

HIGH PLAINS UNDERGROUND WATER CONSERVATION DISTRICT NO. 1 ENFORCEMENT POLICY AND CIVIL PENALTY SCHEDULE

I. General Guidelines

This Enforcement Policy and Civil Penalty Schedule ("Policy") has been developed by the Board of Directors ("Board") of the High Plains Underground Water Conservation District ("District") in accordance with District Rule 3.10. This Policy is incorporated by reference into the District Rules and constitutes a rule of the District for all purposes.

When the General Manager discovers a violation of the District Rules that either (1) constitutes a Major Violation, or (2) constitutes a Minor Violation that the General Manager is unable to resolve within 60 days of discovering the Minor Violation, the General Manager shall bring the Major Violation or the unresolved Minor Violation and the pertinent facts surrounding it to the attention of the Board. Violations related to water well construction and completion requirements shall also be brought to the attention of the Board.

The General Manager shall recommend to the Board an appropriate settlement offer to settle the violation in lieu of litigation as set forth in this Policy. The Board may instruct the General Manager to: (1) tender an offer to settle the violation; (2) institute a civil suit in the appropriate court to seek civil penalties, injunctive relief, and costs of court and expert witnesses, damages, and attorneys' fees; (3) or both settlement offer and institution of a civil suit. Nothing in this Policy, including the assessment of penalties, shall be construed to relieve the violator of the duty to comply with the rule that was violated, and the District shall continue to have all remedies available in law or equity to enforce compliance with the District Rules.

In addition to any other action to provide notice to a violator deemed necessary by the Board and/or General Manager, the General Manager will send a Notice of Violation letter by certified mail, return receipt requested, to a person the General Manager believes to be in violation of a District rule; however, the District is not required to send a Notice of Violation letter for each day that a violation continues and that is considered to be a separate violation under Rule 3.10(a). Notice of Violation letters issued by the District shall include the applicable penalty, a statement informing the violator that each day that a violation continues is considered to be a separate violation, and shall also include the actions required to resolve the violation.

II. Minor Violations

The following acts each constitute a Minor Violation of the District Rules:

1. Failure to conduct a meter reading within the required period (Rule 5.17(d)).
2. Failure to timely submit production reports (Rule 5.17(d)), but which are submitted within the first 60 calendar days after the submission deadline.
3. For new wells, failure to provide driller's log and registration before producing water from the well (Rule 6.3(b)).
4. Failure to install an approved meter on a well or well system by the applicable deadline (January 1, 2016, for existing wells or well systems drilled and completed

before January 1, 2012; before operation begins for new wells or well systems drilled and completed on or after January 1, 2012) (Rule 5.11(a)).

CIVIL PENALTY SCHEDULE FOR MINOR VIOLATIONS

First Violation:	\$100.00
Second Violation:	\$250.00
Third Violation:	Major Violation

A second violation shall be any Minor Violation within three years of the first Minor Violation. A third violation shall be any Minor Violation following the second Minor Violation within three years of the second minor violation. Each day of a continuing violation constitutes a separate violation.

III. Major Violations

The following acts each constitute a Major Violation:

1. Failure to obtain a permit from the District before drilling, altering, operating, or producing groundwater from any new, non-exempt well (Rules 7.4 and 3.1).¹
2. Failure to comply with permit terms, conditions, requirements and special provisions (Rule 7.7).
3. Failure to close or cap an open or uncovered well (Rule 3.4).¹
4. Failure to timely submit production reports (Rule 5.17(d)), but which are submitted after the first 60 calendar days after submission deadline.²
5. Failure to plug an abandoned, destroyed, or deteriorated well (Rule 3.5).¹
6. Committing waste or pollution (Rules 3.2 and 3.3).
7. Tampering with a meter or seal, or causing water to bypass a meter so that the production is not measured (Rule 5.12).
8. Failure to properly abandon and plug a well that has been replaced (Rule 4.4(g)).³

CIVIL PENALTY SCHEDULE FOR MAJOR VIOLATIONS

First Violation:	\$300.00
Second Violation:	\$500.00
Third Violation:	Civil Suit for injunction, civil penalties owed for the violations, and damages

A second violation shall be any Major Violation within three years of the first Major Violation. A third violation shall be any Major Violation following the second Major Violation within three

years of the second Major Violation. Each day of a continuing violation constitutes a separate violation.

¹ In addition to the applicable penalty provided for in the Civil Penalty Schedule for Major Violations, persons who violate Rules 7.4, 3.1, 3.4, and 3.5 shall be subject to the placement of a lien on the property and/or shall be required to reimburse the District for the costs incurred by the District in securing the lien and in remedying the violation, as provided in the District Rules.

² If production reports are still not submitted within 120 days of deadline, the civil penalty is \$750 and the District may suspend the permit and/or seek injunctive relief.

³ As provided in District Rule 4.4(g), the penalty for failure to abandon and plug a well that has been replaced is \$500 for each occurrence, including the first violation.

IV. Violations Related to Production in Excess in of the Allowable Production Rate

This section shall take effect beginning on January 1, 2016, and all violations for production in excess of the Allowable Production Rate before January 1, 2016, are governed by Section VII. until the expiration of Section VII. as set forth below. Persons that produce groundwater in excess of the Allowable Production Rate set forth in Rule 5.3 or Rule 5.4, if applicable, shall be subject to a fine of \$25 per acre foot produced in excess of the Allowable Production Rate for the first occurrence of the violation, \$75 per acre foot produced in excess of the Allowable Production Rate for the second occurrence of the violation, and \$225 per acre foot produced in excess of the Allowable Production Rate for the third occurrence of the violation. A fourth and all subsequent violations for production in excess of the Allowable Production Rate will result in a civil suit for injunction, the civil penalties owed for third-occurrence violations, and damages.

A second violation occurs if a person produces in excess of the Allowable Production Rate within ten years of the first violation under this section. A third violation occurs if a person produces in excess of the Allowable Production Rate within three years of the second violation under this section. A fourth violation occurs if a person produces in excess of the Allowable Production Rate within three years of the third violation under this section, and so on. Production in excess of the Allowable Production Rate is considered to be a Major Violation, subject to the fines and violation schedule set forth in this section.

After production reports are submitted to the District and if the District believes the reports indicate that a person has produced in excess of the Allowable Production Rate, the District shall issue a Notice of Violation letter stating: (1) that the person has produced groundwater in excess of the Allowable Production Rate set forth in the District's Rules; (2) the total amount of production over the Allowable Production Rate; and (3) the total amount of the fine assessed.

All fines assessed under this section shall be paid to the District within 90 days of receipt of the Notice of Violation. Failure to pay the fine within 90 days of receipt of the Notice of Violation letter results in the fine being increased by an additional \$25 per acre foot produced in excess of the Allowable Production Rate. Failure to pay a fine assessed under this section within 180 days of receipt of the Notice of Violation letter shall result in a civil suit to recover the fines assessed, and other costs incurred as contemplated under District Rule 3.10(c).

The District will not impose a fine for the purposes set forth in District Rule 3.10(d) or for amount of groundwater produced in excess of the Allowable Production Rate that is used for fire suppression purposes. A person that exceeds the Allowable Production Rate due in full or in

part to the purposes set forth in District Rule 3.10(d) or for fire suppression purposes shall provide documentation to the General Manager that demonstrates that the production was for such a purpose. The documentation submitted to the General Manager shall include the date(s) of occurrence and the amount of water produced for the purposes set forth in District Rule 3.10(d) or for fire suppression. The General Manager shall review the documentation submitted and shall make a decision to approve or deny a claim made under this section. The General Manager may request that additional information be provided to support a claim made under this section. The General Manager may bring any claim made under this section to the Board for the Board's review and decision. The General Manager's denial of a claim made under this section may be appealed to the Board.

V. Water Well Construction, Completion, and Sealing Requirements

In addition to the civil penalties provided for in this Policy: (1) persons who drill a well in violation of applicable spacing or completion requirements may be required to re-complete or reconstruct the well in accordance with the District's Rules, or may be ordered to plug the well; and (2) persons who fail to properly seal test holes may be required to re-seal the test holes.

VI. Other Violations of District Rules Not Specifically Listed Herein

Any violation of a District Rule not specifically set forth herein shall be presented to the Board of Directors for a determination of whether the violation is Minor or Major, based upon the severity of the violation and the particular facts and issues involved, whereupon the procedures and the appropriate civil penalty amount set forth herein for Minor and Major Violations shall apply to the violation.

VII. Temporary Provisions

The following provisions prevail over anything inconsistent with them in this Policy. This entire Section VII. regarding Temporary Provisions shall automatically expire and be of no further force or effect for water produced on January 1, 2016, and thereafter.

The following provisions shall apply in lieu of the penalties set forth for similar violations above in Section IV.:

1. For water produced in calendar years 2012 and 2013 only, persons that produce groundwater in excess of the Allowable Production Rate set forth in Rule 5.3 or Rule 5.4, if applicable, shall be issued a Notice of Violation letter stating: (1) that the person has produced groundwater in excess of the Allowable Production Rate set forth in the District's Rules; (2) the total amount of production over the Allowable Production Rate; and (3) that no fine is assessed for the violation, but that the District will assess fines for production in excess of the Allowable Production Rate beginning with water produced in year 2014.

2. For water produced in calendar years 2014 and 2015 only, persons that produce groundwater in excess of the amount of groundwater authorized for production shall be issued a Notice of Violation letter and shall pay a fine of \$15 per acre foot produced in excess of the amount of groundwater authorized for production. The Notice of Violation letter shall state: (1) that the person has produced groundwater in excess of the Allowable Production Rate set forth in the District's Rules; (2) the total amount of production over the Allowable Production Rate; (3) the total amount of the fine assessed; and (4) that the minimum fine for production in excess of the Allowable Production Rate will increase to \$25 beginning with water produced in year 2016.

As Proposed for 2/21/2012 Public Hearing

All fines assessed shall be paid to the District in accordance with the timeline set forth in Section IV.