

**Rules of the  
High Plains Water District  
Adopted November 14, 2023  
Effective December 1, 2023**



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## **RULE 1: DEFINITIONS**

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

- a) **“Administratively Complete Application”** shall have the same meaning as found in the §36.114(h), Texas Water Code and information requested under Rule 4.7.
- b) **“Allowable Production Rate”** means the amount of groundwater that a Permitted Well is authorized to produce from an Aquifer of the District during each calendar year beginning on January 1, 2015.
- c) **“Applicant”** means a Person seeking action by the District such as requesting a Permit Application, an exception to the District Rules, or a hearing.
- d) **“Aquifer(s) of the District”** means all or part of any groundwater bearing stratum or formation underlying the District’s boundaries.
- e) **“Board”** means the governing body of the District.
- f) **“Conservation”** means those water saving practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or Waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
- g) **“Contiguous Acre”** means the acreage of groundwater rights within the District and all additional acreage within the District, which is either (a) abutting acreage that physically touches, including corner-to-corner, or (b) non-abutting acreage if the two properties are connected by a common underground water pipeline system. Section (b) shall only apply to affected properties covered by the provision before January 1, 2022. After January 1, 2022, this provision shall expire and no longer apply to newly constructed water pipeline systems. Acreage under this section only includes property that is owned by the same Person through deed, easement, contract, lease, or any other legally recognized agreement. A municipality may include the acreage within its city limits.
- h) **“Deteriorated Well” or “Deteriorating Well”** shall have the same meaning as found in Chapter 76.10(21), Texas Admin. Code, namely, a Well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.
- i) **“District”** means the High Plains Underground Water Conservation District No. 1.
- j) **“District Personnel”** means any Person employed, empowered, or authorized by or contracted to do business for the District.
- k) **“Double Cropping”** means the practice of planting and harvesting more than one irrigated crop per irrigated acre each year. Harvesting includes either mechanically harvesting or grazing of livestock. The following practices will not be considered Double Cropping: (1) cover crops for Conservation purposes only, (2) crop rotation programs that average one irrigated crop per irrigated acre each

year, (3) grazing and mechanically harvesting the same crop in the same year, and (4) subsequent crops which replace a crop destroyed by weather in the same year.

- l) **“Exempt Well”** means a Well that is exempt from permitting under the District Rules.
- m) **“General Manager”** means the General Manager of the District or the General Manager’s designee.
- n) **“Groundwater”** means water percolating below the surface of the earth.
- o) **“Management Goal”** means the District’s Desired Future Condition of the Aquifers of the District. A Desired Future Condition is a quantitative description of the desired condition of the groundwater resources in a management area at one or more specified future times.
- p) **“Management Plan”** means the most recently adopted District Management Plan, as required under §36.1071, Texas Water Code.
- q) **“Meter”** means a water production measuring device authorized under District Rule 5.
- r) **“Open or Uncovered Well”** shall have the same meaning as found in §36.118(b), Texas Water Code, namely, an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered.
- s) **“Permit”** means authorization granted by the Board to construct, drill, operate, install, equip, complete, or other work designed for the production of groundwater from the Aquifers of the District.
- t) **“Permitted Well”** means a pre-District, existing, or new Well that is drilled and equipped to produce more than 25,000 gallons of water per day or 17.5 gallons per minute and that has a record of the location of the Well on file with the District, regardless of whether or not the Well was exempt from permitting under a previous version of the District’s Rules.
- u) **“Person”** means any legal entity, including but not limited to, individual, partnership, firm, any type of corporation, estate, guardianship, trust or any type of municipality.
- v) **“Proposed Well Site”** means the location of a proposed Well as recorded on a Permit Application filed with the District until such application is granted a Permit by the Board.
- w) **“Registered Well”** means a Well that is drilled and/or equipped to produce no more than 25,000 gallons of water per day or 17.5 gallons per minute and that has a record of the location of the Well on file with the District.
- x) **“State of Texas Well Report”** shall have the same meaning as found in Chapter 76.10(54), Texas Administrative Code, namely, a log recorded on forms prescribed by the department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the executive director.
- y) **“Valid Well”** means the location of: (1) a Permitted Well or (2) a Registered Well.
- z) **“Waste”** shall have the same meaning as §36.001(8), Texas Water Code.
- aa) **“Water”** is used herein synonymously with groundwater.

- bb) **“Well”** means any artificial excavation located within the boundaries of the District through which groundwater can be extracted.
- cc) **“Well Operator”** means the Person who operates a Well or Well System.
- dd) **“Well Owner”** means any Person that has a legal right to capture and produce groundwater from a property.
- ee) **“Well System”** means a Well or group of Wells tied to the same water distribution system(s).
- ff) **“Year”** means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.



## **RULE 2: GENERAL PROVISIONS**

### **2.1. Purpose**

The Board of Directors of the High Plains Underground Water Conservation District No. 1 adopts the following Rules of the District in order to:

- a) Protect property rights;
- b) Utilize the best available science to balance the conservation and development of groundwater;  
and
- c) Meet the Management Goals and Desired Future Conditions of Aquifers of the District.

### **2.2. Repeal of Prior Regulations and Notice of Possible Future Changes to Rules**

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

### **2.3. Savings Clause**

If any section, sentence, paragraph, clause, or part of these rules should be held or declared invalid for any reason by a final judgment of the courts of this state or the United States, such decision or holding shall not affect the validity of the remaining portions of these rules.

### **2.4. Time Limits**

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

### **2.5. Final Orders of the Board**

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

### **2.6. Surveys**

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

## **2.7. Research**

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

## **2.8. Collection of Information**

The District may collect any information the Board deems necessary, including information regarding groundwater, water Conservation, and data to fulfill the District's purpose as required in §36.0015, Texas Water Code.

## **2.9. Publication of Plans and Information**

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

## **2.10. Effective Date**

Unless otherwise specified, the District Rules take effect on the date of their original adoption and an amendment to these rules takes effect on the date of its original adoption.

## **2.11. Rules Enforcement**

- a) If it appears that a Person is non-compliant with any provision of the District Rules, the Board may take any action afforded them under the District Rules and State Law.
- b) Enforcement of District Rules by the District Board of Directors includes, but is not limited to:
  - 1) Litigation in the name of the District for injunctive relief;
  - 2) Assessment of civil penalties;
  - 3) Sealing a Groundwater Well;
  - 4) Citing the person to appear before the Board; and
  - 5) Suspending, canceling, or otherwise restricting the production from a Well for failure to comply with the orders or Rules of the District or State Law.

## **RULE 3: WASTE PROHIBITED**

### **3.1. Wasteful Use of Water Prohibited**

- a) No Person may produce or use groundwater from the Aquifers of the District in such a manner to constitute Waste.
- b) No Person may operate a Well at a rate of production higher than the maximum Allowable Production Rate granted in a Permit, the District Rules, or other applicable law.
- c) Beginning on January 1, 2015, no Person may operate a Well producing groundwater from the Aquifers of the District in excess of the Allowable Production Rate set forth under Rule 5. All such unauthorized production is non-compliant with District Rules, wasteful per se, and a nuisance.

- d) All Persons shall use reasonable diligence to convey water from the wellhead where produced to the place of use in order to prevent Waste.
- e) No Person may transport groundwater in an open, unlined ditch or channel.

### **3.2. Groundwater Contamination Prohibited**

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

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

### **4.1. Jurisdiction of the District; Wells Exempt from Permitting**

- a) The District has jurisdiction to manage and reasonably regulate within its geographic boundaries the production of groundwater, the quantity and quality of groundwater, and the use of water produced from the Aquifers of the District.
- b) The following activities are exempt from permitting requirements under these rules:
  - 1) Drilling or operating a Well that is completed or equipped to produce less than 25,000 gallons of groundwater per day, or 17.5 gpm;
  - 2) Drilling a groundwater Well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the Person holding the permit is responsible for drilling and operating the groundwater Well and the Well is located on the same lease or field associated with the drilling rig;
  - 3) Drilling a groundwater Well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the Well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water; and
  - 4) Maintenance or repair of a Well if the maintenance or repair does not increase the production capabilities of the Well to more than the current permitted rate.
- c) The owner of a Well that is exempt loses the exemption if the nature of the Well use changes such that the Well no longer qualifies for the exemption.
  - 1) Within thirty (30) days of the occurrence of any facts that may cause a Well to lose its exemption, the owner shall give written notice to the District of the changed circumstance(s).
  - 2) If the Board determines that the changed circumstance(s) should cause the Well to lose its exemption, then the Board will issue an order declaring the loss of exemption and advise

the owner that the Well is subject to District regulation, including the duty to obtain a Permit.

- d) The owner of a Well that is exempt from permitting under District Rules may register the Well with the District.

#### **4.2. Well Registration**

- a) A Well exempt from permitting that was drilled prior to the enactment date of these rules may be registered with the District.
- b) A new Well exempt from permitting may be registered with the District.
- c) A Person seeking to register a new or existing Exempt Well shall do so on a form prescribed by the District.
- d) The District shall review all Well registration applications to ensure compliance with District Rules, and may require that the application be accompanied by a fee, the amount of which will be determined by a resolution of the Board.

#### **4.3. Permit Required**

- a) No Person may drill or operate a Well that is not exempt from permitting under Rule 4.1, or increase the rate of production above the maximum Allowable Production Rate for which the Well is permitted without first being granted a Permit by the Board.
- b) Any Person required to obtain a Permit under Subsection (a) must file with the District a Permit Application on forms prescribed by the District.

#### **4.4. Permit Application Process**

- a) A Groundwater Owner seeking a Permit from the District shall contact the District to request a Permit Application.
- b) District Personnel will assist the Permit Applicant by informing them of the applicable Rules of the District, including required spacing and production Rules, when the Permit Application is Administratively Complete, and when the Board of Directors may act on the Permit Application.
- c) A Permit Application is considered to be submitted when all required information is filled out on District forms, the Permit Application is signed by the Applicant, a District site inspection has occurred, and all applicable fees have been paid. Failure to complete this subsection within thirty (30) days of the initial Permit Application request shall void the request.
- d) The General Manager shall review the completed Permit Application for accuracy and compliance with District Rules.
- e) Once the Permit Application meets District Rules, District Personnel will notify the Permit Applicant and the Permit Applicant will then proceed to drill and construct the well, if applicable.

- f) The Permit Applicant shall notify the District upon well completion and provide the district with a State of Texas Well Report.
- g) The General Manager shall then review the Permit Application for Administrative Completeness and shall submit the Permit Application to the Board for approval, within sixty (60) days.

#### **4.5. Considerations for Granting or Denying a Permit**

- a) Before granting or denying a Permit, the Board shall consider whether the Permit Application is Administratively Complete, whether the proposed Well complies with District Rules, and whether the Applicant is compliant with District Rules.
- b) The Board shall consider and act on each Administratively Complete Permit Application no later than sixty (60) days after submission.
- c) A Permit may be granted on the basis of and contingent upon the accuracy of the information supplied in the Permit Application.
  - 1) It is fraud upon the District and on the adjacent Groundwater Owners for any Applicant to willfully give erroneous information in the Permit Application.
  - 2) A finding that false information has been supplied in the Permit Application may be grounds to refuse or deny the Permit Application or for immediate revocation of the Permit.
- d) If an Administratively Complete Permit Application meets the requirements of the District as set forth under Rule 4, the Board shall grant the Permit.

#### **4.6. Time During Which a Permit Application is Valid**

- a) A Permit Application is valid for two-hundred and forty (240) days from the date the Permit Application is submitted.
- b) If the Well is not fully constructed within two-hundred and forty (240) days, the Permit Application shall expire and be void and of no force or effect.
- c) If the Applicant needs additional time to construct the new Well, even if at the same location, a new Permit Application and associated fees must be submitted for consideration.

#### **4.7. Elements of an Administratively Complete Permit Application**

- a) The following information must be provided by the Applicant to the District on forms prescribed by the District:
  - 1) Name, mailing address, and telephone number of the Applicant;
  - 2) If different than the Permit Applicant, the name, mailing address, and telephone number of the Groundwater Owner;
  - 3) Locations of the property lines;
  - 4) The legal description of the property;
  - 5) The location of the Well;

- 6) The aquifer from which withdrawals will be made;
  - 7) The desired rate of withdrawal in gallons per minute;
  - 8) A statement of the nature and purpose of the proposed use of the groundwater;
  - 9) Number of Contiguous Acres associated with the Well site; and
  - 10) In the case of a new Well being drilled:
    - i. The State of Texas Well Report; and
    - ii. For any new Well that is not drilled or completed vertically, a schematic diagram showing the exact specifications of construction including Well screen intervals.
  - 11) The District may request a Permit Applicant to provide additional information as authorized under §§36.114(h) & 36.1131, Texas Water Code.
- b) All applicable Permit Application fees shall be paid to the District for a Permit Application to be Administratively Complete, the amount of which will be determined by a resolution of the Board.
- c) The following information must be provided by the District:
- 1) The location of the nearest Valid Well applicable to the Proposed Well Site as described in the Permit Application, and
  - 2) The distances to nearest property lines.
- d) Within thirty (30) days of receiving the State of Texas Well Report, The District shall verify that the Well is constructed at the location specified on the Permit Application, and according to applicable Texas Department of Licensing and Regulation Rules.
- e) The Applicant's signature on the application shall indicate that the Applicant:
- 1) Has legal authority to bind the Groundwater Owner to all obligations imposed by the District and has legal authority to drill or cause to be drilled a well at the Proposed Well Site;
  - 2) Has received a copy of the District's Rules and agrees to comply with said Rules;
  - 3) Agrees that all information provided by the Applicant is correct and true and in compliance with District Rules;
  - 4) Will install, equip, operate, maintain, or close the Well in compliance with District Rules;
  - 5) Is solely responsible for:
    - i Drilling of the Well at the Proposed Well Site identified in the Permit Application;
    - ii Informing the driller of the Proposed Well Site;
    - iii Ensuring the Well is drilled within a ten (10) yard radius of the Proposed Well Site; and
    - iv Abiding by all District Rules should it become necessary to drill the proposed Well at a location other than the Proposed Well Site, but within the ten (10) yard radius noted above;
  - 6) Will provide the District with a completed State of Texas Well Report;
  - 7) Agrees that the Well may be used as a District observation Well as determined by District Personnel; and

- 8) Agrees that upon any violation of this agreement, the Board may order that the Well may no longer be used until the problem is permanently resolved to the satisfaction of the Board.

**4.8. Authorization to Regulate Spacing of Wells**

- a) The District by rule may regulate the spacing of Wells in order to minimize the drawdown of the water table, to control subsidence, to prevent interference between Wells, to prevent degradation of water quality, or to prevent Waste.
- b) For better management of the groundwater resources located within District boundaries or if the District determines that conditions in an aquifer or use of an aquifer differ substantially from one geographic region of the District to another, the District may adopt different rules for each aquifer, subdivision of the aquifer, or geologic strata located in whole or in part within the boundaries of the District or each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the District's boundaries.

**4.9. Minimum Spacing Requirements**

- a) Table 1 and Table 2 spacing requirements shall apply to the point(s) at which the Well is screened. All Wells permitted subsequent to the date of enactment of this rule shall meet the following distance and production limitations:

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

<b>Well Production</b>	<b>Minimum Distance from nearest Valid Well or Proposed Well Site located in the Ogallala /Edwards-Trinity (High Plains) Aquifer</b>	<b>Minimum Distance from nearest property line</b>
17.5 to 70 gpm	100 yards	25 yards
>70 up to 165 gpm	200 yards	50 yards
>165 up to 265 gpm	300 yards	75 yards
>265 up to 390 gpm	350 yards	87.5 yards
>390 up to 560 gpm	400 yards	138 yards
>560 up to 800 gpm	500 yards	238 yards
>800 gpm	540 yards	278 yards

**Table 2: Minimum Spacing of Wells in the Dockum Aquifer**

<b>Well Production</b>	<b>Minimum Distance from nearest Valid Well or Proposed Well Site located in Dockum Aquifer</b>	<b>Minimum Distance from nearest property line.</b>
17.5 up to 70 gpm	100 yards	25 yards
>70 up to 165 gpm	200 yards	50 yards
>165 up to 265 gpm	300 yards	75 yards
>265 up to 500 gpm	880 yards	100 yards
>500 gpm	1760 yards	135 yards

- b) The Board may require a Well Owner to re-equip a permitted Well if the Well does not comply with the production limitations as prescribed under Rule 4.9(a).

**4.10. Place of Drilling Wells**

Before a permit can be granted, the Well must be drilled within ten (10) yards of the location specified in the Permit Application, and not elsewhere.

**4.11. Replacing Wells**

- a) No Person may replace a Permitted Well without first obtaining a Permit from the District.
- b) A replacement Well must be drilled within fifty (50) yards of the Well being replaced.
- c) A replacement Well must comply with the minimum Well spacing requirements, other than the Minimum Distance from nearest property line requirements, for the maximum Allowable Production Rate granted for the Well being replaced, otherwise the replacement Well shall be considered a new Well.
- d) A replacement Well may not be permitted for a higher rate of production than the Well being replaced.
- e) A properly drilled and located replacement Well is a Valid Well.
- f) Within two hundred and forty (240) days submitting the Permit Application, the Well Owner must declare in writing to the District which one of these two Wells will be produced.
- g) If the owner does not notify the District within two hundred and forty (240) days, then it will be conclusive that the replacement Well is the Well the owner desires to retain.
- h) Immediately after determining which Well will be retained for production, the other Well Permit shall be void.
- i) A Permit Application to replace an existing Well may be granted by the Board without notice or hearing.



#### **4.12. Exceptions to Minimum Spacing Requirements**

- a) In order to protect property rights and carry out the goals of the District, the Board may grant exception(s) to minimum spacing requirements. This includes a scenario where a landowner has repeatedly filed a Permit Application without drilling a Well, and their Proposed Well Site has affected the adjoining landowner's ability to submit their own Permit Application.
- b) Any Person requesting an exception to minimum spacing requirements shall submit (1) a request for exception on a form prescribed by the District, and (2) a non-refundable fee, the amount of which will be established by a resolution of the Board.
- c) The request shall contain the name and address of all Groundwater Owners within a distance of the Proposed Well Site equal to the minimum property line spacing and Well spacing requirements for the desired rate of withdrawal.
- d) The Board may grant a request for exception to minimum spacing requirements if the Board finds that:
  - 1) All information requested by the District has been fully and accurately provided;
  - 2) The application complies with District Rules;
  - 3) The Applicant is in compliance with any permits the Applicant holds from the District and with District Rules;
  - 4) The Person requesting the exception does so with full knowledge of its import and effect;
  - 5) All applicable fees have been paid; and
  - 6) All necessary field and site visits have been conducted.
- e) Notice shall be provided to all affected Groundwater Owners under this Rule. These Groundwater Owners may appear and present evidence at a public hearing, at which time the Board in its discretion may grant an exception within ten (10) days of the date of the hearing. Unless the conditions under this Rule have been met, the Board may grant an exception only after written notice and hearing.
- f) An exception may be granted by the Board, without notice and hearing, if all Persons notified execute a written waiver stating that they do not object to the granting of such exception.

### **RULE 5: ALLOWABLE PRODUCTION RATE & PRODUCTION REPORTS**

#### **5.1. Applicability**

The requirements of Rule 5 shall apply to all Permitted Wells.

#### **5.2. Allowable Production Rate for Wells**

- a) Beginning on January 1, 2015, and continuing thereafter, maximum Allowable Production Rate for Permitted Wells is 1.50 acre-feet per Contiguous Acre per year.
- b) A Contiguous Acre may only be counted one time for purposes of determining the amount of groundwater production to be authorized under this Rule.

- c) Only those acres that meet the definition of Contiguous Acre in Rule 1(h) shall be counted for purposes of determining the Allowable Production Rate from a particular tract of land. If a Well Owner or Well Operator has separate tracts of land that together do not meet the definition of Contiguous Acre, the District shall count each tract separately so that each individual tract has a separate Allowable Production Rate. The Allowable Production Rate for separate tracts of land that do not meet the definition of Contiguous Acre shall not be combined and produced from one tract.

### **5.3. Authority to Establish a Conservation Reserve**

- a) A Well Owner or Well Operator may establish a Conservation Reserve under Rule 5.2.
- b) A Well Owner or Well Operator may reserve all or a portion of their annual Allowable Production Rate.
- c) In order to reserve all or a portion of the Allowable Production Rate under this rule, a Well Owner or Well Operator must apply to the District on a form prescribed by the Board at the time the Well Owner or Well Operator submits an annual production report.
- d) The Board may request additional information from the Applicant.
- e) The District shall keep records of the amount of water each owner or operator has been approved by the District to reserve from the Allowable Production Rate under Rule 5.2 for a particular year.
- f) The Conservation Reserve shall not be assigned or transferred to other acreage and withdrawals from the reserve shall not exceed 0.50 acre-feet per acre per year.
- g) Beginning January 1, 2015, an eligible Well Owner or Well Operator shall have an initial Conservation Reserve of 0.50 acre-feet per acre.
- h) The initial Conservation Reserve is available only to Well Owners or Well Operators who timely submit the initial Production Report in accordance with these rules, and document usage under 5.6(a)(2), 5.6(a)(3), 5.6(a)(4) or a Meter.
- i) Effective January 1, 2022, this section shall expire and there shall be no new additional Conservation Reserve Allocations or additions to the existing Conservation Reserve. Any reserve held at that time shall remain in effect until utilized.
- j) A Conservation Reserve ceases to exist if the land associated with the reserve is sold, subdivided, or otherwise transferred.

### **5.4. Aggregate Reporting Requirement**

If an owner or operator chooses to record the use of groundwater by Meter(s), then the Well Owner or Well Operator shall install and meter the Well System so as to measure the total groundwater production from all Permitted Wells included in the Well System. The provisions of Rule 5.7 apply to Meters measuring aggregate production from Well Systems.

### 5.5. Recording Requirements

Beginning on January 1, 2015, all Permitted Wells are required to begin recording the use of groundwater through a Meter or through the use of an approved alternative measuring method as prescribed by Rule 5.6.

### 5.6. Alternative Reporting Methods

- a) A Well Owner or Well Operator may report the use of groundwater as measured by Meter(s), or one of the following alternative methods:
  - 1) One Irrigated Crop: A Well Owner or Well Operator of property producing groundwater solely for agricultural purposes may certify that they will not engage in the practice of Double Cropping as defined in Rule 1(k). Certification under this provision shall satisfy the requirements of Rule 5.2 subject to verification by the District. If this alternative is chosen, all acreage within the property shall use the same method.
  - 2) Energy Consumed: A Well Owner or Well Operator of property producing groundwater may certify the amount of energy consumed by producing said groundwater in accordance with the methods developed and published by the Board.
  - 3) Nozzle Packages: A Well Owner or Well Operator of property producing groundwater for use through a center pivot or drip irrigation system may certify: (a) the nozzle package flow rate, and (b) the hours of use. Hours of use may be reported by (a) the hour-meter or (b) computer recording system such as PivoTrac Monitoring, AgSense, Wagnet or similar type system approved by the Board.
  - 4) Confined Animal Feeding Operation (CAFO): A Well Owner or Well Operator of property producing groundwater for use in a Confined Animal Feeding Operation may certify the average number of animals on feed during a year, multiplied by a water use value (gallons per head per day) for a particular animal type. (Annual use = Average number of animals per day x Daily Water Intake x 365).

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

- 5) Maximum Production Capacity: Certification of the production rate on Contiguous Acres of one (1) gallon per minute per acre or less demonstrates the subject property is unable to

exceed the Allowable Production Rate. This certification, once verified by the District, will be effective until such time that the irrigation system's capacity is altered.

- 6) Other Approved List of Alternative Reporting Methods: A Well Owner or Well Operator of a Permitted Well may apply to the Board for approval of any alternative reporting method or additional Meters not included in the list developed by the District. The Board will approve or deny such applications, after notice and an opportunity for a hearing.
- b) If a Well Owner or Well Operator of property producing groundwater solely for agricultural purposes fails to choose one of the above reporting methods, they will be deemed to have elected Rule 5.6(a)(1), subject to verification by the District.

### **5.7. Meter Installation**

- a) If a Well Owner or Well Operator chooses to record the use of groundwater by Meters:
  - 1) Each Meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's specifications.
  - 2) A Meter must be capable of a maximum reading greater than the maximum expected production during the recording year. All Meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for cold-water Meters.
  - 3) A Well Owner or Well Operator of a Permitted Well is responsible for the purchase, installation, operation, maintenance, and repair of the meter associated with the Well or Well System.
  - 4) Unmetered bypasses are prohibited.

### **5.8. Production Reports**

- a) Annual production reports must be maintained by the Well Owner, or the Well Owner's designee. The District will provide a tool for submission of production reports, if the Well Owner so chooses.
- b) All production reports submitted to the District shall include the following information:
  - 1) The number of Contiguous Acres owned or controlled for the right to produce groundwater from the Permitted Well and whether the number of Contiguous Acres has changed from the last production report submitted to the District;
  - 2) The method of recording or measuring groundwater production as prescribed under Rule 5; and
  - 3) All other information requested by the District in the reporting form and mechanism described under Rule 5.

- c) Reports may be submitted to the District each year. If there is a good faith belief that a Well Owner is not compliant with Rule 5.2, the District may request a Production Report from the Well Owner, using a form developed by the District for such purpose.
- d) Meter readings or readings from alternative measuring methods for annual water use must be recorded prior to January 15 of each year.
- e) Upon request by the District, the Well Owner must provide documentation for each Contiguous Acre claimed, that:
  - 1) The acre is owned by the Well Owner;
  - 2) The acre is leased in fee simple by the Well Owner; or
  - 3) The Well Owner has obtained all groundwater production rights for that acre through a groundwater lease or purchase.

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

**6.1. Responsibility to Protect Groundwater Quality**

All Well Owners or Well Operators shall use reasonable diligence and conform to District Rules in order to prevent the pollution or harmful alteration of groundwater in the Aquifers of the District.

**6.2. Responsibility for Well Construction and Management**

- a) Owners shall be responsible for the installation, equipping, operation, maintenance, and closure of their Wells, and all costs associated therein.
- b) All Wells shall be installed, equipped, operated, maintained, and closed consistent with Chapters 1901 and 1902, of the Texas Occupations Code, and Chapter 16 of the Texas Administrative Code, as may be amended, relating to the Texas Department of Licensing and Regulation’s rules on Well drillers and Well pump installers, regardless of whether the Well is required to obtain a permit from the District.
- c) Any existing Well or pump that is altered, re-worked, re-drilled, re-equipped or replaced must be done in compliance with the State standards, regardless of whether the Well Owner is required to obtain a permit from the District.
- d) Well construction and maintenance issues may be investigated by the District.

**6.3. Requirement of Well Construction and Completion Information**

- a) The District requires that complete records be kept of the drilling, equipping, or completing of Wells and the production and use of groundwater.
- b) The District requires that accurate drillers’ logs of Wells be kept and filed with the District in accordance with §36.112, Texas Water Code.

#### **6.4. Open, Uncovered or Deteriorated Wells Prohibited**

- a) Open or uncovered Wells are prohibited.
- b) The District shall adopt a policy for managing Wells under this section. The policy shall include:
  - 1) The latest procedures and rules for properly handling open, uncovered, and Deteriorated Wells as outlined by the Texas Department of Licensing and Regulation and §76.104, Texas Admin Code; and
  - 2) Any action the District is authorized to take under §36.118, Texas Water Code, including but not limited to, the right of District Personnel to mitigate potential Well hazards and the process for which the District may execute a property lien, should expenses occur.

#### **6.5. Right to Inspect and Test Wells and Gather Information**

- a) District Personnel are entitled to enter any public or private property within the District's boundaries at any reasonable time to carry out technical and other routine investigations necessary for the implementation of the District Rules, or for certain studies beneficial to the District's purposes.
- b) Inhibiting or prohibiting access to District Personnel attempting to conduct an investigation under District Rules constitutes a violation of District Rules and subjects the Person inhibiting or prohibiting access, as Well as any other Person authorizing or allowing such action, to penalties allowed in §36.102, Texas Water Code.
- c) An application for a permit may be suspended or cancelled by the Board if the Applicant refuses to grant District Personnel access to real property to gather information necessary to complete an application.
- d) The operation of any Well may be enjoined by the Board immediately upon the refusal to allow the gathering of information as provided above from such Well.

#### **6.6. Sealing Wells**

- a) The District may seal Wells that are prohibited from withdrawing groundwater by District Rules or Board order when the Board determines that such action is:
  - 1) Reasonably necessary to assure that a Well is not operated in violation of District Rules or Board orders, and
  - 2) The Well Owner has failed to take corrective action following notice from the District.
- b) A Well may be sealed when:
  - 1) No application has been made for a Permit to drill a new Well;
  - 2) Misrepresentations have been made by the Well Owner, orally or in writing, regarding the Well;
  - 3) The Well Owner has violated any provision of the State Law or District Rules;

- 4) It is operated at a higher rate of production than the maximum Allowable Production Rate granted for the Well;
- 5) The Well was not drilled within ten (10) yards of the Proposed Well Site specified in the Permit Application; or
- 6) The Board has denied, cancelled, or revoked a Permit.
- c) The Well may be sealed by physical means, including plugging or rendering inoperable, and tagged to indicate that the Well has been sealed by order of the District.
- d) The District may recover costs incurred for sealing a Well under this rule from the Well Owner.
- e) Other appropriate action may be taken as necessary to preclude operation of the Well or to identify unauthorized operation of the Well.
- f) Tampering with, altering, damaging, or removing the seal of a sealed Well or in any other way violating the integrity of the seal or pumping groundwater from a Well that has been sealed constitutes a violation of District Rules and subjects the Person performing that action, as well as, any Well Owner who authorizes or allows that action, to such penalties as provided by state law and District Rules.
- g) The Well Owner may appeal the decision of the District to seal the Well by filing a written request for a hearing before the Board, in which case the Board will hear the Well Owner's appeal at the next regular Board meeting for which notice has not already been published.
- h) The Well Owner may also take corrective action to address the cause for which the District sealed the Well and thereafter request the District to remove the seal.

## **RULE 7: CONTESTED CASE HEARING PROCEDURES**

### **7.1. Applicability**

Contested case hearings may be requested in connection with Permits and Permit Applications.

### **7.2. Processing Applications; Determination of Administrative Completeness**

- a) Completeness of a Permit Application.
  - 1) A Permit Application shall be considered Administratively Complete if it includes:
    - i. All required information;
    - ii. Is signed;
    - iii. Is accompanied by payment of all applicable fees, including any penalties or past due fees; and
    - iv. Includes any maps, documents, or supplementary information requested within the District Rules or by the Board or District Personnel.
  - 2) A determination of Administrative Completeness will be made by the General Manager.
- b) Action on Incomplete Applications.

- 1) The District will not take action on an application that is not Administratively Complete or has not proceeded in a manner consistent with District Rules.
  - 2) An application may be rejected as not being Administratively Complete if the District finds that substantive information required by the application or District Personnel is missing, false, or incorrect.
  - 3) Incomplete Permit Applications will be returned to the Applicant with a list of deficiencies and may be reconsidered once the deficiencies are corrected.
- c) Action on Administratively Complete Applications.
- 1) Within 60 days of receiving an Administratively Complete Permit Application, the General Manager will schedule the Permit Applications for a public hearing, and shall publish notice of the public hearing in accordance with District Rules.

### **7.3. Procedural Options Available to Applicants**

- a) Applicants filing applications subject to a contested case hearing may respond to the proposed action of the General Manager in the following manner:
  - 1) Not filing a notice of request for contested case hearing and:
    - i. If the Applicant agrees with the proposed action, and no other affected Person requests a contested case hearing, and the matter will be taken directly to the Board for final action as an uncontested matter; or
    - ii. If the Applicant disagrees with the proposed action, and no other affected Person requests a contested case hearing, the Applicant may offer to settle the matter.
  - 2) If the matter is settled, the application may be taken directly to the Board for final action.
  - 3) If the matter is unable to be settled, the application may be taken directly to the Board for final action as a contested matter, although one not referred to contested case hearing.
  - 4) The Applicant, General Manager, and other affected Persons may present their respective positions to the Board and allow the Board to take final action at the Board meeting without a contested case hearing. Filing a notice of request for contested case hearing.
- b) The Board will process a protest against an application by first determining if the protestant is entitled to a contested case hearing. In the event a protest is filed and approved, any settlement under one of the alternatives in Subsection (a) requires the consent of the protestant.
- c) Persons have a personal justiciable interest in and are entitled to a contested case hearing on applicable applications if that Person owns Registered or Permitted Well that may be adversely impacted if the protested application is granted.
- d) Applicants choosing not to file a request for a contested case hearing and instead pursue one of the alternatives in Subsection (a), waive any right to a contested case hearing upon the expiration of the filing deadline.



- e) The Board is not bound by a settlement agreed to by the parties.

#### **7.4. Requests for Contested Case Hearing**

- a) A request for a contested case hearing or a protest against an application must be in writing and be filed before the end of the public hearing on that application for which notice was properly provided.
- b) A contested case hearing request must substantially comply with the following:
  - 1) Give the name, address, daytime telephone number, and electronic mail of the Person filing the request. If the request is made by a corporation, partnership, or other business entity, the request must identify the entity and one Person by name who shall be responsible for receiving all official communications and documents for the entity;
  - 2) State the basis upon which the Person is entitled to a contested case hearing;
  - 3) State the issues the requestor or protestant wishes to contest;
  - 4) State whether the Person requesting the contested case hearing is the Applicant for that permit or an Applicant for or holder of another groundwater withdrawal permit.
  - 5) Request a contested case hearing;
  - 6) Provide any other information requested in the notice of proposed action and technical summary; and
  - 7) Be verified by an affidavit.
- c) Where a request for a contested case hearing is filed by a Person other than the Applicant, a copy of that request must be served on the Applicant at or before the time the request is filed. The request shall include a certificate indicating the date and manner of service and the name and address of all Persons served.
- d) If a Person is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

#### **7.5. Processing of Hearing Requests**

- a) After a hearing request is timely filed, District Personnel will schedule a preliminary hearing to consider the request.
- b) At least 20 days prior to the preliminary hearing, District Personnel will provide notice to the Applicant, General Manager, and any Persons who timely filed a hearing request.
- c) Affected Persons may submit a written response to the hearing request no later than ten (10) days before a Board meeting at which the Board will evaluate that request.
- d) Responses must be filed with the District and served on the General Manager, the Applicant, and any other Persons who timely filed a hearing request in connection with that matter.
- e) The Person requesting a hearing may submit a written reply to a response no later than five (5) days before the scheduled Board meeting at which the Board will evaluate the hearing request.

- f) All replies shall be filed with the District and served on the same day on the General Manager, the Applicant, and any other Person who timely filed a hearing request.
- g) The Board may refer the hearing request to the State Office of Administrative Hearings (SOAH) instead of scheduling the hearing before the Board.
- h) Following the hearing, SOAH will provide a proposal for decision to the Board of Directors for action by the Board.

#### **7.6. Action by Board**

- a) The determination of whether a hearing request should be granted is not a contested case hearing.
- b) The Board will evaluate the hearing request at a regularly scheduled meeting of the Board and may determine that the Person requesting the hearing:
  - 1) Does not have a personal justiciable interest related to the application and deny the hearing request; or
  - 2) Has a personal justiciable interest relating to the application and schedule the application to a contested case hearing.
- c) If the Board grants the request for a contested case hearing, the Board shall assign a hearings examiner or delegate the matter to SOAH. The hearings examiner shall schedule a preliminary hearing and evidentiary hearing.
- d) At least twenty-one (21) days after the preliminary hearing, and following the evidentiary hearing, prepare a proposal for decision including proposed findings of fact and conclusions of law, and transmit that proposal to the Board.
- e) The Board shall schedule a final hearing where it will consider the evidence and testimony presented during the evidentiary hearing and the hearings examiner's proposal for decision.
- f) Following the final hearing, the Board may:
  - 1) Grant the Permit;
  - 2) Grant the Permit with conditions; or
  - 3) Deny the Permit Application.

#### **7.7. Delegation to State Office of Administrative Hearings (SOAH)**

- a) By order, the Board may delegate to SOAH the authority to conduct hearings designated by the Board.
- b) If the Board refers a contested case hearing to SOAH, then the applicable rules of practice and procedure of SOAH, Chapter 155, Texas Administrative Code, (1 Texas Administration Code Ch. 155) govern any contested case hearing of the District, as supplemented by this subchapter.

- c) If the Board refers a contested case hearing to SOAH, the administrative law judge who conducts the contested case hearing shall serve as the hearings examiner and consider applicable District Rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.
- d) If the Board refers a contested case hearing to SOAH, the District may not attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.
- e) If requested by the Applicant or other party to a contested case, a District shall contract with the SOAH to conduct the hearing.
  - 1) The party must file such a request not later than the fourteenth (14<sup>th</sup>) day before the date the evidentiary hearing is scheduled to begin.
  - 2) The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by SOAH.
  - 3) The party requesting the hearing before the SOAH shall pay all costs associated with the contract for the hearing, and shall, before the hearing begins, deposit with the District an amount sufficient to pay the contract amount.
  - 4) At the conclusion of the hearing, the District shall refund any excess money to the paying party.

#### **7.8. Conducting a Contested Case Hearing by SOAH**

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

#### **7.9. Service of Documents**

- a) For any document filed with the District or the hearings examiner in a contested case, the Person filing that document must serve a copy on all parties at or before the time that the request is filed.
- b) A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each Person served. The District may

authorize a document to be filed without a certificate of service but will require the certificate be served within three days thereafter.

#### **7.10. Continuances**

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

#### **7.11. Designation of Parties**

- a) The following are parties in all contested cases:
  - 1) The General Manager;
  - 2) The Applicant; and
  - 3) A Person who is granted a contested case hearing by Board action.

#### **7.12. Discovery**

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

#### **7.13. Expenses of Witness or Deponent**

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

#### **7.14. Evidentiary Matters**

- a) Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.
- b) The rules of privilege recognized by law shall be given effect.
- c) An objection to an evidentiary offer may be made and shall be noted in the record.
- d) Evidence may be received in writing if:

- 1) It will expedite the hearing; and
  - 2) The interests of the parties will not be substantially prejudiced.
- e) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.
  - f) A party may conduct cross-examination required for a full and true disclosure of the facts.
  - g) Witnesses may be sworn and their testimony taken under oath.
  - h) Official notice may be taken of:
    - 1) All facts that are judicially cognizable; and
    - 2) Generally recognized facts within the area of the District's specialized knowledge.
  - i) 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 District Personnel memoranda or information.
  - j) Each party is entitled to an opportunity to contest material that is officially noticed.
  - k) The special skills or knowledge of District Personnel may be used in evaluating the evidence.

#### **7.15. Depositions and Subpoenas**

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

- 3) The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.
- e) In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the District will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers, or other objects that may be necessary or proper for the purpose of the proceeding.

#### **7.16. Ex-Parte Communications**

- a) For applications for which there is a right to a contested case hearing, a member of the Board may not, at any time after the application has been filed and before the Board has taken final action, communicate, directly or indirectly, about any issue of fact or law with any representative of the District or other designated party to the application, except on notice and opportunity for all parties to participate.
- b) Subsection (a) does not apply if:
  - 1) The Board member abstains from voting on a matter in which he or she engaged in ex-parte communications;
  - 2) The communications are by and between members of the Board consistent with the Texas Open Meetings Act;
  - 3) The communications are with District Personnel who have not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the District Personnel in evaluating the evidence; or
  - 4) The communications are with legal counsel representing the Board of Directors.

#### **7.17. Remand to Board**

- a) A hearings examiner may remand an application to the Board as follows:
  - 1) All timely hearing requests have been withdrawn;
  - 2) All parties to a contested case reach a settlement so that no facts or issues remain controverted; or
  - 3) The party or parties requesting the hearing defaults.
- b) After remand, the application will be uncontested, and the Applicant will either be deemed to have agreed to the action proposed by the General Manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration. District will set the application for consideration at a Board meeting.

#### **7.18. Informal Dispositions and Alternative Dispute Resolution**

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

- 1) Stipulation;
  - 2) Agreed settlement;
  - 3) Consent order; or
  - 4) Default.
- b) The hearings examiner may require the parties enter into mediation or other alternative dispute resolution process. The hearings examiner may also determine how the costs of the alternative dispute procedure shall be apportioned among the parties, appoint an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

#### **7.19. Certified Questions**

- a) At any time during a contested case proceeding, on a motion by a party or on the hearings examiner's own motion, the hearings examiner may certify a question to the Board.
- b) Issues regarding District policy, jurisdiction, or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are appropriate for certification.
- c) Policy questions for certification purposes include, but are not limited to:
  - 1) The District's interpretation of its rules and applicable statutes;
  - 2) The portion of the Act, the District rules, or other statutes that are applicable to a proceeding; and
  - 3) Whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
- d) If a question is certified, the hearings examiner shall submit the certified issue to the District:
  - 1) District Personnel will place the certified issue on the agenda of a meeting of the Board.
  - 2) The District will give the hearings examiner and parties 30-day notice of the meeting at which the certified question will be considered.
  - 3) Within ten days after the certified question is filed with the District, parties to the proceeding may file briefs. Within ten days of the filing of such briefs, parties may file responses.
  - 4) Briefs and responses shall be filed with the District with copies served on the hearings examiner.
  - 5) The District will provide copies of the certified questions and any briefs and responses to the Board.
  - 6) 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.
- e) The Board will take action and issue a written decision on the certified issue and provide copies to the parties and the hearings examiner. A decision on a certified issue is not subject to a

motion for rehearing, appeal, or judicial review prior to the issuance of the Board's final decision in the proceeding.

#### **7.20. Scheduling of a Meeting of the Board**

- a) After receiving the proposal for decision or other disposition from the hearing examiner, District Personnel shall schedule the presentation of the proposal to the Board.
  - 1) The District shall provide ten (10) day notice to the parties of the date of the final hearing before the Board at which the proposal will be presented and considered.
  - 2) The Board may reschedule the presentation of the proposal.
  - 3) The District will send notice of the rescheduled meeting date to the parties no later than ten (10) days before the rescheduled meeting.
- b) Any party to the contested case hearing may make an oral presentation at the Board meeting in which the proposal for decision in that case is presented to the Board.
- c) On the written request of a party to a contested case, the oral proceedings before the Board at which the proposal for decision is presented and oral presentations are made, may be transcribed by a court reporter.
  - 1) A party that desires a transcript of the proceedings shall bear the cost, or the costs will be equally divided between all parties requesting a transcript.
  - 2) If the District desires a transcript, it will bear the costs.

#### **7.21. Reopening the Record**

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

#### **7.22. Decision**

- a) The decision, if adverse to any party, must be in writing or stated in the record and will include findings of fact and conclusions of law separately stated.
- b) Findings of fact may be based only on the evidence and on matters that are officially noticed. If set forth in statutory language, findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- c) If a party submits proposed findings of fact, the decision will include a ruling on each proposed finding.
- d) If a contested case is presided over by a majority of the Board, then the Board's decision shall be rendered not later than the 60th day after the date on which the hearing is finally closed. If



the Board refers a contested case to SOAH, then the Board's decision will be rendered no more than 120 days after the date that the proposal for decision is presented at a final hearing, unless the Board determines that there is good cause for extending the deadline.

### **7.23. Notification of Decisions**

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

### **7.24. Motion for Rehearing**

- a) For any matter considered during a contested case hearing, only a party to the contested case proceeding may file a motion for rehearing.
- b) The motion shall be filed with the District by no later than the 20th day after the date of the Board's decision.
- c) On or before the date of filing of a motion for rehearing, the party filing the motion shall mail or deliver a copy of the motion to all parties with certification of service furnished to the District.
- d) The motion shall contain:
  - 1) The name and representative capacity of the Person filing the motion;
  - 2) The style and official docket number assigned by the hearings examiner;
  - 3) The date of the decision or order; and
  - 4) The grounds for the motion, including a concise statement of each allegation of error.
- e) Only a party to the contested case proceeding may reply to a motion for rehearing.
  - 1) A reply must be filed with the District within 20 days after the date the motion for rehearing is filed.
- f) The motion for rehearing will be scheduled for consideration during a Board meeting.
- g) A motion for rehearing may be granted in whole or in part.
- h) When a motion for rehearing is granted, the decision or order is nullified.
- i) The Board may reopen the hearing to the extent it deems necessary.
- j) If the Board grants a motion for rehearing, District Personnel shall schedule the rehearing not later than the 45th day after the date the motion is granted.
- k) Thereafter, the Board shall render a decision or order.
- l) The failure of the Board to grant or deny a motion for rehearing before the ninety-first (91<sup>st</sup>) day after the date the motion is submitted constitutes a denial of the motion by operation of law.

### **7.25. Agreement to Modify Time Limits**

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

### **7.26. Decision Final and Appealable**

- a) In the absence of a timely motion for rehearing, a decision or order of the Board is final on the expiration of the period for filing a motion for rehearing. If a party files a timely motion for rehearing, a decision or order of the Board is final and appealable on the date:
  - 1) The Board denies the motion for rehearing, including a denial by operation of law; or
  - 2) The Board renders a written decision after rehearing.

### **7.27. Appeal of Final Decision**

- a) Not later than the 60th day after the date on which the decision became final and appealable, parties affected by the final decision of the Board in a contested case may file suit under § 36.251, Texas Water Code, to appeal the decision.
- b) A party may not file suit if a motion for rehearing was not timely filed.
- c) The record in a contested case hearing shall include the following:
  - 1) All pleadings, motions and intermediate rulings;
  - 2) Evidence received or considered;
  - 3) A statement of matters officially noticed;
  - 4) Questions and offers of proof, objections, and rulings on them;
  - 5) Summaries of the results of any conferences held before or during the hearing;
  - 6) Proposed findings, exceptions and briefs;
  - 7) Any decision, opinion or report issued by the hearings examiner;
  - 8) Pre-filed testimony;
  - 9) All memoranda or data submitted to or considered by the hearings examiner; and
  - 10) The final order and all interlocutory orders.

### **7.28. Costs of Record on Appeal**

- a) 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.
- b) A charge imposed is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

## **RULE 8: RULEMAKING HEARING PROCEDURES**

### **8.1. Purpose of Rulemaking Hearings**

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

### **8.2. Notice**

- a) Not later than the twentieth (20<sup>th</sup>) day before the date of a rulemaking hearing, the General Manager or Board shall
  - 1) Post notice in a place readily accessible to the public at the District's principal office,
  - 2) Provide notice to the county clerk of each county in the District,
  - 3) Publish notice in one or more newspapers of general circulation in the county or counties in which the District is located,
  - 4) Provide notice by mail, facsimile, or electronic mail to any Person who has requested notice under Subsection (d), and
  - 5) Make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy of a generally accessible internet website.
- b) The notice provided under Subsection (a) must include:
  - 1) The time, date, and location of the rulemaking hearing,
  - 2) A brief explanation of the subject of the rulemaking hearing, and
  - 3) A location or Internet site at which a copy of the proposed rules may be reviewed or copied.
- c) Failure to provide notice under Subsection (a)(4) does not invalidate an action taken by the District at a rulemaking hearing.
- d) A Person may submit to the District a written request for notice of a rulemaking hearing.
  - 1) A request is effective for the remainder of the calendar year in which the request is received by the District.
- e) To receive notice of a rulemaking hearing in a later year, a Person must submit a new request.
- f) An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or electronic mail to the Person in accordance with the information provided by the Person is proof that notice was provided by the District.

### 8.3. Hearing Procedures

- a) The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible.
- b) Comments may be submitted orally at the hearing or in writing at the sole discretion of the presiding officer.
- c) The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.
- d) The District may use an informal conference or consultation to obtain opinions and advice of interested Persons about contemplated rules and may appoint advisory committees of experts, interested Persons, or public representatives to advise the District about contemplated rules.
- e) The District may require each Person who participates in a rulemaking hearing to submit a hearing registration form stating the Person's name and address, whom the Person represents, and if the Person is not at the hearing in the Person's individual capacity.
- f) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

### 8.4. Emergency Rules

- a) A Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board:
  - 1) Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than twenty (20) days notice and
  - 2) Prepares a written statement of the reasons for its finding under Subsection (a)(1).
- b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than ninety (90) days.
- c) If notice of a hearing on the final rule is given no later than the ninetieth (90<sup>th</sup>) day after the date the rule is adopted, the rule is effective for an additional ninety (90) days.
- d) A District Rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Texas Government Code.

### 8.5. Petition for Rulemaking

- a) **A person with a real property interest in groundwater in the District may file a petition with the District to request the adoption of a rule.**
- b) Petitions must be submitted in writing to the District office and must comply with the following requirements:

- 1) Each rule requested must be submitted by a separate petition.
  - 2) Each petition must be signed, and state the name and address of each person signing the petition.
  - 3) Each petition must include:
    - a. **A brief description of the petitioner's real property interest in groundwater in the District;**
    - b. **A brief explanation of the proposed rule;**
    - c. **The text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any; and**
    - d. **An allegation of injury or inequity that could result from the failure to adopt the proposed rule.**
- c) **The Board may reject any petition for failure to comply with the requirements of Subsection b) of this section and shall provide notice to the petitioner of the reason for the rejection.**
- d) **Within 90 days after the submission of a petition that complies with this section, the Board shall either deny the petition, stating its reasons for denial in the minutes of the Board meeting or in a letter providing a written explanation to the petitioner, or initiate rulemaking proceedings as provided by Section 36,101, Water Code.**