

**LOST PINES GROUNDWATER CONSERVATION DISTRICT
RULES AND REGULATIONS**

SECTION 1. DEFINITIONS AND MATTERS OF GENERAL APPLICABILITY

Rule 1.1 Definition of Terms.

In the administration of its duties, the Lost Pines Groundwater Conservation District follows the definitions of terms set forth in Chapter 36, Texas Water Code, with modifications, and the definitions as follows:

“Acre-foot” means the amount of water necessary to cover one acre of land to the depth of one foot, or 325,851 U.S. gallons of water.

“Additional production” means the amount of water produced from an excluded well in excess of that amount produced under permit by the Railroad Commission of Texas.

“Affected person” means, for any matter before the district, 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 affected by the matter before the district, not including a person who has an interest common to members of the public.

"Agricultural crop" means food or fiber commodities grown for resale or commercial purposes that provide food, clothing, animal feed, or other products.

“Agricultural use” or purposes means the use of groundwater for irrigation to produce an agricultural crop.

“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, and also includes subdivision(s) of an aquifer.

“Beneficial use” or “beneficial purpose” means use of groundwater for:

1. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial or recreational purposes;
2. exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals;
or
3. any other purpose that is useful and beneficial to the users that does not commit or result in waste as that term is defined in these rules.

“Board” means the Board of Directors of the Lost Pines Groundwater Conservation District.

“Casing” means a tubular, water tight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the groundwaters to their zones of origin and to prevent the entrance of surface pollutants.

“Cement” means a neat Portland or construction cement mixture of not more than seven gallons of water per ninety-four (94) pound sack of dry cement, creating a cement slurry in which bentonite, gypsum, or other additives may be included.

“Deteriorated well” means a well, the condition of which will cause, or is potentially likely to cause, pollution of any water in the district.

“Director” means a person appointed by the county judge of either Bastrop or Lee counties, or by the board in the case of a resignation, to be a member of the board and who is qualified and has taken the Constitutional oath of office.

“District” means the Lost Pines Groundwater Conservation District as authorized under Senate Bill 1911 (Acts 1999, 76th Legis., R.S., ch. 1331, p. 4536), ratified under House Bill 2432 (Acts 2001, 77th Legis., R.S., Ch. 1323, p. 3251) and confirmed at the November 2002 General Election.

“District office” means the office of the district, which is designated and may be changed from time to time by resolution of the board.

“Domestic use” means the use of groundwater by an individual or a household to support essential domestic activity. “Essential domestic activity” includes water for use inside the home; watering domestic animals; to protect foundations; and recreation only for swimming pools. The term does not include water use activities for which consideration is given or for which the product is to be sold; irrigation of lawns and landscaped areas; filling or refilling ponds, lakes, tanks, reservoirs or other confinements; and non-closed system geothermal heating/cooling systems.

“Drilling registration” means the registration required for an exempt well that is to be drilled.

“Effective date of these rules” means June 21, 2000.

“Export” means the same as groundwater produced within the district that is transported or transferred outside of district boundaries pursuant to Sec. 36.122 of the Texas Water Code.

“Gpm.” means gallons per minute.

“Groundwater” means water percolating below the surface of the earth.

“Groundwater reservoir” means a specific subsurface water-bearing stratum.

“Hearing body” means the board, any committee of the board, or a hearing examiner at any hearing held under the authority of law.

“Hearing examiner” means the person appointed by the board of directors to conduct a hearing or other proceeding.

“Landowner” means the person who holds possessory rights to the land surface or the groundwater.

“Municipal use” means the use of groundwater through public water supply systems authorized by the State of Texas and includes use of groundwater from private, individual wells for non-agricultural purposes such as irrigation of golf courses, common areas or community landscaping and for filling and maintaining water features.

“New well application” means an application for a permit for a water well that has not been drilled.

“Open Meetings law” means Chapter 551, Texas Government Code, as it may be amended from time to time.

“Open Records law” means Chapter 552, Texas Government Code, also called the “Public Information law,” as it may be amended from time to time.

“Party” means a person who is an automatic participant in a proceeding before the district or a person who is an affected person as defined under these rules and who has been designated as a participant in the proceeding before the district.

“Person” means an individual, corporation, limited liability company, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

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

“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.

“Quorum” means a majority of the members of the board of directors.

“Registration” means the recordation of a certificate issued by the district for a well that is exempt from an operating permit.

“Rule” or “rules” mean the rules and regulations of the district.

“Texas Rules of Civil Procedure” and “Texas Rules of Evidence” mean the civil procedure and evidence rules, as adopted by the Supreme Court of Texas, as amended, and in effect at the time of the action or proceeding. Except as modified by these district rules, the rights, duties and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure and the Texas Rules of Evidence are the same as a court acting under those rules, without a jury.

Types of permits:

“Drilling permit” means a permit issued by the district for a water well to be drilled, including test wells, or an existing well that is to be re-drilled.

“Export permit” means a permit issued by the district for a water well, allowing groundwater withdrawn from the well to be transferred or transported outside of the district’s boundaries.

“Operating permit” means a permit issued by the district for a water well, allowing groundwater to be withdrawn from the water well.

Types of wells:

“Additional production well” means a well that is otherwise excluded by law from regulation by the district that is also used for additional purposes regulated by the district.

“Artesian well” means a water well completed in the confined portion of an aquifer such that, when properly cased, water will rise in the well by natural pressure above the base of the overlying impermeable stratum.

"De-watering well" or “depressurizing well” means a well used to remove water from a construction site or an excavation, or to relieve hydrostatic uplift on permanent structures. De-watering wells may include exempt, non-exempt, and excluded wells.

“Exempt well” means a well, which may be either a new or an existing well, that is exempt under Rule 8.6 or under the Texas Water Code, and is not required to have an operating permit. Existing exempt wells may be registered with the district; new exempt wells must be registered with the district.

“Existing well” means a well that is in existence or for which drilling has commenced as of June 21, 2000.

“Excluded well” means a well drilled for oil, gas, sulfur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluid or for any purpose, under permits issued by the Railroad Commission of Texas.

“Injection well” means a well into which fluids are injected.

“Monitoring well” means a well installed to measure some property of the groundwater or the aquifer that it penetrates.

“New well” means a well not in existence or for which drilling has not commenced on the day of adoption of these rules.

“Non-exempt well” means either an existing or a new well subject to these rules.

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

(a) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural purposes, gardening, domestic use, stock raising purposes, or other beneficial purposes;

(b) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

(c) escape of groundwater from a groundwater reservoir to any other reservoir or geologic stratum that does not contain groundwater;

(d) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(e) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well

unless such discharge is authorized by permit, rule, or other order issued by the Texas Commission on Environmental Quality, its predecessors or successors, under Chapter 26, Texas Water Code;

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

(g) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Texas Water Code;

(h) groundwater that is discharged into a watercourse for transit to another location when the losses in transit exceed 20%; or

(i) operating a deteriorated well.

"Water meter" or "water measuring device" for large volume users means a water flow measuring device that can within +/- 10% accurately record the amount of groundwater produced during a measured time.

"Well" means any facility, device or method used to withdraw or sample groundwater from or observe the water level in a groundwater reservoir in the district.

"Well operator" means the person who operates a well or a water distribution system supplied by a well.

"Well owner" means the person who owns a possessory interest in one or more of the following:

- (a) a well;
- (b) the land upon which a well is located or to be located; or,
- (c) the beneficial use of the groundwater.

"Well system" means a well or group of wells tied to the same distribution system.

"Withdraw" means the act of extracting or producing groundwater by pumping or some other method.

Rule 1.2 Purpose of rules; Mission Statement.

These rules are adopted pursuant to the authority of Section 36.101, Texas Water Code, for the purpose of conserving, preserving, protecting, and recharging groundwater in the district, and these rules are adopted under the district's statutory authority to prevent waste and to protect the rights of owners of interests in groundwater. In fulfilling the stated purpose of these rules, the

board will endeavor to maintain the aquifers in the district on a sustainable basis. For the purposes of these rules, “sustainability” is defined as development and use of groundwater in a manner that can be maintained in perpetuity.

Rule 1.3 Use and effect of rules.

These rules are used by the district in the exercise of the powers conferred by law and in the accomplishment of the purposes of the law creating the district. They may not be construed as a limitation or restriction on the exercise of any discretion, nor may they be construed to deprive the district or board of the exercise of any powers, duties or jurisdiction conferred by law, nor may they be construed to limit or to restrict the amount and the character of data or information that may be required to be collected for the proper administration of the law creating the district.

Rule 1.4 Amending of rules.

The board may, following notice and hearing, amend these rules or adopt new rules from time to time.

Rule 1.5 Headings and captions.

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

Rule 1.6 Construction.

A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the Texas Water Code. Construction of words and phrases are governed by the Code Construction Act, Chapter 311, Subchapter B, Texas Government Code. Whenever a singular noun is used, it may refer to a plural; whenever a plural noun is used, it may refer to a singular.

Rule 1.7 Methods of service under the rules.

Except as otherwise provided in these rules, any notice or document required by these rules to be served or delivered may be delivered to the recipient, or the recipient’s authorized representative, in person, by agent, by courier receipted delivery, by certified or registered mail sent to recipient’s last known address, or by telephonic document transfer to the recipient’s current telecopier number and shall be accomplished by 5:00 o’clock p.m. of the date on which it is due. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer commencing after 5:00 o’clock p.m. shall be deemed complete 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 period of time after service, three days will be added to the prescribed period. Where service by other methods has proved unsuccessful, the service may be complete upon publication of the notice in a newspaper of general circulation in the district, or by such method as the hearing body may provide.

Rule 1.8 Severability.

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

SECTION 2. BOARD OF DIRECTORS

Rule 2.1 Purpose of the board.

The board is created to determine policy with respect to and to regulate the withdrawal of groundwater within the boundaries of the district, and to exercise its rights, powers and duties in a manner that will effectively and expeditiously accomplish the purposes of the law creating the district, Chapter 36, Texas Water Code, and the district's mission statement. The board's responsibilities include, but are not limited to, adoption and enforcement of reasonable rules, policies, permits, and orders.

Rule 2.2 Board structure, officers.

The board consists of appointed members, qualified as required by law. Each year at its regular January meeting, and if there is no January meeting, at its next regular meeting, the board will select one of its members to serve as president to preside over board meetings and proceedings, one to serve as vice-president to preside in the absence of the president, and one to serve as secretary-treasurer to keep a true and correct account of all meetings and proceedings of the board. The board may appoint an assistant secretary to assist the secretary-treasurer. Members and officers serve until their successors are appointed and qualified to hold the office. In the event of a vacancy in an office of the district, the board shall select out of its members a person to serve out the remaining term of the office. In the absence of a general manager, the president shall exercise all of the duties delegated to the general manager under these rules. Business of the district will be conducted when a quorum is present.

Rule 2.3 Meetings.

The board will hold a regular meeting each month on a day and place that the board may establish from time to time by resolution. At the request of the president, or by written request of at least three members, the board may hold special meetings. All board meetings will be held in accordance with the Open Meetings law.

Rule 2.4 Committees.

The president may establish committees for formulation of policy recommendations to the board, and appoint the chair and membership of the committees, which may be derived from the board or outside of the board. Committee members serve at the pleasure of the president.

Rule 2.5 Ex parte communications.

(a) Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested case 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 communicate ex parte with other members of the board and staff, if a quorum is not present.

(b) The hearing body may not communicate, directly or indirectly, in connection with any issue of fact or law with any district employee, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with district employees not directly involved in the hearing to utilize the special skills and knowledge of the district in evaluating the evidence.

SECTION 3. GENERAL MANAGER

Rule 3.1 General manager.

The board may employ a person to be the general manager, who is the chief administrative officer of the district. The general manager shall have full authority to manage and to operate the affairs of the district, subject only to the direction given by the board through policies and orders adopted by it. At least annually, the board shall determine the compensation to be paid to the general manager and review the actions and performance of the general manager to determine how the general manager has fulfilled his responsibilities and whether additional responsibilities should be delegated to him. The general manager, with the approval of the board, may employ all persons necessary for the proper handling of the business and operation of the district.

Rule 3.2 Delegation of authority.

The general manager may delegate duties as may be necessary to effectively and expeditiously accomplish those duties, provided that no such delegation may relieve the general manager from responsibilities under the Texas Water Code, the act creating the district, and the policies, orders and permits promulgated by the board.

SECTION 4. DISTRICT PUBLIC RECORDS, CERTIFIED COPIES AND OFFICE

Rule 4.1 Minutes and records of the district.

All documents, reports, records, and minutes of the district are available for public inspection and copying in accordance with the Open Records law. Upon written application of any person, the district will furnish copies of its public records. Persons who are furnished copies may be assessed a copying charge, pursuant to policies established by the board. A list of charges for copies will be furnished by the district.

Rule 4.2 Certified copies.

Requests for certified copies must be in writing. Certified copies may be made by the secretary, assistant secretary or the general manager. Persons furnished with certified copies may be assessed a certification charge, in addition to the copying charge, pursuant to policies established by the board.

Rule 4.3 Official office and office hours.

The board, by resolution, shall establish an official office for the district, and the office will maintain regular business hours.

SECTION 5. DISTANCE AND SPACING REQUIREMENTS

Rule 5.1 Required distance from property lines and spacing from other wells.

Except as provided in Rule 5.2, a new well may not be drilled within 50 feet from the property line of any adjoining landowner. Non-exempt and non-excluded wells completed in the Carrizo or Simsboro sands shall be spaced as follows from any other well completed in the same sands:

Wells capable of producing up to and including 500 gpm, minimum spacing of 1,500 feet;

Wells capable of producing at a rate in excess of 500 gpm up to and including 1,000 gpm, minimum spacing of 2,500 feet; and

Wells capable of producing in excess of 1,000 gpm, minimum spacing of 5,000 feet.

This spacing may be reduced or increased by the board upon demonstration either that such spacing is overly protective of neighboring wells or is insufficiently protective of neighboring wells. All other non-excluded wells completed in other aquifers in the district will be considered on a case by case basis.

Rule 5.2 Exceptions to distance and spacing requirements.

(a) Provided that an applicant presents waivers signed by the adjoining landowner(s), stating that they have no objection to the proposed location of the well site, the minimum distance from the property line requirements will not apply to the new proposed well location, subject to the right of the board to limit production of the well to prevent or minimize injury to adjoining landowners or the aquifer.

(b) Provided that an applicant shows good cause why a new well should be allowed to be drilled closer than the required minimum distance of 50 feet from the property line of the adjoining landowner(s), or closer than the well spacings stated in Rule 5.1, these distance and spacing requirements will be considered during the technical review process and/or the contested case process.

If the board chooses to grant a permit to drill a well that does not meet the distance or spacing requirements, the board may limit the production of the well to prevent or to minimize injury to adjoining landowners or the aquifer.

(c) In addition, the board may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing the distance and spacing

requirements.

Rule 5.3 Requirement for monitoring.

Applications for wells drilled and existing wells when reworked, equipped to pump more than 200 acre-feet per year, or the equivalent on a daily basis, shall include provisions for monitoring, on as frequent a basis as reasonably possible, water levels in the aquifer from which withdrawals are to be made using one or more existing wells, subject to more detailed orders of the board as set forth in the permit and all applicable rules, including but not limited to Rules 7.3 and 8.3(b)(2)(D). The board may, upon application, exempt an applicant from this rule.

SECTION 6. PRODUCTION LIMITATIONS

Rule 6.1 Maximum allowable production from aquifers in district.

To protect and to assure the sustainability of the water supplies available from the aquifers, enabling all citizens of the district to have access to groundwater to provide for their health, safety and welfare, the district shall consider water levels and water level changes in or associated with a groundwater reservoir or aquifer within the district. The board, by resolution, shall designate one or more wells for the purpose of monitoring and observing the level of water in an aquifer or groundwater reservoir in the district.

Rule 6.2 Areas of depletion and proration orders.

(a) Upon the district being notified that water levels in an aquifer are dropping, the general manager shall conduct an investigation. Before action is taken, the board shall conduct a public hearing to determine the nature and/or the extent of the reduction in the water levels.

(b) At the conclusion of the hearing, the board may, by resolution, define the approximate area of the reduction in the water levels or multiple areas of reduction of water levels.

(c) After adopting, or simultaneous with the adoption of the resolution defining the approximate area of reduction in the water levels, or multiple areas of reduction of water levels, the board may direct that aquifer withdrawals be decreased in the area or areas by persons holding permits from the district.

(d) The board may amend the defined area or areas by expanding it (them) or reducing it (them) and may increase or decrease the withdrawals from the aquifer.

(e) The board shall take into consideration the use of a well in making its determinations.

SECTION 7. ADMINISTRATIVE AND REGULATORY FEES AND DEPOSITS; FILING REPORTS

Rule 7.1 Deposits, filing of state well reports and plugging reports.

(a) Each application for a drilling registration or permit of any type issued by the district must be accompanied by a deposit, in an amount established by the board by resolution, which will be accepted and deposited in the district account by the general manager. The purpose of the deposit is to cover the cost of reviewing an application and processing a permit and to ensure receipt by the district of the information set out herein. Such administrative deposit or fee shall not unreasonably exceed the cost to the district for such administrative acts. The applicant may be required by the board to deposit with the district additional funds if the amount of the original deposit is expended prior to the board's final action on the permit. For a drilling permit application, the fee, less deductions, if any, will be returned to the applicant by the district if: (1) the application is denied; (2) if the application is granted, upon the receipt of the correctly completed state well report; or (3) if the permit location is abandoned without having been drilled or results in a dry hole, upon return and surrender of the permit marked "abandoned" by the applicant, together with a plugging and abandonment report if the well has been drilled. For a drilling registration, the deposit will be returned in whole to the registrant by the district if: (1) the well is not an exempt well and the registration is denied; (2) upon the receipt of the correctly completed state well report; or (3) if the registered location is abandoned without having been drilled or results in a dry hole, upon return and surrender of the drilling registration marked "abandoned" by the applicant, together with a plugging and abandonment report if the well has been drilled, and any other material or information required by the district.

In the event that neither the driller's and completion logs of the well nor the permit marked "abandoned" is returned to the district office within 180 calendar days after the issuance date of the drilling permit or drilling registration, the deposit becomes the property of the district and the drilling permit or drilling registration is deemed cancelled without further action by the board, unless an extension has been granted. Extensions may be granted by the board to the extent of 180 days or less, as the board determines is appropriate.

(b) As an additional fee for administrative acts of the district, after an application for any permit issued by the district has been determined to be administratively complete by the board, the applicant shall deposit with the district an amount of money determined by the board to cover the cost associated with an uncontested or contested hearing regarding the permit application. The amount of the deposit shall be sufficient to pay legal fees, expert fees, court reporter fees, hearing facility rental fees, and other expenses. The remaining deposit balance, if any, is refundable following approval of the permit, disposal of any motions for rehearing, and receipt of anticipated expenses. The applicant may be required by the board to deposit with the district additional funds if the amount of the original deposit is expended prior to the board's final action on the permit.

Rule 7.2 Regulatory fees.

- (a) Regulatory fees shall be established by resolution of the board.
- (b) The district may impose a regulatory export fee of up to 50 percent of the district's regulatory production fee for water exported out of the district.
- (c) Regulatory fees shall be paid to the district on a monthly basis within 15 days after the end of the reporting month. Regulatory fees not paid by 25 days after the end of the reporting month are considered delinquent and the fee payer shall be assessed a late fee of 5 percent of the amount due.
- (d) A regulatory production fee shall be paid to the district for the amount of water actually produced from non-exempt wells under operating permits.
- (e) A regulatory export fee shall be paid to the district for the amount of water actually exported from non-exempt wells under export permits.
- (f) Groundwater from non-exempt wells that is exported from the district under the provisions of Rule 9.2(c) and (d) is not exempt from regulatory export fees.
- (g) An exempt or excluded well as defined in Rules 8.6 and 8.7 is not excused from regulatory fees if the groundwater is exported from the district. The owner of the well shall identify to the district the amount of water exported from the district on a monthly basis and pay a regulatory fee to the district in an amount equal to the regulatory production fee of a non-exempt well plus the regulatory export fee, as defined in Rule 7.2(b).
- (h) An excluded mine well is not excused from regulatory fees if the groundwater is used for municipal purposes or by a public utility or if the groundwater is exported from the district. The owner of the well shall identify to the district the amount of water used for municipal purposes or by a public utility or exported from the district on a monthly basis. The district may impose a regulatory fee equivalent to either the regulatory production fee of a non-exempt well or the regulatory export fee of a non-exempt well as defined in Rule 7.2(b).
- (i) Groundwater that is discharged pursuant to a permit issued by the Texas Commission on Environmental Quality or its predecessors and not sold is not considered to have been exported from the district and is not subject to regulatory fees unless the discharge is part of an over all water export and sale.

Rule 7.3 Filing reports.

- (a) The report referred to by the Texas Department of Licensing and Regulation State Water Well Driller's Board as a "state well report," shall be filed with the district within 30 days from the preparation of the report pertaining to groundwater production, groundwater quality, or aquifer

testing. In the event a well is plugged, the person who plugs the well shall within 30 days after plugging and abandonment is complete, submit a plugging report to the district in accordance with the Rules of the Texas Department of Licensing and Regulation, unless an extension has been granted.

(b) Water levels in monitoring wells designated under these rules shall be reported to the district at the same time as regulatory fees are paid to the district unless provided otherwise in the permit or in a written agreement with the district.

SECTION 8 PERMITS, REGISTRATIONS AND AMENDMENTS

Rule 8.1 Drilling registrations and drilling permits.

(a) After the effective date of these rules, no person shall:

- (1) drill an exempt water well before filing an application for a drilling registration and receiving the registration; or
- (2) drill a non-exempt water well before filing an application for a drilling permit and receiving the drilling permit.

Each original application for a water well drilling registration or drilling permit requires a separate application form. Application forms will be provided by the district and furnished to the applicant upon request.

(b) Contents of an application. An application for a drilling registration or drilling permit shall be in writing and sworn, and shall contain:

- (1) The name and mailing address of the applicant and the name and address of the owner of the land, if different from the applicant, on which the well is to be located;
- (2) If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;
- (3) For exempt wells, a statement regarding the basis for asserting that the well will be exempt under Rule 8.6;
- (4) A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(5) Except for exempt wells, availability of feasible and practicable alternative supplies to the applicant;

(6) Except for exempt wells, the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the district;

(7) Except for exempt wells, the applicant's water conservation plan and, if any subsequent user of the water is a municipality or entity providing retail water services, the water conservation plan of that municipality or entity shall also be provided and a declaration that the applicant will comply with the district's management plan;

(8) The location of the well and the estimated or proposed rate at which water will be withdrawn and where the water is proposed to be used; and,

(9) A well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the district.

(c) The general manager may refer a drilling permit application to the board for consideration and setting of a hearing.

(d) Unless specified otherwise by the board or these rules, and in accordance with Rule 7.1, drilling registrations and drilling permits are effective for a term ending 180 calendar days after the drilling registration or drilling permit is issued by the district, unless an extension is granted by the board for good cause.

(e) A drilling registration or drilling permit application may be changed by the applicant by submitting a written, sworn amendment to the application, calling the attention of the district to the proposed changes. For drilling permit applications, if an amendment is filed, new notice may be required to be given if significant changes are requested.

(f) An individual or entity may mitigate or make emergency repairs to an existing well provided that the mitigation or repair is required by the Railroad Commission of Texas and the mitigation or repair does not violate Rule 10.1.

Rule 8.2 Well Registrations.

(a) This subsection concerns the following types of wells:

(1) wells that are exempt pursuant to Rule 8.6 or the Texas Water Code and were in existence as of June 21, 2000; or

(2) wells that are no longer subject to the rules of the Railroad Commission of Texas, but will

continue to be used, provided they will be exempt wells according to these rules.

All existing water wells exempt under these rules from the requirement of an operating permit may be registered with the district by the well owner or the well operator. If the exempt well is in existence on the effective date of these rules, the well owner or operator may file with the district an application for a certificate of registration. After review and the determination by the general manager that the well is exempt, the owner or operator shall be issued a certificate of registration by the general manager. A registration may be amended by following the procedures for a new registration and identifying the changes requested.

(b) For exempt wells not in existence as of June 21, 2000, the owner shall apply for a drilling registration and request that the well be registered. The application shall include the information set out in Rule 8.1(b). The general manager shall review the drilling registration application and make a preliminary determination on whether the well meets the exemptions provided in Rule 8.6. If the general manager concludes that the applicant seeks a drilling registration for a well that will be exempt under these rules, the general manager shall issue the drilling registration to the applicant. After the well is drilled and upon the filing of the state well report with the district, the general manager shall issue to the owner or operator a certificate of registration.

(c) The state well report (and on abandonment, if drilled, the plugging and abandonment report) shall be filed with the district as provided in Rule 7.3.

(d) The general manager will assist the applicant in registering a well exempt under these rules.

Rule 8.3 General permitting policies and procedures.

(a) Operating Permit Requirement. The well owner or well operator must file a written, sworn application for an operating permit prior to operating any well not otherwise exempt under Rule 8.6 or excluded, unless additional production is obtained from the well. The connection of a water well to any means of distributing the water, whether temporary or permanent, shall be deemed as operating the well. Pumping tests of a well are not deemed operating the well. The operating permit may be approved by the general manager under such terms and conditions as the board shall direct, and the well shall remain permitted until an operating permit term has expired and is no longer required for the well/well system. For non-exempt wells in existence on the effective date of the creation of the district, an application for an operating permit must be filed on or before August 31, 2001.

(b) Operating Permit Applications. Every well shall have a separate application for an operating permit, unless it is an exempt well or an excluded well having no additional production. Each original application for an operating permit requires a separate application. Application forms will be provided by the district and furnished to the applicant upon request. The application shall be in writing, sworn, and provide the following information:

(1) For non-exempt wells in existence on the effective date of these rules, the information provided for drilling permits stated in Rule 8.1, and any additional information requested by the general manager.

(2) For non-exempt wells not in existence on the effective date of these rules:

(A) Any corrections to the information supplied in the drilling permit application;

(B) The date the well was drilled and its location;

(C) The instantaneous (gallons per minute; gpm), daily, and annual rate at which the applicant seeks to pump the well; and,

(D) For wells to be drilled and equipped to produce more than 200 acre-feet per year, or the equivalent on a daily basis, excluding irrigation wells, such information must include, to the extent practical, the transmissivity and storativity of the aquifer from which groundwater is to be withdrawn and also shall include an assessment of the impact on the aquifer of the proposed pumpage. It is expected that these aquifer parameters be determined based on a pumping test of at least twenty-four hours duration. Any observation well used for determining transmissivity and storativity of an aquifer must be sufficiently close to the well being pumped to discern the effects of the pumping well on water levels in the aquifer in accordance with the anticipated transmissivity and storativity of the aquifer and duration of the pumping test. All testing is to be performed under the direction and control of a licensed professional engineer or a licensed professional geoscientist in the State of Texas, who shall affix his or her signature and seal to the test results and assessment of aquifer impact. For recognized well fields, defined as two or more wells operated by the same entity at or within plus thirty percent of the minimum spacing prescribed in Rule 5.1, or as modified through application of Rule 5.2, or as defined by a permit issued by the board, a single aquifer test will be sufficient.

(E) In addition, for wells to be drilled and equipped to produce more than 200 acre-feet per year, or the equivalent on a daily basis, for municipal purposes, the applicant shall provide evidence demonstrating the need for the water to be provided, which demonstration shall include an identification of the geographical area of the proposed service, the population and projected population growth rates for the identified geographical area and either the regulatory or statutory requirement of the applicant to provide water to the identified area or evidence of a legal obligation to provide water service to the identified area, including, but not limited to, a contract to provide water.

(F) Any additional information requested by the board or the general manager

(c) Notice of permit hearing. Once the district has received an original application for a drilling permit or an operating permit for a non-exempt water well and the application is deemed administratively complete, the general manager, with board orders, will prepare a written notice of the application and hearing as provided in Rule 13.2.

(d) Decision and Issuance of Permit. In deciding whether or not to issue a permit, and in setting the terms of the permit, the Board must consider the Texas Water Code and the district rules, and if:

- (1) The application conforms to the Water Code and these rules;
- (2) The impact on the aquifer is consistent with the management plan and the managed available groundwater;
- (3) There is an identified need for the water for the stated beneficial purpose and there will be no waste;
- (4) For applications seeking water for municipal purposes:
 - (A) The geographic area of proposed use is reasonably described;
 - (B) The identified population requires the requested quantity of water or the population projections are reasonable;
 - (C) There is a statutory, regulatory or other legal obligation to supply the municipal water to the population; and,
- (5) There is sufficient water to grant the permit.

(e) Operating Permits, Terms.

- (1) Unless specified otherwise by the Board, except for permits used for agricultural purposes, all operating permits are effective for a five (5) year period from the date a permit is granted, unless changed or revoked, or a different period of time is required by the Texas Water Code.
- (2) Operating permits for wells used solely for agricultural purposes are effective until changed or revoked.

(f) Operating Permit Provisions. The operating permit will contain the name and address of the well owner or operator, the location of the well, the quantity of water and maximum rate at which water may be withdrawn, where the water will be used and the purpose of use of the water, other criteria deemed necessary by the board for the protection of the public health, safety, welfare, conservation, and management of the groundwater resources in the district, and the standard provisions listed in Rule 8.4. The operating permit may also contain provisions relating to the means and methods of transportation of water produced within the district, and any other provisions that the board may direct.

(g) **Aggregation of Withdrawal.** In issuing an operating permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the district. District Rules 5 and 6 will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted for an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production.

(h) **Effect of Acceptance of Permit.** Acceptance of the permit by the person to whom it is issued constitutes acknowledgment by that person and agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions stated in the permit and in these rules.

(i) **Operating permits are not transferable.** In the event the operating permit holder for a well that is producing water as authorized by a then valid permit sells or otherwise transfers the well to another person, the permit holder may file a new application on behalf of the new well owner, which shall have the effect of continuing the authorities granted under the existing operating permit until the district takes action on the new application.

Rule 8.4 Standard operating permit conditions.

All operating permits are granted subject to these rules, orders of the board, and the laws of the State of Texas. An operating permit may be modified at any time by the board in accordance with the district's management plan. In addition to any special provisions or other requirements incorporated into the permit, each permit issued shall contain the following standard permit provisions:

(1) This operating permit is granted in accordance with the provisions of the rules of the district, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee accepts the terms and conditions of the permit and will comply with the rules and management plan, of the district.

(2) This permit confers only the right to operate the well described in this permit under these rules, and its terms may be amended pursuant to the provisions of these rules. This permit is not transferable. To protect the permit holder from illegal use by a new landowner, within 10 days after the date of sale, the operating permit holder must notify the district in writing of the name and address of the new owner. Any person who becomes the owner of a currently permitted well must, within 20 calendar days from the date of the change in ownership, file an application for a new permit.

(3) The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.

(4) Withdrawals from all non-exempt wells must be measured by a water meter or estimated by the owner or operator using a water measuring device or method that is within plus or minus 10% of accuracy. Measured or estimated water use shall be reported to the district monthly and the applicable regulatory fee paid. Permittees shall keep accurate records of the

groundwater withdrawn and the purposes of the withdrawal. Such records shall be available for inspection by district representatives.

(5) The well site must be accessible to district representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site.

(6) The application for which this operating permit has been issued is incorporated by reference in this permit, and this operating permit is granted on the basis of and contingent upon the accuracy of the information provided in that application. A finding that false or inaccurate information has been provided is grounds for immediate revocation of the operating permit. Operating permits are subject to the imposition of additional provisions in accordance with the district's approved and certified management plan.

(7) The maximum authorized withdrawal is limited to the amount stated in the permit on an annualized basis and the instantaneous rate of withdrawal shall not exceed 1.25 times the instantaneous rate necessary to produce the authorized withdrawal on an annual basis, except when groundwater production from wells is aggregated in accordance with Rule 8.3(g), unless otherwise authorized by the permit.

(8) Violation of this permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawal, is grounds for revocation of the permit and/or punishable by civil penalties as provided by Rule 14.4.

(9) Wherever special provisions in this permit are inconsistent with other provisions or rules of the district, the special provisions of the permit shall prevail.

Rule 8.5 Operating permit limitations.

(a) Maximum Authorized Withdrawal. No operating permittee shall pump or withdraw any groundwater on an annual basis in excess of the amount of groundwater authorized in the operating permit and no rate of pumping shall be in excess of 1.25 times the instantaneous rate necessary to produce the authorized withdrawal on an annual basis, except when groundwater production from wells is aggregated in accordance with Rule 8.3(g) or unless otherwise authorized by the operating permit.

(b) Operating Permit Required. Unless otherwise exempt or excluded from operating permit requirements as provided in Rule 8.6, Rule 8.7, or the Texas Water Code, no person shall operate a well without an operating permit issued by the district. An operating permit is required for excluded wells that are used for additional production.

(c) When an operating permit is granted, the permittee shall begin and complete construction of the permitted well diligently and produce water from the well for the purpose(s) authorized within 24

months from the date the permit is issued. Failure of a permittee to begin and complete construction, and pump water from the permitted well for the authorized purpose(s) within the time period specified shall cause the permit to terminate and the permittee shall lose all rights thereunder without further action by the district; however, permittees may, upon a showing that it is not technically or economically feasible to connect the well to existing infrastructure or to a reasonably necessary extension of existing infrastructure within the 24 month period, be granted the full five year term of the operating permit to complete construction, and pump water from the permitted well for the authorized purpose(s). The permittee who has been granted an operating permit pursuant to this subsection must record a copy of the operating permit and the applicable spacing rule in effect at the time the operating permit is granted in the county real property records.

Rule 8.6 Exemptions.

Except as otherwise provided in these rules, the operating permit requirements of this Section 8 do not apply to exempt wells, however, the drilling registration requirements of Rule 8.1 and the well registration requirements of Rule 8.2 do apply to exempt wells.

Exempt wells are defined as follows:

- (a) a well used solely for domestic use or for providing water for livestock or poultry that is drilled, completed, or equipped such that it is incapable of producing more than 25,000 gallons of water per day; and
- (b) a well used solely for domestic use or for providing water for livestock or poultry that is drilled, completed, or equipped such that it is incapable of producing more than 50,000 gallons of water per day; if the well owner provides the district with an affidavit stating that the average daily production of that well shall not exceed 25,000 gallons.

Rule 8.7 Excluded wells and non-excluded use.

- (a) Wells drilled for oil, gas, sulfur, uranium, lignite, or brine or core tests, or for injection of gas, saltwater, or other fluids, or for any other purpose under permits issued by the Railroad Commission of Texas, are excluded under these rules. The district may not require a drilling permit for a well to supply water for drilling any wells permitted by the Railroad Commission of Texas, except as allowed by the Texas Water Code. Water wells drilled to supply water for hydrocarbon production activities, including lignite, must meet the spacing requirements of the district unless no space is available within 300 feet of the production well or central injection station.
- (b) Any water well drilled and operated under the authority of the Railroad Commission of Texas becomes subject to the rules and regulatory fees of the district if the well ceases to be used for purposes under the jurisdiction of the Railroad Commission of Texas and is then used as an ordinary water well.
- (c) Any water well drilled and operated under the authority of the Railroad Commission of Texas becomes subject to the rules of the district to the extent of the non-excluded use if the water is exported or used for municipal purposes or by a public utility, or if the well produces water in excess of that quantity necessary and for purposes other than the railroad commission

permitted activity. These wells are also subject to district regulatory fees as provided in Rule 7.2. This rule is specifically subject to the limitations of Texas Water Code Section 36.117(f).

Rule 8.8 Operating permit amendments.

(a) Permit Amendment Increasing Authorized Withdrawal. It is a violation of these rules to pump any amount of water over the amount authorized by an operating permit. A written, sworn application for a permit amendment to increase the authorized withdrawal must be filed and an amendment granted before any such additional pumpage occurs. The applicant must demonstrate that the originally authorized amount has proven inadequate and why there is a need to increase the withdrawals.

(1) Submission of application. An applicant for a permit amendment increasing the authorized withdrawal must present sufficient evidence that the amount of withdrawal originally authorized has proven inadequate and the reasons for the need to increase withdrawals.

(2) Action on amendment. Applications shall be considered by the board, provided that the general manager may rule on the first application for increased withdrawal in an amount up to, but not exceeding, 20 percent of the initially authorized withdrawal without notice, hearing, or further action of the board. Thereafter, such applications shall be considered by the board. Once a ruling is made by the general manager, written notice of the ruling shall be served upon the applicant. Any applicant or affected person may appeal the general manager's ruling by filing a written request for hearing within 10 business days of the date of service of the general manager's decision. If a written request for a hearing is filed, or if the applicant seeks an increase greater than 20 percent of the initially authorized withdrawal, notice shall be issued and a hearing conducted in the manner prescribed for permit issuance.

(b) Amendment To Decrease Authorized Withdrawal. The general manager may rule on any application by the permit holder for a permit amendment to decrease the authorized withdrawal. The general manager may grant such amendment without notice, hearing, or further action by the board.

(c) Operating permits are not transferable. The new owner of a well that is permitted shall file an application for a new permit to operate the well in accordance with these rules. The written sworn application shall include a request to make the ownership change and show the authority for requesting the change. The general manager may grant the application for the new permit under terms and conditions and with the same expiration date as the permit it is replacing. Alternatively, the general manager may process the application for consideration by the board of directors. While the application is pending, the new owner may continue to operate the well.

Rule 8.9 Renewal applications.

Prior to the termination of a permit, the permittee shall make an application for renewal of the permit. All renewals shall be considered by the board after notice and hearing. If there is a change in the

information contained in the original application, the permittee-applicant shall provide the district the information that has changed. The general manager shall review the change and may require a deposit consistent with Rule 7.1. After review, the board shall consider the renewal and may require that notice be given and a public hearing conducted before taking action on the renewal. A permittee may continue to operate a well while the district considers the application for renewal.

Rule 8.10. Reservation Permits.

(a) A person who wishes to reserve a site for future well development may file an application for a reservation permit. If granted by the board, all the protections intended to an operating permit shall be accorded to the holder of the reservation permit for the location of the well for the term of the permit.

(b) (1) The application, containing the information required for an operating permit, shall be in writing and signed by the applicant before a notary. In addition, the application shall include an application for a drilling permit for the purpose of drilling a test well or a monitoring well. Applicant shall state the location of the proposed well site by GPS coordinates. Applicant shall state the amount of water it proposes to reserve for a beneficial purpose on an annual basis; and include the maximum production rate in gallons per minute; identify the geographic area for anticipated use of the water; state the projected population and growth rates for the area on five, ten and fifteen year increments; and identify any statutory, regulatory or other legal obligation to provide water service to the anticipated area of use identified in the application. In addition, the applicant shall file a copy of a water conservation plan it, or the entity with which it has contracted, has developed for the quantity and location of proposed use of the water sought to be reserved. All contracts, agreements, or other legal obligations to supply the quantity of water sought to be reserved must be in place and shall also be filed with the application.

(2) A person who has one or more applications for a drilling or operating permit on file with the district, on or before the date of publication of notice of rulemaking of this rule, which application(s) substantially comply with the requirements of the district rules may file a written request with the district that the district convert such application(s) to an application(s) for a reservation permit. When such a request is received, the pending application(s) shall be converted to an application for a reservation permit. An application converted as provided by this rule shall retain its original filing date for the purpose of the district's processing and review of permit applications and scheduling of permit hearings.

(c) Unless otherwise extended by the district, the holder of a reservation permit(s) shall commence drilling and completing a test well or monitoring well on a site owned or controlled by the permittee within 180 days from the date a reservation permit (s) is granted. All such test or monitoring wells shall be equipped for monitoring and operate as specified by the district and made available to the district. Upon a showing by the holder of a reservation permit that existing or proposed wells serve the purpose of a test well or a monitoring well, the board may waive this provision. The holder of the

reservation permit must retain ownership or control of the land on which the applicant seeks a reservation permit for the entire term of the reservation permit, including any succeeding renewals. The failure of the owner to drill and complete the test well or monitoring well or retain the land ownerships or leaseholds as provided herein, will cause the reservation permit to automatically terminate. Reservation permits are not transferable.

(d) Notice and hearing.

(1) When an application is determined to be administratively complete, notice of the type and extent required for an operating permit will be issued to inform the public of the time, date and location of the public hearing on the application. The hearing shall be conducted in the same manner as a hearing for an operating permit.

(2) After hearing the evidence concerning the application, before granting or denying an application for a reservation permit, the board shall consider the reservation permit if:

(A) The application conforms to these rules;

(B) The water conservation plan is consistent with state law;

(C) The population or projected population in the proposed geographical area is consistent with population growth promulgated by regional or state planning agencies with jurisdiction to do so and is based on five, ten and fifteen year increments;

(D) There is a statutory, regulatory or other legal obligation to provide water service to the identified anticipated area of use; and

(E) The water sought to be reserved conforms to the district's management plan and is consistent with the district's managed available groundwater.

(e) If the application(s) does not comply with the district's rules, or the board determines there is insufficient water to grant the reservation permit, the board shall deny the application.

(f) Reservation permits shall be granted for a term of five (5) years. However, reservation permits may be renewed for two additional terms. When an application for renewal is filed, spacing rules at the time of the initial application shall remain applicable; however, any new requirements of the district's approved Management Plan shall apply.

(g) After a reservation permit is granted, in the event the holder of the permit later desires to acquire an additional drilling permit and an operating permit based on the reservation permit, the following limitations apply:

(1) the reservation permit must be in existence and in good standing, with all applicable fees paid;

(2) the precise coordinates will be required for the drilling permit and/or the operating permit, and the application will only be considered if the well is to be located within 100 feet from the reservation permit GPS location ; however, this 100-foot radius allowance will not count against the spacing rule requirements detailed in Rule 5.1, except for the limitation on the distance to the property line, as modified by Rule 5.2.;

(3) the approved management plan in force at the time of the application for the drilling permit or operating permit shall govern the standards and criteria under which the permit or permits are evaluated and considered; and

(4) Except for the initial drilling permit, the granting of a reservation permit does not obligate the district to grant an additional drilling permit, operating permit or export permit for the full quantity of water specified in a reservation permit, if the reservation permit is located in an area where reductions in authorized withdrawals have been temporarily required as determined by the board or the managed available groundwater cannot support the application.

(h) For reservation permit applications, the applicant shall pay all of the processing, notice and hearing fees as are applicable to an operating permit application. Such fees will be set out in district rules. After a reservation permit is granted, the holder of the reservation permit shall pay a monthly fee set by the district, which currently is \$3.50 per acre-foot per year of water reserved. If a reservation permit is reduced, temporarily or permanently, the monthly fee shall be correspondingly reduced.

(i) No person or entity shall hold more than five (5) reservation permits at any one time.

Section 9. PERMITS FOR EXPORT OF GROUNDWATER OUT OF THE DISTRICT

Rule 9.1 Export Permit required.

Groundwater produced from within the district may not be exported outside the district's boundaries unless the board has issued the well owner/operator an export permit. The requirements of this rule are applicable without regard to the manner the water is exported out of the district and specifically includes discharges into watercourses to convey water, as well as pipelines and aquaducts. Export permits are not transferable.

Rule 9.2 Applicability.

A groundwater export permit is not required for transportation of groundwater under the following circumstances:

- (a) The groundwater is part of a manufactured product;
- (b) The groundwater is to be used on contiguous property with the same property ownership that straddles the district boundary line;
- (c) The groundwater is supplied to a public water supply retail service area that straddles the district boundary line;
- (d) The groundwater serves property designated within a Certificate of Convenience and Necessity issued under Chapter 13 of the Texas Water code that straddles the district boundary line; or,
- (e) The groundwater is discharged pursuant to a permit issued by the Texas Commission on Environmental Quality or its predecessors, unless the discharge is part of an over all water export and sale.

Rule 9.3 Application.

An application for an export permit must be filed in the district office, be in writing and sworn, and include the following information:

- (a) the name and mailing address of the applicant and, if different from the applicant, the name and address of the owner of the land on which the well is located or to be located, from which the export is to be made;
- (b) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed export;
- (c) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose and the period of time each purpose is expected to continue;
- (d) availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;
- (e) availability of feasible and practicable alternative supplies to the applicant, municipality or entity;
- (f) the amount and purposes of use for which water is needed in the proposed receiving area for which water is needed;
- (g) the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district as determined by a licensed professional engineer or a licensed professional geoscientist in the State of Texas;
- (h) the indirect costs and economic and social impacts associated with the proposed export of water from the district;
- (i) the approved regional and state water plan, if one has been approved, and the certified district management plan, if one has been approved for the receiving area;
- (j) other facts and considerations deemed necessary by the district's board or general manager for protection of the public health and welfare and conservation and management of natural resources in the district;
- (k) the applicant's water conservation plan and, if any subsequent user of the water is a municipality or entity providing retail water services, the water conservation plan of that municipality or entity shall also be provided;
- (l) the location of the well and rates of withdrawal; and

(m) the period of time for which the permit is sought.
The board, at its discretion, may combine permit applications.

Rule 9.4 Hearing and permit issuance.

(a) Applications for export permits are subject to the hearing procedures provided by these rules.
(b) In determining whether to issue a permit to export groundwater out of the district, the board shall consider the information provided in Rule 9.3, the Texas Water Code, the district’s management plan, the district’s mission statement and such other information the board deems relevant.

Rule 9.5 Export permit amendments.

Amendment to an Export Permit. It is a violation of these rules to export any amount of water in excess of the amount, withdrawal rate, or by any means or route not authorized by an export permit. A written, sworn application for an amendment to an export permit must be filed and the amendment granted before any deviation in the export permit occurs. The applicant must demonstrate that the originally authorized terms and conditions in the export permit have proven inadequate and why there is a need to change the authorization.

(1) Submission of application. The applicant for an amendment to modify the export permit shall provide sufficient documentation that the original authorizations have proven inadequate and the reasons for the need to make the change(s).

(2) Action on amendment. The general manager shall prepare a notice to be given of the amendment, which shall be given as in the original application, and a hearing conducted in the manner prescribed for permit issuance.

9.6. Duration of Export permit.

The period for which water may be exported under an export permit shall be at least three years if construction of a conveyance system has not been initiated within the period specified in the permit or at least thirty years if construction of a conveyance system has been initiated prior to the issuance of the permit. Initiation of construction means letting of contracts for construction of facilities from the point of the well to at least the district boundary and the commencement of actual construction under the contract.

9.7 Export Permit assessments.

The regulatory fees for the export of water out of the district will be set forth by resolution of the board.

SECTION 10. REWORKING AND REPLACING A WELL

Rule 10.1 Procedures.

(a) An existing, permitted or exempt well may not be reworked or re-equipped in a manner that will

change the authorizations contained in the operating permit or registration without a written, sworn application for an amendment that is approved by the board in the case of an operating permit, or the general manager in the case of a registration. Re-drilling a well requires a new permit.

(b) An operating permit must be applied for, if a party wishes to increase the rate of production of an exempt well to the point of increasing the size of the column pipe and gallon per minute rate by reworking or re-equipping the well such that the well is no longer exempt.

(c) A drilling permit or a drilling registration must be applied for and granted if a party wishes to replace an existing well with a new, replacement well.

(d) A replacement well, in order to be considered such, must be drilled within 50 feet of the existing well and must meet and conform to the distance and spacing requirements (Section 5), production (Section 6), and completion (Section 11) requirements of these rules. The board may grant such application without further notice and/or variances to this rule on a case by case basis. This rule is specifically subject to the limitations of Texas Water Code Section 36.117(f).

(e) After the effective date of these rules, upon commencing reworking or replacing permitted wells drilled and equipped to produce more than 200 acre-feet of water per year, the reworked or replacement well also shall be equipped to allow measurement of water levels in the well, and such water levels shall be measured on as frequent a basis as reasonably possible, preferably on a daily, but no greater than weekly, basis between the time the water level in the well first can be measured after the pump fails or is turned off to just before the pump is restarted for production. Reporting of water levels measured in accordance with this rule shall be coincident with payment of regulatory fees.

Rule 10.2 Emergency reworking or replacing a well.

An emergency replacement or reworking of a well under the auspices of the Railroad Commission of Texas may be performed with notice to the district so long as there is no change to the rate or amount of withdrawal. New state well reports shall be filed with the district within the same period of time as the reports are required to be filed with the water well drillers' board.

SECTION 11. WELL LOCATION AND COMPLETION

Rule 11.1 Responsibility.

After an application for a well drilling permit or drilling registration has been granted, the well, if drilled, must be drilled within 30 feet of the location specified in the permit or registration application, and not elsewhere; however, the well shall not be drilled within 50 feet of the property line of the adjoining landowner, except as provided in Rule 5.2. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the board pursuant to Chapter 36, Texas Water Code and these rules. As described in the Rules of the Texas Department of Licensing and Regulation, all well drillers and persons having a well drilled, deepened, or otherwise

altered shall adhere to the provisions of the rule prescribing the location of wells and proper completion and these rules.

Rule 11.2 Location of domestic, industrial, injection, and irrigation wells.

A new well must not be located:

- (a) within 50 feet, measured horizontally, of any water-tight sewage facility or liquid-waste collection facility;
- (b) within 150 feet, measured horizontally, of any potential source of contamination, such as existing or proposed livestock or poultry yards, privies, and septic systems, including tanks, piping any evapo-transpiration pits, and pressure-dose distribution systems;
- (c) a well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal, so as to maintain a junction between the casing and pump column, and a steel sleeve extending a minimum of thirty six (36) inches above ground level and twenty four (24) inches below the ground surface.
- (d) within 500 feet, measured horizontally, of a sewage treatment plant, solid waste disposal site, or land irrigated by sewage plant effluent; or
- (e) within 300 feet, measured horizontally, of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.

Rule 11.3 Standards of completion for domestic, industrial, injection, and irrigation wells.

Water well drillers must indicate the method of completion on the Well Report (TNRCC-0199) Section 10 Surface Completion. Domestic, industrial, Class V injection, and irrigation wells must be completed in accordance with the stricter of the following specifications or Texas Department of Licensing and Regulation rules set forth at 16 Texas Administrative Code, Chapter 76, local county or incorporated city ordinances:

- (a) The annular space between the borehole and the casing shall be filled with cement slurry from the ground level to a depth of not less than 10 feet below the land surface or well head.
- (b) All wells shall have a concrete slab or sealing block above the cement slurry around the well at the ground surface.
- (c) The slab or block shall extend at least two (2) feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.
- (d) The surface of the slab shall be sloped to drain away from the well.
- (e) In all new wells:

- (1) the casing shall extend a minimum of one foot above the original ground surface; and
- (2) A slab or block as described in Rule 11.3(b) is required above the cement slurry except when a pitless adapter is used. Pitless adapters may be used in such wells provided that:

- (i) Pitless adapter is welded to the casing or fitted with another suitably effective seal; and

- (ii) The annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.

(f) All wells, especially those that are gravel packed, shall be completed so aquifers or zones containing waters that differ are not allowed to commingle through the borehole-casing annulus or the gravel pack so as to result in pollution as defined in these rules.

(g) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(h) The mix of cement shall conform to the definition contained in these rules.

(i) In addition, all new wells permitted after the effective date of these rules that are drilled and equipped to produce more than 200 acre-feet of water per year also shall be equipped to allow measurement of water levels in the well

Rule 11.4. Re-completions.

(a) The landowner shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted 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 unwanted 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 to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

SECTION 12. WASTE AND BENEFICIAL USE

Rule 12.1 Waste defined.

Waste has the meaning as defined in Rule 1.1.

Rule 12.2 Waste prevention.

(a) Groundwater shall not be produced in or used within or without the district, in such a manner as to constitute waste as defined in Rule 1.1.

(b) No person shall cause pollution of the groundwater reservoir or aquifer in the district as defined in Rule 1.1.

(c) No person shall allow, cause, suffer, or permit waste as that term is defined herein.

(d) No person shall allow the continued existence of a deteriorated well.

Rule 12.3 Use for a beneficial purpose.

Groundwater produced in the district shall be used for a beneficial purpose.

SECTION 13. HEARINGS

Rule 13.1 Types of hearings.

(a) The district conducts two general types of hearings:

(1) Permit hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing, and

(2) rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or district policy, or that describe the procedure or practice requirements of the district. Any matter designated for hearing before the board may be referred by the board for hearing before a hearing examiner.

(b) Permit Hearings.

(1) Permit Applications, Amendments and Revocations. The district will hold hearings on water well drilling permits, operating permits, export permits or amendments and permit revocations or suspensions. A permit application or an amendment to a permit is considered contested when a person with a personal justiciable interest files a protest and seeks a contested case hearing, unless the board determines otherwise.

(2) Hearings on motions for rehearing. Motions for rehearing will be heard by the board pursuant to Rule 13.8(b).

(c) Rule-making Hearings.

- (1) District management plan: At its discretion, when authorized by law, after giving notice, the board shall hold a hearing to adopt or revise the management plan.
- (2) District rules: the district shall hold a hearing in accordance with these rules to adopt or revise these rules.
- (3) Other matters: A public hearing may be held on any matter within the jurisdiction of the duties and responsibilities of the board, if the board deems a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the board.
- (d) Any matter designated for hearing before the Board may be referred by the Board for hearing before a hearing examiner.
- (e) Hearings are not required for exempt well drilling registrations or exempt well registrations.

RULE 13.2 Notice and scheduling of hearings.

- (a) Wells that are exempt by Rule 8.6 or the Texas Water Code and wells that are excluded by Rule 8.7(a) do not require notice and hearings.
- (b) Notices of all hearings of the district shall be prepared by the general manager.
- (c) For all permit applications, a copy of the hearing notice will be provided to the applicant, and shall contain the following information:
 - (1) the name and address of the applicant;
 - (2) the name or names of the owner or owners of the land, if different from the applicant;
 - (3) the date the application was filed and the number assigned to it;
 - (4) the address or approximate location of the proposed well;
 - (5) a brief summary of the information included in the application;
 - (6) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use and any change in use;
 - (7) the time, date and location of the hearing; and
 - (8) any other information requested by the board.
- (d) For all permit hearings, the applicant is responsible for giving notice in the following manner:
 - (1) Not less than 20 days before the hearing the applicant shall give notice to the following persons and provide the district with proof of service:

- (A) adjacent property owners and landowners as shown in the county tax rolls as of the date the application is filed;
 - (B) all existing registered and permitted well owners within 5000 feet of the proposed well as shown in the records of the district as of the date the application is filed.
- (2) The applicant shall also publish the notice once in a newspaper(s) of general circulation in each county within the district no less than 20 calendar days before the date set for the hearing, and provide the district with a publisher's affidavit and tear sheet of the notice.
 - (3) Proof of service and the publisher's affidavit and tear sheet of the notice shall be filed with the district prior to the commencement of the hearing. In considering whether notice has been given, the board may evaluate the good faith effort of the applicant to give the notice.
- (e) For all permit applications, the general manager shall also post notice in a publicly accessible place at the district's office, provide notice to the county clerks of Bastrop and Lee Counties, give regular mail, facsimile or electronic mail notice to any person who has requested notice and regular mail notice to any other person entitled to receive notice under these rules. An officer or employee of the district shall make an affidavit establishing attempted service of the notice by first class mail, facsimile or electronic mail in accordance with the information provided by the person as proof that the notice was provided. However, the failure to provide the notice to persons requesting the notice does not invalidate an action taken by the district.
 - (f) For rule-making hearings, the general manager is responsible for giving the notice. The notice shall be given not less than 20 days before the rule-making hearing. The notice shall be posted in a place readily accessible to the public at the district office, be provided to the county clerks of Bastrop and Lee Counties, published in one or more newspapers of general circulation in each county, provide notice by mail, facsimile or electronic mail to any person who has requested notice, and a copy of the proposed rule shall be made available at the district office. The notice shall include the time, date and place of the rule-making hearing, a brief explanation of the subject of the rule-making hearing, and a location or internet site at which a copy of the proposed rule(s) may be reviewed or copied.
 - (g) Notice will be given to each person who requests in writing copies of hearing notices pursuant to the procedures set forth in this rule, and any other person the board of directors deems appropriate. The date of delivery or mailing of notice may not be less than 20 calendar days before the date set for the hearing.
 - (h) Requests for notices.

- (1) Any person having an interest in the subject matter of a permit application or amendment hearing or hearings may receive written notice of such hearing or hearings by submitting a request in writing. The request must identify with as much specificity as possible the hearing or hearings for which written notice is requested. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. Failure to provide written notice under this subsection does not invalidate any action taken by the board.
- (2) Any person may submit a written request for notice of a rule-making hearing. The request is effective for the remainder of the calendar year in which the request is received. The request for a rule-making notice must be renewed by making a new request each year. An affidavit of an officer or employee establishing the attempted service of notice by first class mail, facsimile or electronic mail is proof that notice was provided by the district. However, the failure to provide the notice shall not invalidate an action taken by the district at a rule-making hearing.

(i) Hearings may be scheduled during the district's regular business hours, Monday through Friday of each week, except district holidays. All permit hearings will be held at the district office, unless the board directs otherwise. However, the board may from time to time change or schedule additional dates, times, and places for permit hearings. Other hearings will be scheduled at the dates, times and locations set at a regular board meeting, unless an emergency meeting becomes necessary, which shall be publicized and held as required by law. The district may schedule as many applications for consideration at one hearing as deemed desirable. Hearings may be continued from time to time and date to date without additional mailed or published notice.

Rule 13.3 General procedures.

- (a) Authority of presiding officer. The presiding officer may conduct the hearing or other proceeding in the manner the presiding officer deems most appropriate for the particular proceeding. In permit or amendment application hearings, the presiding officer shall designate parties to the proceedings. The applicant shall always be designated a party.

The presiding officer has the authority to:

- (1) set hearing dates, other than the initial hearing date for permit matters in accordance with Rule 13.2;
- (2) convene the hearing at the time and place specified in the notice for public hearing;
- (3) establish the jurisdiction of the district concerning the subject matter under consideration;
- (4) rule on motions and on the admissibility of evidence and amendments to pleadings;

- (5) designate and align parties and establish the order for presentation of evidence;
- (6) administer oaths to all persons presenting testimony;
- (7) examine witnesses;
- (8) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
- (9) require the taking of depositions and compel other forms of discovery under these rules;
- (10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- (11) conduct public hearings in an orderly manner in accordance with these rules;
- (12) recess any hearing from time to time and place to place;
- (13) reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
- (14) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of presiding officer.

(b) Hearing Registration Forms. Each individual who participates in a hearing or other proceeding of the district must submit a form providing the following information: name; address; whether the person plans to testify; who the person represents if the person is not there in the person's individual capacity; and any other information relevant to the hearing or other proceeding.

(c) Appearance; Representative Capacity. Any interested person may appear in person or may be represented by counsel, engineer, or other representative provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, limited liability company, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.

(d) Alignment of Parties; Number of Representatives Heard. Participants in a proceeding may be aligned according to the nature of the proceeding 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 proceeding 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.

(e) Appearance by Applicant or Movant. The applicant, movant or party requesting the hearing or other proceeding or their 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.

(f) Reporting. Hearings and other proceedings will be recorded on audio cassette tape or, at the discretion of the presiding officer, may be recorded by a certified shorthand reporter. The district does not prepare transcripts for the public of hearings or other proceedings recorded on audio cassette tape on district equipment, but the district will arrange access to the recording. Subject to availability of space, any party may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 13.5(b). In all district matters, if a proceeding 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 transcript filed with 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.

(g) Continuance. The presiding officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the district office) for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the presiding officer before it is recessed, the presiding officer must provide a notice giving the time, date, and location of the continued hearing by regular mail to the parties. It is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.

(h) Filing of Documents, Time Limit. Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these rules or by law must be received in hand at the district's office within the time limit, if any, set by these rules or by the presiding officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the district within the time limit.

(i) Computing Time. In computing any period of time specified by these rules, by a presiding officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday as determined by the board, in which case the period runs

until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

(j) Affidavit. Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.

(k) Broadening the Issues. No person will be allowed to appear in any hearing or other proceeding that in the opinion of the presiding officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.

(l) Conduct and Decorum. Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of district business. If in the judgment of the presiding officer, a person is acting in violation of this provision, the presiding officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.

Rule 13.4 Uncontested permit hearings procedures.

(a) Written Notice of Intent to Contest. Any person who intends to contest a permit application must provide written notice of that intent to the district office and the applicant at least five calendar days prior to the date of the hearing. If the general manager intends to contest a permit application, the general manager must provide the applicant written notice of that intent at least five calendar days prior to the date of the hearing. If no notice of intent to contest is received five calendar days prior to the hearing, the general manager, as instructed by the Board of Directors, will cancel the hearing and the board will consider the permit at the next regular board meeting.

(b) Informal Hearings. Permit hearings may be conducted informally when, in the judgment of the hearing body, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.

(c) Agreement of Parties. If, during an informal proceeding, all parties reach a negotiated or agreed settlement which, in the judgment of the hearing body, settles the facts or issues in controversy, the proceeding will be considered an uncontested case. The hearing body will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.

(d) Decision to Proceed as Uncontested or Contested Case. If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the hearing body determines these issues will require extensive discovery proceedings, the hearing body will declare the case to be contested and convene a prehearing conference as set forth in Rule

13.5. The hearing body may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions the hearing body deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the hearing body will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the board.

(e) Recordation of the hearing. In an uncontested case, the presiding officer may substitute minutes or the report required under Tex. Water Code 36.410 for the method of recording the hearing.

Rule 13.5 Contested permit hearings procedures.

(a) Pre-hearing Conference. A pre-hearing conference shall be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process.

(1) Matters considered: Matters which may be considered at a pre-hearing conference include, but are not limited to:

(A) the designation of parties;

(B) the formulation and simplification of issues;

(C) the necessity or desirability of amending applications or other pleadings;

(D) the possibility of making admissions or stipulations;

(E) the scheduling of discovery;

(F) the identification of and specification of the number of witnesses;

(G) the filing and exchange of prepared testimony and exhibits; and

(H) the procedure at the hearing.

(2) Notice: A prehearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 13.2, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the presiding officer.

(3) Conference Action. Action taken at a prehearing 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.

(b) Assessing Reporting and Transcription Costs. Upon the timely request of any party, or at the discretion of the hearing body, the hearing body may make a recommendation to the board regarding the assessment of reporting and transcription costs to one or more of the parties. If the board is the hearing body, a hearing report with recommendations need not be filed. The hearing examiner must

consider the following factors in assessing reporting and transcription costs:

- (1) the party who requested the 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.

In any proceeding where the assessment of reporting or transcription costs is an issue, the hearing body must provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs must be included in the hearing body's report to the board.

(c) Designation of Parties. Parties to a hearing will be designated on the first day of hearing or at such other time as the hearing body determines. The general manager and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. To be designated as a party, the person must be an affected person as defined in Rule 1.1. After parties are designated, no other person may be admitted as a party unless, in the judgment of the hearing body, there exists good cause and the hearing will not be unreasonably delayed.

(d) Rights of Designated Parties. Subject to the direction and orders of the hearing body, 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.

(e) Persons Not Designated Parties. At the discretion of the hearing body, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the hearing body as evidence.

(f) Furnishing Copies of Pleadings. After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or the party's representative. A certification of this fact must accompany the original instrument when filed with the district. Failure to provide copies may be grounds for withholding consideration of the

pleading or the matters set forth therein.

(g) **Disabled Parties and Witnesses.** Persons who have special requests concerning their need for reasonable accommodation, as defined by the Americans With Disabilities Act, 42 U.S.C. 12111(9), during a board meeting or a hearing, shall make advance arrangements with the general manager of the district. Reasonable accommodation shall be made unless undue hardship, as defined in 42 U.S.C. 12111(10), would befall the district.

(h) **Agreements to be in Writing.** No agreement between parties or their representatives affecting any pending matter will be considered by the hearing examiner unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered into the record.

(i) **Discovery.** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the hearing body. Unless specifically modified by these rules or by order of the hearing body, discovery will 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 by agreement.

(j) **Discovery Sanctions.** If the hearing body finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the hearing body may:

- (1) suspend processing of the application for a permit if the applicant is the offending party;
- (2) disallow any further discovery of any kind or a particular kind by the offending party;
- (3) rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
- (4) limit the offending party's participation in the proceeding;
- (5) disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and/or
- (6) recommend to the board that the hearing be dismissed with or without prejudice.

(k) **Compelling Testimony, Swearing Witnesses and Subpoena Power.** The hearing body may compel the testimony of any person which is necessary, helpful, or appropriate to the hearing. The hearing body will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The hearing body may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the

manner provided in the Texas Rules of Civil Procedure.

(l) Evidence. Except as modified by these rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.

(m) Written Testimony. When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.

(n) Requirements for Exhibits. 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.

(o) Abstracts of Documents. When documents are numerous, the hearing body may receive in evidence only those that are representative and the hearing body 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 abstracts are made.

(p) Introduction and Copies of Exhibits. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the hearing body and to each of the parties, unless the hearing body rules otherwise.

(q) 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.

(r) Official Notice. The hearing body may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the district's specialized knowledge.

(s) 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.

(t) Oral Argument. At the discretion of the hearing body, oral arguments may be heard at the

conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The hearing body 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 is not the hearing body.

(u) If a hearing is uncontested, or becomes uncontested during the course of the hearing, the presiding officer may substitute minutes or the report required by law for a method of recording the hearing.

Rule 13.6 Conclusion of the hearing; report.

(a) Closing the Record; Final Report. At the conclusion of the presentation of evidence and any oral argument, the hearing body may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the hearing body. After the record is closed, the hearing body will prepare a report to the board, and submit the report to the board not later than the 30th day after the date the hearing is concluded, if the board is not the hearing body. The report must include a summary of the subject matter of the hearing and evidence, together with the hearing body's findings and conclusions and recommendations for action. Upon completion and issuance of the hearing body's report, a copy must be submitted to the board, delivered to each party to the proceeding and to each person who provided comments. In a contested case, delivery to the parties must be by certified mail.

(b) Exceptions to the Hearing Body's Report; Reopening the Record. Prior to board action, any party in a contested case or a person who provided comments may file written exceptions to the hearing body's report, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the board. Upon review of the report and exceptions, the hearing body may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the report and exceptions to the board. The board may, at any time and in any case, remand the matter to the hearing body for further proceedings.

(c) Time for Board Action on Certain Permit Matters. In the case of hearings involving new permit applications, original applications for existing wells, or applications for permit renewals or amendments, the hearing body's report should be submitted, and the board shall act, within 60 calendar days after the close of the hearing record.

Rule 13.7 Rule-making hearings procedures.

(a) General Procedures. The presiding officer will conduct the rule-making hearing in the manner the presiding officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The presiding officer may follow the guidelines of *Robert's Rules of Order, Newly Revised*.

(b) Submission of documents. Any interested Person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 13.2; provided, however, that the presiding officer may grant additional time for the submission of documents.

(c) Oral presentations. Any person desiring to speak on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

(d) Conclusion of the hearing; closing the record; hearing body's report. At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the presiding officer is a hearing examiner or chairman of a committee, the presiding officer must, after the record is closed, prepare a report to the board. The report must include a summary of the subject of the hearing and the public comments received, together with the hearing body's recommendations for action. Upon completion and issuance of the hearing body's report, a copy must be submitted to the board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.

(e) Exceptions to the hearing body's report; reopening the record. Any interested person may make exceptions to the hearing body's report, and the board may reopen the record, in the manner prescribed in Rule 13.6(b).

Rule 13.8 Final decision; appeal.

(a) Board action. After the record is closed and the matter is submitted to the board, the board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action but the board shall act on an application for any type of permit or permit amendment not less than 60 days after the date the final hearing is concluded. The board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.

(b) Requests for rehearing or findings and conclusions. Any decision of the board on a matter may be appealed by requesting a rehearing before the board within 20 calendar days of the date of the board's decision, in the case of a contested or uncontested hearing on an application, the applicant, or a party to a contested hearing, may administratively appeal. Such a rehearing request must be filed at the district office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the board before any appeal may be brought. The board's decision is final if no request for rehearing is made within the specified time, or upon the

board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the board, the date of the rehearing will be within 45 calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the board to grant or deny the request for rehearing within 90 calendar days of submission will be deemed to be a denial of the request.

SECTION 14. INVESTIGATIONS AND ENFORCEMENT

Rule 14.1 Notice and access to property. Board members and district agents and employees are entitled to access to all property within the district to carry out technical and other investigations necessary to the implementation of the district rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the district. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any board member or district agents or employees who are attempting to conduct an investigation under the district rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code, Section 36.102.

Rule 14.2 Conduct of investigation. Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the well.

Rule 14.3 Rule enforcement. If it appears that a person has violated, is violating, or is threatening to violate any provision of the district rules the board of directors may institute and conduct a suit in the name of the district for enforcement of rules through the provisions of Section 36.102, Texas Water Code.

Rule 14.4 Penalty for violating rules, permit condition, or board orders. The penalty for violating a rule, permit term or condition or order of the board is up to \$5,000 per violation per day for each day the violation continues.

Rule 14.5 Sealing of wells. Following due process, the district may, upon orders from a court of competent jurisdiction, seal wells that are prohibited from withdrawing groundwater within the district by the district rules to ensure that a well is not operated in violation of the district rules. A well may be sealed when: (1) no application has been made for a permit to drill or to register a new well; or (2) no application has been made for an operating permit to withdraw groundwater from an existing or new

well that is not registered, excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or (3) the board has denied, canceled or revoked a drilling permit or an operating permit.

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

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