

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



**As Adopted July 19, 2011**

## **RULES OF THE HIGH PLAINS UNDERGROUND WATER CONSERVATION DISTRICT NO. 1**

In accordance with Section 59 of Article 16 of the Texas Constitution, with Article 7880-3c, Texas Civil Statutes as amended, and with Acts of the 53rd Legislature (1953), p. 17, Ch. 10, H. B. 56, with Acts of the 57th Legislature (1961), p. 1095, Ch. 493, H. B. 692, and Chapter 36 of the Texas Water Code, the following rules are hereby ratified and adopted as the rules of the District by its Board. All rules or parts of rules in conflict with these rules are hereby repealed. The effective date of these rules is July 19, 2011.

The rules, regulations and modes of procedure herein contained are and have been adopted for the purpose of facilitating the administration of the groundwater laws of the state and the rules of this District. The laws of the state of Texas enable the District to draft rules providing for the conservation, regulation, preservation, protection, recharging, and prevention of waste of groundwater, and of aquifers or their subdivisions. Groundwater conservation districts are the state's preferred method of groundwater management through rules developed, adopted, and promulgated by the district. To the end that these objectives be attained, these rules shall be so construed.

These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case shall they, or any of them, be construed as a limitation or restriction upon the exercise of any discretion, where such exists; nor shall they in any event be construed to deprive the Board of an exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount and character of data or information which may be required for the proper administration of the law.

The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in these rules shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by state law and District rules. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

The District incorporates Texas Water Code §36.102, as may be amended, into these rules: (1) A District may enforce its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction; (2) The Board by rule may set reasonable civil penalties for breach of any rule of the District not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation; (3) A penalty under the District rules is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the District's principal office or meeting place is located; (4) If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of the attorney's fees shall be fixed by the court.

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## RULE 1: DEFINITIONS

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

- (a) "50/50 Management Goal" means the District's Desired Future Condition of the Ogallala Aquifer, as set forth in the District's Management Plan, that 50 percent of the saturated thickness of the Ogallala Aquifer will still be in the Ogallala Aquifer 50 years later. The first planning interval for the 50/50 Management Goal as contemplated in these rules is January 1, 2010, through January 1, 2060.
- (b) "Abandoned well" means a well that has been abandoned by the owner by filing an abandoned well form with the District and (1) capped or plugged in compliance with District rules or (2) properly equipped in such a manner that it cannot produce more than 25,000 gallons of water per day or 17.5 gallons of water per minute. Once a well is abandoned its permit and well site are void.
- (c) "Administratively complete application" means an application (1) for which all information requested by the District has been fully and accurately provided; (2) that complies with District rules; (3) for which all applicable fees and deposits have been paid; (4) where the applicant is in compliance with any permits the applicant holds from the District and with District rules; (5) where all necessary field and site visits have been conducted, insofar as applicable, and (6) that has been recommended for approval by the General Manager.
- (d) "Allowable Production Rate" means the amount of groundwater that wells or well systems are authorized to produce from the Ogallala Aquifer during each calendar year beginning on January 1, 2012. The Allowable Production Rate for all wells and well systems in the District is set forth in Rule 5.3.
- (e) "Alternate Measuring Method" means an alternative measuring method approved for use as provided on the District's list of approved alternate measuring methods.
- (f) "Applicant" means a person seeking action by the District such as requesting a permit, an exception, or a hearing.
- (g) "Approved well site" means a site granted by the Board and a permit to drill issued.
- (h) "Aquifer" means all or part of any water bearing stratum or formation underlying the District's boundaries, including the Ogallala Aquifer, Edwards-Trinity (High Plains) Aquifer and the Dockum Aquifer.
- (i) "Board" means the governing body of the District.
- (j) "Beneficial use" or "Beneficial purpose" shall have the same meaning as found in the Texas Water Code §36.001(9), as may be amended: (1) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes; (2) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or (3) any other purpose that is useful and beneficial to the user.
- (k) "Conservation" means those water saving practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or

increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

- (l) "Contiguous Acre" means a surface acre of land overlying the Ogallala Aquifer upon which a well is located, and each additional acre of land overlying the Ogallala Aquifer that is:
- (1) owned in fee by the same person or entity or for which the person or entity has the right to produce groundwater through deed, easement, contract, lease or any other legally recognized conveyance; and
  - (2) either:
    - (A) located within the same continuous boundary or perimeter of the same surface estate plat, deed, section, or other legally recognized surface estate property description filed in the county deed records as the acre on which the well is located, including property that is described in separate plats or deeds;
    - (B) adjacent to acreage described under (1) or (2)(A).  
  
Acreage on separate tracts of land that would otherwise be contiguous under this definition but for the need to cross over to the other side of a public right of way or an easement shall be considered contiguous. The acreage of the public right of way or easement itself shall not be included for purposes of calculating the amount of total contiguous acreage unless the person or entity has the right to produce groundwater from the public right of way or easement. Acreage on two otherwise non-contiguous tracts of land shall not be considered contiguous simply because they are joined by the length of a public right of way or easement.
- (m) "Destroyed well" means a well that has been plugged in compliance with District rules and/or no evidence of the well is visible at the ground surface. A destroyed well shall not be considered a valid well.
- (n) "Deteriorated well" or "Deteriorating well" means a well that, in the discretion of the District, because of its condition, will cause or is likely to cause property damage, personal injury, or risk to health, safety, or life and/or the contamination of groundwater within the District's boundaries.
- (o) "District" means the High Plains Underground Water Conservation District No. 1, having authority to regulate the spacing of wells, the production of wells, or both, maintaining its principal office in Lubbock, Texas. Where applications, reports, and other papers are required to be filed with or sent to "the District" or "District office" means the District's principal office in Lubbock, Texas.
- (p) "District personnel" means any person employed, empowered, or authorized by or contracted to do business for the District.
- (q) "Domestic use" means the use of water by an individual, or by a family unit or household, for drinking washing, culinary purposes, landscape irrigation, irrigation of a family garden and/or orchard when the produce is to be consumed by the family unit, and the watering of animals used in operating a farm or as food for the farm family. Domestic use does not include use by or for a public water system.

- (r) "Domestic well" means a well used solely for domestic use.
- (s) "Exempt well" means a well that is exempt from permitting under Rule 7.1(c).
- (t) "Existing well" means a well that was in existence or for which drilling commenced prior to July 19, 2011.
- (u) "General Manager" means the General Manager or the General Manager's designee.
- (v) "Groundwater" means water percolating below the surface of the earth.
- (w) "Illegal well" means any well drilled, completed, equipped or operated in violation of District rules.
- (x) "Livestock use" means the use of groundwater for the watering of livestock.
- (y) "Management Plan" means the most recently adopted District management plan, as required under Texas Water Code §36.1071.
- (z) "Meter" means a water production measuring device authorized under Rule 5.
- (aa) "New well" means a well that is to be drilled into the aquifer on or after July 19, 2011.
- (bb) "Open or uncovered well" means any artificial excavation drilled or dug for the purpose of exploring for or producing water from the aquifer and is not capped or covered in compliance with District rules.
- (cc) "Owner" means and includes any person, private or public, that has a legal right to capture and produce water from a property, except as those rights may be limited or altered by Texas Water Code Chapter 36, as may be amended, or District rules, either by ownership, contract, lease, easement, or any other estate in the water.
- (dd) "Permit" means authorization granted by the Board to construct, drill, operate, install, equip, complete, or other work designed for the production of groundwater from the aquifer.
- (ee) "Permitted well" means a well completed and operated in compliance with and provided protection under District rules, and for which an abandoned well form has not been filed with the District.
- (ff) "Person" means any legal entity, including but not limited to, individual, partnership, firm, any type of corporation, estate, guardianship, trust or any type of municipality.
- (gg) "Poultry use" means the use of groundwater for the watering of poultry.
- (hh) "Pre-District well" means an unpermitted well drilled and equipped to produce more than 25,000 gallons of water per day or 17.5 gallons per minute prior to the creation of the District or in an area prior to its annexation into the District that, provided there is a record of the exact location of the well on file with the District, shall be afforded spacing protection under District rules as if it had been a permitted well and until such time the well is abandoned by the owner.
- (ii) "Proposed well site" means the location of a proposed well as recorded on an application filed with the District until such application is granted by the Board. A proposed well site is not a permit to drill.
- (jj) "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water in 30 Texas Administrative Code, Section 290.38. Such a system must

have at least fifteen service connections or serve at least twenty-five individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than fifteen connections or less than twenty-five individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are fifteen or greater or if the total number of individuals served by the combined systems total twenty-five or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

- (kk) "Retail public utility" means any person, corporation, public utility, water supply corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service for compensation.
- (ll) "Replacement well" means a well drilled with the purpose of replacing an existing well.
- (mm) "Rule(s)" means the rules and regulations of the District compiled in this document and as may be amended.
- (nn) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.
- (oo) "Valid well" means the location of (1) a permitted well or (2) a pre-District well.
- (pp) "Waste" shall have the same meaning contemplated under Chapter 36 of the Texas Water Code, including without limitation as defined in Texas Water Code §36.001(8), as may be amended: (1) withdrawal of groundwater from the aquifer at a rate and in an amount that causes or threatens to cause intrusion into the aquifer of water unsuitable for municipal, industrial, agricultural, gardening, domestic, or stock raising purposes; (2) the flowing or producing of wells from the aquifer if water produced is not used for a beneficial purpose; (3) escape of groundwater from one aquifer to any other reservoir or geologic strata that do not contain groundwater; (4) pollution or harmful alteration of groundwater in the aquifer by salt water or other deleterious matter admitted from another stratum or from the surface of the ground; (5) 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; or (6) groundwater that escapes onto land other than that of the owner unless permission has been granted by the occupant of the land receiving the discharge. This permission must be in the form of an agreement signed between the parties on a form acceptable to the District and on file at the District office. The occupant of the land receiving the discharge must otherwise comply with all other District rules.
- (qq) "Water" is used synonymously with groundwater.

- (rr) "Well" means any artificial excavation located within the boundaries of the District dug or drilled for the purpose of exploring for or withdrawing groundwater from the aquifer.
- (ss) "Well operator" means the person who operates a well or well system.
- (tt) "Well owner" means the person who owns a possessory interest in the land upon which a well or well system is located or to be located, the well or well system, or the groundwater withdrawn from a well or well system.
- (uu) "Well system" means a well or group of wells tied to the same center pivot irrigation system(s) or other water distribution system(s).
- (vv) "Year" means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.

## **RULE 2: GENERAL PROVISIONS**

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

All of the previous rules and regulations of the District have been reviewed and evaluated, and except as they are herein republished, are repealed. Any previous rule or regulation which conflicts with or is contrary to these rules is hereby repealed. District rules may be changed from time to time depending upon changes to applicable laws, rules, regulations, management plans, and other conditions or circumstances dictating change. The District, at its discretion and through appropriate procedure, may amend, suspend, or repeal, in part or in whole, these rules at any time as necessary to accommodate the above-referenced need for change to the rules.

### **2.2 Savings Clause**

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

### **2.3 Computing Time**

In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday.

## **2.4 Time Limits**

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

## **2.5 Show Cause Orders and Complaints**

The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite any person operating within the District to appear before the Board in a public hearing and require that person to show cause why the operating authority or permit should be not suspended, canceled, or otherwise restricted and limited, for failure to comply with the orders or rules of the Board or the relevant statutes of the state, or for failure to abide by the terms and provisions of the permit or operating authority itself. The matter of evidence and all other matters of procedure at any such hearing will be conducted in accordance with these rules of procedures and practice.

## **2.6 Changed Conditions**

The decision of the Board on any matter contained herein may be reconsidered by its own motion or upon motion showing changed conditions, or upon the discovery of new or different conditions or facts after the hearing or decision on such matter. If the Board should decide to reconsider a matter after having announced a ruling or decision and upon a motion showing changed conditions, it shall give notice to persons who were proper parties to the original action, and such persons shall be entitled to a hearing thereon if they file a written request therefore within fifteen days from the date of the mailing of such notice.

## **2.7 Final Orders of the Board**

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

## **2.8 Headings and Captions**

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

## **2.9 Construction**

A reference to a title or chapter or code without further identification is a reference to a title of or chapter of the Texas Water Code. A reference to a rule, section, or subsection without further identification is a reference to a rule, section, or subsection in these rules. The singular includes the plural, and the plural includes the singular. The masculine includes the feminine, and the feminine includes the masculine.

## **2.10 Surveys**

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

### **2.11 Research**

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

### **2.12 Collection of Information**

The District may collect any information the Board deems necessary, including information regarding groundwater, water conservation, and the practicability of recharging the aquifer or subdivisions.

### **2.13 Publication of Plans and Information**

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

### **2.14 Effective Date**

These rules take effect on the date of their original adoption and an amendment to these rules takes effect on the date of its original adoption. It is the District's intention that the rules and amendments thereto be applied retroactively to activities involving the production and use of groundwater resources located in the District.

## **RULE 3: ILLEGAL DRILLING AND OPERATION OF WELLS**

### **3.1 Drilling or Altering a Well without a Permit Prohibited**

- (a) No person may drill a well or alter the size of a well or well pump such that it would bring that well under the jurisdiction of the District without first obtaining a permit from the Board.
- (b) A violation occurs on the first day the drilling or alteration begins and continues each day thereafter until the appropriate permits are approved.

### **3.2 Wasteful Use of Water Prohibited**

- (a) Groundwater produced from the aquifer may only be used for a beneficial purpose. No person may produce or use groundwater from the aquifer in such a manner to constitute waste. Any person producing or using groundwater from the aquifer shall employ all reasonable methods to identify, prevent, and stop the waste of water.
- (b) No person shall operate a well within the District's boundaries at a rate of production higher than the maximum allowable production granted in a permit, District rules, or other applicable law. Beginning on January 1, 2012, no person shall operate a well producing groundwater from the Ogallala Aquifer within the District's boundaries in excess of the Allowable Production Rate set forth under Rule 5. All such unauthorized production is illegal, wasteful per se, and a nuisance.
- (c) All persons shall use reasonable diligence to convey water from the wellhead where produced to the place of use in order to prevent waste. No person shall transport groundwater in an open, unlined ditch or channel.

### **3.3 Groundwater Contamination Prohibited**

- (a) No person shall pollute or harmfully alter the character of the aquifer of the District by means of salt water or other deleterious matter admitted from some other stratum or strata or from the surface of the ground.
- (b) Groundwater contamination issues may be investigated by the District but will be reported to the appropriate regulatory agency.

### **3.4 Open or Uncovered Wells Prohibited**

- (a) Open or uncovered wells are prohibited within the District's boundaries. No owner shall allow an open or uncovered well condition to exist. The District shall require the owner to either close or cap said well according to District policy and procedures.
- (b) If the owner fails or refuses to close or cap the well in compliance with District rules, District personnel may go on the land and close or cap the well safely and securely.
- (c) Reasonable expenses incurred by the District in closing or capping a well constitute a lien upon the land which the well is located. The lien arises and attaches upon recordation in the deed records of the county where the well located an affidavit, executed by District personnel, stating the following: (1) the existence of the well; (2) the legal description of the property on which the well is located; (3) the approximate location of the well on the property; (4) the failure or refusal of the owner, after notification, to cap or close the well in compliance with District policies and procedures; (5) the closing of the well by the District; and (6) the expenses incurred by the District in closing the well.

### **3.5 Deteriorated Wells Prohibited**

- (a) Deteriorated wells are prohibited within the District boundaries. No owner shall allow a deteriorating well condition to exist. The District shall require the owner to either repair or destroy said well according to District policy and procedures.
- (b) If the owner fails or refuses to repair or destroy the well in compliance with District rules, District personnel may go on the land and close the well safely and securely.
- (c) Reasonable expenses incurred by the District in closing a well constitute a lien on the land which the well is located. The lien arises and attaches upon recordation in the deed records of the county where the well is located an affidavit, executed by District personnel, stating the following: (1) the existence of the well; (2) the legal description of the property on which the well is located; (3) the approximate location of the well on the property; (4) the failure or refusal of the owner, after notification, to repair or destroy the well in compliance with District policies and procedures; (5) the closing of the well by the District; and (6) the expenses incurred by the District in closing the well.

### **3.6 Right to Inspect and Test Wells and Gather Information**

- (a) District personnel are entitled to enter any public or private property within the District's boundaries at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the District.

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

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

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

### **3.7 Well Validation**

(a) No person shall drill, equip, or operate an illegal well within the District's boundaries.

(b) The Board may cause to be issued a certificate of validation for wells drilled and equipped within the District for which the owner has not applied for a permit, or for wells not otherwise properly permitted, provided that such wells were not drilled, equipped, and operated in such a manner as to violate any other District rules; and provided that the cost of each well validation is paid to the District as provided by this rule. Nothing in this rule is intended to limit the powers of the Board to any other course of action granted by state law, or District rules, or within the prerogative of the Board.

(c) In order to provide for the validation of existing wells that are subject to District rules, it shall be the policy of the Board that a certification of validation for a well can be issued only after the location of the well and the wellhead equipment of the well has been determined by field survey by District personnel and found to be compliant with all District rules. The cost of such validation shall be borne by the owner and shall be \$1,000 per well validated.

(d) The validation fee may be waived for existing wells drilled in an area prior to its annexation into the District provided the owner submits a request for validation to the District within 120 days after the annexation date of the area in which the well to be validated is located.

(e) The General Manager is hereby directed to establish and administer the District's program for well validation; with appeals to the General Manager's well validating decisions being subject to Board review at any of its regularly called meetings, or at special called meetings.

### **3.8 Sealing Wells**

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

(b) The well may be sealed by physical means, including plugging or rendering inoperable, and tagged to indicate that the well has been sealed by order of the District. The District may recover costs incurred for

sealing a well under this rule from the owner. Other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

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

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

### **3.9 Illegal Drilling and Operation of Wells; Citizen Suit**

(a) Drilling or operating a well or wells without a required permit or producing groundwater in violation of state law or District rules is declared to be illegal, wasteful per se, and a nuisance.

(b) Except as provided by this section, a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which a well or wells are drilled or operated without a required permit or permits or from which groundwater is produced in violation of state law or District rules, or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the well or wells, may sue the well owner in a court of competent jurisdiction to restrain or enjoin the illegal drilling, operation, or both. The suit may be brought with or without the joinder of the District.

(c) Except as provided by this section, the aggrieved party may also sue the well owner for damages for injuries suffered by reason of the illegal operation or production and for other relief to which the party may be entitled. In a suit for damages against the well owner, the existence of a well or wells drilled without a required permit or the operation of a well or wells in violation of state law or District rules is prima facie evidence of illegal drainage.

(d) The suit may be brought in the county where the illegal well is located or in the county where all or part of the affected land is located.

(e) The remedies provided by this section are cumulative of other remedies available to the individual or the District.

(f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court.

(g) Before filing a suit under Subsection (b) or (c), an aggrieved party must file a written complaint with the District having jurisdiction over the well or wells drilled or operated without a required permit or in violation of a District rule. The District shall investigate the complaint and, after notice and hearing and not later than the 90<sup>th</sup> day after the date the written complaint was received by the District, the District shall determine, based on the evidence presented at the hearing, whether a District rule has been violated. The aggrieved

party may only file a suit under this section on or after the 91<sup>st</sup> day after the date the written complaint was received by the District.

(h) Notwithstanding Subsection (g), an aggrieved party under Subsection (b) may sue a well owner or well driller in a court of competent jurisdiction to restrain or enjoin the drilling or completion of an illegal well after filing the written complaint with the District under Subsection (g) and without the need to wait for a hearing on the matter.

### **3.10 Rules Enforcement**

(a) If it appears that a person or entity has violated or is violating any provision of these rules, the Board may institute and conduct a suit in a court of competent jurisdiction in the name of the District for injunctive relief, recovery of a civil penalty in an amount set by these rules per violation, both injunctive relief and a civil penalty, or any other appropriate remedy. Each day that a violation continues shall be considered a separate violation. The civil penalty for a violation of any District rule is hereby set at the lower of:

(1) the \$10,000.00 per violation maximum penalty set forth under Chapter 36, Texas Water Code; or

(2) a lesser amount based on the severity of the violation set forth in a civil penalty schedule which the Board of Directors may adopt from time to time and which is incorporated by reference into these rules and shall constitute a rule of the District for all purposes.

(b) A penalty authorized under this section is in addition to any other penalty provided by law and may be enforced by filing a complaint in a court of competent jurisdiction in the county in which the District's principal office or meeting place is located.

(c) If the District prevails in a suit to enforce its rules, the District may seek and the court shall grant, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of attorney's fees awarded by a court under this rule shall be fixed by the court.

(d) The District shall not impose a penalty against a person for groundwater produced in excess of the Allowable Production Rate if necessary to comply with an order of the Texas Commission on Environmental Quality (TCEQ) that is specific to the person and related to remediating groundwater or soil contamination, supplying public water through an emergency interconnect, or a similar TCEQ order specific to that person that necessitates groundwater production above the Allowable Production Rate where the acquisition of the required number of additional Contiguous Acres is impractical as determined in the sole discretion of the Board.

## **RULE 4: REGULATION OF WELL SPACING**

### **4.1 Authorization to Regulate Spacing of Wells**

(a) In order to minimize as far as practicable the drawdown of the water table, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, the District by rule may regulate the spacing of wells by requiring all wells to be spaced a certain distance from property lines or adjoining wells; requiring wells with a certain production capacity, pump size, or other characteristic

related to the construction or operation of and production from a well to be spaced a certain distance from property lines or adjoining wells; or imposing spacing requirements adopted by the Board.

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

#### 4.2 Minimum Spacing Requirements

(a) All new wells, including exempt wells, drilled into the Ogallala Aquifer shall be spaced from other valid wells drilled into or proposed well sites located in the Ogallala Aquifer as follows: (1) a well projected to produce 17.5 to 70 gallons per minute shall be located at least 100 yards from the nearest valid well or proposed well site and a minimum distance of 25 yards from the nearest property line; (2) a well projected to produce greater than 70 to 165 gallons per minute shall be located at least 200 yards from the nearest valid well or proposed well site and a minimum distance of 50 yards from the nearest property line; (3) a well projected to produce greater than 165 to 265 gallons per minute shall be located at least 300 yards from the nearest valid well or proposed well site and a minimum distance of 75 yards from the nearest property line; (4) a well projected to produce greater than 265 to 390 gallons per minute shall be located at least 350 yards from the nearest valid well or proposed well site and a minimum distance of 87.5 yards from the nearest property line; (5) a well projected to produce greater than 390 to 560 gallons per minute shall be located at least 400 yards from the nearest valid well or proposed well site and a minimum distance of 100 yards from the nearest property line; (6) a well projected to produce greater than 560 to 1,000 gallons per minute shall be located at least 500 yards from the nearest valid well or proposed well site and a minimum distance of 125 yards from the nearest property line; and (7) a well projected to produce greater than 1,000 gallons per minute shall be located at least 540 yards from the nearest valid well or proposed well site and a minimum distance of 135 yards from the nearest property line. (Table 1)

**Table 1. Minimum Spacing of Wells Drilled into the Ogallala Aquifer**

<b>Well Production (factor that determines spacing of proposed wells)</b>	<b>Minimum Distance from nearest valid well drilled into or proposed well site located in Ogallala Aquifer</b>	<b>Minimum Distance from nearest property line</b>
17.5 to 70 gpm	100 yards	25 yards
>70 up to 165 gpm	200 yards	50 yards
>165 up to 265 gpm	300 yards	75 yards
>265 up to 390 gpm	350 yards	87.5 yards
>390 up to 560 gpm	400 yards	100 yards
>560 up to 1,000 gpm	500 yards	125 yards
>1,000 gpm	540 yards	135 yards

(b) All new wells drilled into the Dockum Aquifer shall be spaced from other valid wells drilled into or proposed well sites located in the Dockum Aquifer as follows: (1) a well projected to produce 17.5 up to 70 gallons per minute shall be located at least 100 yards from the nearest valid well or proposed well site and a minimum distance of 25 yards from the nearest property line; (2) a well projected to produce greater than 70 up to 165 gallons per minute shall be located at least 200 yards from the nearest valid well or proposed well site and a minimum distance of 50 yards from the nearest property line; (3) a well projected to produce greater than 165 up to 265 gallons per minute shall be located at least 300 yards from the nearest valid well or proposed well site and a minimum distance of 75 yards from the nearest property line; (4) a well projected to produce greater than 265 up to 500 gallons per minute shall be located at least 880 yards from the nearest valid well or proposed well site and a minimum distance of 100 yards from the nearest property line; and (5) a well projected to produce greater than 500 gallons per minute shall be located at least 1760 yards from the nearest valid well or proposed well site and a minimum distance of 135 yards from the nearest property line. (Table 2)

**Table 2. Minimum Spacing of Wells Drilled into the Dockum Aquifer**

<b>Well Production (factor that determines spacing of proposed wells)</b>	<b>Minimum Distance from nearest valid well drilled into or proposed well site located in Dockum Aquifer</b>	<b>Minimum Distance from nearest property line</b>
17.5 up to 70 gpm	100 yards	25 yards
>70 up to 165 gpm	200 yards	50 yards
>165 up to 265 gpm	300 yards	75 yards
>265 up to 500 gpm	880 yards	100 yards
>500 gpm	1760 yards	135 yards

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

(d) Regardless of a permit applicant's intent in providing information in the application, the Board may require the owner of a well with a production capacity that exceeds the allowable capacity for the minimum well spacing distance applicable to the well to be re-equipped to limit its production capacity to bring it into compliance with the applicable production and minimum distance requirements set forth in this rule.

#### **4.3 Place of Drilling Wells**

After an application for a permit has been granted, the well, if drilled, must be drilled within ten yards of the location specified in the permit, and not elsewhere. If the well is drilled more than ten yards from the approved well site granted by the Board, it will be an illegal well. The District may enjoin the drilling or operation of the well pursuant to Texas Water Code §36.119, as may be amended.

#### **4.4 Replacing Wells**

- (a) No person may replace a well without first obtaining a permit from the Board.
- (b) A replacement well must be drilled within fifty yards of the well being replaced and not elsewhere.
- (c) A replacement well must comply with the minimum spacing requirements for the maximum allowable production granted for the well being replaced, otherwise the replacement well shall be considered a new well for which application must be made under District rules.
- (d) A replacement well may not be permitted for a capacity greater than the maximum allowable production for which the well being replaced well was permitted.
- (e) A replacement well may not be replaced.
- (f) The location of the well being replaced shall be protected in accordance with minimum spacing requirements for the maximum allowable production for which the well being replaced was permitted until the replacement well is drilled and tested. Within 240 days of the issuance of the permit, the owner must declare in writing to the District which one of these two wells will be produced. If the owner does not notify the District within 240 days, then it will be conclusively presumed that the replacement well is the well the owner desires to retain.
- (g) Immediately after determining which well will be retained for production, the other well shall be abandoned in accordance with District rules. Violation of such article is made punishable by a fine of not less than \$500.00.
- (h) An application to replace an existing well may be granted by the Board without notice or hearing.

#### **4.5 Altering the Size of a Well or Well Pump**

- (a) No person may alter the size or actual pumping capacity of a well or well pump to a larger capacity to increase the pumping rate of production above the maximum allowable production for which the well is permitted without a permit from the Board.
- (b) The Board may grant permission to alter the size of a well or well pump only after written notice to adjacent landowners and owners of wells within a distance of the proposed well equal to the minimum spacing requirements for new wells of same or desired capacity.
- (c) If the owners set identified in Subsection (b) indicate to the Board in writing that they have no objection to the proposed change and/or if the well is a sufficient distance from other wells to comply with the minimum spacing requirements for new wells of the desired capacity then the Board may proceed to decide such matter.
- (d) An application to alter the size of a well or well pump may be granted by the Board without notice or hearing.

#### **4.6 Exceptions to Minimum Spacing Requirements**

(a) In order to protect property rights and carry out the goals of the District, the Board may from time to time grant exception to minimum spacing requirements. This rule shall not be construed so as to limit the power of the Board, and the powers stated are cumulative only of all other powers possessed by the Board.

(b) Any person requesting an exception to minimum spacing requirements shall submit (1) a request for exception on a form prescribed by the District and (2) a non-refundable fee of \$500 plus any other fees or deposits required by the District.

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

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

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

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

### **RULE 5: IMPLEMENTATION OF THE 50/50 MANAGEMENT GOAL; PRODUCTION LIMITATIONS**

#### **SUBCHAPTER A: PURPOSE & APPLICABILITY**

##### **5.1 Purpose**

The purpose of this Rule 5 is to set forth the process for implementing the District's 50/50 Management Goal for the Ogallala Aquifer, as defined in these rules. The provisions of these rules are adopted to allow the District to accomplish the purposes of Chapter 36 of the Texas Water Code, these rules, and to achieve the goals of the District's Management Plan, including the attainment of the 50/50 Management Goal.

#### **SUBCHAPTER B: ALLOWABLE PRODUCTION RATE**

##### **5.2 Applicability**

The requirements of this Rule 5, Subchapter B, shall apply to all existing, pre-District, and new wells or well systems that withdraw groundwater from the Ogallala Aquifer, whether valid or illegal, except for wells that are exempt from permitting under Rule 7.1(c).

### **5.3 Allowable Production Rate for Wells**

- (a) Beginning on January 1, 2012, and through December 31, 2013, all persons who own or operate an existing, new, or pre-District well or well system that withdraws groundwater from the Ogallala Aquifer are required to limit the total amount of production from the well or well system to the Allowable Production Rate of 1.75 acre feet per Contiguous Acre per year, as that term is defined by these rules.
- (b) Beginning on January 1, 2014, and through December 31, 2015, all persons who own or operate an existing, new, or pre-District well or well system that withdraws groundwater from the Ogallala Aquifer are required to limit the total amount of production from the well or well system to the Allowable Production Rate of 1.5 acre feet per Contiguous Acre per year.
- (c) Beginning on January 1, 2016, and continuing thereafter, all persons who own or operate an existing or new well or well system that withdraws groundwater from the Ogallala Aquifer are required to limit the total amount of production from the well or well system to the Allowable Production Rate of 1.25 acre feet per Contiguous Acre per year.
- (d) A Contiguous Acre shall only be counted one time for purposes of determining the amount of groundwater production authorized under this rule.
- (e) Only those acres that meet the definition of Contiguous Acre in Rule 1 shall be counted for purposes of determining the Allowable Production Rate from a particular tract of land. If an owner or operator has separate tracts of land that together do not meet the definition of Contiguous Acre, the District shall count each tract separately so that each individual tract has a separate Allowable Production Rate based on the number of Contiguous Acres associated with the individual tract. The Allowable Production Rates for separate tracts of land that do not meet the definition of Contiguous Acre shall not be combined and produced from one tract.

### **5.4 Allowable Production Rate for Municipalities and Public Water Systems**

- (a) A municipality or public water system that operates as a retail public utility as of the effective date of this provision shall submit a sworn written certification to the District that includes the following information: (1) the maximum amount of groundwater production from the Ogallala Aquifer from any one year during the previous three calendar years; (2) the location of each well or well system used to provide retail public water service; (3) the number of Contiguous Acres owned or controlled for the right to produce groundwater from the well or well system; and (4) the number of acres within the corporate boundaries or certificated service area of the municipality or public water system. The municipality or public water system shall provide this certification to the District on an application form prescribed by the District no later than March 1, 2012.
- (b) The municipality or public water system shall submit evidence to support the maximum amount of groundwater production claimed under Subsection (a)(1) of this rule.
- (c) The General Manager shall approve or deny such applications, in whole or in part, and may request additional information from the applicant. Appeals of a denial by the General Manager may be made to the Board on written request of the applicant.

(d) Beginning on January 1, 2012, the amount of groundwater production certified to the District under Subsection (a) of this rule and approved by the General Manager or Board shall be the maximum amount of groundwater the municipality or public water system is authorized to produce on an annual basis from the Ogallala Aquifer, except as provided under Subsection (e).

(e) A municipality or public water system that intends to produce more groundwater than the amount authorized under Subsection (d) of this rule shall have the requisite amount of Contiguous Acres necessary to produce the additional amount of groundwater prior to such production. All production over the amount authorized under Subsection (d) of this rule shall follow the Allowable Production Rates specified in Rule 5.3.

(f) All municipalities and public water systems shall follow the metering and reporting requirements in Rule 5, Subchapter C.

(g) A municipality or other public water system may produce its maximum annual groundwater production amount at any rate necessary to comply with applicable minimum water system capacity requirements of the Texas Commission on Environmental Quality. This subsection shall not be construed to exempt a municipality or other public water system from other requirements of these District Rules.

#### **5.5 Authority to Carry Forward Allowable Production Rate**

(a) A well owner or operator may set aside all or a portion of the current year's Allowable Production Rate under Rule 5.3 to carry forward for use during any of the following three calendar years. There is no limitation on the amount of water that may be set aside from the current year's Allowable Production Rate under Rule 5.3 and carried forward for future use, but the right to use the water set aside under this rule shall expire at the end of the third calendar year following the year that the water was set aside.

(b) A well owner or operator may only set aside all or a portion of the current year's Allowable Production Rate from the Contiguous Acres that surround a well or well system. Property that is not contiguous to the location of the well or well system under Rule 1 is not eligible to be counted for purposes of this rule.

(c) To be eligible to set aside all or a portion of the current year's Allowable Production Rate, the well or well system must have been permitted for the right to produce groundwater, be a pre-District well, or must be a well registered in accordance with Rule 7.9, as of January 1 of the calendar year for which the set aside is sought.

(d) A well owner or operator is not authorized to borrow from or set aside production from a future year's Allowable Production Rate.

(e) In order to set aside all or a portion of the Allowable Production Rate under this rule, a well owner or operator must apply to the District no later than March 1 following the year for which the set aside is sought. The application must be timely received, and shall not be approved unless the well owner also timely submits a production report in compliance with Rule 5.17 that addresses groundwater production for that year for which the set aside is sought. The application for a set aside shall be prescribed by the District utilizing the mechanisms and procedures set forth under Rule 5.17 and shall indicate the unused amount of acre feet that is being carried forward.

(f) The General Manager shall approve or deny such applications, in whole or in part, and may request additional information from the applicant. Appeals of a denial by the General Manager may be made to the Board on written request of the applicant.

(g) The District shall keep records of the amount of water each owner or operator has been approved by the District to carry forward from the Annual Production Rate under Rule 5.3 for a particular year and the year the amount carried forward is set to expire.

(h) The first calendar year for which a person may submit an application under this rule is for production during calendar year 2012. Thus, the application for that year must be submitted to the District no later than March 1, 2013.

*(Rules 5.6 through 5.9 reserved for expansion)*

## **SUBCHAPTER C: METERING AND REPORTING REQUIREMENTS**

### **5.10 Applicability of Metering Requirement**

The metering requirements of these rules shall apply to all existing and new wells or well systems, except those wells exempt from permitting under Rule 7.1(c)(1) or 7.1(c)(2).

### **5.11 Metering Requirements; Ability for Existing Wells to Use Alternate Measuring Method Until 2016**

(a) Existing wells: Beginning on January 1, 2012, all existing wells or well systems that are required to be metered must begin recording the use of groundwater through a meter or through the use of an alternate measuring method. All existing wells or well systems that are required to be metered must be equipped with a fully functioning meter that meets the requirements of these rules no later than January 1, 2016.

(b) New wells: Beginning on January 1, 2012, all new wells or well systems that are required to be metered shall be equipped with a fully functioning meter before producing groundwater from the well or well system.

(c) The General Manager shall develop and publish a list of approved alternate measuring methods and shall develop and publish meter specifications that shall include a list of approved meters on the District's internet website no later than September 1, 2011. The Board shall review and approve the list of alternate measuring methods and the meter specifications developed and published by the General Manager.

(d) An owner or operator may apply to the District for approval of any alternate measuring method or additional meters not included in the list developed by the General Manager. The General Manager shall approve or deny such applications. Appeals of a denial by the General Manager may be made to the Board on written request. In no event may an owner or operator of an existing well or well system operate the well on or after January 1, 2012, without either installing a fully functional meter that meets the requirements of these rules or implementing an approved alternate measuring method for the well or well system, regardless of whether a request for approval or appeal is pending before the General Manager or District. In no event may an owner or operator of a new well or well system operate the well on or after January 1, 2012, without installing a fully functioning meter that meets the requirements of these rules, regardless of whether a request for approval or appeal is pending before the General Manager or District.

(e) Replacement wells are considered to be new wells for purposes of the metering requirements of these rules.

#### **5.12 Meter Installation and Sealing**

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

(b) No person may tamper with any meter or seal installed, or that is required to be installed, on any well or well system within the District's boundaries.

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

(d) Bypasses are prohibited unless they are also metered.

(e) Meter readings shall be recorded and groundwater production reported as required under Rule 5.17.

#### **5.13 Grandfathering of Existing Meters**

(a) Wells or well systems that are equipped with fully functioning meters as of the date the District's approved meter list is published are hereby grandfathered, and are recognized by the District as being equipped with meters in compliance with these rules for as long as the grandfathered meters remain fully functional. Owners or operators wells or well systems that are equipped with meters as of the date the District's approved meter list is published shall follow the Allowable Production Rate and reporting requirements of these rules.

(b) In the event a well or well system equipped with a meter that has been grandfathered under Subsection (a) of this rule is replaced under Rule 4.4 or requires the installation of a new meter, the well or well system shall be equipped with a new meter in accordance with the General Manager's meter specifications and shall be from the District's list of approved meters as set forth in Rule 5.11.

#### **5.14 Metering Aggregate Withdrawal**

(a) Where wells are part of a well system, one or more water meters may be used for the well system if the water meter or meters are installed so as to measure the total groundwater production from all wells included in the system with no non-metered production. The provisions of Rule 5.12 apply to meters measuring aggregate pumpage from well systems.

(b) Owners or operators of all new wells or replacement wells that are required to be metered and that are drilled to operate as part of a well system shall meter the well system in accordance with Subsection (a) of this rule before producing from the new well or the replacement well and shall report production from the entire well system upon operation of the new well or replacement well as required under this rule.

### **5.15 Removal of Meter for Repairs**

A seal on a meter may be removed for meter repairs and the well or well system may be operated provided that the District is notified prior to removal of the seal and all necessary repairs are completed in a timely manner. The readings on the meter must be recorded immediately prior to removal and at the time of reinstallation of the seal by the District. The record of pumpage must include an estimate of the amount of groundwater withdrawn during the period the meter was not installed and operating. Upon completion of the meter repairs, the District shall be notified and District staff shall inspect the re-installation of the meter and re-install the seal.

### **5.16 Enforcement**

It is a major violation of these Rules to fail to record and report groundwater production through a meter or alternate measuring method in accordance with these rules. After a well or well system is determined to be in violation of these rules for failure to meter, use an alternative measuring method, or maintain and report meter or alternate measurement readings, all enforcement mechanisms provided by law and these rules shall be available to prevent unauthorized use of the well or well system and may be initiated by the General Manager without further authorization from the Board.

### **5.17 Production Reports**

(a) Beginning on January 1, 2012, all owners or operators of wells or well systems that are required to be metered under Rule 5.10 shall begin recording groundwater production through the use of a fully functional meter that meets the requirements of these rules or through the use of an approved alternate measuring method for the well or well system.

(b) All owners or operators of wells or wells systems that are required to be metered must submit annual production reports to the District. All production reports submitted to the District shall include the following information: (1) the total amount of groundwater produced from the well or well system for the previous calendar year; (2) the number of Contiguous Acres owned or controlled for the right to produce groundwater from the well or well system and whether the number of Contiguous Acres has changed from the last production report submitted to the District; (3) the deeds, easements, contracts, leases or other conveyance documents necessary to show proof that the well owner or operator has the right to produce groundwater from the number of Contiguous Acres claimed under Subsection (b)(2) of this rule, if such documentation has not already been submitted to the District; and (4) all other information requested by the District in the reporting form and mechanism described under Subsection (c). For purposes of meeting the requirement in Subsection (b)(3) of this rule, a person may submit a United States Department of Agriculture Farm Services Agency Form 578 showing proof of ownership of property claimed to be Contiguous Acres.

(c) Production reports shall be submitted through a mechanism developed by the District for submission through the District's internet website. If an owner or operator is unable to submit the report through use of the District's internet website, the report may be submitted by fax, regular mail, or electronic mail. The report shall be submitted using a form developed by the District for such purpose. The District shall make the form available in the District office and on the District website.

(d) Meter readings or readings from alternate measuring methods for annual water use must be recorded during the period ranging from December 15 to January 15 of each year and shall be included in the production report submitted to the District. Production reports for the previous calendar year's annual water use must be submitted to the District no later than March 1 of each calendar year. Therefore, the first annual production report required under this rule is for production during calendar year 2012 and must be submitted to the District no later than March 1, 2013.

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

### **6.1 Responsibility to Protect Groundwater Quality**

All owners shall use reasonable diligence and conform to these rules related to the installation, equipping, operation, maintenance, and closure of their wells in order to prevent the pollution or harmful alteration of the character of the aquifer.

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

(a) Owners shall be responsible for the installation, equipping, operation, maintenance, and closure of their wells, and all costs associated with therewith. Each well shall be installed, equipped, operated, maintained, and closed in compliance with the manufacturer's standards, instructions, or recommendation, as may be applicable.

(b) All wells located within the District's boundaries shall be installed, equipped, operated, maintained, and closed consistent with Chapters 1901 and 1902, Texas Occupations Code, and Chapter 66, 16 Texas Administrative Code, as may be amended, relating to the Texas Department of Licensing and Regulation's rules on well drillers and well pump installers, irrespective of whether the well is required to obtain a permit from the District.

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

(d) Well construction and maintenance issues may be investigated by the District but will be reported to the appropriate regulatory agency.

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

(a) The District requires that complete records be kept and reports be of the drilling, equipping, or completing of wells and the production and use of groundwater. The District requires that accurate drillers' logs be kept of wells; and copies of drillers' logs and electric logs be filed with the District.

(b) No person shall produce water from any well hereafter drilled, equipped, or completed within the District, except that necessary to the drilling and testing of such well and equipment, unless or until the District has been furnished an accurate driller's log, any electric log which shall have been made, and a well log correctly furnishing all available information required on the forms furnished by the District. No application shall be considered administratively complete nor is a well considered valid until the permanent pump has been installed in the well.

## **RULE 7: WATER WELL PERMITS; EXEMPTIONS; WELL REGISTRATION**

### **7.1 Jurisdiction of the District; Wells Exempt from Permitting**

(a) The District has jurisdiction to manage and regulate within its geographic boundaries the production of groundwater from the aquifer; the quantity of groundwater in the aquifer; the quality of groundwater in the aquifer; the use of water produced from wells from the aquifer, to ensure its beneficial use, conservation, avoidance of waste, and management during drought conditions; and recharge of water into the groundwater.

(b) The District may not require a permit for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than it is currently permitted for.

(c) The permitting requirements of these rules do not apply to:

(1) Drilling or operating a well that does not have the capacity, as equipped, to produce more than 17.5 gallons per minute, or 25,000 gallons of water per day, unless the well is part of a well system that has a total aggregated capacity to produce more than 17.5 gallons per minute or 25,000 gallons of water per day;

(2) Drilling or operating any well, regardless of its size or capacity, that is used solely for domestic use;

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

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

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

(e) The owner of a well that is exempt from permitting under this rule shall register the well with the District if required under Rule 7.2.

(f) The owner of any new well, including a well that is exempt from permitting under this rule, shall comply with the well spacing requirements under Rule 4.

(g) For purposes of determining whether the exemption set forth under Subsection (c)(1) of this rule applies, the capacity of a well that is part of a well system shall be determined by taking the sum of each of the individual wells, as equipped, in the well system. If the total sum of the capacities is more than 17.5

gallons per minute, or 25,000 gallons of water per day, the well system and the individual wells that are part of the well system are not considered to be exempt.

## **7.2 Well Registration**

(a) Well owners of the following wells shall be registered with the District:

- (1) all new exempt wells,
- (2) all existing exempt wells, except those existing wells exempt under Rule 7.1(c)(1) or 7.1(c)(2);
- (3) any well that meets all of the following criteria:
  - (A) not exempt under Rule 7.1;
  - (B) not a pre-District well;
  - (C) not a permitted well; and
  - (D) was exempt under a prior version of the District Rules.

(b) Registration applications for new wells shall be filed prior to the drilling of the well. Registration applications for existing wells shall be filed no later than March 1, 2012.

(c) A person seeking to register a well shall provide the District with the following information: (1) name, mailing address, and telephone number of the applicant; (2) name, mailing address, and telephone number of the owner of the land on which the well will be located; (3) property lines; (4) the location of the well; (5) the aquifer from which withdrawals will be made; (6) the estimated rate of withdrawal in gallons per minute; (7) a statement of the nature and purpose of the proposed use of the groundwater; (8) installation and completion date; and (9) all other information as may be required by the Board.

(d) The General Manager shall review and approve well registration applications containing the information in Subsection (c) of this rule.

## **7.3 Metering and Production Report Requirements**

(a) All new and existing exempt wells, except those wells exempt under Rule 7.1(c)(1) or 7.1(c)(2), shall follow the alternate measuring and metering requirements set forth in Rule 5, Subchapter C.

(b) Beginning on January 1, 2012, the owner or operator of a well or well system that is required to be metered under Subsection (a) of this rule shall begin recording groundwater production through the use of a fully functional meter or alternate measuring method meeting the requirements of Rule 5, Subchapter C, and shall submit annual production reports to the District. The report shall be submitted in the manner described under Rule 5.17.

(c) Meter readings for annual water use must be recorded during the period ranging from December 15 to January 15 of each year and shall be included in the production report submitted to the District. Production reports providing the annual water use from the previous calendar year must be submitted to the District no later than March 1 of each calendar year.

#### **7.4 Permit Required**

(a) No person may drill a well that is not exempt from permitting under Rule 7.1(c) or alter the size of a well or well pump such that it would bring that well under the jurisdiction of the District without first being granted a permit by the Board.

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

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

#### **7.5 Considerations for Granting or Denying a Permit**

(a) Before granting or denying a permit, the District shall consider whether: (1) the application conforms to the requirements of state law and District rules and is accompanied by the prescribed fees; (2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders; (3) the proposed use of groundwater is dedicated to any beneficial use as defined by state law and District rules; (4) the proposed use of water is consistent with the District's management plan; (5) the applicant has agreed to avoid waste and achieve water conservation; (6) and the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

(b) The District shall consider and act on each administratively complete application for a permit. If an application is not administratively complete, the District shall request the applicant to complete the application. The application will expire if the applicant does not complete the application within 90 days of the date of the District's request.

#### **7.6 Time During Which a Permit is Valid**

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

(b) If the applicant makes an application to drill a well, but does not complete the work or file with the District a completed well log within 240 days of the issuance of the permit, the deposit for the permit will be forfeited and will become the property of the District.

#### **7.7 Contents of Permits**

(a) The following information must be provided by the applicant to the District on forms prescribed by the District: (1) name, mailing address, and telephone number of the applicant (2) name, mailing address, and

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

(b) The following information must be provided by the District: (1) the location of the three nearest wells within 540 yards of the proposed well site for wells drilled into the Ogallala Aquifer or the location of the three nearest wells within 1760 yards of the proposed well site for wells drilled into the Dockum Aquifer, as appropriate and (2) the location of the proposed well site as determined by field survey by District personnel.

(c) The applicant's signature on the application shall indicate that the applicant: (1) has legal authority to bind the owner to all obligations imposed by the District, (2) has legal authority to drill or cause to be drilled a well at the proposed well site; (3) has received a copy of the District's rules and agrees to comply with said rules; (4) agrees that all information provided by the applicant is correct and true and in compliance with District rules; (5) will install, equip, operate, maintain, or close the well as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of, and achieve the conservation of groundwater in the aquifer; (6) is solely responsible for the drilling of the well at the approved well site identified in the application; for informing the driller of the approved well site; for ensuring the well is drilled within a ten-yard radius of the approved well site; and to abide by all District rules should it become necessary to drill the proposed well at a location other than the approved well site but within the ten-yard radius noted above; (7) will provide the District with a completed well log on forms prescribed by the District immediately upon installation of the permanent pump and prior to the production of groundwater from the well, except for such production as may be necessary to the drilling and testing of such well; (8) agrees that the application will not be considered administratively complete nor is the well valid until the permanent pump has been installed in the well; (9) agrees that the well may be used as a District observation well as determined by District personnel; and (10) agrees that upon any violation of this agreement, the Board may order that the well may no longer be used until the problem is permanently resolved to the satisfaction of the Board.

(d) A permit confers only the right to use the permit under the provisions of District rules and according to its terms. A permit's terms may be modified pursuant to the provisions of District rules. The Board may revoke or amend a permit in compliance with District rules when reasonably necessary to accomplish the purposes of the District, the rules of the District, the District's Management Plan, regulatory plan, or state law.

(e) An application pursuant to which a permit has been issued is incorporated in the permit, and the permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application. A finding that false information has been supplied in the application may be grounds to refuse or deny the application or for immediate revocation of the permit.

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

## **7.8 Deposits**

(a) Each permit application shall be accompanied by a \$250.00 deposit which shall be accepted by the General Manager. Deposit shall be returned to the applicant if: (1) the application is denied; (2) if the application is granted upon receipt of correctly completed well log; or (3) the permit is cancelled without having been drilled, upon return and surrender of said permit marked "cancelled" by the applicant within 240 days after the approval date of the permit.

(b) In the event neither the well log nor the permit marked "cancelled" is returned to the District within 240 days after the approval date of the permit or the extension date thereof, the said deposit shall become the property of the District.

(c) All deposits heretofore made or which shall hereafter be made shall become the property of the District if such well log or permit has not been returned or is not returned to the District within 240 days from the approval date of the permit.

## **RULE 8: PERMIT HEARING PROCEDURES**

### **8.1 Scheduling of Hearing**

(a) The General Manager or Board may schedule a hearing on permit applications received by the District as necessary.

(b) The General Manager or Board may schedule more than one application for consideration at a hearing.

(c) A hearing must be held at the District's principal office unless the Board provides for hearings to be held at a different location.

(d) A hearing may be held in conjunction with a regularly scheduled Board meeting.

### **8.2 Notice**

(a) Not later than the 10<sup>th</sup> day before the date of the permit hearing, the General Manager or Board shall: (1) post notice in a place readily accessible to the public at the District's principal office; (2) provide notice to the county clerk of each county in the District; and (3) provide notice by (aa) regular mail to the applicant, (bb) regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and (cc) regular mail to any other person entitled to receive notice under District rules.

(b) The notice provided under Subsection (a) must include: (1) the name of the applicant; (2) the address or approximate location of the well or proposed well; (3) a brief explanation of the proposed permit, including any requested amount of groundwater, the purpose of the proposed use, and any change in use; (4) the time, date, and location of the hearing; and (5) any other information the General Manager or Board considers relevant and appropriate.

(c) Failure to provide notice under Subsection (a)(3)(bb) does not invalidate an action taken by the District at the hearing.

(d) A person may request notice from the District of a hearing on a permit. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District.

To receive notice of a hearing in a later year, a person must submit a new request. An affidavit of District personnel establishing attempted service by first class mail, facsimile, or electronic mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

### **8.3 Hearing Registration**

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

### **8.4 Hearing Procedures**

(a) Hearings will be conducted in such manner as the Board deems most suitable to the particular case, and technical rules of legal and court procedure need not be applied. It is the purpose of the Board to obtain all the relevant information and testimony pertaining to the issue before it as conveniently, inexpensively, and expeditiously as possible without prejudicing the rights of either applicants or protestants.

(b) A hearing must be conducted by: (1) a quorum of the Board; or (2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing.

(c) Except as provided by Subsection (d), the Board president or the hearings examiner shall serve as the presiding officer at the hearing.

(d) If the hearing is conducted by a quorum of the Board and the Board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.

(e) The presiding officer may: (1) convene the hearing at the time and place specified in the notice; (2) set any necessary additional hearing dates, (3) designate the parties regarding a contested application, (4) establish the order for presentation of evidence, (5) administer oaths to all persons presenting testimony, (6) examine persons presenting testimony, (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party, (8) prescribe reasonable time limits for testimony and the presentation of evidence; (9) limit the number of witnesses appearing whose testimony may be merely cumulative, and (10) exercise the procedural rules related to hearings on permit or permit amendment applications.

(f) Any party at interest in a proceeding may appear either in person or by attorney or both in such proceedings. A party at interest is any person owning a groundwater right within the boundaries of the District who is or may be affected by such proceeding.

(g) At the discretion of the Board, anyone not a party to a proceeding may appear. The District may allow any person, including District personnel, to provide comments at a hearing on an uncontested application.

(h) The presiding officer may allow testimony to be submitted in writing and may require sworn written testimony. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

(i) If the Board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10<sup>th</sup> day after the hearing. A person who files additional written material with the presiding officer under this section must also provide the material, not later than the 10<sup>th</sup> day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this section may file a response to the material with the presiding officer not later than the 10<sup>th</sup> day after the date the material was received.

### **8.5 Evidence**

(a) The presiding officer shall admit clear and convincing evidence that is relevant to an issue at the hearing. Evidence will be admitted if it is of that quality upon which reasonable persons are accustomed to rely in the conduct of serious affairs. It is intended that needful and proper evidence shall be conveniently, inexpensively, and expeditiously produced while preserving the substantial rights of the parties to the proceeding.

(b) The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

### **8.6 Recording**

(a) Except as provided by Subsection (b), the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

(b) If a hearing is uncontested, the presiding officer may substitute minutes or the report required under section 8.8 for a method of recording the hearing provided by Subsection (a).

### **8.7 Continuance**

The presiding officer may continue a hearing from time to time and from place to place without providing notice under section 8.2. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.

### **8.8 Report**

(a) Except as provided by Subsection (e), the presiding officer shall submit a report to the Board not later than the 30<sup>th</sup> day after the date a hearing is concluded.

(b) The report must include: (1) a summary of the subject matter of the hearing, (2) a summary of the evidence or public comments received, and (3) the presiding officer's recommendation for Board action on the subject matter of the hearing.

(c) The presiding officer or General Manager shall provide a copy of the report to: (1) the applicant and (2) each person who provided comments or each designated party.

(d) A person who receives a copy of the report under Subsection (c) may submit to the Board written exceptions to the report.

(e) If the hearing was conducted by a quorum of the Board and if the presiding officer prepared a record of the hearing as provided by Rule 8.6(a) the presiding officer shall determine whether to prepare and submit a report to the Board under this section.

### **8.9 Board Action**

The Board shall act on a permit application not later than the 60<sup>th</sup> day after the date the final hearing on the application is concluded.

### **8.10 Requests for Rehearing or Findings and Conclusions**

(a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit application by requesting written findings and conclusions or a rehearing before the Board not later than the 20<sup>th</sup> day after the date of the Board's decision.

(b) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35<sup>th</sup> day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions from the Board may request a rehearing before the Board not later than the 20<sup>th</sup> day after the date the Board issues the findings and conclusions.

(c) A written request for rehearing must be filed in the District's principal office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.

(d) If the Board grants a request for a rehearing, the Board shall schedule the rehearing not later than the 45<sup>th</sup> day after the date the request is granted.

(e) The failure of the Board to grant or deny a request for rehearing before the 91<sup>st</sup> day after the date the request is submitted is a denial of the request.

### **8.11 Final Decision**

(a) A decision by the Board on a permit or permit amendment application is final (1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or (2) if a request for rehearing is filed on time, on the date (aa) the Board denies the request for rehearing; or (bb) the Board renders a written decision after rehearing.

(b) Except as provided by Subsection (c), an applicant or a party to a contested hearing may file a suit against the District under Section 36.251 to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.

(c) An applicant or a party to a contested hearing may not file suit against the District under Section 36.251 if a request for rehearing was not filed on time.

### **8.12 Consolidated Hearings**

(a) Except as provided by Subsection (b), a District shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the District requires a separate permit or permit amendment application for: (1) drilling, equipping, operating, or completing a well or substantially altering the size of a well or well pump under Section 36.113; (2) the spacing of water wells or the production of groundwater under Section 36.116; or (3) transferring groundwater out of a District under Section 36.122.

(b) A District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.

## **RULE 9: RULEMAKING HEARING PROCEDURES**

### **9.1 Purpose of Rulemaking Hearings**

(a) The District may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. During the rulemaking process the Board shall consider all groundwater uses and needs and shall develop rules which are fair and impartial and that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program. Any rule of the District that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.

(b) Except as provided by Texas Water Code §36.1011, after notice and hearing, the Board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the Board.

(c) The Board shall compile its rules and make them available for use and inspection at the District's principal office.

### **9.2 Notice**

(a) Not later than the 20<sup>th</sup> day before the date of a rulemaking hearing, the General Manager or Board shall (1) post notice in a place readily accessible to the public at the District's principal office, (2) provide notice to the county clerk of each county in the District, (3) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located, (4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d), and (5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy of a generally accessible internet website.

(b) The notice provided under Subsection (a) must include (1) the time, date, and location of the rulemaking hearing, (2) a brief explanation of the subject of the rulemaking hearing, and (3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

(c) Failure to provide notice under Subsection (a)(4) does not invalidate an action taken by the District at a rulemaking hearing.

(d) A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or electronic mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

### **9.3 Hearing Procedures**

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

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

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

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

### **9.4 Emergency Rules**

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

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

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

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

## **RULE 10: PERMITTING AND REGULATION OF DRILLED OR MINED SHAFTS**

### **10.1 Purpose, Scope, and Applicability**

- (a) This rule is promulgated under the provisions of Texas Water Code §36.101, for the purpose of conserving, preserving, protecting, recharging, and preventing waste of the underground water within the jurisdiction of the District.
- (b) This rule applies to all drilled or mined shafts and associated facilities within the District's jurisdiction, except those listed in Rule 10.4 (b).

### **10.2 Definitions**

The definitions contained in the Texas Water Code §28.001 shall apply to this rule. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

- (a) "Aquifer" means a geologic formation, group of formations, or part of a formation that is water-saturated water-bearing, and yields potable water in sufficient quantities to provide a usable supply within the jurisdiction of the District.
- (b) "Area of review" means the surface area and the subsurface area extending horizontally not less than 2,000 feet in all directions from the maximum extension of a proposed or existing shaft.
- (c) "Borehole" means a drilled penetration or an artificial opening in the ground where the depth is greater than its largest surface dimension, located within 2,000 feet of a new shaft and penetrating a potable water aquifer.
- (d) "Casing" means the material used to seal off strata at and below the earth's surface and to maintain the structural stability of the shaft opening.
- (e) "Contaminant" means any physical, biological, chemical, or radioactive material or matter.
- (f) "Formation" means a body of soil or rock characterized by a degree of lithologic homogeneity that is prevailing, but is not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.
- (g) "Existing shaft" means a shaft constructed before the effective date of this rule (the use of which remains unchanged after the effective date of this rule) or an abandoned shaft.
- (h) "Formation fluid" means the fluid present in a formation under natural conditions.
- (i) "Ground water" means water below the land surface in a zone of saturation.
- (j) "New shaft" means any shaft which has not been constructed as of the effective date of this rule or any existing shaft or abandoned shaft which is modified or converted to a new purpose for which it was not being used on the effective date of this rule.
- (k) "Pollution" means the contamination of water or the alteration of the physical, chemical, radioactive, or biological quality of water (1) that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or (2) that impairs the usefulness of the public enjoyment of the water for any lawful and reasonable purpose.

(l) "Resident inspector" means the person or persons designated by the General Manager to remain on-site to oversee and inspect the ongoing construction and operation of the drilled or mined shaft.

(m) "Seismic reflection survey" or "geophysical survey" means any surface-based geophysical method which can accurately measure a response at depth of physical phenomena, artificial and/or natural, directly and/or indirectly, which is related to the underground geological conditions.

(n) "Shaft" means any vertically oriented excavation, whether constructed by drilling or mining techniques, where the depth of the excavations greater than its diameter and the excavation penetrates into or through the base of a potable water aquifer.

(o) "Surface facilities" means the structure, equipment, appurtenances, and other fixtures associated with the drilled or mined shaft, used for storage, processing, or operation, that are above the ground, but not including the shaft collar.

(p) "Stratum or strata" means a bed or layer, regardless of thickness, that consists of generally the same kind of soil, rock, or material.

(q) "Test hole" means a drilled and/or cored hole used to determine the type, nature, and characteristics of the sub-surface materials and the extent and conditions of the various materials as they exist.

(r) "Well" means an augered, bored, drilled, or driven penetration or an artificial opening in the ground made by digging, jetting, or some other method, where the depth of the well is greater than its largest surface dimension, but the term does not include any surface pit, surface excavation, drilled or mined shaft, or natural depression.

### **10.3 Severability**

If any provision of this rule, or the application of such provision to any person or circumstance, is held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

### **10.4 Construction and Use Prohibited**

(a) Unless excluded under Rule 10.4(b), the construction, use, or operation of a new shaft is prohibited, unless authorized by permit of the Board.

(b) The following penetrations are not within the scope of Rule 10.4(a): (1) Penetrations whose primary purpose is the production of groundwater; (2) shafts incident to surface mines for oil and gas, iron ore, lignite, coal, or uranium recovery regulated by the Railroad Commission of Texas; (3) sanitary sewer lift stations and otherwise approved water and sewer collection, storage, and distribution structures; (4) penetrations authorized by the Railroad Commission of Texas of less than 36 inches in diameter whose primary purpose is the ventilation of underground workings or structures; (5) penetrations authorized by the Texas Department of Water Resources or Railroad Commission of Texas whose purpose is the transmission of fuels, concrete slurries, muds, electrical lines, communications, wires, or structures, or other utility transmissions, or bulk materials to or recovery from underground storage facilities of mine workings; (6) penetrations which would otherwise be defined as shafts but which, due to local conditions, do not penetrate into or through a potable water aquifer; and (7) existing shafts.

## **10.5 Pre-Permit Determination**

(a) Prior to submission of an application for permit, persons considering the construction of a new shaft, which may be defined as a shaft subject to this rule, must contact the General Manager and obtain a determination whether or not the proposed activity is subject to this rule.

(b) The following information must be submitted for this determination: (1) the proposed or existing location(s) of the shaft(s); (2) the activity proposed and, if applicable, the existing activity; and (3) the proposed or, if applicable, existing depth of the shaft(s).

(c) An applicant may provide information supporting its position that the new or existing shaft(s), due to local conditions, will not penetrate into or through a potable water aquifer for the purposes of this determination.

## **10.6 Pre-Application Activities**

(a) Persons who desire to propose a new shaft subject to this rule must obtain the General Manager's approval of plans for the drilling of an engineering design test hole on center or offset to the shaft and a proposed seismic reflection survey (geophysical survey) for the purpose of site characterization, shaft and seal design, and shaft decommissioning prior to submitting an application for permit. Plans submitted for approval shall contain specific information which will address the following: (1) test hole – location, drilling, completion, testing, closure, surface cleanup, and mud pits; and (2) seismic survey – location and number of lines, velocity control, and accuracy of resolution.

(b) An applicant may provide results of previous exploratory drilling and geophysical surveys to support its position that the engineering design test hole and seismic reflection survey (geophysical survey) are not necessary.

(c) After an appropriate review of the matters submitted under Subsections (a) and (b), the General Manager (1) may allow the results of previous exploratory drilling and geophysical exploration to be substituted for the engineering design test hole and seismic reflection survey; (2) will determine the requirements of Rule 10.9 of this rule (relating to Procedures for Application) and the area or review; (3) will determine the fee necessary to compensate the District for reviewing the application; and (4) may require mechanical integrity investigations for existing shafts which may be modified or converted to a new purpose.

(d) Persons required to drill an engineering design test hole and/or conduct a seismic reflection survey must first obtain written approval from the General Manager.

## **10.7 Test Hole and Seismic Reflection Survey**

(a) A test hole will not be required to be drilled in conjunction with modification or conversion of use of an existing or abandoned shaft.

(b) Current rules of the District, Texas Commission on Environmental Quality, and Railroad Commission of Texas shall be used to determine requirements for the mud pit construction, surface cleanup, and test hole closure requirements.

(c) A seismic reflection survey (geophysical survey) will not be required in conjunction with modification or conversion of an existing or abandoned shaft.

#### **10.8 Application for Permit**

(a) A technical report prepared either by a registered professional engineer or by a qualified person who is competent and experienced in the field to which the application relates or who is thoroughly familiar with the operation or project for which the application is made shall be submitted as part of the application for a new permit.

(b) At a minimum, the technical report shall include the following: (1) a general description and intended purpose of all facilities and systems proposed to be used for, or in connection with, construction and operation of a shaft by mining or drilling; (2) a surveyor's plat showing the exact location from property lines and survey lines, and giving the latitude and longitude of the shaft and a map(s) showing the location of the shaft for which a permit is sought and the applicable area of review. Within the area of review, the map(s) must show the number, name, and location of all boreholes and other pertinent surface features; (3) a tabulation of data of all boreholes within the applicable area of review. Such data shall include a description of each penetration's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the General Manager may require; (4) maps and cross-sections, as necessary, indicating the general vertical and lateral limits of aquifers within the applicable area of review and their positions relative to the formation, formations or stratigraphic units the shaft is constructed to reach; and (5) the test of the report shall discuss the geology, hydrogeology, and ground-water use and development within the applicable area of review, and with respect to the shaft shall discuss design, construction, sealing, decommissioning, mechanical integrity, operating procedures, and monitoring.

(c) After an appropriate review, the General Manager may modify the requirements for application of this section if he finds that additional information is required to evaluate the shaft, or that information required herein is not reasonably available and is not necessary for a full evaluation of the application.

#### **10.9 Procedures for Application**

An application is administratively complete when received with all the information as required by this rule.

(a) Any person who is required to obtain a permit, or who requests an amendment, renewal, revocation or suspension of a permit, shall complete, sign, and submit an application to the General Manager, according to the sections of this rule.

(b) Signatories to Application

(1) All applications shall be signed as follows:

i. for a corporation: by a principal executive officer of at least the level of vice-president or a duly authorized representative if such representative is responsible for the overall operation of the facility. A representative shall submit in writing proof of the authorization;

ii. for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

iii. for a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

(2) A person signing an application shall make the following certification:

*"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of civil penalty and criminal fine."*

(3) For permit applications involving hazardous solid waste the owner and operator of a facility must sign the application.

(c) Permittees shall keep records of all data used to complete applications and any supplemental information for a period of at least three years from the date the permit is granted. This period may be extended by request of the General Manager.

(d) The General Manager will review each application and accompanying data, information, and materials to determine if the application is complete. If an application is not complete, the General Manager shall notify the applicant and include a list of the information necessary to make the application complete. The application is complete when the listed information is received by the General Manager. After receiving the listed information, the General Manager may request additional information to clarify, modify, or supplement the previously submitted material.

(e) If an applicant does not submit a complete application and fails or refuses to correct deficiencies in the application within 60 days after correction is requested, the General Manager shall withhold further review and return the application to the applicant.

(f) When an application is complete, the General Manager will forward the application to the Board. For the purpose of providing adequate information, the General Manager will identify for the Board the area wherein the application, if granted, would have a potential impact and provide a list of persons who may be affected.

(g) The General Manager will prepare a draft permit consistent with all applicable District rules unless a recommendation is made not to grant an application. The draft will be subject to change during the course of the proceedings on the application. The draft permit will be available for public review. The approved draft permit will be filed with the Board to be included in its consideration of the application for permit.

The General Manager may prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The General Manager shall send this summary, together with the draft permit, to the applicant and on request, to any other person. The summary shall include the following information, where applicable: (1) a brief description of the type of facility or activity which is the subject of the draft permit; (2) conditions that do or do not appear justified, including references to applicable statutory or regulatory provisions; (3) required

standards that do or do not appear justified; and (4) name and telephone number of a person to contact for additional information.

(h) Certain material submitted to the District may be determined to be confidential and withheld from public review. The application shall identify any material for which confidentiality is requested. Each claim of confidentiality must be made upon submission of the material with the application, or the material will be considered available for public review. Reasons of confidentiality include the concept of trade secrecy and other related legal concepts which give a business the right to preserve confidentiality of business information and to obtain or retain advantages from its right in the information. This includes authorizations under 5 United States Code 552(b)(4), 18 United States Code 1905, and special rules cited in 40 Code of Federal Regulations §§ 2.301–2.309. The General Manager will review each claim of confidentiality. If a claim is not approved, the applicant will be notified and informed whether the material is essential to the application. The applicant may elect to withdraw any material submitted with an application. The name and address of an applicant or permittee will not be considered confidential.

(i) The provisions of this subsection establish the requirements for permits for drilled or mined shafts.

(j) It is the duty of the owner of the land where the shaft will be located to submit an application for permit. This duty may be delegated to the operator of the shaft if the shaft is owned by one person and operated by another.

(k) Forms for permit applications will be made available by the District. Each application for permit shall include the following: (1) the name, mailing address, and location(s) of the shaft(s) for which the application is submitted; (2) the ownership status as federal, state, private, public, or other entity; (3) the operator's name, mailing address, and telephone number; (4) a brief description of the nature of the business; (5) the activities conducted by the applicant which require a permit; (6) the principal products or services provided by the applicant; and (7) a topographic map, ownership map, county highway map, or a map prepared by a registered professional engineer or a registered surveyor which shows the shaft and any other structure or location regarding the regulated shaft and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8½ inches by 14 inches or folded to that size and shall be on a scale of not less than 1 inch equals 1 mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the boundaries sufficient to show the following: (i) each water well, spring, and surface water body or other water in the state within the map area; (ii) the general character of the area adjacent to the facility, including public roads, towns and the nature of development such as residential, commercial, agricultural, recreational, undeveloped and so forth; (iii) the location of any waste disposal activities conducted on the tract not included in the application; (iv) the ownership of tracts of land within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity; (v) such other information that may reasonably be requested by the General Manager; (8) a listing of all permits or construction approvals received or applied for from other agencies or boards; (9) the manner in which financial assurance will be attained; (10) a decommissioning and closure plan; (11) a fee, based on estimated cost of application processing and review, of not less than \$10,000, which shall include, but is not limited to, consultants' fees, lab work, personnel

salaries, support services, travel expenses, computer time, and informational services; (12) a letter from the Railroad Commission of Texas stating that a drilling or mining of the proposed shaft and use of the proposed shaft will not endanger or injure any oil or gas formation or significantly limit the potential for future recovery of or exploration for oil or gas; and (13) a statement of the current status of any litigation involving the project or proposed siting of the shaft.

#### **10.10 Permit Required**

(a) All shafts subject to this rule shall be specifically authorized by permit. Shafts serving the same underground working, or built as part of a single comprehensive program, may be included in one permit. Additional shafts to be added after the permit is issued may be authorized by permit amendment and shall be constructed in accordance with construction standards as set forth in section 10.11.

(b) A permit shall include terms and conditions reasonably necessary to protect the potable water aquifers from pollution. The permit shall include requirements regarding the construction, operation, and decommissioning of a new shaft and corrective action, if necessary, to prevent pollution resulting from inadequately constructed, completed, and abandoned boreholes within the area of review. In the event that, after construction of a new shaft has commenced, evidence indicates that a shaft might pose a hazard to a potable water aquifer, the General Manager may prescribe a corrective plan and compliance schedule to remedy such hazard as a condition for continued construction, use, or operation.

#### **10.11 Construction Standards for Shafts**

(a) The provisions of this rule apply to new shafts within the District's jurisdiction.

(b) All shafts shall be constructed to prevent migration of fluids that may cause or allow the pollution of aquifers. Construction materials used in each shaft shall be designed for the life expectancy of the shaft.

(c) Appropriate surveys, logs, and other tests shall be conducted during the construction of shafts. All surveys, logs, and tests shall be interpreted by qualified persons.

(d) Any proposed change or alteration to construction plans after permit issuance shall be filed with the General Manager and approval obtained before incorporating such changes.

#### **10.12 Resident Inspector**

The General Manager may designate a resident inspector to oversee all phases of shaft activities. The resident inspector shall monitor compliance with the terms of the permit for all testing, construction, completion, and operation of the shaft, and report to the General Manager.

#### **10.13 Operating Standards**

(a) The construction, use, and operation of a new shaft shall be authorized by the permit. All shafts must have mechanical integrity. A lined shaft or lined portion of a shaft has mechanical integrity if there is no leak or physical deterioration in the casing, liners, and seals, and if there is no fluid movement through vertical fluid channels adjacent to the shaft which could cause pollution of an aquifer. An unlined shaft, or unlined portion of a shaft, has mechanical integrity if there is no deterioration of the wall rock which could cause pollution of an aquifer. In the event that the lined shaft, unlined shaft, or portion of an unlined shaft may have inflows of

ground water, the General Manager may require a shaft and mine water management plan be submitted as part of the shaft permit application. Mechanical integrity of the shaft (wallrock or casing, liners, and seals) must be demonstrated as required by the permit during the life of the shaft, and shall be accomplished by a method approved by the General Manager.

(b) Shafts lacking mechanical integrity shall undertake corrective maintenance actions immediately. The permittee shall notify and obtain the approval of the General Manager before commencing any corrective maintenance that is necessitated by failure to achieve or maintain mechanical integrity. The notification shall be in writing and shall include plans for the proposed work. The General Manager may grant an exception to the requirement for prior written notification when immediate action is required.

#### **10.14 Monitoring and Reporting Standards**

(a) The permittee shall submit daily construction chronology reports to the General Manager and to the resident inspector, if applicable, providing data for each day during the drilling, or mining and casing or lining of the shaft. The data shall be presented in tabular form and shall report date, thickness, and lithology penetrated, material settings and volumes, and problems.

(b) Within 90 days after the completion of the shaft, the permittee shall submit an engineering drawing showing the "as built" construction details of the shaft, liners, and seals, including the depth, thickness, and lithology of the rock units penetrated in constructing the shaft.

(c) The permittee shall, prior to commencing construction, provide written notice to the General Manager that a copy of the permit has been filed with the commissioners' court for the county where the shaft is located.

(d) The permittee shall notify the General Manager in writing of the anticipated first date when the shaft will be used or operated or its stated purpose at least 30 days prior to commencing use of the shaft. Compliance with all pre-operation terms of the permit must occur prior to beginning operations.

(e) The permittee shall notify the General Manager within twenty-four hours of the discovery of any leakage or other failure of the shaft or associated chambers.

(f) Within 90 days after the completion of a corrective maintenance action, a report shall be filed with the General Manager providing the reason for the shaft corrective maintenance action and the details of all work performed and results of remedial action.

#### **10.15 Surface Facilities**

Surface facilities must be constructed, maintained, and operated in compliance with applicable permits and rules governing that facility.

#### **10.16 Certification of Construction and Completion**

Prior to commencing operations, the permittee must certify that the shaft was constructed and completed in compliance with permit requirements.

### **10.17 Additional Requirements**

(a) The permittee shall keep complete and accurate records of (1) all construction records; (2) mechanical integrity testing; (3) geotechnical testing; (4) water level and water quality testing; (5) record of post-construction operations; (6) corrective maintenance actions; and (7) any additional information that the General Manager determines might reasonably affect the construction and operation of the shaft.

(b) All records or copies of all records shall be filed on-site and made available for review upon request by a representative of the District.

(c) The permittee shall retain, for the lifetime of the shaft and for at least five years after decommissioning, records of all information concerning the construction, use, and operation of the shaft.

(d) The permittee may be required, prior to commencing operations, to secure and maintain a performance bond or other equivalent form of financial assurance or guarantee, approved by the General Manager, to assure (1) the costs of the District of monitoring and of on-site, full-time surveillance; and (2) the cost to ensure the safe decommissioning and closure of the shaft.

### **10.18 Decommissioning**

Shaft decommissioning and closure shall be in accordance with plans and specifications approved by the General Manager. Decommissioning seals shall be placed in the shaft so as to prevent the migration of fluids into a potable water aquifer. Shaft seal mix designs shall be based on formulations developed for borehole sealing and shall be compatible with existing lining, if applicable, and adjacent strata.

### **10.19 Hearings and Permit Term**

After the General Manager has submitted to the Board the completed application and a proposed permit (or recommendation to deny the permit), the Board will set a hearing upon the application, which hearing will be held in accordance with District rules. Following such hearing, the Board shall issue a permit upon such conditions and requirements as the Board feels necessary or advisable to conserve, preserve, protect, and prevent the waste of the underground water within the jurisdiction of the District. Alternatively the Board may deny the permit if it finds that a permit would not be advisable or necessary or that the granting of a permit would result in the lack of conservation or protection of the underground water within the jurisdiction of the District. Any permit which is granted shall have a maximum life of ten years. Should the shaft for which the permit is granted not be completed in accordance with the terms of the permit within two years from the date such permit is issued, the permit will automatically be terminated unless, after hearing, the Board grants an extension of such permit.