e) the duty to reduce water production or consumption during times of drought in accordance with applicable law, and to comply with the District's drought management plan, as may be amended from time to time, and the permittee's plan approved by the District, as applicable;

(f) the duty to comply with the District's certified groundwater management plan, as may be amended from time to time;

(g) the duty to use diligence to protect groundwater quality within the District;

(h) the duty to comply with the District's rules, as may be amended;

(i) any permit review, renewal, or extension conditions;

(j) the duty to locate all wells, and confirm the actual location with the proposed location in the application or as provided for in the permit, consistent with the District's well spacing rules, prior to the production from any wells identified in the permit or application;

(k) the continuing right of the District to supervise and manage groundwater production and protect the aquifer;

(l) the duty to install, equip, operate, maintain, and close all wells in accordance with the District's rules, and other applicable federal, state, and local law;

(m) the duty to comply with the District's rules relating to transfers and amendments of permits;

(n) the duty to pay and be current in the payment of all applicable fees;

(o) the duty not to export groundwater from a well within the District's boundaries to a place of use outside the District's boundaries without a Groundwater Exportation Permit issued by the District;

(p) the duty to give notice to the District of any changes in name, address, or telephone number of the permittee, or the authorized representative, as applicable, in accordance with these rules;

(q) the duty to comply with all of the terms and conditions of the permit;

(r) the duty to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;

(s) the right of the District to enter land under § 36.123, Texas Water Code, as may be amended;

(t) the duty to comply with the metering and reporting requirements set forth in Chapter 8 of these rules;

(u) the duty to comply with any proportional adjustments mandated by Subchapter B of Chapter 5 of these rules; and

(v) any other conditions as the Board may deem appropriate.

**§ 5.217 Groundwater Production in Violation of Historic Use Production Permit Prohibited**

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

**§ 5.219      Transfer of Ownership or Lease of Historic Use Production Permit; Notice**

(a)      The ownership of a Historic Use Production Permit may be transferred separately from the ownership of the place of use.

(b)      Within 30 days after transfer of the ownership of a Historic Use Production Permit, or lease of the right to withdraw groundwater thereunder, the transferee shall file with the District a notice on a form prescribed by the District. For transfers of ownership, if the notice is complete, and the transfer is otherwise in compliance with this subchapter, the general manager shall reflect the new ownership and issue an amended permit to the transferor, transferee, or both, as may be appropriate. For leases, the general manager will update the District's permit records to reflect the lease.

**§ 5.221      Historic Use Production Permit Transfers and Amendments; Applications**

(a)      The District may amend a Historic Use Production Permit as to the following:

- (1)      point of withdrawal;
- (2)      place of use;
- (3)      the total volume of groundwater authorized to be withdrawn in acre-feet per annum by aquifer management zone, if applicable;
- (4)      rate of production in gpm; or
- (5)      ownership in accordance with Section 5.219.

(b)      Any person seeking to amend their permit as provided in Subsection (a)(1)-(4) must first file with the District an application to amend on a form prescribed by the District.

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

(d)      A permit amendment may not authorize the withdrawal of groundwater from a different aquifer management zone than that authorized in the transferor's Historic Use Production Permit.

(e)      An amendment to a Historic Use Production Permit to increase the authorized withdrawal amount may only be made based on the transfer of Historic Use Production Permit withdrawal amounts from another Historic Use Production Permit.

**§ 5.222      Historic Use Production Permit Reissuance**

Following the readoption of the District's management plan in 2015, and in compliance with the applicable procedures in Chapter 9, Subchapter C, the District shall reissue all Historic Use Production Permits authorizing withdrawals from the Trinity Aquifer to specify, to the extent reasonably possible, whether withdrawals are from the Hensell and/or the Hosston

Management Zone and in what amount or amounts from each aquifer management zone withdrawals are authorized to be made.

**§ 5.223 Basis for Granting Applications to Amend Historic Use Production Permits**

The Board shall grant an application to amend a Historic Use Production Permit if it finds that:

- (1) the elements provided for in §§ 5.207, 5.211 and 5.221 are established; and
- (2) during the term of the permit, the applicant, transferor, or transferee, as may be appropriate, demonstrates a positive compliance history with the permit’s terms and conditions, and the District’s rules.

**§ 5.225 Availability of and Application for Non-Historic Use Production Permits**

(a) If, pursuant to Subchapter B of this chapter, the District determines that there is sufficient groundwater available for the District to issue Non-Historic Use Production Permits in a given aquifer, and given aquifer management zone, if applicable, then the Board will issue a written order authorizing the filing and processing of applications for Non-Historic Use Production Permits for the applicable aquifer and aquifer management zone, if applicable (an “NHUPP Authorization Order”). The District will not accept for filing any NHUPP application for a given aquifer unless and until such an NHUPP Authorization Order has been issued by the Board for that aquifer.

(b) If the District issues an NHUPP Authorization Order for a given aquifer and given aquifer management zone, if applicable, then no groundwater may be produced from that aquifer and aquifer management zone, if applicable, from a non-exempt well for which there is not an associated Historic Use Production Permit without first applying for and obtaining a Non-Historic Use Production Permit. On the other hand, if, pursuant to Subchapter B of Chapter 5 of these rules, the District determines that there is not sufficient groundwater available for the District to issue Non-Historic Use Production Permits in a given aquifer and given aquifer management zone, if applicable, then no groundwater may be produced from a non-exempt well for which there is not an associated Historic Use Production Permit.

**§ 5.227 Applications for Non-Historic Use Production Permits (NHUPP)**

(a) If NHUPPs may be applied for, an NHUPP applicant must use the application form prescribed by the District and include all relevant information required by these rules. A single NHUPP application may, at the applicant’s discretion, be submitted for multiple wells owned or operated by the applicant. In addition to the information specified in § 9.107, an application for an NHUPP application shall contain the following:

- (1) Name and Address of Owner: The full name, physical and mailing addresses, telephone number, fax number, and electronic mail address of the landowner and operator, as applicable.
- (2) Source of Supply: A statement identifying which aquifer(s) and aquifer

management zone, if applicable, is/are the source of groundwater from the well.

(3) Rate of Withdrawal: The maximum rate of withdrawal in gallons per minute or cubic feet per second that the well is capable of producing.

(4) Method of Withdrawal: A description of the method used to withdraw groundwater.

(5) Declaration of Amount of Proposed Use. A declaration by the applicant of the volume of groundwater that is proposed to be used without waste for a beneficial purpose and detailed documentation showing the need for the proposed amount of use.

(6) Purpose of Use: The purpose(s) for which the groundwater will be used and the dates by which water will be needed for any specific projects, if applicable.

(7) Ownership of Land: The deed and legal description for the tract of land on which the well is or will be located.

(8) Information regarding availability, access to, and cost to obtain water from a source other than the aquifer identified by the applicant. Information regarding such other sources shall at a minimum include the availability of, access to, and cost to obtain surface water.

(9) Well location: The location of the well or proposed well.

(10) Place of Use: The place of use of groundwater to be withdrawn from the well.

(11) Year Drilled: The year in which the well was or will be drilled.

(12) Well or Driller's Log: A copy of any State well report and, if applicable, any geophysical log for the well.

(13) Plans: Any potable water supply entity shall provide a copy of its water conservation plan and drought contingency plan prepared for the Commission.

(14) Compliance with Management Plan: A declaration that the applicant will comply with the District's management plan.

(15) Compliance with Rules: A declaration that the applicant is in compliance with all applicable District rules in effect on or after December 7, 2007, and will comply with the District's rules.

(16) Surface Water Bodies: The name of any surface water, including lakes, streams, or rivers, within 1,000 feet of the well.

(17) Waste and Conservation: A statement that the applicant agrees to avoid waste and achieve water conservation.



(18) Groundwater Quality: A statement that the applicant agrees to use reasonable diligence to protect groundwater quality.

(19) Other Information: Any other information determined to be necessary by the District.

(b) All applicants for an NHUPP for municipal use shall also include a report prepared by an engineer licensed in the State of Texas that provides the details and methods used to determine:

(1) the applicant's monthly and annual water use on a per meter and per capita basis for the previous 10 years;

(2) the estimated future water needs of the applicant;

(3) the applicant's billing amounts, rate structure, and billing efficiency;

(4) the estimate of water lost through leaks, unmetered connections, and any other loss;

(5) the water conservation methods implemented during the previous 10 years and the methods planned for implementation in the next 10 years;

(6) the economic analysis of using surface water or conservation methods to avoid the need for increased groundwater use; and

(7) the economic analysis of using groundwater from the Brazos River Alluvium Aquifer or other groundwater sources to avoid the need for increased groundwater use from the Trinity Aquifer.

(c) All applicants for an NHUPP for industrial use shall also include a detailed report prepared by an engineer licensed in the State of Texas that includes:

(1) the applicant's monthly and annual water use for the previous 10 years;

(2) the estimated future water needs of the applicant;

(3) the amount of water used per unit of production and referenced to the typical amount of water used in the industry per unit of production (gallons per pound, gallons per item, gallons per unit processed, etc.);

(4) an estimate of water lost through leaks, unmetered uses, and any other loss;

(5) the water conservation methods implemented during the previous 10 years and those methods planned for implementation in the next 10 years;

(6) an economic analysis of using surface water or conservation methods to avoid the need for increased groundwater; and

(7) an economic analysis of using groundwater from the Brazos River Alluvium Aquifer or other groundwater sources to avoid the need for increased groundwater use from the Trinity Aquifer.

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

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

(e) All applicants for an NHUPP for any other use not defined in Subsections (b), (c) and (d), shall submit additional information determined by the Board based on the proposed use of groundwater.

**§ 5.229 Basis for Action on Non-Historic Use Production Permit Applications**

(a) The Board shall grant an application for an Non-Historic Use Production Permit if the Board finds that:

- (1) the application is complete;
- (2) the application complies with the rules of the District;
- (3) all applicable fees and deposits have been paid;

- (4) the applicant owns the proposed or existing well;
- (5) the applicant has a legal right to produce groundwater from the proposed or existing well;
- (6) the wellhead is, or will be physically located, within the boundaries of the District;
- (7) the withdrawals are proposed to be placed to an actual beneficial use;
- (8) except as provided in Section 5.401(b), the place of use is located within the District's boundaries, unless the applicant also has obtained or applied for a groundwater exportation permit from the District;
- (9) there are no economically feasible alternative sources of water available;
- (10) there is a sufficient volume of water available pursuant to Chapter 5, Subchapter B of these rules to satisfy the applicant's intended purpose of use for the term of the permit;
- (11) no other pending applications compliant with the rules, and essential to support domestic use, will be denied, in whole or in part, as the result of granting the application;
- (12) the withdrawal amount requested will be physically withdrawn and put to beneficial use within three years of the date the application was filed;
- (13) the activities of the applicant will be managed to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of groundwater from, and achieve the conservation of groundwater in and produced from, the aquifer;
- (14) the proposed production of water will not unreasonably affect existing groundwater or surface water resources or existing holders of permits issued by the District or exceed the MAG;
- (15) operation of the well will not cause unreasonable interference between wells;
- (16) the applicant is in compliance with any permits the applicant holds from the District and with District rules; and
- (17) the application is consistent with the District's certified groundwater management plan, as may be amended.

(b) **Aggregation of Withdrawals.** The authorized withdrawal amount for a given Non-Historic Use Production Permit may be aggregated with the authorized withdrawal amounts for other Non-Historic Use Production Permits held by the same permittee. Where aggregated, the total authorized withdrawal amount will be assigned to the wells in aggregate, rather than

allocating to each well its pro-rata share of production.

(c) The initial production amount specified in a Non-Historic Use Production Permit may subsequently be proportionally reduced, even to the extent that it is entirely voided, by the District as provided in Subchapter B of this Chapter.

**§ 5.231 Contents of Non-Historic Use Production Permits**

(a) A Non-Historic Use Production Permit issued by the District shall include the following terms and conditions:

- (1) the name of the person or entity to whom the permit is issued;
- (2) the date the permit is issued;
- (3) the location of the well;
- (4) the purpose of use for which the water produced from the well will be used;
- (5) the specific location of the place of use of the water produced from the well;
- (6) except as provided in Section 5.401(b), if the place of use is not within the District's boundaries, the permittee must obtain a groundwater exportation permit from the District prior to the withdrawal of groundwater under the permit;
- (7) the requirements for the conveyance of water produced from the well to the place of use;
- (8) the maximum rate of production in gpm, and any conditions relative thereto;
- (9) the maximum amount of production in acre-feet per annum, and any conditions relative thereto;
- (10) a water well closure plan or a declaration that the applicant will comply with well plugging requirements and report closure to the District and the Commission;
- (11) metering and reporting requirements;
- (12) requirement that withdrawals from the same point or points of withdrawal and purpose of use permitted in a Historic Use Production Permit be allocated first to the authorized annual withdrawal amount of a Historic Use Production Permit before being allocated to a Non-Historic Use Production Permit;
- (13) a statement that the permit is subject to the Standard Permit Conditions set forth in Section 5.233 of these rules;

(14) a statement that the permit is subject to limitation or modification as may be provided in the District's rules or other applicable law; and

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

(b) Within 30 days of issuance, the District, on behalf of the permit holder, will file a Non-Historic Use Production Permit for recordation in the deed records of every county in which the well or wells or place of use are located and a copy shall be provided to the permit holder. The permit holder is responsible for payment of these recording costs.

(c) Within 30 days of reissuance pursuant to Section 5.222, the District, on behalf of the permit holder, will file a reissued Non-Historic Use Production Permit for recordation in the deed records of every county in which the well or wells or place of use are located and a copy shall be provided to the permit holder.

### **§ 5.233 Standard Permit Conditions for Non-Historic Use Production Permits**

Any Non-Historic Use Production Permit issued by the District shall be subject to the following conditions:

(a) the duty to beneficially use and avoid waste of groundwater;

(b) the duty to conserve water in accordance with applicable law, and comply with the District's water conservation plan, as may be amended from time to time, and the permittee's plan approved by the District, as applicable;

(c) the duty to properly close (cap or plug) all wells in accordance with applicable law, and comply with the District's well closure plan, if any, as may be amended from time to time, and the permittee's plan approved by the District, as applicable;

(d) the duty to file all applicable reports with the District, and other appropriate federal, state, or local governments;

(e) the duty to reduce water or production or consumption during times of drought in accordance with applicable law, and comply with the District's drought management plan, as may be amended from time to time, and the permittee's plan approved by the District, as applicable;

(f) the duty to comply with the District's certified groundwater management plan, as may be amended from time to time;

(g) the duty to use diligence to protect the groundwater quality within the District;

(h) the duty to comply with the District's rules, as may be amended;

(i) any permit review, renewal, or extension conditions;

(j) the duty to locate all wells, and confirm the actual location with the proposed

location in the application or as provided for in the permit, consistent with the District's well spacing rules, prior to the production from any wells identified in the permit or application;

(k) the continuing right of the District to supervise and manage groundwater production and protect the aquifer;

(l) the duty to install, equip, operate, maintain, and close all wells in accordance with the District's rules, and other applicable federal, state, and local law;

(m) the duty to comply with the District's rules relating to transfers and amendments of permits;

(n) the duty to pay and be current in the payment of all applicable fees;

(o) except as provided in Section 5.401(b), the duty not to export groundwater from a well within the District's boundaries to a place of use outside the District's boundaries without a groundwater exportation permit issued by the District;

(p) the duty to give notice to the District of any changes in name, address, or telephone number of the permittee, or the authorized representative, as applicable, in accordance with these rules;

(q) the duty to comply with all of the terms and conditions of the permit;

(r) the duty to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;

(s) the right of the District to enter land under § 36.123, Texas Water Code, as may be amended;

(t) the duty to comply with the metering and reporting requirements set forth in Chapter 8 of these rules;

(u) the duty to comply with any proportional adjustments mandated by Subchapter B of Chapter 5; and

(v) any other conditions as the Board may deem appropriate.

**§ 5.235 Reduction in Amount or Cancellation of Non-Historic Use Production Permit for Non-Use**

(a) If all or part of the water authorized to be produced under a Non-Historic Use Production Permit has not been put to Beneficial Use at any time during between the time the permit is issued and three years thereafter, then the permit is subject to cancellation by the District in whole or a reduction in the annual volume of production authorized by the permit.

(b) Prior to any cancellation or reduction, the District shall provide the opportunity

for a hearing and give notice to the permittee at least 30 days before the date of the hearing.

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

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

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

(1) the water or any portion of the water authorized to be produced under the permit has not been put to a Beneficial Use during the 3-year period; and

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

**§ 5.237 Groundwater Production in Violation of Non-Historic Use Production Permit Prohibited**

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

**§ 5.239 Transfer of Ownership or Permittee of Non-Historic Use Production Permit; Notice**

(a) The ownership or authorized permittee of a Non-Historic Use Production Permit may not be transferred separately from the ownership of the place of use or points of withdrawal for a permit for municipal use with a certificate of convenience and necessity (CCN).

(b) Within 30 days after transfer of the ownership of a Non-Historic Use Production Permit, the transferee shall file with the District a notice on a form prescribed by the District. If the notice is complete, and the transfer is otherwise in compliance with this subchapter, the general manager shall reflect the new ownership and issue an amended permit to the transferee, as appropriate.

**§ 5.241 Non-Historic Use Production Permit Transfers and Amendments; Applications**

(a) The District may amend a Non-Historic Use Production Permit as to the following:

- (1) point of withdrawal;
- (2) place of use;
- (3) the total volume of groundwater authorized to be withdrawn in acre-feet per annum by aquifer management zone, if applicable;
- (4) rate of production in gpm; or
- (5) ownership in accordance with Section 5.239.

(b) Any person seeking to amend their permit as provided in Subsection (a)(1)-(4) must first file with the District an application to amend on a form prescribed by the District.

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

(d) A permit amendment may not authorize the withdrawal of groundwater from a different aquifer management zone than that authorized in the transferor's Non-Historic Use Production Permit.

(e) An amendment to a Non-Historic Use Production Permit to increase the authorized withdrawal amount must comply with Sections 5.225 and 5.227 applicable to new applications for a Non-Historic Use Production Permit and shall be granted only in accordance with Section 5.229.

#### **§ 5.242 Non-Historic Use Production Permit Reissuance**

Following the readoption of the District's management plan in 2015, and in compliance with the applicable procedures in Chapter 9, Subchapter C, the District shall reissue all Non-Historic Use Production Permits authorizing withdrawals from the Trinity Aquifer to specify, to the extent reasonably possible, whether withdrawals are from the Hensell and/or the Hosston Management Zone and in what amount or amounts from each aquifer management zone withdrawals are authorized to be made.

#### **§ 5.243 Basis for Granting Applications to Amend Non-Historic Use Production Permits**

The Board shall grant an application to amend a Non-Historic Use Production Permit if it finds that:

- (a) the elements provided for in § 5.229 are established; and
- (b) during the term of the permit, the applicant, transferor, or transferee, as may be appropriate, demonstrates a positive compliance history with the permit's terms and conditions, and the District's rules.



## **Subchapter D. Groundwater Exportation Permits**

### **§ 5.401 Applicability**

(a) Except as provided in Subsection (b), this subchapter applies to any person who seeks to export groundwater that is produced from a well within the District's boundaries to a place of use outside the District's boundaries.

(b) This subchapter does not apply to:

(1) a groundwater export arrangement in effect prior to January 7, 2010, and continuing thereafter, so long as there is no increase in the annual amount exported after January 7, 2010;

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

(3) groundwater that is produced from a well located within the District, where the well is situated on a contiguous tract of land that straddles the District's boundaries and the groundwater is placed to use solely on that tract, but including portions outside the District's boundaries; or

(4) groundwater that is produced from a non-exempt well located within the District and delivered by the permittee to end users pursuant to a certificate of convenience and necessity (CCN), where: the CCN boundaries straddle the District boundaries.

### **§ 5.403 Groundwater Exportation Permit Required**

(a) Exporting groundwater from the District without a required groundwater exportation permit is illegal, wasteful per se, and a nuisance.

(b) Any person seeking to export groundwater to a place of use outside of the District's boundaries is required to first file with the District an application to export groundwater on a form prescribed by the District and obtain a groundwater exportation permit from the District.

(c) An application filed to comply with this section shall be considered and processed under the same procedures as other applications for other permits and may be combined with applications filed to obtain a permit for in-District water use from the same applicant, if any.

(d) The District may not deny a permit under this subchapter based on the fact that the applicant seeks to export groundwater outside of the boundaries of the District, but may restrict a groundwater exportation permit to the annual production of groundwater and the purpose of use allowed under the associated groundwater production permit.

### **§ 5.405 Applications for Groundwater Exportation Permits**

In addition to the information specified in § 9.107, an application for a groundwater

exportation permit shall contain information reasonably related to the information to be contained in a groundwater exportation permit under §§ 5.413 and 5.417 and the elements to be considered by the Board in determining whether to grant or deny the application under § 5.407. The application shall be submitted on the form developed and prescribed by the District.

**§ 5.407 Basis for Action on Groundwater Exportation Permit Applications**

The Board shall grant an application for a groundwater exportation permit if the Board finds that:

- (a) the application is complete;
- (b) the application complies with the rules of the District;
- (c) all applicable fees and deposits have been paid;
- (d) the water to be exported is proposed to be placed to a Beneficial Use;
- (e) the place of use is identified specifically and located outside the District's boundaries;
- (f) the well to be used for the proposed exportation project is identified specifically and located within the District's boundaries;
- (g) the applicant is in compliance with any permits the applicant holds from the District and with the District's rules;
- (h) the applicant owns a groundwater production permit issued by the District to produce the groundwater necessary for the proposed exportation project, or has a contract to purchase the groundwater from a third party who holds such permit or other authorization;
- (i) there is insufficient water available in the proposed receiving area to substantially meet the actual or projected demand during the proposed term of the groundwater exportation permit;
- (j) there is sufficient water available within the District to substantially meet the actual or projected demand during the proposed term of the groundwater exportation permit;
- (k) the proposed exportation will not have an unreasonably adverse effect on aquifer conditions, depletion, or water quality within the District;
- (l) the proposed exportation will not have an unreasonably adverse effect on existing permittees, or other groundwater users within the District;
- (m) the proposed exportation is consistent with the applicable Regional Water Plans approved by the Texas Water Development Board; and
- (n) the proposed exportation is consistent with the District's certified Groundwater Management Plan, as may be amended.

**§ 5.411 Groundwater Exportation Permit Term; Renewal**

(a) The permit term for an exportation permit shall be set by the Board, consistent with the following criteria:

(1) the permit term shall be three years, if construction of a conveyance system in the District's boundaries has not been initiated prior to the issuance of the permit; or

(2) the permit term shall be 30 years, if construction of a conveyance system has been initiated in the District's boundaries prior to the issuance of the permit.

(b) The three-year term specified in Subsection (a)(1) shall automatically be extended to thirty years if construction of a conveyance system is begun before the expiration of the three-year period. For the purposes of this section, construction of a conveyance system shall be considered to have been initiated when the permittee has completed construction of at least 10% of the portion of the conveyance facilities located within the District that will be used to convey the maximum annual quantity of groundwater permitted for transfer outside of the boundaries of the District. Such portion of the conveyance facilities does not include any existing or previously constructed facilities that were not constructed specifically for use in exporting the groundwater considered under the permittee's groundwater exportation permit application.

(c) An exportation permit may be renewed. Any person seeking the renewal of a groundwater exportation permit must file with the District an application to renew on a form prescribed by the District. The application must be filed with the District no later than one year prior to the expiration of the permit term.

**§ 5.413 Contents of Groundwater Exportation Permits**

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

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

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

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

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

(e) the permit term, including dates of issuance, effectiveness, and termination;

(f) the purpose of use for which the water produced from the well(s) is to be used;

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

- (h) the location of the place of use outside the District's boundaries;
- (i) the maximum amount of production in acre-feet per annum that may be exported from the District, which will be limited to the amount that could be produced by the well(s) for in-District use pursuant to the production limitations set forth in these rules, and any conditions or restrictions relative thereto;
- (j) the metering and reporting requirements; and
- (k) other terms and conditions as may be required by the Board.

**§ 5.417 Standard Permit Conditions for Groundwater Exportation Permits**

All groundwater exportation permits shall be issued with and subject to the following conditions:

- (a) the duty to beneficially use water and avoid waste;
- (b) the duty to conserve water in accordance with applicable law and comply with either the District's water conservation plan, as may be amended;
- (c) the duty to file all applicable reports with the District and other appropriate federal, state, or local governments;
- (d) the duty to reduce water consumption during times of drought in accordance with applicable law, and comply with either the District's drought management plan, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;
- (e) the District's certified groundwater management plan, as may be amended from time to time;
- (f) the duty to use all reasonable diligence to protect the groundwater quality of the aquifer;
- (g) the duty to comply with the District's rules as may be amended from time to time;
- (h) permit review, renewal, or extension conditions;
- (i) the continuing right of the District to supervise the depletion of the aquifer;
- (j) installation, equipping, operation, and maintenance of all meters in accordance with the District's rules;
- (k) the duty to comply with the District's rules relating to transfers and amendments of permits as may be amended from time to time;
- (l) the duty to pay and be current in the payment of all applicable fees;
- (m) the duty to record the permit;

(n) the duty to give notice to the District of any changes in name, address, or telephone number of the permittee, or the authorized representative, or the landowner, as may be appropriate;

(o) the duty to comply with all of the terms and conditions of the permit;

(p) the duty to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;

(q) the right of the District to enter land under § 36.123, Texas Water Code, as may be amended; and

(r) any other conditions as the Board may deem appropriate.

#### **§ 5.419 Groundwater Production in Violation of Permit Prohibited**

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

#### **§ 5.421 Transfer of Ownership or Lease; Notice**

(a) The ownership of a groundwater exportation permit may be transferred separately from the ownership of the place of use. The owner of a groundwater exportation permit may authorize a person other than the permittee to export groundwater under the permit.

(b) Within 30 days after transfer of the ownership of a groundwater exportation permit, or lease of the right to export thereunder, the transferee shall file with the District a notice on a form prescribed by the District. For transfers of ownership, if the notice is complete, and the transfer is otherwise in compliance with this subchapter, the general manager shall reflect the new ownership and issue an amended permit to the transferor, transferee, or both, as may be appropriate. For leases, the general manager will update the District's permit records to reflect the lease.

#### **§ 5.423 Permit Transfers and Amendments; Applications**

(a) The District may amend a groundwater exportation permit as to the following:

- (1) point of withdrawal;
- (2) place of use;
- (3) the total volume of groundwater exported in acre-feet per annum;
- (4) rate of production in gpm; or
- (5) ownership in accordance with Section 5.421.

(b) Any person seeking to amend their permit as provided in Subsection (a)(1)-(4) must first file with the District an application to amend on a form prescribed by the District.

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

(d) An amendment to a groundwater exportation permit to increase the authorized exportation amount must comply with Section 5.405 applicable to new applications for a groundwater exportation permit and shall be granted only in accordance with Section 5.407.

**§ 5.425 Basis for Granting Applications to Amend Groundwater Exportation Permits**

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

(a) the elements provided for in § 5.407 are established; and

(b) during the term of the permit, the applicant, transferor, or transferee, as may be appropriate, demonstrates a positive compliance history with the permit's terms and conditions, and the District's rules.

**Subchapter E. Wells Exempt from Permits**

**§ 5.501 Exempt Wells**

(a) The owner and/or operator of any of the following types of wells is exempt from the duty to obtain a drilling permit or groundwater withdrawal permit for the well:

(1) a well that was in use prior to the effective date of these rules, that is used solely for domestic use, and that was drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater per day;

(2) a well on a tract of land larger than 10 acres if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day and if the water produced or to be produced from the well is used or to be used solely for domestic use or to provide water for livestock or poultry;

(3) a well to supply water solely for a drilling rig that is actively engaged in drilling or exploration operations permitted by the Railroad Commission of Texas if:

(A) the person holding the Commission permit is responsible for the water well; and

(B) the water well is located:

(i) on the lease on which the drilling rig is located;

(ii) within the boundaries of the field in which the drilling rig is located; or

(iii) in close proximity to the drilling rig; or

(4) a well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code; or

(5) a well completed and capable of withdrawing water solely from the Brazos River Alluvium Aquifer if the water produced or to be produced from the well is used or to be used solely for domestic use or to provide water for livestock or poultry, and the well is:

(A) on a tract of land that is 2 acres or more in size but less than 5 acres and the well is drilled, completed, or equipped to be incapable of producing more than 5,000 gallons of groundwater a day;

(B) on a tract of land that is 5 acres or more in size but less than 7 acres and the well is drilled, completed, or equipped to be incapable of producing more than 12,000 gallons of groundwater a day; or

(C) on a tract of land that is 7 to 10 acres in size and the well is drilled, completed, or equipped to be incapable of producing more than 17,000 gallons of groundwater a

day.

(b) Notwithstanding Subsection (a), the District may require a well to be permitted pursuant to these rules if any of the applicable criteria in Section 36.117(d), Texas Water Code, are satisfied.

(c) A person holding a permit issued by the Railroad Commission of Texas under Chapter 134 of the Texas Natural Resource Code that authorizes the drilling of a water well shall report monthly to the District the total amount of water withdrawn from the well, the quantity of water necessary for mining purposes, and the quantity of water withdrawn for other purposes.

(d) All wells qualifying as exempt wells pursuant to Subsection (a) of this Section, shall be registered with the District in accordance with these rules.

(e) All exempt wells shall be equipped and maintained so as to conform to the District's Rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(f) All exempt wells shall comply with the spacing requirements set forth in these rules, except for wells exempt under Subsection (a)(4).

(g) The driller of an exempt well shall file the drilling log, and if available, a geophysical log, for the well with the District within 60 days of completion of the exempt well.

(h) An exemption under this section does not affect the District's authority to impose fees under Texas Water Code, Section 36.122 or Texas Water Code, Chapter 36, Subchapter G. Groundwater withdrawn from an exempt well and subsequently transported outside the boundaries of the District shall be subject to any applicable production and exportation fees.

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

(j) The owner and/or operator of an exempt well must ensure that the well site is accessible to District representatives for inspection, and must cooperate fully in any reasonable inspection of the well and well site by District representatives.

### **§ 5.503 Loss of Exemption; Notice of Changed Circumstances**

The owner and/or operator of a well that is exempt under this subchapter loses the exemption if the nature of the well changes such that the well no longer qualifies for the exemption. Within 30 days of the occurrence of any facts that may cause a well to lose its exemption, the owner and/or operator of the well shall give written notice to the District of the changed circumstances. If the board determines that the changed circumstances have caused the well to lose its exemption, then the board will issue an order declaring the loss of exemption and advising the well owner and/or operator that the well is subject to District regulation, including the duty to obtain a permit, or other regulation, as may be applicable.



**§ 5.505 Well Conversions**

(a) If the owner and/or operator of a well for which a groundwater withdrawal permit has been issued desires to convert the well to one exempt from the duty to obtain a groundwater withdrawal permit, the owner and/or operator must claim the exemption by abandoning the groundwater withdrawal permit and registering the well as provided for in Section 5.601.

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

## **Subchapter F. Registration of Wells**

### **§ 5.601 Registration of Exempt Wells**

(a) No person may drill or operate an exempt well within the boundaries of the District without first registering the well with the District using a registration form approved by the District, and obtaining written District approval of the registration and agreement that the well qualifies as exempt. All registrations for existing exempt wells shall be filed with the District on or before January 1, 2009.

(b) In addition to the information specified in Section 9.107 of these rules (Contents of and Requirements for All Applications; Registrations and Notices of Transfer of Ownership), a well registration shall contain the following, as applicable:

- (1) the name, address and phone number of the registrant and the owner of the land on which the well is or will be located;
- (2) if the registrant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
- (3) a statement of the nature and purpose of the existing or proposed use and the annual amount of water used or to be used for each purpose;
- (4) the location of the well;
- (5) the physical address of the property upon which the well is located;
- (6) the location where the water from the well will be used;
- (7) information relating to the size, source of power, and estimated production rate (in gallons per minute, “gpm”) of the pump used or to be used in the well;
- (8) the depth or proposed depth of the well and the depth of the casing;
- (9) the internal diameter of the well casing.
- (10) the approximate date that the well was or will be constructed;
- (11) the name, address, and telephone number of the well driller who constructed or will construct the well, and related information;
- (12) a copy of any well drilling and completion report, driller’s logs, geophysical logs, or well equipping report which pertain to the well;
- (13) the size of the tract of land on which the well site is located, including the total number of acres owned by the registrant upon which the well is or will be located;
- (14) a legal description of the location of the well, including: the county, section, block and survey, and the number of feet to the two nearest public streets or highways;

or other adequate legal description approved by the District;

(15) if requested by the District:

(A) a city or county map with the location of the property on which the well is located highlighted and the location of the well pinpointed; and

(B) a map or plat of the property on which the well is located, drawn to scale, not greater than 1000 feet to an inch (1" = 1000') that shows the pinpoint location of the well;

(16) the maximum amount of groundwater that the well is or will be capable of withdrawing per day stated in gallons;

(17) where applicable, a copy of any permit issued by the Railroad Commission of Texas relevant to the well; and

(18) any other information deemed necessary by the board in order to determine whether the well qualifies for exempt well status.

(c) The general manager may approve a well registration if the general manager finds that:

(1) the well is eligible to be registered;

(2) the registration is complete;

(3) the registration complies with the rules of the District;

(4) all applicable fees have been paid;

(5) the registration identifies a proposed or an existing well;

(6) the wellhead is or will be physically located within the boundaries of the

District;

(7) the production from the well is proposed to be placed to a beneficial use;

(8) the registrant has a legal right to make withdrawals from the well;

(9) for new wells, the proposed well location complies with the spacing rules;

(10) the registrant is in compliance with any permits the registrant holds from the District and with District rules;

(11) the well will be installed, equipped, operated, maintained, or closed, as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of, and achieve the conservation of groundwater in the aquifer;

(12) the registrant intends to install, equip, operate, maintain, and close the well, as appropriate, in accordance with the manufacturer's standards, instructions, or recommendations, as may be applicable; and

(13) the well meets the criteria for exempt well status pursuant to Section 5.501 of these Rules.

(d) If the general manager makes a preliminary determination that the well is ineligible to be registered, then the matter shall be referred to the board for its consideration. If the board determines that the well is ineligible to be registered, then the owner and/or operator of the well shall file an application for, as applicable, a groundwater withdrawal permit, and/or a well drilling permit, under these rules.

## **CHAPTER 6. WELL MANAGEMENT**

### **Subchapter A. General Provisions**

#### **§ 6.1 Responsibility for Well Management**

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

#### **§ 6.3 Well Construction and Pump Installation Standards**

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

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

#### **§ 6.7 Re-completions**

(a) The landowner, well owner and/or operator shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the loss of water through the wellbore to other porous strata.

(b) If a well is allowing the commingling of undesirable water and fresh water or the loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

(c) The board may direct the landowner, well owner and/or operator to take steps to prevent the commingling of undesirable water and fresh water, or the loss of water.

## **Subchapter B. Well Spacing and Location Requirements**

### **§ 6.101 Location of Wells**

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

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

(c) No new well may be located within five hundred (500) feet of a sewage treatment plant, solid waste disposal site, or land irrigated by sewage plant effluent, or within three hundred (300) feet of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.

### **§ 6.103 Required Well Spacing**

(a) Except for replacement wells, all new wells drilled into the Hensel Formation or the Hosston Formation of the Trinity Aquifer with a maximum production capacity of 50 gallons per minute or less shall be located a minimum distance of one thousand (1,000) feet from any other well, other than an abandoned well, completed in the same management zone of the Trinity Aquifer.

(b) Except for replacement wells, all new wells drilled into the Hensel Formation or the Hosston Formation of the Trinity Aquifer with a maximum production capacity of more than 50 gallons per minute shall be located a minimum distance of one thousand (1,000) feet plus 20 additional feet for each additional gallon per minute of capacity over 50 gallons per minute from any other well completed in the same management zone of the Trinity Aquifer.

(c) The spacing requirements set forth in Subsections (a) and (b) of this section are not applicable to any well that was completed on or before February 28, 2008. However, any well exempt from the spacing requirements because it was completed on or before February 28, 2008 will lose its exemption and become subject to the spacing requirements if, after February 28, 2008, the well is modified in a manner that substantially increases the capacity of the well.

### **§ 6.105 Applications for Variance from Well Spacing Limitations**

In addition to the information specified in Section 9.107 (Contents of and Requirements for All Applications and Registrations), an application for variance from well spacing limitations shall contain the following:

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

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

(c) Drilling Application Number. The drilling permit application number for the proposed well.

(d) The names and addresses of owners of wells located within the applicable minimum well spacing distance mandated in § 6.103 from the proposed well.

(e) Information about why the applicable well spacing requirements mandated in § 6.103 cannot be complied with, if applicable.

(f) Information demonstrating that the operation of the proposed well will not substantially interfere with the use and enjoyment of wells located within the minimum well spacing distance mandated in § 6.103, if applicable.

(g) Signed waivers from all owners of wells located within the applicable minimum well spacing distance mandated in § 6.103 from the proposed well stating that they have no objection to the District granting the requested variance, if applicable.

(h) Any other information as may be required by the District.

**§ 6.107 Variances from Well Spacing Limitations; Protesting Variance Applications**

(a) The board may grant a variance from the well spacing limitations set forth in § 6.103 if the board finds that:

(1) an administratively complete application for variance from well spacing limitations has been filed;

(2) the application complies with the rules of the District;

(3) all applicable fees have been paid;

(4) the applicant has shown good cause why the applicable well spacing limitations mandated in § 6.103 cannot be complied with; and

(5) the applicant has demonstrated that the operation of the proposed well will not substantially interfere with the use and enjoyment of wells located within the minimum well spacing distance mandated in § 6.103.

(b) The board may also grant a variance from the well spacing limitations set forth in § 6.103 if the board finds that:

(1) an administratively complete application for a variance from the well spacing limitations has been filed;

(2) the application complies with the rules of the District;

(3) all applicable fees have been paid; and

(4) the applicant presents signed waivers from all owners of wells located

within the applicable minimum well spacing distance mandated in § 6.103 from the proposed well stating that they have no objection to the District granting the requested variance.

(c) A well owner with a well located within the applicable minimum well spacing distance mandated in § 6.103 from the proposed well may protest the application for variance from spacing limitations pursuant to the procedures set forth in Subchapter D of Chapter 9. If timely protested, the issue of spacing limitations will be decided utilizing the contested case process set out in Subchapter D of Chapter 9. If the board chooses to grant a variance to drill a well that does not meet the spacing limitations mandated in § 6.103, the board may limit the production of the well to ensure that the well will not substantially interfere with the use and enjoyment of wells located within the minimum well spacing distance mandated in § 6.103.

(d) The board, on its own motion, may enter special orders or add special permit conditions increasing or decreasing spacing requirements if site-specific conditions warrant.



## **Subchapter C. Well Drilling Permits**

### **§ 6.201 Well Drilling Permits Required; Applications; Exception for Exempt Wells**

(a) Drilling, equipping or completing any non-exempt well or increasing the size or capacity of a non-exempt well or well pump without a well drilling permit required by this subchapter is illegal, waste, and a nuisance per se.

(b) The owner and/or operator of a well or proposed well must apply for and obtain from the District a well drilling permit before drilling, equipping or completing any non-exempt well or increasing the size or capacity of a well or well pump.

(c) Any person seeking to perform any of the activities identified in Subsection (b) must file with the District an application for a well drilling permit on a form prescribed by the District.

(d) A drilling permit is not required for well maintenance or repair that does not increase the production capabilities of the well to more than its authorized production rate.

### **§ 6.203 Applications for Well Drilling Permits**

In addition to the information specified in Section 9.107 (Contents of and Requirements for All Applications and Registrations), an application for a well drilling permit shall contain the following:

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

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

(c) Description of Proposed Activity. A description of the activity for which a well drilling permit is being sought (e.g., drilling a new well, altering an existing well, installing a larger pump).

(d) Well Address. The physical address of the property upon which the well or proposed well will or is to be located.

(e) Well Location. A description of the actual or proposed location of the well, including: the county; section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines), and the latitude and longitude for the well based on readings from a global positioning satellite (GPS) accurate to within 50 feet.

(f) Map. A city or county map with the location of the property on which the well is or will be located highlighted and the location of the well pinpointed.

(g) Purpose of Use. The proposed purpose of use for the water stated in definite

terms.

(h) Amount of Annual Withdrawal. The total amount of groundwater proposed to be withdrawn from the aquifer and beneficially used on an annual basis, stated in number of acre-feet or gallons.

(i) Rate of Withdrawal. The maximum rate of withdrawal that the well will be capable of, in gallons per minute.

(j) Depth. The proposed depth of the well and proposed depth of cement casing.

(k) Casing. The proposed depth of the cemented casing and cementing methodology.

(l) Depth of Strata. The predicted depth to the top of targeted water-bearing strata.

(m) Pump. The size of the proposed pump and pumping method.

(n) Proposed Construction Date. The approximate date that well construction operations are proposed to begin.

(o) Identity of Well Driller. The name, address, telephone number and driller's license number of the well driller.

(p) Water source. The applicant shall identify the intended source or sources of water for the well.

(q) Legal Basis of Right to Withdraw Groundwater. The applicant shall identify the legal basis under which groundwater will be withdrawn from the well (groundwater withdrawal permit or interim production status) and which the applicant either owns or is seeking to obtain.

(r) Any other information as may be required by the District.

#### **§ 6.205 Basis for Action on Well Drilling Permit Applications**

The board shall grant an application for a well drilling permit if the board finds that:

(a) the application is complete;

(b) the application complies with the rules of the District;

(c) all applicable fees have been paid;

(d) the applicant owns the well;

(e) the application identifies a proposed or an existing well;

(f) the wellhead is or will be physically located within the boundaries of the District;

(g) the well is designed to produce groundwater from a groundwater source within

the District;

(h) the withdrawals are proposed to be placed to a beneficial use;

(i) the applicant has a legal right to make withdrawals from the well;

(j) the well location complies with the spacing rules;

(k) the applicant is in compliance with any permits the applicant holds from the District and with District rules;

(l) the well will be installed, equipped, operated, maintained, or closed, as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of, and achieve the conservation of groundwater;

(m) the applicant intends to install, equip, operate, maintain, and close the well, as appropriate, in accordance with the manufacturer's standards, instructions, or recommendations, as may be applicable; and

(n) the well will be installed, equipped, operated, maintained, or closed, as appropriate, consistent with applicable local, state, and federal law.

#### **§ 6.207 Well Drilling Permit Does Not Authorize Withdrawals**

No water may be withdrawn or produced from a well for which the District has solely issued a well drilling permit, except for the purposes of drilling or testing the well during the time the well drilling permit is valid, and the well shall not be placed into operation without the owner or operator of such well first obtaining a groundwater withdrawal permit.

#### **§ 6.209 Well Drilling Permit Terms; Extensions; Applications**

A well drilling permit shall expire and be void and of no force or effect 120 days from the date of issuance of the permit, or upon the expiration of any permit extension. The board, for good cause, may extend the term of a drilling permit for up to two additional 120-day periods. In order to extend the period, the permittee must file with the District an application to extend the term. The application must be filed with the District during the original 120-day term, or the first extension period, as appropriate.

#### **§ 6.211 Multiple Test Wells Authorized**

A well drilling permit authorizes the completion of a single well. However, a holder of a well drilling permit may, within a radius of 200 yards from the authorized well location specified in a well drilling permit, drill multiple test wells in order to identify the best location for the completed well. The coordinates of the location ultimately chosen must be provided to the District and the well drilling permit will be modified as necessary to reflect the chosen location. The chosen location must comply with all applicable spacing and location requirements. All test wells must, within 60 days, be completely plugged in compliance with applicable well plugging

standards.

**§ 6.213 Basis for Action on Applications to Extend Well Drilling Permit Term**

The board shall grant an application to extend a drilling permit term if the board finds that:

- (a) the application is complete;
- (b) the application complies with the rules of the District;
- (c) all applicable fees have been paid;
- (d) the applicant filed the original drilling permit application;
- (e) the applicant is in compliance with any permits the applicant holds from the District and with District rules; and
- (f) a reasonable basis for the need for the extension is established and demonstrates that the failure to complete the well is not due to the permittee's own lack of due diligence.

**§ 6.215 Contents of Well Drilling Permits**

Well drilling permits shall contain the following:

- (a) name, address and telephone number of the permittee;
- (b) name, address and telephone number of an authorized representative, if any, of the permittee;
- (c) permit term;
- (d) purpose of use of the well;
- (e) maximum rate of withdrawal in gallons per minute;
- (f) legal description of the location of the well, including, county, section, block and survey, and the latitude and longitude for the well based on readings from a global positioning satellite (GPS) accurate to within 50 feet;
- (g) identification of the legal authority to produce groundwater from the well (groundwater withdrawal permit) which the applicant either owns or is seeking to obtain;
- (h) the groundwater source;
- (i) size of the pump, pumping rate, and pumping method;
- (j) meter specifications, if any;

(k) borehole diameter; external and internal diameter of casing; total depth of casing; depth of grout; total well depth; screen, perforation, and filter pack intervals; and other well installation specifications, as appropriate;

(l) any conservation-oriented methods of drilling prescribed by the District;

(m) all applicable reporting requirements;

(n) installation and completion schedule;

(o) a requirement that the permittee must file all applicable reports with the District prior to the production of water from the well, except for such production necessary to the drilling and testing of the well;

(p) a requirement that the permittee use reasonable diligence to protect groundwater quality and that all well plugging laws will be followed at the time of well closure;

(q) a copy of the approved water well closure plan, if any, or a requirement that the permittee will comply with well plugging law and report closure to the TDLR and the District; and

(r) any other appropriate conditions as determined by the board.

#### **§ 6.217 Standard Permit Conditions**

All well drilling permits shall be issued with and subject to the following conditions:

(a) the duty to properly close (cap or plug) all wells in accordance with applicable law, and comply with either the District's well closure plan, if any, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;

(b) the duty to file all applicable reports with the District, and other appropriate federal, state, or local governments;

(c) the duty to use diligence to protect the groundwater quality of the aquifer;

(d) the duty to comply with the District's Rules as may be amended;

(e) permit review, or extension conditions;

(f) the duty to locate all wells, and confirm the actual location with the proposed location in the application or as provided for in the permit, consistent with the District's well spacing rules, prior to the production from any wells identified in the permit or application;

(g) the continuing right of the District to supervise and manage groundwater production and the depletion of the aquifer;

(h) installation, equipping, operation, maintenance, and closure of all wells in accordance with the District's Rules, and other applicable federal, state, and local law;

- (i) installation, equipping, operation, and maintenance of all meters in accordance with the District's Rules;
- (j) the duty to pay and be current in the payment of all applicable fees;
- (k) the duty to give notice to District of any changes in name, address, or telephone number of the permittee, or the authorized representative, the landowner, well owner, or well operator, as may be appropriate;
- (l) the duty to comply with all of the terms and conditions of the permit;
- (m) the duty to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;
- (n) the right of the District to enter land under Section 36.123, Texas Water Code, as may be amended; and
- (o) any other conditions as the board may deem appropriate.

**§ 6.219 Notice of Condition Affecting Groundwater Quality; Corrective Action**

If at any time a well owner or operator has reason to believe that a well condition may exist that may cause the pollution, degradation, or harmful alteration of the character of the groundwater in the aquifer, then the owner and/or operator shall, within forty-eight (48) hours of learning of the fact(s), notify the District in writing of the well condition. The District may conduct an investigation and, if facts warrant, direct the owner and/or operator of the well, at the owner's or operator cost, to evaluate and test the well conditions and take appropriate corrective action, including replacement, to bring the well into proper working condition in conformance with this chapter.

**§ 6.221 Notice of Commencement of Well Construction Activities**

No later than 3 days prior to commencement of the activities authorized in a well drilling permit, the permittee shall give notice to the District of the intent to commence, so that a representative of the District may attend and observe the activities, at the District's discretion.

**§ 6.223 Replacement of Wells**

(a) A well owner or operator may rework, re-equip, re-drill or replace an existing permitted or registered well by filing an application to amend such permit or registration, and applying for a well drilling permit, providing such information as may be required by the General Manager, under the following conditions:

- (1) The replacement well must be drilled within 150 feet of the original permitted location and shall not be drilled nearer to the property line than the original well;
- (2) The replacement well shall not be located any closer to any other

permitted well or authorized well site than the well being replaced, unless the new location complies with the minimum spacing requirements set out in Subchapter B of Chapter 6 of these rules;

(3) The replacement well or pump shall not be changed to a larger size or capacity so as to increase the rate of production authorized in such permit; and

(4) If a replacement well is drilled, the well owner or operator shall cease production from the existing permitted or registered well and ensure that the replaced well is, within 90 days:

(A) plugged;

(B) capped; or

(C) re-equipped to meet the eligibility requirements applicable to an exempt well and registered under Subchapters E and F of Chapter 5 of these rules or applicable to a monitoring well under these rules.

**§ 6.225 Transfer of Well Drilling Permit Prohibited**

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

**§ 6.227 Additional Logging Requirements for Trinity Wells**

Within 60 days after drilling any well completed so as to be capable of producing water from the Trinity Aquifer, the well owner and/or operator shall have prepared and delivered to the District an electric or geophysical log showing for the well, at a minimum, electrical conductance, spontaneous potential, and natural gamma.

## **Subchapter D. Well Construction**

### **§ 6.301 Unlicensed or Unregistered Well Drillers or Pump Installers Prohibited**

(a) Except as otherwise provided in Subsection (b) of this section, within the District's boundaries no person may drill or construct a water well unless the person first holds a well driller's license issued by the Texas Department of Licensing and Regulation ("TDLR") under Chapter 1901, Texas Occupations Code; and Chapter 76, 16 Texas Administrative Code, as may be amended.

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

(c) Except as otherwise provided in Subsection (d) of this section, within the District's boundaries, no person may install or repair a water well pump unless the person first holds a pump installer's license issued by the TDLR under Chapter 1902, Texas Occupations Code; and Chapter 76, 16 Texas Administrative Code, as may be amended.

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

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

(2) any person who is a ranch or farm employee whose general duties include personally installing or repairing a water well pump or equipment on his employer's property for his employer's use, but who is not employed or otherwise in the business of installation or repair of water pumps or equipment.

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

### **§ 6.303 Notice of Commencement of Well Installation**

Not less than 3 days prior to the commencement of the activities authorized in a well drilling permit, the well driller shall give notice to the District of the intent to commence, so that a representative of the District may attend and observe the activities, at the District's discretion.

### **§ 6.305 Confirmation and Posting of Drilling Permits and Registrations**

Any well driller engaged to drill or otherwise construct a well within the District shall, before undertaking any drilling or construction operations, confirm with the District that any required well drilling permit or other permit or registration has been issued for the well and is in



effect. In addition, at all times during well drilling or construction operations, the driller shall post a copy of any permit or registration for the well at a location at the well site that can be easily seen by visitors to the well site.

**§ 6.307 Well Records, Reports, and Logs**

The driller of any well within the District, regardless of whether the well qualifies or does not qualify as an exempt well, shall keep and maintain for at least three years an accurate driller's log for each such well. The driller shall file a copy of each driller's log, a report detailing the drilling, equipping, and completing of the well and, if performed, any electric or geophysical log, pump test results, water quality sampling results, and well video surveys with the District within 60 days after the date the well is completed. The report shall include copies of all information about the well submitted to any agency of the State of Texas.

## **Subchapter E. Capping of Wells**

### **§ 6.401 Capping Requirements**

(a) Every owner or operator of any land within the District upon which is located any open or uncovered well shall be required to cap or close the well with a covering capable of preventing the entrance of surface pollutants into the well and of sustaining a weight of at least four-hundred (400) pounds, except when said well is in actual use by the owner or operator thereof.

(b) In addition, every owner or operator of any land within the District upon which is located a flowing artesian water well shall be required to cap or close the well with a covering capable of preventing any flow and therefore preventing waste, except when the well is in actual use by the owner or operator thereof.

(c) If the owner or operator fails or refuses to close or cap the well in compliance with this section, the District, or its employees or agents, may go on the land and close or cap the well safely and securely. Reasonable expenses incurred by the District in closing or capping a well constitute a lien on the land on which the well is located. The lien arises and attaches upon recordation of an affidavit in the deed records of the county where the well is located, executed by any person conversant with the facts, stating the following:

- (1) the existence of the well;
- (2) the legal description of the property on which the well is located;
- (3) the approximate location of the well on the property;
- (4) the failure or refusal of the owner or operator, after notification, to close the well within 10 days after the notification;
- (5) the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
- (6) the expense incurred by the District in closing the well.

**Subchapter F.            Plugging of Abandoned or Deteriorated Wells**

**§ 6.501            Responsibility**

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

**§ 6.503            Report on Plugging of Wells**

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

## **CHAPTER 7. FEES**

### **§ 7.1 Registration Fees**

(a) By resolution and order, the District shall adopt a well registration fee for exempt wells completed so as, in the opinion of the District, to be capable of producing water from the Trinity Aquifer or Brazos River Alluvium Aquifer, and for all other exempt wells. The registration fee shall be determined based on the District's estimated processing costs for such registrations.

(b) The applicable registration fee must accompany the registration form and be paid at the time of filing. If the registrant fails to pay the fee at the time of filing, the District may refuse to accept the registration for filing and/or commence any other action to enforce payment as authorized by law.

### **§ 7.3 Application Fees**

(a) By resolution and order, the District shall adopt an application fee for the following applications:

- (1) a new or amended groundwater withdrawal permit application, except as provided in Subsections (b) and (c);
- (2) a new or amended groundwater exportation permit application; and
- (3) a well drilling permit application.

(b) By resolution and order, the District shall adopt an application fee for the following applications:

- (1) a new or amended groundwater withdrawal permit application relating to a well drilled at a depth of less than 100 feet;
- (2) a well drilling permit application for a well drilled at a depth of less than 100 feet.

(c) By resolution and order, the District shall adopt an application fee for the following applications:

- (1) an application to amend a groundwater withdrawal permit for a year or less;
- (2) an application to amend a groundwater exportation permit for a year or less; and
- (3) an application to amend a groundwater withdrawal permit based solely on installing a replacement well.

(d) All required fees must accompany the application form and be paid at the time of

filing. If the applicant fails to pay the fee at the time of filing, the District may refuse to accept the application for filing, or otherwise cease processing the application.

(e) The District shall adopt application fees for the purpose of compensating the District for the administrative functions associated with the applications. If an application fee is determined by the District to be insufficient to cover the anticipated costs of processing the application, the District shall require the applicant to post additional funds in an amount determined to be sufficient to cover anticipated costs. The costs for which the District may seek additional fees include, but are not limited to, the cost for public notices, legal fees, expert fees, hearing facility rental fees, and other expenses. If the applicant fails to pay the additional amounts, then the District may suspend processing the application, and may return the application. As application processing costs are incurred by the District, at the District's discretion, the District may incur costs itself and seek reimbursement from the additional deposited funds, or may expend deposited funds directly to pay for additional application processing costs. The applicant shall be provided periodic accountings of billings against the deposit. If the additional deposit is determined by the District to be insufficient to cover the application processing costs, then the applicant may be required to pay additional fee deposits. Any unexpended and unobligated fee deposits will be promptly returned to the applicant after the board issues a final order disposing of the application.

#### **§ 7.4 Annual Well Fees**

(a) By resolution and order, the District shall adopt a non-refundable well fee per well on all non-exempt wells in the District.

(b) The District shall adopt annual well fees for the purpose of compensating the District for the administrative functions associated with well inspections and monitoring.

(c) All Historic Use Production Permit and Non-Historic Use Production Permit owners are required to pay the annual well fee assessed under this section by February 15<sup>th</sup> for that calendar year.

#### **§ 7.5 Groundwater Production Fees**

(a) The District shall assess groundwater production fees as set forth in this chapter.

(b) Except for withdrawals of groundwater made from an exempt well as defined under Section 5.501, groundwater production fees shall be assessed by the District against all withdrawals of groundwater from within the boundaries of the District.

(c) Annually, the groundwater production fees for agricultural use and non-agricultural uses for the fiscal year shall be calculated and assessed by resolution and order based on the District's adoption of a budget reflecting annual operating revenue requirements for the fiscal year. The groundwater production fee for agricultural use shall not exceed 20% of the fee for non-agricultural uses nor \$1 per acre-foot annually. The District shall calculate the groundwater production fee for non-agricultural uses on a per acre-foot basis as follows: the District's estimated net annual operating revenue requirements minus an estimate of the amount of other fees to be collected divided by the amount of groundwater estimated to be withdrawn in

acre-feet by non-agricultural users. The groundwater production fee shall be assessed against the amount of groundwater actually produced.

(d) All persons making withdrawals of groundwater from a non-exempt well within the boundaries of the District are required to pay to the District the groundwater production fee as assessed pursuant to this section. Each non-exempt well owner and/or operator shall complete a groundwater use report as required by Section 8.7, and return the completed report, along with payment of the applicable groundwater production fees, to the District by no later than the 15<sup>th</sup> day of the month. The amount due becomes delinquent if payment in full is not received by the District by the 30<sup>th</sup> day of the month following the month for which the fees were assessed.

(e) For any groundwater production fee that is delinquent, the District may assess, for every month thereafter that the invoice remains delinquent, a penalty equivalent to the maximum amount allowed by law.

### **§ 7.7 Limitation on Amount of Assessments**

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

### **§ 7.9 Enforcement for Nonpayment**

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

(1) by suspending the processing of any application that the person owing the fee, or his successor in interest, may have pending before the District; or

(2) by commencing any action to enforce payment and collection of the delinquent fee as may be authorized by law.

### **§ 7.11 Prohibitions**

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

### **§ 7.13 Unauthorized Withdrawals**

(a) Any person who withdraws groundwater from within the boundaries of the District without legal authority shall pay to the District the groundwater production fees and annual well fees in force and effect for the period of time during which the unauthorized withdrawals were made. The District shall assess groundwater production fees based on the amount of groundwater the District reasonably estimates was actually withdrawn.

(b) If a person makes withdrawals of groundwater that are not being metered and reported in accordance with Chapter 8 of these rules, the board may assess groundwater

production fees based on the amount of water the permittee is authorized to withdraw under a groundwater withdrawal permit or based on the amount of groundwater the District reasonably estimates was actually withdrawn.

### **§ 7.15 Groundwater Export Fees**

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

(1) water actually exported from the District's boundaries to a place of use outside the District's boundaries;

(2) operational water that is lost in the operation and maintenance of the export project and not actually exported from the District's boundaries; and

(3) reject water processed in order to produce water of a suitable quality for export and not actually exported from the District's boundaries.

(b) The groundwater export fee shall be calculated and assessed as follows: 50% of the groundwater production fee assessed under Section 7.5 for that use

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

(d) For any export fee that is delinquent, if payment in full is not received on or before 10 days after the date the amount becomes delinquent, then the District shall assess, for every month thereafter that the invoice remains delinquent, an administrative penalty of 10%. Additionally, each day that an export fee is delinquent constitutes a separate violation of the District's rules.

(e) No person may export groundwater outside the District's boundaries if the owner and/or operator of the well from which the exported groundwater is produced is delinquent in the payment of any fee that is due and payable to the District.

(f) Any person who, without any legal authority, exports groundwater outside the District's boundaries shall pay to the District the export fee then in force and effect for the period of time during which the unauthorized exports were made.

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

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

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

(2) groundwater produced from within the District, where the well is situated on a contiguous tract of land that straddles the District boundary and the groundwater is placed to use solely on that tract, but including portions outside the District's boundaries; and

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

#### **§ 7.17 Inspection and Plan Review Fees**

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



## **CHAPTER 8. METERS AND REPORTING**

### **§ 8.1 Meters Required**

(a) **Duty to Install:** The owner and/or operator of a non-exempt well located within the District shall equip the well with a meter meeting the specifications of these Rules and shall operate and maintain the meter to measure the instantaneous flow rate and cumulative amount of groundwater withdrawn from the well. For an existing, non-exempt well, a meter shall be installed by the owner and/or operator no later than February 1, 2008. For a new, non-exempt well, a meter shall be installed before any groundwater is withdrawn from the well.

(b) **Approved Meters:** Meters must be mechanically driven, digital, totalizing water meters. The digital totalizer must not be resettable by the permittee and must be capable of a maximum reading greater than the maximum expected pumpage during a permit term. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for cold-water meters.

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

(d) **Bypasses:** All bypasses must be metered. A bypass is any pipe of any size connected to the discharge pipe between the well and the meter.

(e) **Meter accuracy to be tested:** The District may require the permittee, at the permittee's expense, to test the accuracy of the meter and submit a certificate of the test results. The certificate must be on a form provided by the District. The District may further require that the test be performed by a third party qualified to perform meter tests. Certification tests will be required no more than once every three years for the same meter and installation. If the test results indicate an accuracy outside the 95% - 105% of the actual flow, then appropriate steps must be undertaken by the permittee to repair or replace the meter within 90 calendar days from the date of the test. The District, at its own expense, may undertake further random tests and other investigations for the purpose of verifying meter readings. If the District's tests or investigations reveal that a meter is not registering within an accuracy of 95% - 105% of actual flow, or is not properly recording the total flow of groundwater withdrawn from the well, or well system, the permittee must reimburse the District for the costs of those tests and investigations, and the permittee must take appropriate steps to remedy the problem within 90 calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement accuracy is impaired, the District may

require the permittee, at the permittee's expense, to take appropriate steps to remedy any problem, and to retest the meter within 90 calendar days from the date the problem is discovered and reported to the permittee.

### **§ 8.3 Pre-existing Meters and Alternative Measuring Methods**

(a) By no later than February 1, 2008, the owner and/or operator of an existing, non-exempt well shall register with the District any meter or alternative measurement(s) method installed and in use on the well as of the effective date of these rules.

(b) All meters existing on the effective date of these Rules and registered in accordance with Subsection (a) of this section shall be inspected by the District for compliance with the meter specifications set forth in these Rules. If the meter complies with these specifications, the District shall approve the meter in writing and advise the owner or operator of the approval. If the meter does not comply with these specifications, the District will issue a notice of deficiency and direct the owner and/or operator of the meter to install a new meter or modify the existing meter in compliance with these Rules within 45 days.

(c) If at any time the well owner or operator has reason to believe that a condition, of any kind whatsoever, may exist that affects the accuracy of a meter, then the well owner and/or operator shall, within seven days of learning of the fact(s), notify the District that the accuracy of the meter may be in question. Such notification shall be in writing.

(d) The District may conduct an investigation and, if facts warrant, direct the well owner and/or operator, at the well owner and/or operator's cost, to evaluate and test the accuracy of the meter and take appropriate corrective action, including replacement, to restore the accuracy and proper working condition of the meter in conformance with the requirements of these Rules.

### **§ 8.5 Removal and Disabling of Meters**

(a) A meter may not be removed or otherwise disabled, including for routine maintenance, unless the well owner or operator gives the District prior notice, in writing, of the intent to remove or disable the meter. Except in cases of routine maintenance, such notice must be approved in writing by the District before the meter is removed or disabled.

(b) A meter may be removed or otherwise disabled, only by the well owner or operator or his or her authorized representative.

(c) During a period that a meter is removed or otherwise disabled, groundwater may not be withdrawn from the well, unless the District has approved an alternative measuring method.

### **§ 8.7 Meter Reading and Groundwater Use Reporting**

The well owner and/or operator must read the meter associated with the well and record the meter readings and the actual amount of withdrawals on a form provided by the District by no later than the 15<sup>th</sup> of each month for the prior month's withdrawals. The District shall send to

each permittee an annual groundwater use report reflecting reported withdrawals for the previous calendar year. By not later than March 31<sup>st</sup> of each year, each non-exempt well owner and/or operator must return to the District the annual groundwater use report with any changes. Groundwater withdrawal reports shall provide the following: (1) name of the well owner and/or operator; (2) the well number; (3) the total amount of groundwater produced during the immediately preceding period, either month or calendar year (January 1 through December 31), including the total amount of groundwater produced during each separate month of the immediately preceding calendar year, by management zone, if appropriate; (4) the purpose for which the groundwater was used; and (5) any other information requested by the District as indicated on the report form.

## **CHAPTER 9. PROCEDURES BEFORE THE DISTRICT**

### **Subchapter A. General**

#### **§ 9.1 Purpose**

The purpose of this chapter is to provide for the procedures to be followed in the processing of applications and registrations, and other types of approvals or actions that may be taken by the District. These rules should be interpreted to simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of the District's Rules, policies, and objectives.

#### **§ 9.3 Applicability**

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

#### **§ 9.5 Service of Documents**

(a) Except as otherwise provided in these rules, all documents filed, served, or delivered under this chapter or these rules, must be served as follows:

(1) by delivering a copy to the person to be served, or the person's duly authorized agent or attorney of record, either in person or by agent or by carrier-receipted delivery or by United States mail, to the person's last known address;

(2) by facsimile to the recipient's current facsimile number; or

(3) by electronic mail to the recipient's electronic mail address.

(b) Service by mail shall be complete upon deposit of the document, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by facsimile or electronic mail is complete upon transfer and shall be accomplished by 5:00 p.m. (as shown by the clock of the local time of the recipient) of the date on which it is due. Any transfer after 5:00 p.m. shall be deemed served on the following day. Service by facsimile or electronic mail must be followed by serving the original document in person, by mail or by carrier-receipted delivery within three days. Where service by the methods listed in Subsection (a) has proved unsuccessful, the service shall be complete upon publication of notice in a newspaper.

(c) Whenever a person has the right or is required to do some act within a prescribed period after the service of a document upon the person, and the document is served by mail or by facsimile, three days shall be added to the prescribed period. This subsection does not apply when documents are filed for consideration at a board meeting.

(d) A document served under this rule must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The person or the person's attorney of record shall certify compliance with this rule in writing by signature on

the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of service.

(e) Nothing herein shall preclude any person from offering proof that the notice or instrument was not received or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the District may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions herein relating to the method of service of notice are in addition to all other methods of service prescribed by these rules.

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

## **Subchapter B. Requirements for Applications and Registrations**

### **§ 9.101 Purpose**

The purpose of this subchapter is to provide for the procedures to be followed for applications and registrations that may be filed with the District.

### **§ 9.103 Applicability**

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

### **§ 9.105 Proper Applicant or Registrant**

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

### **§ 9.107 Contents of and Requirements for All Applications and Registrations**

All applications and registrations filed with the District shall be typewritten or printed legibly in ink and shall include:

(a) The full name, physical and mailing addresses, telephone number, and electronic mail address of the applicant or registrant. If the applicant or registrant is a partnership, the name of the partnership shall be followed by the words "a partnership." If the applicant or registrant is acting as trustee for another, the trustee's name shall be followed by the word "trustee." If one other than the named applicant or registrant executes the application or registration, the person executing the application or registration shall provide their name, position, physical address, mailing address, electronic mail address and telephone number.

(b) Signature of Applicant or Registrant. The application or registration shall be signed as follows:

(1) If the applicant or registrant is an individual, the application or registration shall be signed by the applicant, registrant or a duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant or registrant. If the applicant or registrant is an individual doing business under an assumed name, the applicant or registrant shall attach to the application or registration an assumed name certificate filed with the county clerk of the county in which the principal place of business is located or the Secretary of State.

(2) Joint applications and registrations. A joint application or registration shall be signed by each applicant or registrant or each applicant's or registrant's duly authorized agent with written evidence of such agency submitted with the application or registration. If a well or proposed well is owned by both husband and wife, each person shall sign the application or registration. Joint applicants or registrants shall select one among them to act for and represent

the others in pursuing the application or registration with the District with written evidence of such representation to be submitted with the application or registration.

(3) If the application or registration is by a partnership, the application or registration shall be signed by one of the general partners. If the applicant or registrant is a partnership doing business under an assumed name, the applicant or registrant shall attach to the application or registration an assumed name certificate filed with the county clerk of the county in which the principal place of business is located or with the Secretary of State.

(4) If the applicant or registrant is an estate or guardianship, the application or registration shall be signed by the duly appointed guardian or representative of the estate and a current copy of the letters testamentary issued or order appointing guardian by the court shall be attached to the application or registration.

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

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

(c) Attestation. Each applicant or registrant shall subscribe and swear or affirm under oath that the facts set out in the application or registration are accurate before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the application, registration or notice.

**Subchapter C. Application, Registration and Reissuance Processing by the District**

**§ 9.201 Purpose**

The purpose of this subchapter is to provide the procedures to be followed in the processing of applications and registrations filed with the District and reissuances of Historic Use Production Permits and Non-Historic Use Production Permits under Sections 5.222 and 5.242.

**§ 9.203 Applicability**

This subchapter applies to the processing of all applications or registrations filed with the District and to the reissuances of Historic Use Production Permits and Non-Historic Use Production Permits under Sections 5.222 and 5.242.

**§ 9.205 Initial Action on Applications and Registrations**

All applications and registrations received by the District shall be stamped or marked “received” with the date of receipt clearly indicated.

**§ 9.207 Review for Administrative Completeness**

(a) The District will promptly conduct an initial review of each application or registration for administrative completeness.

(b) In reviewing an application or registration for administrative completeness, the District will assess whether the application or registration contains the necessary information in legible form to allow:

- (1) the District staff to conduct a technical review, if appropriate; and
- (2) the District to take or recommend action on the application or registration, as appropriate.

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

**§ 9.209 Return of Applications and Registrations Deemed Not Administratively Complete**

(a) If the District determines that an application or registration is not administratively complete, the District will notify the applicant or registrant of any such deficiencies by mail or electronic mail. Illegible applications or registrations will be returned to the filer.

(b) The applicant or registrant may submit any additional necessary information in response to a letter sent by the District pursuant to Subsection (a) of this section, within 30 days of the date the letter noting the deficiencies was mailed or electronically mailed.



(c) If the additional necessary information is not forthcoming within 30 days of the date of receipt of the letter noting the deficiencies, the District will return the incomplete application or registration to the applicant or registrant.

#### **§ 9.211 Technical Review**

(a) After an application or registration is determined by the District to be administratively complete, District staff will commence a technical review of the application or registration as necessary and appropriate.

(b) The applicant or registrant shall be notified in writing of any additional material necessary for a complete technical review. If the applicant or registrant provides the information within 30 days of the date it is requested, District staff will complete the technical review of the application or registration. If the necessary additional information is not received by the District within 30 days of the date the information is requested and the information is considered essential by the District, the District may return the application to the applicant or registration to the registrant. Decisions to return an application to the applicant or registration to the registrant during the technical review will be made on a case-by-case basis.

(c) The general manager or his or her designee is entitled to enter public or private property at any reasonable time and upon reasonable notice for the purpose of inspecting, investigating or verifying conditions or information submitted in connection with an application or a registration.

(d) Following the readoption of the District's management plan in 2015, the District shall conduct a technical review of all Historic Use Production Permits and Non-Historic Use Production Permits authorizing withdrawals from the Trinity Aquifer to determine, to the extent reasonably possible, whether withdrawals are from the Hensell and/or the Hosston Management Zone and in what amount or amounts from each aquifer management zone withdrawals should be authorized to be made.

#### **§ 9.213 General Manager's Proposed Action on Applications and Reissuances and Technical Summary**

(a) Following completion of technical review, the general manager will determine whether to recommend granting or denying the application or whether to reissue a permit in accordance with Sections 5.222 or 5.242 and will prepare a written statement summarizing the recommendation and the reasons for that recommendation. If the general manager recommends full or partial granting of a permit or permit amendment application, or permit reissuance, the general manager shall also prepare a draft permit. The general manager's recommendation and any draft permits are subject to change by the general manager or board during the course of the proceedings on the application or reissuance. The statement and proposed permit or denial shall be available for public review and inspection.

(b) In conjunction with the proposed permit, denial, or reissuance, the general manager will prepare a technical summary that will include the following, as appropriate:

- (1) the applicant or permittee's name and address;

- (2) a summary of the application or reissuance;
  - (3) the location of each point of withdrawal for an application;
  - (4) the reasons and technical basis for the recommended action;
  - (5) if applicable, a summary of the proposed permit;
  - (6) the proposed purpose(s) of use, if applicable;
  - (7) notice that the general manager may modify his or her recommendation, or seek additional information from the applicant or permittee, in the course of the District's proceeding on the application or reissuance;
  - (8) as may be authorized by this chapter, a statement that the applicant, or other affected persons may file a request for a contested case hearing on the application on or before the deadline set forth in Section 9.307; and
  - (9) any other information that the general manager determines to be appropriate.
- (c) The general manager will provide the applicant or permittee with a copy of the general manager's statement, any proposed permit or denial and the technical summary.

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

(a) **Applicability.** This section applies to all registrations and applications other than applications for groundwater withdrawal permits, groundwater exportation permits, and applications for a variance from well spacing limitations and to the reissuance of Historic Use Production Permits pursuant to Section 5.222 and Non-Historic Use Production Permits pursuant to Section 5.242.

(b) **Scheduling the Board Meeting.** Following technical review and the referral of the proposed action to the board, the general manager will schedule the presentation of the application, registration or reissuance and the proposed permit, approval, authorization or denial to the board. The board may reschedule the presentation of the application, registration or reissuance and the proposed permit, approval, authorization or denial.

(c) **Notice of Board Meeting.** At least 10 days prior to the board meeting, the District will notify the applicant, registrant or permittee of the date of the board meeting referred to above. If rescheduled by the board, the District will send notice of the rescheduled meeting date to the applicant, registrant or permittee no later than ten days before the rescheduled meeting. In addition, the District will provide public notice that the application, registration or reissuance and the permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Open Meetings Act. Except to the extent that such items contain information excepted from public disclosure under the Public Information Act, copies of the application, registration or reissuance and the proposed permit, approval, authorization or

denial will be made available to the public for inspection and copying at the offices of the District during regular business hours.

(d) Consolidation or Severance of Matters. Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) Oral Presentation Before the Board. The applicant, registrant or permittee and the general manager or his or her designee may make an oral presentation at the board meeting at which the application, registration or reissuance and the proposed permit, approval, authorization or denial are presented to the board. Oral presentations before the board will be limited to 15 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions will be directed to the board.

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

(g) Upon consideration of the application, registration or reissuance and the proposed permit, approval, authorization or denial at its meeting, the board may issue an order granting or denying an application, registration or reissuance in whole or in part, dismissing proceedings, amending or modifying a proposed permit, or taking any other appropriate action.

**§ 9.217 Action by Board on Applications Where There is a Right to a Contested Case Hearing But None Was Requested or Requests Were Withdrawn**

(a) Applicability. This section applies only to all applications for groundwater withdrawal permits, groundwater exportation permits, and applications for a variance from well spacing limitations where, after the time for the filing of a hearing request provided in Section 9.307:

- (1) no timely hearing request has been received;
- (2) all timely hearing requests have been withdrawn; or
- (3) the judge has remanded the application because of settlement.

(b) Scheduling the Board Meeting. Following the expiration of the time to file a hearing request pursuant to Section 9.307 of this chapter, and if all of the conditions stated in Subsection (a)(1)-(3) of this section have been met, the District will schedule the presentation of the application and the proposed permit, approval, authorization or denial to the board. The board may reschedule the presentation of the application and the proposed permit, approval, authorization or denial.

(c) Notice of Board Meeting. At least 10 days prior to the board meeting, the District will notify the applicant of the date of the board meeting referred to above via first class mail or

hand delivery. If rescheduled by the board, the District will send notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting. In addition, the District will provide public notice that the application and the proposed permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Open Meetings Act. Copies of the application and the proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the offices of the District during regular business hours.

(d) Consolidation or Severance of Matters. Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) Oral Presentation Before the Board. The applicant and the general manager or his or her designee may make an oral presentation at the board meeting in which the application and the proposed permit, approval, authorization or denial are presented to the board. Oral presentations before the board will be limited to 15 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions will be directed to the board.

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

(g) Upon consideration of the application and the proposed permit, approval, authorization or denial at its meeting, the board may issue an order granting or denying an application in whole or in part, dismissing proceedings, amending or modifying a proposed permit, or taking any other appropriate action.

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

(a) Applicability. This section applies only to applications for groundwater withdrawal permits, groundwater exportation permits, and applications for a variance from well spacing limitations and relates to final permit hearings before the board.

(b) A notice of hearing on an application for a permit shall be prepared by the District. At a minimum, the notice shall state the following information:

- (1) the name and address of the applicant;
- (2) the name or names of the owner or owners of the land or well, if different from the applicant;
- (3) the name or names of the operator or operators of the land or well, if different from the applicant;

- (4) the date the application was filed and the number assigned to it;
  - (5) the time, date and location of the hearing;
  - (6) the address or approximate location of the well or proposed well;
  - (7) a brief explanation of the permit or permit amendment sought, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
  - (8) a summary of the action on the application recommended by the general manager pursuant to Section 9.213 of these rules;
  - (9) a statement of the legal authority and jurisdiction under which the hearing is to be held;
  - (10) a brief description of the technical summary;
  - (11) a statement that a copy of the proposed action, technical summary, and application are available for inspection by the public at the offices of the District;
  - (12) a statement that the application will be presented to the board for action at the hearing unless a request for a contested case hearing is submitted at least five days prior to the date of the hearing pursuant to Section 9.307; and
  - (13) a statement that the applicant or another affected person may request a contested case hearing on the application by filing a request with the District, at least five days before the date of the hearing, in accordance with 9.307.
  - (14) any other information the board or general manager considers relevant and appropriate.
- (c) The District shall, not less than 20 days before the date of the hearing:
- (1) Post the notice in a place readily accessible to the public at the District's office;
  - (2) Provide the notice for posting at the county courthouse to the county clerk of each county in which the District is located;
  - (3) Provide the notice:
    - (A) By regular mail to the applicant; and
    - (B) By regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d) below; and
  - (4) Publish the notice at least once in a newspaper of general circulation in the District.

(d) Any person may request to receive written notice of permit hearings by submitting a request to the District in writing. The request must identify with as much specificity as possible the types of permit hearings for which written notice is requested. The request remains valid for the remainder of the calendar year in which the request is received by the District, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service of notice by first class mail, facsimile, or electronic mail to a person required pursuant to Subsection (c)(3)(B), above, in accordance with the information provided by that person is proof that notice was provided by the District. Failure to provide notice under Subsection (c)(3)(B) does not invalidate an action taken by the District at the hearing.

(e) The applicant, at the applicant's expense, shall give the notification by first class mail to well owners and well operators within 1,000 feet of the well for which the application is sought, not less than twenty (20) days before the hearing. Prior to the hearing, the applicant will provide the District with proof of service including a list of names and addresses of the landowners, well owners and well operators.

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

(a) Applicability. This section applies only to applications for groundwater withdrawal permits, groundwater exportation permits, and applications for variance from well spacing limitations and relates to final permit hearings before the board.

(b) Hearings on applications for permits may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays and may be held in conjunction with a regularly scheduled board meeting. All permit hearings will be held at the District Office, unless the board directs otherwise. The District may from time to time schedule additional dates, times, and places for permit hearings by resolution adopted at a regular board meeting. The District may schedule as many applications for consideration at one hearing as deemed desirable and feasible.

## **Subchapter D. Contested Case Hearing Procedures**

### **§ 9.301 Purpose**

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

### **§ 9.303 Applicability**

This subchapter applies to matters subject to a contested case hearing under Section 9.219 for which a timely request for contested case hearing is pending before the District and the request has not been withdrawn because of settlement or for some other reason.

### **§ 9.305 Persons Entitled to Request a Contested Case Hearing**

The following persons may request a contested case hearing on an application subject to this subchapter:

- (a) the applicant; and
- (b) any other affected person.

### **§ 9.307 Timing, Form and Contents of Requests for Contested Case Hearing**

(a) A request for a contested case hearing may only be made for applications for groundwater withdrawal permits, groundwater exportation permits, and applications for a variance from well spacing limitations.

(b) A request for a contested case hearing must be in writing and be filed by United States mail, facsimile, or hand delivery to the District by no later than fourteen days before the date of the hearing specified in the notice made pursuant to Section 9.219.

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

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

(2) the basis for the contention that the person will be injured and has a personal justiciable interest in the matter such that a contested case hearing is appropriate;

(3) a request for a contested case hearing;

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

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

(6) the person filing the request shall subscribe and swear or affirm under oath that the facts set out in the request are true and correct before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the request.

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

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

### **§ 9.309 Processing of Hearing Requests**

(a) Except as provided in Subsection (d), the general manager shall schedule any timely filed contested case hearing request for board consideration. At least seven days prior to the board hearing, the general manager shall provide notice to the applicant and other persons making a timely hearing request of the hearing. The board may receive relevant oral testimony or documentary evidence at a board hearing during which the contested case hearing request is evaluated.

(b) The hearing request will be the initial matter considered at the hearing on the permit application.

(c) Persons may submit a written response to the hearing request. Responses shall be filed with the District, the applicant and any persons filing a hearing request in connection with that matter. The response should address the question of whether the person requesting the contested case hearing has a personal justiciable interest related to the application at issue.

(d) The board shall evaluate the hearing request and any written responses thereto at the scheduled board hearing and shall determine that the person requesting the hearing:

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

(2) has a personal justiciable interest relating to the application, refer the application to a contested case hearing, and admit the person as a party to the hearing.

(e) The board may delegate to a presiding officer the processing of requests for contested case hearing.

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

### **§ 9.311 General Hearing Procedures in Contested Cases**

(a) Except for a hearing referred to SOAH, the procedures provided in this subchapter apply to contested case hearings. If the board refers a contested case hearing to



SOAH, then the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code, and the applicable rules of practice and procedure of SOAH (Title 1, Chapter 155, Tex. Admin. Code, as may be amended) govern any contested case hearing of the District conducted by SOAH, as supplemented by this subchapter.

(b) A contested case hearing of the District must be conducted by either:

- (1) a quorum of the board;
- (2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
- (3) a SOAH administrative law judge.

(c) If requested by any party to a contested case, the District must contract with SOAH to conduct a contested case hearing.

(d) Except as provided by Subsection (d), the board president or the hearings examiner shall serve as the presiding officer at the hearing.

(e) If the hearing is conducted by a quorum of the board and the board president is not present, the directors conducting the hearing may select another director to serve as the presiding officer.

(f) Authority of presiding officer: The presiding officer may conduct the hearing in the manner the presiding officer deems most appropriate for the particular proceeding. The presiding officer has the authority to:

- (1) convene the hearing at the time and place specified in the notice for public hearing;
- (2) set hearing dates;
- (3) designate the parties;
- (4) establish the order for presentation of evidence;
- (5) administer oaths to all persons presenting testimony;
- (6) examine persons presenting testimony or comments;
- (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- (8) prescribe reasonable time limits for testimony and the presentation of evidence;
- (9) exercise the procedural rules of the District;

(10) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;

(11) require the taking of depositions and compel other forms of discovery under these rules;

(12) reopen the record of a hearing for additional evidence when necessary to make the record more complete;

(13) establish the jurisdiction of the District concerning the subject matter under consideration;

(14) rule on motions and on the admissibility of evidence and amendments to pleadings;

(15) conduct public hearings in an orderly manner in accordance with these rules;

(16) recess any hearing from time to time and place to place; and

(17) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of the presiding officer.

(g) Alignment of Parties in a Contested Case Hearing; Number of Representatives Heard: Parties in a contested case hearing may be aligned according to the nature of the hearing and their relationship to it. The presiding officer may require the participants of an aligned class to select one or more persons to represent them in the hearing or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.

(h) Appearance by Applicant or Movant: The applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to so appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the presiding officer deems it necessary in order to fully develop the record.

(i) Reporting: Contested case hearings will be recorded by audio or video recording or, at the discretion of the presiding officer, may be recorded by a certified court reporter transcription. The District does not prepare transcripts of hearings or other proceedings recorded on audio cassette tape on District equipment for the public, but the District will arrange access to the recording. On the request of a party to a contested case hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs

assessed against that party will be paid by another party. If a proceeding other than a contested case hearing is recorded by a reporter, and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original of any transcript will be filed with the District and placed in the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.

(j) Continuance: The presiding officer may continue hearings in a contested case hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice under Section 9.219. If the presiding officer continues a contested case hearing without announcing at the hearing the time, date and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to all parties.

### **§ 9.313 Conduct and Decorum**

Every person participating in or observing a contested case hearing, or other associated proceeding, must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants or observers. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If, in the judgment of the presiding officer, a person is acting in violation of this provision, the presiding officer shall first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.

### **§ 9.315 Hearing Registration Forms**

Each individual attending who provides comments or testimony in a contested case hearing shall submit a hearing registration form providing the following information: name, address, who the person represents, if the person is not there in person's individual capacity, whether the person plans to testify or provide comments, and any other information relevant to the hearing.

### **§ 9.317 Opportunity for Hearing and Participation; Notice of Hearing**

(a) In a contested case, each party is entitled to an opportunity:

(1) for hearing; and

(2) to respond and to present evidence and argument on each issue involved in the case.

(b) Notice shall be provided not later than 14 days before the date of a contested case hearing to all parties to a contested case hearing and all persons who have requested a contested case hearing pursuant to Section 9.307 on which no action has been taken.

**§ 9.319 Pre-Hearing Conferences**

(a) The presiding officer may hold one or more pre-hearing conferences at which the presiding officer may consider any matter which may expedite the hearing or otherwise facilitate the hearing process.

(b) Matters Considered. Matters which may be considered at a pre-hearing conference include, but are not limited to:

- (1) the withdrawal of protest;
- (2) the designation of parties;
- (3) the formulation and simplification of issues;
- (4) the necessity or desirability of amending applications or other pleadings;
- (5) the possibility of making admissions or stipulations;
- (6) the scheduling of discovery;
- (7) the identification of and specification of the number of witnesses;
- (8) the filing and exchange of prepared testimony and exhibits; and
- (9) the procedure at the hearing.

(c) Conference Action. Action taken at a pre-hearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.

**§ 9.321 Designation of Parties**

The following persons shall be designated as parties in a contested case hearing:

- (a) The general manager of the District is a party in all contested case hearings;
- (b) The applicant is a party in a contested case hearing on its application; and

(c) Any person who timely requested a contested case hearing pursuant to Section 9.307, and who has been determined by the presiding officer to be a person entitled to a contested case hearing under the standard set forth in Section 9.309.

**§ 9.323 Right to Counsel**

(a) Each party to a contested case hearing may have the assistance of legal counsel before the District.

- (b) A party to a contested case hearing may choose not to have the assistance of legal

counsel.

**§ 9.325 Interpreters for Deaf or Hearing Impaired Parties and Witnesses**

(a) In a contested case hearing, the District shall provide an interpreter whose qualifications are approved by the Texas Office for Deaf and Hard of Hearing Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(b) In this section, “deaf or hearing impaired” means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

**§ 9.327 Informal Disposition of Contested Case Hearing**

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

- (a) stipulation;
- (b) agreed settlement;
- (c) consent order; or
- (d) default.

**§ 9.329 Hearing Conducted by Hearings Examiner**

(a) This section applies only to contested case hearings presided over by a hearings examiner.

(b) A hearings examiner who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing.

(c) The District shall provide the hearings examiner with the District rules or policies applicable to the matter under consideration in the hearing.

(d) The District may not attempt to influence the findings of fact or the hearings examiner’s application of law in a contested case hearing except by proper evidence and legal argument.

(e) The District may change a finding of fact or conclusion of law made by the hearings examiner, or may vacate or modify an order issued by the hearings examiner, only if the District determines:

- (1) that the hearings examiner did not properly apply or interpret applicable law, District rules or policies provided under Subsection (c), or prior administrative decisions;
- (2) that a prior administrative decision on which the hearings examiner relied is incorrect or should be changed; or

- (3) that a technical error in a finding of fact should be changed.

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

### **§ 9.331 Certified Questions**

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

(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 among the types of issues appropriate for certification. Policy questions for certification purposes include, but are not limited to:

- (1) the District's interpretation of its rules and applicable statutes;
- (2) which rules or statutes are applicable to a proceeding; or
- (3) whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(c) If a question is certified, the hearings examiner shall submit the certified issue to the general manager. The general manager will place the certified issue on the agenda of the earliest possible meeting of the board, in compliance with the Open Meetings Act and other applicable law. The general manager will give the hearings examiner and parties notice of the meeting at which the certified question will be considered. The parties to the proceeding may file with the District briefs on the certified question. Briefs shall be filed with the parties with a copy served on the hearings examiner. The general manager will provide copies of the certified question and any briefs to the board. The hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.

(d) The District will issue a written decision on the certified issue within 30 days following the meeting at which the certified issue is considered. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

### **§ 9.333 Service of Documents filed in a Contested Case Hearing**

(a) Service of all Documents Required. For any document filed with the District or the judge in a contested case hearing, the person filing that document must serve a copy on all parties to the contested case including the general manager at or before the time that the request is filed.

(b) Certificate of Service. A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person

served. The docket clerk may permit a document to be filed without a certificate of service but will require the certificate to be filed promptly thereafter.

**§ 9.335 Privilege**

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

**§ 9.337 Objections to Evidence**

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

**§ 9.339 Burden of Proof**

The burden of proof is on the applicant to establish, by a preponderance of the evidence, that the applicant is entitled to have the application granted.

**§ 9.341 Assessing Costs**

(a) The party or parties requesting a contested case hearing before SOAH shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party or parties.

(b) Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may make a recommendation to the board regarding the assessment of costs incurred by the District for the hearing not addressed in Subsection (a), including the District's expenditures for attorney's fees and technical experts, and any reporting and transcription costs to one or more of the parties. If the hearing is conducted by the board, a hearing report with recommendations need not be filed, and the board may directly assess the District's hearing costs and reporting and transcription costs to one or more of the parties. The presiding officer must consider the following factors in assessing the District's hearing costs not addressed in Subsection (a) and the reporting and transcription costs:

- (1) the party who requested the hearing and/or transcript;
- (2) the financial ability of the party to pay the costs;
- (3) the extent to which the 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.

(c) In any proceeding where the assessment of the District's hearing costs and reporting or transcription costs is an issue, the presiding officer must provide the parties an opportunity to present evidence and argument on the issue. If applicable, a recommendation regarding the assessment of costs must be included in the hearing presiding officer's report to the board.

**§ 9.343 Rights of Designated Parties**

Subject to the direction and orders of the presiding officer, parties have the right to conduct discovery; present a direct case; cross-examine witnesses; make oral and written arguments; obtain copies of all documents filed in the proceeding; receive copies of all notices issued by the District concerning the proceeding; and otherwise fully participate in the proceeding.

**§ 9.345 Persons Not Designated Parties**

At the discretion of the presiding officer, a person not designated as a party to a proceeding may submit a comment or statement, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the presiding officer.

**§ 9.347 Ex Parte Communications**

Except as otherwise provided below, the presiding officer or a member of the board assigned to render a decision or to make findings of fact or conclusions of law on a contested permit application may not communicate, directly or indirectly, about any issue of fact or law during the pendency of the contested case with any representative of the District or other designated party to the contested case, except on notice and opportunity for all parties to participate. This rule does not apply to a board member who abstains from voting on any matter in which he or she engaged in ex parte communications. A member of the board may communicate ex parte with other members of the board consistent with the requirements of other law, such as the Open Meetings Act. A member of the board or the presiding officer may communicate ex parte with a District employee who has not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the District employee in evaluating the evidence.

**§ 9.349 Evidence**

The presiding officer shall admit evidence that is relevant to an issue at the hearing. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The Texas Rules of Evidence may be referred to in order to determine the admissibility and introduction of evidence in contested case hearings. However, evidence not admissible under the Texas Rules of Evidence may be admitted if the evidence is:

- (a) necessary to ascertain facts not reasonably susceptible of proof under those rules;
- (b) not precluded by statute; and



(c) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

In addition, evidence may be stipulated to by agreement of all parties.

### **§ 9.351 Written Testimony**

(a) When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially thereby, the presiding officer may allow testimony in a contested case hearing to be received in written form.

(b) The written testimony of a witness, either in narrative or question and answer form, must be sworn to by the witness and may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness must be available, in person, by phone, or by other reasonable means, for clarifying questions and cross-examination, and the prepared testimony will be subject to objection. On the motion of a party, the presiding officer may exclude written testimony if the person who submits the testimony is unavailable for cross-examination by phone, a deposition before the hearing, or other reasonable means.

### **§ 9.353 Requirements for Exhibits**

(a) Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.

(b) Abstracts of Documents. When documents are numerous, the presiding officer may receive in evidence only those which are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

(c) Introduction and Copies of Exhibits. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the presiding officer and to each of the parties, unless the presiding officer rules otherwise.

(d) Excluding Exhibits. In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.

### **§ 9.355 Official Notice; District Evaluation of Evidence**

(a) In connection with a contested case hearing, the presiding officer may take official notice of:

- (1) all facts that are judicially cognizable; and

(2) generally recognized facts within the area of the District's specialized knowledge.

(b) Each party shall be notified, either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information.

(c) Each party is entitled to be given an opportunity to object to material that is officially noticed.

### **§ 9.357 Agreement of Parties; Remand to Board**

(a) No agreement between parties or their representatives affecting any pending matter shall be considered by the presiding officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the prehearing conference or the hearing and entered of record.

(b) An agreed disposition of a contested case may be made by stipulation, settlement, consent order, or the withdrawal of all requests for a contested case hearing so that no facts or issues remain controverted. Upon settlement of a matter, the presiding officer shall remand the matter to the board. If the person requesting the contested case hearing defaults, then the presiding officer may also deem the request for a contested case hearing to have been withdrawn by the person and remand the case to the board. Applications remanded under this section shall be considered to be uncontested and shall be considered under Section 9.215. The presiding officer shall summarize the evidence, including findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing. Any stipulations, settlements, consent orders, withdrawals of requests for contested case hearing, orders, findings of default, presiding officer summary of the proceedings, and other relevant documents shall be presented to the board for its consideration.

### **§ 9.359 Discovery**

Discovery may be conducted upon such terms and conditions, and at such times and places, as directed by the presiding officer. Unless specifically modified by this subchapter or by order of the presiding officer, discovery shall be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer.

### **§ 9.361 Documents in District Files**

Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.

### **§ 9.363 Oral Argument**

At the discretion of the presiding officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The presiding officer

may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the board for final decision, further oral arguments may be heard by the board if the board did not preside over the hearing.

### **§ 9.365 Closing the Record**

At the conclusion of the presentation of evidence and any oral argument, the presiding officer may close the record or, if the board has not taken final action on the application, keep it open and allow the submission of additional testimony by a person who testified at the hearing, or exhibits, briefs, or proposed findings and conclusions from one or more of the parties. Any supplementation of the record must be filed not later than the 10<sup>th</sup> day after the date of the final hearing. A person who files additional written material with the presiding officer under this section must also provide the material, not later than the 10<sup>th</sup> day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested case hearing. A person who receives additional written material under this section may file a response to the material with the presiding officer not later than the 10<sup>th</sup> day after the date the material was received. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer.

### **§ 9.367 Proposal for Decision**

Except for contested cases presided over by a quorum of the board, no later than 30 days following the completion of the contested case hearing, the presiding officer shall submit a proposal for decision to the District and serve a copy on the applicant and each designated party to the contested case. A proposal for decision shall include a summary of the subject matter of the hearing, a summary of the evidence or public comments received, and the presiding officer's recommendations for board action on the subject matter of the hearing. The presiding officer, when submitting the proposal for decision, shall notify the parties of the deadlines for the filing of exceptions and replies.

### **§ 9.368 Exceptions to the Proposal for Decision**

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

### **§ 9.369 Scheduling a Meeting of the Board**

(a) After receiving the proposal for decision or proposed order, the general manager shall schedule the presentation of the proposal for decision or proposed order to the board. The general manager shall provide at least 10 days' prior notice to the parties of the date of the board meeting at which the proposal for decision or proposed order will be presented and considered. The board may reschedule the presentation of the proposal for decision or proposed order. The general manager shall send notice of the rescheduled meeting date to the parties no later than 10 days before the rescheduled meeting.

(b) Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

### **§ 9.371 Oral Presentation Before the Board**

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

(b) Any party to the contested case hearing may make an oral presentation at the board meeting in which the proposed order in that case is considered by the board.

(c) Oral presentations before the board shall be limited to 5 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the board.

### **§ 9.373 Reopening the Record**

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

### **§ 9.375 Decision**

(a) No later than 60 days after the date of the final hearing on the application is concluded, the board shall render its decision. The decision, if adverse to any party, must be in writing or stated in the record. If a written request is filed with the District not later than the 20<sup>th</sup> day after the date of the board's decision, then the board's decision must be in writing and shall include findings of fact and conclusions of law separately stated regarding the decision of the board. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35<sup>th</sup> day after the date the board received the request.

(b) The board's decision shall be rendered no later than 60 days after the date the final hearing on the application is concluded, unless the board determines that there is good cause for continuing the proceeding.

(c) The board may change a finding of fact or conclusion of law made by the presiding officer, or may vacate or modify an order issued by the presiding officer, only if the board determines:

(1) that the presiding officer did not properly apply or interpret applicable law, District rules, written policies provided to the presiding officer by the District, or prior administrative decisions:

(2) that a prior administrative decision on which the presiding officer relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

**§ 9.377 Notification of Decisions and Orders**

(a) The District shall notify all parties in a contested case either personally or by certified mail, return-receipt requested, of any decision or order.

(b) The District shall send a copy of the decision or order in a contested case by first-class mail to attorneys of record and shall keep an appropriate record of the mailing. If a party is not represented by an attorney, the District shall send a copy of the decision or order by first-class mail to the party and shall keep an appropriate record of the mailing.

(c) A party or attorney of record notified by mail under Subsection (b) is presumed to have been notified on the third day after the date on which the notice is mailed.

**§ 9.379 Motion for Rehearing**

(a) Filing motion. Only a party to the contested case may file a motion for rehearing. The motion shall be filed with the general manager within 20 days after the date the party or his or her attorney of record is notified of the decision or order. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered 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 District;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(b) Reply to motion for rehearing. Only a party to the contested case proceeding may reply to a motion for rehearing. A reply to a motion for rehearing must be filed with the general manager within 20 days after the date the motion for rehearing is filed.

(c) Ruling on motion for rehearing.

(1) Upon the request of a board member, the motion for rehearing shall be scheduled for consideration during a board meeting. Unless the board rules on the motion for rehearing, the failure of the board to grant or deny a request for rehearing before the 91<sup>st</sup> day after the date the request is submitted constitutes a denial of the request by operation of law.

(2) 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 request for rehearing, the board shall schedule the rehearing not later than the 45<sup>th</sup> day after the date the request is granted. Thereafter, the board shall render a decision or order as required by this subchapter.

**§ 9.381 Decision Final and Appealable**

In the absence of a timely filed motion for rehearing, a decision or order of the board is final and appealable 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; (2) the motion is denied by operation of law; or (3) the board renders a written decision after rehearing.

**§ 9.383 Appeal of Final Decision**

(a) A filing of a timely motion for rehearing is a prerequisite to appeal.

(b) Not later than the 60<sup>th</sup> day after the date on which the decision of the board becomes final, an applicant or a party to a contested case hearing may appeal the District's decision by filing suit under Section 36.251, Texas Water Code. An applicant or a party to a contested case hearing may not file suit against the District under Section 36.251 if a request for rehearing was not filed on time.

(c) The record. The record in a contested case shall include the following:

- (1) all pleadings, motions and intermediate rulings;
  - (2) evidence received or considered;
  - (3) a statement of matters officially noticed;
  - (4) questions and offers of proof, objections and rulings on them;
  - (5) summaries of the results of any conferences held before or during the hearing;
  - (6) proposed findings, exceptions and briefs;
  - (7) any decision, opinion or report issued by the presiding officer;
  - (8) pre-filed testimony;
  - (9) all memoranda or data submitted to or considered by the presiding officer;
- and
- (10) the final order and all interlocutory orders.

**§ 9.385            Costs of Record on Appeal**

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

## **Subchapter E. Procedures for Adoption of Rules and Management Plan**

### **§ 9.401 Rulemaking and Management Plan Hearing Procedures**

(a) The District shall adopt rules and its management plan following the notice and hearing procedures set forth in this subchapter.

(b) Not later than the 20<sup>th</sup> day before the date of a hearing to adopt rules or a management plan, the general manager shall provide notice of the public hearing as follows:

(1) post a notice in a place readily accessible to the public at the District office;

(2) provide a copy of the notice to the county clerk of each county in which the District is located, to be posted at the County courthouse;

(3) publish the notice in one or more newspapers of general circulation in the District;

(4) provide the notice by mail, facsimile, or electronic mail to any person who has requested the notice pursuant to Subsection (g); and

(5) make available a copy of the proposed rule or management plan at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on its website.

(c) The notice shall include the following information:

(1) the time, date, and location of the rulemaking or management plan hearing;

(2) a brief explanation of the subject of the rulemaking or management plan hearing; and

(3) the procedures for submitting oral or written comments, and a location or internet site at which a copy of the proposed rules or management plan may be reviewed or copied, if any.

(d) The general manager may designate a person to be the presiding officer to conduct the public hearing. The presiding officer shall conduct a rulemaking or management plan hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule or management plan as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments. The District shall allow at least 20 days for submission of written public comments on a proposed rule or management plan before adopting the proposed rule or plan.



(e) Any person participating in a rulemaking hearing must submit to the District a registration form indicating the person's name, address, and who the person represents, if not in attendance or his or her behalf.

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

(g) A person may submit to the District a written request for notice of a rulemaking or management plan hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking or management plan hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or electronic mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(h) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about a contemplated rule or management plan provision and may appoint an advisory committee of experts, interested persons, or public representatives to advise the District about a contemplated rule or management plan provision.

(i) Failure to provide notice under Subsection (b)(4) does not invalidate an action taken by the District at a rulemaking or management plan hearing.

(j) Oral Presentations. Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer may establish the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

(k) Adoption of Proposed Rules or Management Plan. After the conclusion of the hearing and the time period for submission of written comments, the board shall consider all timely written comments and shall, in the order adopting the rule or plan, state the District's responses to the written comments.

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

#### **§ 9.402 Adoption of Desired Future Conditions Hearing Procedures**

(a) Not later than the 20<sup>th</sup> day before the date of a hearing or meeting at which the District will adopt a desired future condition for any aquifer, the District shall provide notice of the public hearing or meeting as follows:

(1) post a notice in a place readily accessible to the public at the District office;

(2) provide a copy of the notice to the county clerk of each county in which

the District is located, to be posted at the County courthouse;

(3) publish the notice in one or more newspapers of general circulation in the District;

(4) provide the notice by mail, facsimile, or electronic mail to any person who has requested a notice pursuant to Section 9.401(g) or who has made such a request related specifically to the adoption of a desired future condition; and

(5) make available a copy of the proposed desired future condition at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on its website.

(b) At least 10 days before a hearing or meeting at which the District will adopt a desired future condition for any aquifer, the District must post notice that includes:

(1) the proposed desired future conditions and a list of any other agenda items;

(2) the date, time, and location of the meeting or hearing;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the names of the other districts in the District's management area; and

(5) information on how the public may submit comments.

### **§ 9.403 Emergency Rulemaking**

(a) The District may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

(1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its findings under Subsection (a).

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

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

(d) A rule adopted under this section must be adopted at a meeting held as provided by the Open Meetings Law.

**CHAPTER 10. WATER QUALITY**

**§ 10.1 Prohibition on Pollution of Groundwater**

A person may not pollute or contribute to the pollution of groundwater in the District.

## **CHAPTER 11. INVESTIGATIONS AND ENFORCEMENT**

### **§ 11.1 Right to Enter Land**

Any District board member or District employee, agent or representative is entitled to enter any public or private property within the boundaries of the District at any reasonable time for the purpose of inspecting or investigating conditions relating to the quality or quantity of groundwater or in regard to the compliance with the District Act, Chapter 36 of the Texas Water Code, or any rule, permit, or order of the District. Such persons acting under this authority who enter private property shall, prior to entry, give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the property, as determined by information contained in the application or other information on file with the District, if any.

### **§ 11.3 Conduct of Investigation**

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

### **§ 11.5 Judicial Civil Enforcement**

(a) The District may enforce the District Act or its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, in the same action, civil penalties, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court.

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

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

### **§ 11.7 Enforcement Action by the General Manager**

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

### **§ 11.9 Enforcement Action by the Board**

If the board determines that a person, or his predecessor in interest, violated, is violating, or is threatening to violate the District Act, these Rules, or the terms or conditions of a permit or

interim production status, it may, after providing a 10-day written notice to the person and an opportunity for the person to appear and be heard at a meeting of the board:

(a) suspend the processing of any application or authorization that the person has pending before the District, until the violation is remedied;

(b) suspend any interim production status, permit or authorization issued by the District, which is held by that person, until the violation is remedied;

(c) commence any action authorized by law to address the violation, including filing a civil suit in state district court seeking an injunction, a mandatory injunction, civil penalties, and attorney's fees and other costs associated with bringing a suit; or

(d) enter into, or authorize the general manager to enter into, a settlement agreement with the person.

**§ 11.11 Enforcement Related to Groundwater Withdrawal Limitations**

(a) If the board determines that the holder of a HUPP has exceeded the annual authorized withdrawal amount in the permit, the board may suspend taking enforcement action for a period of time in order to determine whether the holder of the permit has average annual withdrawals over a three-year period in excess of the permit's annual authorized withdrawal amount.

(b) If the board determines that the holder of a HUPP has annual withdrawals over a three-year period in excess of the permit's annual authorized withdrawal amount, the general manager and the board may commence any enforcement action authorized by these rules and other law to enforce the terms of the permit.