

# **RULES**

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## **CULBERSON COUNTY GROUNDWATER CONSERVATION DISTRICT**

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## CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

### § 1.001 Definitions of Terms

In the administration of its duties, the Culberson Groundwater Conservation District follows the definitions of words, terms, and phrases set forth in Section 8816.001 of the Texas Special District Local Laws Code and Section 311.005 of the Texas Government Code. To the extent that there is no conflict with the foregoing statutory provisions, the definitions in this section govern these rules.

- (1) “Abandoned well” means a well that has not been in use for six consecutive months. A well is considered to be in use when the well is not a deteriorated well and contains the casing, pump, and pump column in good condition, or when the well is not a deteriorated well and has been properly capped.
- (2) “Acre-foot” means 325,851 U.S. gallons of water.
- (3) “Affected person” means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District’s regulatory authority and is or may be affected by the application in question, including a groundwater conservation district contiguous to Culberson County that has such an interest. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (4) “Agricultural use” means a use or activity involving any of the following:
  - (A) cultivating the soil to produce crops for human food, animal feed, or planting seed, or for the production of fibers;
  - (B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers, or non-soil media, by a nursery grower;
  - (C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
  - (D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
  - (E) wildlife management; or
  - (F) raising or keeping equine animals.
- (5) “Aquifer” means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.
- (6) “Back-up well” means a well drilled pursuant to a well drilling permit but from which groundwater is not produced while any other well owned by the same permittee on the same tract is capable of producing groundwater authorized for production under a permit.

- (7) “Beneficial use” means the use of the amount of water that is necessary for a purpose authorized by law when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.
- (8) “Board” means the board of directors of the District.
- (9) “Business day” means a weekday, Monday through Friday, ending at 5:00 p.m. District holidays do not count as a business day.
- (10) “Casing” means a watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.
- (11) “Casing diameter” means the inside diameter of the casing of a well.
- (12) “Contested case hearing” means a proceeding before the District Board, or, where applicable, the State Office of Administrative Hearings under Section 36.416(b), Texas Water Code, in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for an adjudicative hearing.
- (13) “Contract user” means a person who withdrew or purchased groundwater during the Existing and Historic Use Period pursuant to a contract or other legal right from an existing well on land owned by another.
- (14) “Desired Future Condition” (DFC) means the desired, quantified condition of groundwater resources for a specific aquifer within the District as defined in the District’s groundwater management plan and implemented by the District.
- (15) “Deteriorated well” means a well or borehole that, because of its condition, will or may cause pollution of any water in the state, including any groundwater, or cause a public nuisance.
- (16) “Dewatering well” means a temporary well used to remove water from a construction site or excavation, or to relieve hydrostatic pressure or uplift on permanent structures, for a non-consumptive use.
- (17) “District” means the Culberson County Groundwater Conservation District.
- (18) “District Act” means Chapter 8816 of the Texas Special District Local Laws Code.
- (19) “District office” means the location of the office of the District, as designated by the Board by written resolution. The location of the District office may be changed from time to time by written resolution of the Board.
- (20) “Domestic use” means the private use of water to provide the daily water needs of a household, and includes water used on-site for: drinking, washing or culinary purposes; residential landscape watering, or watering of a family garden/orchard; watering of domestic animals; and for residential water recreation uses (e.g., swimming pool, hot tub). Domestic use does not include water used by, or to support, activities for which consideration is given or received or for which

the product of the activity is sold. Domestic use does not include use by or for a public water system.

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

(22) “Exempt well” means any groundwater withdrawal well exempt from the requirement to obtain a drilling and/or production permit under these rules.

(23) “Existing and Historic Use Period” means the time period from January 1, 1994, through August 24, 2011.

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

(A) was in existence on, or for which drilling had commenced and was still in process, by August 24, 2011;

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

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

(25) “Federal conservation program” means the Conservation Reserve Program of the United States Department of Agriculture or any successor program.

(26) “Gpm” means gallons per minute.

(27) “Groundwater” means water percolating beneath the earth’s surface within the boundaries of the District.

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

(29) “Groundwater production” means to withdraw, pump, or otherwise obtain groundwater from an underground source.

(30) “Hearing examiner” means the person appointed by the Board or otherwise designated according to law to conduct a contested case hearing or other proceeding.

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

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

(33) “Industrial use” means the use of water for or in connection with industrial activities, including, but not limited to, manufacturing, bottling, brewing, food processing, scientific research

and technology, recycling, production of concrete, asphalt, and cement, quarrying, tourism, entertainment, and hotel or motel lodging, other business activities, and generation of power other than for hydroelectric.

(34) “Landowner” means the person who either owns in fee simple the land surface or owns in fee simple the groundwater estate associated with the land surface (including the wells from which groundwater may be withdrawn that are located on such land surface), or owns both.

(35) “Lobo Flat Aquifer” means the portion of the water-bearing geological group within the West Texas Bolsons (a minor aquifer) located as shown on the map officially maintained at the District office, which is depicted at Appendix B herein.

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

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

(38) “Modeled Available Groundwater” (MAG) means the amount of water that the executive administrator of the Texas Water Development Board determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108 of the Texas Water Code.

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

(40) “Municipal use” means the use of water, within or outside of a municipality and its environs, whether supplied by a person, a municipality, a utility, a political subdivision, or other entity for domestic, industrial, or commercial uses, firefighting, sewer and drain flushing, swimming pools, or maintenance of public property.

(41) “New well” means a well for which drilling commenced or will commence after August 24, 2011.

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

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

(44) “Open Meetings Act” means Chapter 551 of the Texas Government Code.

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

- (46) “Party” means each person admitted as a party in a contested case hearing.
- (47) “Permit” means a document issued by the District approving an application for a permit.
- (48) “Permitted well” means a groundwater withdrawal well authorized to operate by a permit issued by the District.
- (49) “Person” means corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.
- (50) “Pleading” means any document filed by a party in a contested case hearing.
- (51) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state, including groundwater, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose, including the alteration of groundwater by saltwater or other deleterious matter admitted from another stratum or from the surface of the ground.
- (52) “Presiding officer” means the President, Vice President, Secretary, or other Board member presiding at any hearing or other proceeding or a hearing examiner conducting any hearing or other proceeding on behalf of the District.
- (53) “Protestant” means any person opposing, in whole or in part, an application for which a request for a contested case hearing may be filed under the District’s Rules.
- (54) “Public Information Act” means Chapter 552 of the Texas Government Code.
- (55) “Registration” means the document required to be filed to register a well with the District.
- (56) “Replacement well” means any well drilled within 150 feet of the well to be replaced if it is drilled for the purpose of replacing such well and the same permittee owns both wells.
- (57) “Reworked well” means a well that has been altered, modified, repaired, or recompleted.
- (58) “Rules” means the rules of the District compiled in this document.
- (59) “Section,” as related to land, means the numbered section of a survey or block as shown in a county’s real property records.
- (60) “Sewage wet well” means a sewage well, which incorporates a reservoir in addition to a pump.
- (61) “SOAH” means the State Office of Administrative Hearings.
- (62) “Solid waste” means garbage, hazardous substances, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

- (A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Texas Water Code;
  - (B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or
  - (C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Texas Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901 et seq.).
- (63) “TCEQ” means the Texas Commission on Environmental Quality.
  - (64) “TDLR” means the Texas Department of Licensing and Regulation.
  - (65) “Uncovered well” means an open well.
  - (66) “Waste” means any one of the following:
    - (A) production of groundwater at a rate and in an amount that causes or threatens to cause intrusion into an aquifer of water unsuitable for agricultural, gardening, domestic, or stock watering purposes;
    - (B) the flowing or producing of wells from an aquifer if the water produced is not used for a beneficial purpose;
    - (C) escape of groundwater from an aquifer to any other reservoir or geologic strata that does not contain groundwater;
    - (D) pollution or harmful alteration of groundwater in an aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
    - (E) willfully or negligently causing, suffering, or allowing groundwater produced from an aquifer to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality under Chapter 26 of the Texas Water Code;
    - (F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, the meaning assigned by Section 11.205 of the Texas Water Code.

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

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

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

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

(71) “Wild Horse Flat Aquifer” means the portion of the water-bearing geological group within the West Texas Bolsons (a minor aquifer) located as shown on the map officially maintained at the District office, which is depicted at Appendix A herein.

(72) “Withdraw” or “withdrawal” means producing or obtaining groundwater using man-made facilities, whether by pumping or any other method.

#### **§ 1.002 Purpose of Rules**

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

#### **§ 1.003 Construction**

Construction of words and phrases in these rules is governed by Subchapter B of Chapter 311 of the Texas Government Code. References to a code or statutory provision or section in these rules includes such code or statutory provision as amended, reordered, or re-codified. These rules shall be read, interpreted, and applied in a manner that is consistent with the District Act and, if any provision of these rules conflicts with or is inconsistent with any provision of the District Act, such rule shall be construed and applied consistently with the District Act, which shall control. The word “shall” is mandatory, and the word “herein” refers to these rules. Unless specified otherwise, references to times are to local (Central) time in Culberson County. Unless otherwise specifically provided for in these rules, the past, present, and future tense shall include the other; the masculine, feminine, and neutral gender shall each include the other; and the singular and plural number shall each include the other.

#### **§ 1.004 Headings and Captions**

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

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

Except as otherwise expressly provided in these rules or in an order of the Board or hearing officer in a contested case proceeding, delivery and service of any notice or documents required by these rules is governed by Rule 21a of the Texas Rules of Civil Procedure, except that subsection (a)(1) of Rule 21 is inapplicable, and the computation of time is governed by Rule 4 of the Texas Rules of Civil Procedure.

### **§ 1.006 Amendment of Rules**

The Board may, following applicable notice, hearing, process, and procedural requirements set forth in these rules and Chapter 36 of the Texas Water Code, amend these rules and adopt new rules from time to time.

### **§ 1.007 Scope and Application of Rules**

(a) These rules apply to the full extent of the District's geographical jurisdiction; however, except as provided in subsections (b) and (c) below, the rules governing non-exempt in-district groundwater production and in-district groundwater use apply only within the Wild Horse Flat and Lobo Flat Aquifers.

(b) Under the authority provided in Section 36.117(a), except as provided by subsection (c), the District hereby exempts from permitting groundwater produced within District boundaries that is outside the Wild Horse Flat and Lobo Flat Aquifers, but only to the extent such groundwater is used inside the District. This subsection (b) exemption shall be deemed a production authorization for purposes of any application for a groundwater exportation permit under these rules.

(c) Notwithstanding the exemption in the first sentence in subsection (b) of this section, if, following notice and an opportunity for potentially affected persons to be heard, and the presentation of evidence, the Board makes a preliminary determination that a well system outside the Wild Horse Flat and Lobo Flat Aquifers, as delineated by the District, is hydrologically connected to either aquifer or to a domestic or livestock well, and the well system does not meet the requirements of Section 5.401(a)(1)-(7) for an exempt well, the person claiming an exemption under the first sentence in subsection (b) of this section and Section 5.401, may present evidence to the Board to demonstrate that the well system is either not hydrologically connected or the impacts of any withdrawals the well system is capable of producing will be de minimis. After considering any information presented by the person claiming the exemption, the Board shall approve or deny the exemption. If the Board denies the exemption, a groundwater production permit to withdraw groundwater from the relevant aquifer shall be required prior to any withdrawals from the well. If the owner or operator of the well system would have qualified for a HUPP if the well system would have been determined to be hydrologically connected to a managed aquifer on April 2, 2012, he or she may apply for a HUPP in accordance with the rules in effect at that time, otherwise, he or she may apply for an NHUPP. If an exemption for the well system was previously granted, if the well system owner or operator files an application for a groundwater production permit within 90 days, he or she may continue to operate the well system until final action by the Board on the application.

(d) As of February 12, 2020, any prior reference in a District permit or authorization to the Michigan Flat Aquifer shall be deemed to refer to the Wild Horse Flat Aquifer.

(e) The District shall periodically re-evaluate the production exemption for in-district use set forth in subsection (b), above, but in no event later than five years from February 12, 2020, provided, however, that the Board by resolution may extend such deadline based on the availability of data relevant to the exemption.

## **CHAPTER 2. BOARD**

### **§ 2.001 Purpose of the Board**

The Board was created to determine policy and regulate the withdrawal and use of groundwater, as well as drilling for groundwater, within the boundaries of the District for conserving, preserving, protecting, and recharging the groundwater within the District, and to exercise the District's rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act and Chapters 36 and 49 of the Texas Water Code. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules, orders, and resolutions.

## **CHAPTER 3. DISTRICT STAFF**

### **§ 3.001 General Manager**

- (a) The Board may employ or contract with a person to serve as general manager of the District and to perform such services as the Board may specify from time to time. The Board may delegate to the general manager full authority to manage and operate the affairs of the District subject only to these rules and orders of the Board. The general manager, with approval of the Board, may employ, or contract with, all persons necessary for the proper handling of business and operation of the District, and their salaries and compensation will be set by the Board.
- (b) The Board by resolution may delegate authority to act on behalf of the District on such applications and related matters to the general manager as it determines is appropriate and consistent with the District Act and Chapters 36 and 49 of the Texas Water Code, but in no event may it delegate to the general manager the authority to give final approval of applications for groundwater production permits, groundwater exportation permits, or preliminary determinations under Section 1.007(c) that a well system outside of the Wild Horse Flat or Lobo Flat Aquifers is hydrologically connected to the groundwater authorized for production by holders of HUPPs or NHUPPs in either of those two aquifers or to a domestic or livestock well.
- (c) If the position of general manager is vacant, the Board may appoint an interim manager, or act to manage the District and perform any function of the general manager identified by these rules.

## **CHAPTER 4. DISTRICT RECORDS**

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

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

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

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

### **§ 4.003 Comptroller Public Information Database**

The District, through its general manager, shall take such steps as necessary and appropriate to transmit such records and other information as required by Section 203.062 of the Texas Local Government Code.

### **§ 4.004 Audit**

Consistent with Sections 36.061(a)(5) and 36.153 of the Texas Water Code, and to ensure a better use of management information, the Board shall establish an audit and finance committee, which committee, working with the general manager, shall act to have an annual audit of the financial condition of the District.

## **CHAPTER 5. GROUNDWATER PRODUCTION**

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

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

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

#### **§ 5.002 Operation of Well at Greater than Authorized Rate or Amount Prohibited**

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

#### **§ 5.003 Conveyed Water; Pipelines**

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

#### **§ 5.004 Permits Subject to Revocation**

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

#### **§ 5.005 General Provisions Applicable To Permits**

- (a) A valid Historic Use Production Permit or Non-Historic Use Production Permit is required to withdraw or produce groundwater from a non-exempt well.
- (b) A permit confers only the right to use the permit under the provisions of these rules. The permit's terms may be transferred or amended pursuant to the provisions of these rules.
- (c) Withdrawal or production of groundwater from a permitted well must be measured by the owner or operator and reported to the District according to the requirements of Chapter 8 of these rules.
- (d) All well sites must be accessible to District representatives for inspection, and every permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.
- (e) Within 30 days after the date of a change in ownership of the permit or real property to which permitted rights are appurtenant, the permittee must notify the District in writing of the name and address of the new owner. Any person who becomes the owner of permit or real property to which permitted rights are appurtenant must, within 30 calendar days from the date of the change in ownership, file a notice of transfer of ownership.

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

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

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

### **§ 5.101 Purpose**

The purpose of this subchapter is to:

- (a) establish the aggregate, annual volume of groundwater that may be produced from:
  - (1) exempt wells; and
  - (2) non-exempt wells operating pursuant to Historic Use Production Permits and Non-Historic Use Production Permits;
- (b) establish the procedures for implementing, if necessary, proportional adjustments to the volume of groundwater allowed to be produced in any given year pursuant to Historic Use Production Permits; and
- (c) establish the procedures for implementing, if necessary, proportional adjustments to the volume of groundwater allowed to be produced in any given year pursuant to Non-Historic Use Production Permits.

### **§ 5.102 Groundwater Available for Production from the Wild Horse Flat Aquifer**

- (a) Except as provided in subsection (d) below, the aggregate, annual volume of groundwater that may be produced from the Wild Horse Flat Aquifer from exempt wells (as estimated in the District's approved Groundwater Management Plan) and non-exempt wells operating pursuant to HUPPs and NHUPPs shall be no greater than the volume of Modeled Available Groundwater for the Wild Horse Flat Aquifer (MAGWHF), as estimated using the procedures shown in Appendix C.
- (b) The estimated volume of groundwater from the Wild Horse Flat Aquifer allotted for production from exempt wells (ExemptWHF) shall equal the volume estimate using the procedures shown in Appendix C.
- (c) The volume of groundwater that may be produced from the Wild Horse Flat Aquifer by non-exempt wells (Non-ExemptWHF) shall not exceed the volume of Modeled Available Groundwater for the Wild Horse Flat Aquifer (MAGWHF) less the estimated volume of groundwater from the Wild Horse Flat Aquifer allotted for production from exempt wells (Non-Exempt WHF  $\leq$  MAGWHF – ExemptWHF).
- (d) If, after final action by the Board on all HUPP applications, the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits (HUPPWHF) is less than the volume calculated in subsection (c) above (Non-ExemptWHF), then the District may grant Non-Historic Use Production Permits (NHUPPWHF) in an aggregate annual volume equal to or less than the difference between the volume calculated in subsection (c) above and the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits (NHUPPWHF  $\leq$  Non-ExemptWHF - HUPPWHF). No NHUPP applications shall be considered by the District until the Board has taken final action on all HUPP applications and the District has issued all HUPPs accordingly.

(e) The aggregate of the annual volume of groundwater production permitted pursuant to HUPPs and NHUPPs is subject to such additional proportional reduction by written order of the Board as may be necessary, and taking into account the factors in Section 36.1132(b) of the Texas Water Code, in order to achieve the MAGWHF, and any Desired Future Condition of the Wild Horse Flat Aquifer. If any additional proportional reduction is necessary, such reduction shall be first applied to NHUPPs, including to the extent, if necessary, that production pursuant to NHUPPs will be entirely curtailed, before any proportional reduction is made to HUPPs.

### **§ 5.103 Groundwater Available for Production from the Lobo Flat Aquifer**

(a) Except as provided in subsection (d) below, the aggregate, annual volume of groundwater that may be produced from the Lobo Flat Aquifer from exempt wells (as estimated in the District's approved Groundwater Management Plan) and non-exempt wells operating pursuant to HUPPs and NHUPPs shall be no greater than the volume of Modeled Available Groundwater for the Lobo Flat Aquifer (MAGLF), as estimated using the procedures shown in Appendix C.

(b) The estimated volume of groundwater from the Lobo Flat Aquifer allotted for production from exempt wells (ExemptLF) shall equal the volume estimate using the procedures shown in Appendix C.

(c) The volume of groundwater that may be produced from the Lobo Flat Aquifer by non-exempt wells (Non-ExemptLF) shall not exceed the volume of Modeled Available Groundwater for the Lobo Aquifer (MAGLF) less the estimated volume of groundwater from the Lobo Flat Aquifer allotted for production from exempt wells ( $\text{NonExempt LF} \leq \text{MAGLF} - \text{ExemptLF}$ ).

(d) If, after final action by the Board on all HUPP applications, the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits (HUPPLF) is less than the volume calculated in subsection (c) above (Non-ExemptLF), then the District may grant Non-Historic Use Production Permits (NHUPPLF) in an aggregate annual volume equal to or less than the difference between the volume calculated in subsection (c) above and the aggregate of the annual volume of groundwater authorized for production pursuant to Historic Use Production Permits ( $\text{NHUPPLF} \leq \text{Non-ExemptLF} - \text{HUPPLF}$ ). No NHUPP applications shall be considered by the District until the Board has taken final action on all HUPP applications and the District has issued all HUPPs accordingly.

(e) The aggregate of the annual volume of groundwater production permitted pursuant to HUPPs and NHUPPs is subject to such additional proportional reduction by written order of the Board as may be necessary, and taking into account the factors in Section 36.1132(b) of the Texas Water Code, in order to achieve the MAGLF, and any Desired Future Condition of the Lobo Flat Aquifer. If any additional proportional reduction is necessary, such reduction shall be first applied to NHUPPs, including to the extent, if necessary, that production pursuant to NHUPPs will be entirely curtailed, before any proportional reduction is made to HUPPs.

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

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

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

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

Except as provided in § 1.007(b), groundwater may not be produced from a non-exempt well within the District without holding a valid HUPP or NHUPP.

### **§ 5.202 Authorized Uses**

Other than exempt well production, a person may beneficially use groundwater withdrawn from the Aquifer to use for the following purposes, which shall be specifically stated in a groundwater production permit:

- (1) agricultural (irrigation);
- (2) municipal;
- (3) industrial; and
- (4) such other use as is specifically identified in the permit.

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

In order to obtain an Historic Use Production Permit, the owner of a non-exempt well that was completed and operational prior to August 24, 2011, and that produced and used groundwater in any year during the Existing and Historic Use Period, was required to submit an application to the District for an Historic Use Production Permit by no later than 5:00 p.m., April 2, 2012. Failure to file an application for a HUPP by 5:00 p.m. on April 2, 2012, for a well or wells shall preclude the owner or any operator from producing groundwater from the well or wells unless such owner or operator obtains a Non-Historic Use Production Permit pursuant to these Rules, converts the well to an exempt well, or obtains a transfer of production rights from the holder of a HUPP.

### **§ 5.205 Provisions Applicable to Historic Use Production Permits**

- (a) **Aggregation of Withdrawals.** The authorized withdrawal amount for a given Historic Use Production Permit may be aggregated with the authorized withdrawal amounts for other Historic Use Production Permits held by the same permittee and within the same aquifer or aquifer subdivision. Where aggregated, the total authorized withdrawal amount will be assigned to the wells in aggregate, rather than allocating to each well its pro-rata share of production.
- (b) The production amount specified in an Historic Use Production Permit may be proportionally reduced by the District as provided in subchapter B of this chapter.
- (c) Existing and Historic Irrigated Land shall be classified by the District as the acres of land that are irrigable and which were irrigated to produce an agricultural crop during one or more years of the Existing and Historic Use Period.

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

- (1) the land is classified by the United States Department of Agriculture Farm Services Agency as "cropland," that is land that is capable of being farmed with normal farming equipment and any other requirements of the Farm Services Agency;
- (2) the land is classified by the United States Department of Agriculture Natural Resources Conservation Services as "Additional Farmland of Statewide Importance according to the procedures of 7 CFR Section 657.5 (Identification of Important Farmlands); or
- (3) any other method or methods determined by the Board to reasonably determine if land is irrigable.

### **§ 5.206 Contents of Historic Use Production Permits**

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

- (1) the name of the person or entity to whom the permit is issued;
- (2) the date the permit is issued;
- (3) the location of the well(s);
- (4) the purpose of use for which the water produced from the well(s) will be used;
- (5) the specific location of the place of use of the water produced from the well(s);
- (6) the perpetual term of the permit;
- (7) except as provided in § 5.301(b), if the place of use is not within the District's boundaries, the permittee must obtain a groundwater exportation permit from the District prior to the withdrawal of groundwater under the permit;
- (8) the requirements for the conveyance of water produced from the well to the place of use;
- (9) the maximum rate of production in gpm, and any conditions relative thereto;
- (10) the maximum amount of production in acre-feet per annum, and any conditions relative thereto;
- (11) a water well closure plan or a declaration that the applicant will comply with well plugging requirements and report closure to the District and the Commission;
- (12) metering and reporting requirements;
- (13) a statement that the permit is subject to the standard permit conditions set forth in § 5.207 of these rules; and

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

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

(b) Within 30 days of issuance, the permittee shall record a Historic Use Production Permit with the Clerk of every county in which the well or wells or place of use are located, and a copy of each permit recorded shall be provided to the District. Each copy shall show the respective County records file number.

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

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

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

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

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

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

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

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

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

(h) the duty to comply with the District's rules;

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

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

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

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

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

- (n) the duty to pay and be current in the payment of all applicable fees;
- (o) the duty not to export groundwater from a well within the District's boundaries to a place of use outside the District's boundaries without a groundwater exportation permit issued by the District;
- (p) the duty to give notice to the District of any changes in name, address, or telephone number of the permittee, or the authorized representative, as applicable, in accordance with these rules;
- (q) the duty to comply with all of the terms and conditions of the permit;
- (r) the duty to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;
- (s) the right of the District to enter land under Section 36.123, Texas Water Code;
- (t) the duty to comply with the metering and reporting requirements set forth in Chapter 8 of these rules;
- (u) the duty to comply with any proportional adjustments mandated by subchapter B of Chapter 5 of these rules; and
- (v) such other conditions as the Board may deem appropriate.

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

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

**§ 5.209 Transfer of Ownership or Lease of Historic Use Production Permit**

- (a) Within 30 days after the transfer of ownership of all of a Historic Use Production Permit, the transferee shall file with the District a notice of transfer of ownership on a form prescribed by the District. The general manager will update the District's permit records to reflect the transfer.
- (b) Within 30 days after the lease of the right to withdraw groundwater under a Historic Use Production Permit, the permittee shall file with the District a transfer application on a form prescribed by the District. The general manager will update the District's permit records to reflect the lease. The term of such leases shall not exceed ten years.

**§ 5.210 Historic Use Production Permit Transfers and Amendments**

- (a) Subject to Board approval, a Historic Use Production Permit may be transferred or amended to reflect a change in the following circumstances:
  - (1) place of use;
  - (2) the total volume of groundwater authorized to be withdrawn in acre-feet per annum;
  - (3) rate of production in gpm;

- (4) ownership; or
  - (5) the point of withdrawal, including the addition of a back-up well.
- (b) Any person seeking to temporarily transfer a permit under subsection (a), must first file with the District an application to transfer on a form prescribed by the District.
- (c) Any person seeking to permanently amend a permit under subsection (a), must first file with the District an application to amend on a form prescribed by the District.
- (d) No permit transfer or amendment under this section is effective until it has been approved by the Board, provided, however, that actions of the general manager that are authorized by Board resolution pursuant to § 3.001(b), which constitute the approval of transfers or amendments to a permit, are effective upon the general manager's official action.

### **§ 5.211 Basis for Granting Applications to Transfer or Amend Historic Use Production Permits**

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

- (1) the application is complete;
- (2) the application complies with the rules of the District;
- (3) all applicable fees and deposits have been paid;
- (4) the applicant owns the proposed or existing well and the place of use;
- (5) the applicant has a legal right to produce groundwater from the proposed or existing well; the wellhead is, or will be, physically located within the boundaries of the District;
- (6) the withdrawals are proposed to be placed to a beneficial use;
- (7) except as provided in § 5.301(b), the place of use is located within the District's boundaries, unless the applicant also has obtained a groundwater exportation permit from the District;
- (8) the applicant, transferor, or transferee, as may be appropriate, are in compliance with any permits from the District and with the District's rules;
- (9) the activities of the applicant constituting the purpose for which the groundwater will be beneficially used will be managed to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of groundwater from, and achieve the conservation of groundwater in and produced from, the aquifer;
- (10) the proposed production of water will not unreasonably affect existing groundwater or surface water resources, existing holders of permits issued by the District or exempt wells that are registered with the District;
- (11) the operation of the well will not cause unreasonable interference between wells;

- (12) the application is consistent with the District’s certified groundwater management plan; and
- (13) the requirements in § 5.205 are satisfied.

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

- (a) If, pursuant to subchapter B of this chapter, the Board determines that there is sufficient groundwater available for the District to issue Non-Historic Use Production Permits in a given aquifer, the Board shall issue a written order authorizing the filing and processing of applications for Non-Historic Use Production Permits for the applicable aquifer (an “NHUPP Authorization Order”). The District will not accept for filing any NHUPP application for a given aquifer unless and until such an NHUPP Authorization Order has been issued by the Board for that aquifer.
- (b) No groundwater may be produced from an aquifer from a non-exempt well for which there is not an associated Historic Use Production Permit unless it is pursuant to a Non-Historic Use Production Permit.

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

No Non-Historic Use Production Permit applications will be accepted, processed, or considered by the District unless and until all applications for Historic Use Production Permit applications have been finally issued and the District has issued an NHUPP Authorization Order pursuant to § 5.212 for a given aquifer. An NHUPP applicant must use the application form prescribed by the District and include all relevant information required by these rules. A single NHUPP application may, at the applicant’s discretion, be submitted for multiple wells owned or operated by the applicant. In addition to the information specified in § 9.104, an application for an NHUPP application shall contain the following:

- (a) Name and Address of Owner: The full name, physical and mailing addresses, telephone number, fax number, and email address of the landowner and operator, as applicable.
- (b) Source of Supply: A statement identifying the aquifer that is the source of groundwater from the well.
- (c) Rate of Withdrawal: The maximum rate of withdrawal in gallons per minute or cubic feet per second that the well is capable of producing.
- (d) Method of Withdrawal: A description of the method used to withdraw groundwater.
- (e) Declaration of Amount of Proposed Use. A declaration by the applicant of the volume of groundwater that is proposed to be used without waste for a beneficial purpose and detailed documentation showing the need for the proposed amount of use.
- (f) Purpose of Use: Any purpose for which the groundwater will be used.
- (g) Ownership of Land: The deed and legal description for the tract of land on which the well is or will be located.

- (h) Information regarding availability of, access to, and cost to obtain water from a source other than the aquifer identified by the applicant. Information regarding such other sources shall at a minimum include the availability of, access to, and cost to obtain surface water.
- (i) Well location: The location of the well or proposed well.
- (j) Place of Use: The place of use of groundwater to be withdrawn from the well.
- (k) Year Drilled: The year in which the well was or will be drilled.
- (l) Well or Driller's Log: A copy of any State well report and, if applicable, any geophysical log for the well.
- (m) Plans: Any potable water supply entity shall provide a copy of its water conservation plan and drought contingency plan prepared for TCEQ.
- (n) Compliance with Management Plan: A declaration that the applicant will comply with the District's management plan.
- (o) Compliance with Rules: A declaration that the applicant is in compliance with all applicable District rules and will comply with the District's rules.
- (p) Surface Water Bodies: The name of any surface water, including lakes, streams, or rivers, within 1,000 feet of the well.
- (q) Beneficial use and waste and conservation: A statement that the applicant agrees to beneficially use any permitted water and to avoid waste and achieve water conservation.
- (r) Groundwater Quality: A statement that the applicant agrees to use reasonable diligence to protect groundwater quality.
- (s) Qualified reports for certain applications: For any applications requesting a permit for an annual groundwater production amount greater than 25 acre-feet:
  - (1) A report from a qualified, Texas-licensed engineer, hydrologist, or geologist, which documents that the proposed production of water will not unreasonably affect existing groundwater or surface water resources, existing holders of permits issued by the District or exempt wells that are registered with the District or result in pumping within the District exceeding the MAG or impairing achievement of the DFC for the aquifer from which production would be made; and
  - (2) A report from a qualified, Texas-licensed engineer, hydrologist, or geologist, which documents that the proposed production of water will not cause unreasonable interference with any active well located within a 1-mile radius of any of the wells identified in the application as a source of production.
- (t) Information supporting a finding that the proposed production of water will not unreasonably affect existing groundwater or surface water resources, existing holders of permits issued by the District or exempt wells that are registered with the District or resulting in pumping

within the District exceeding the MAG or impairing achievement of the DFC for the aquifer from which production would be made.

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

(a) In the event that the District has issued an NHUPP Authorization Order pursuant to § 5.212(a) for a given aquifer, the Board shall grant an application for an Non-Historic Use Production Permit as to such aquifer if the Board finds that:

- (1) the application is complete;
- (2) the application complies with the rules of the District;
- (3) all applicable fees and deposits have been paid;
- (4) the applicant owns the proposed or existing well;
- (5) the applicant has a legal right to produce groundwater from the proposed or existing well;
- (6) the wellhead is or will be physically located within the boundaries of the District;
- (7) the withdrawals are proposed to be placed to a beneficial use;
- (8) except as provided in § 5.301(b), the place of use is located within the District's boundaries, unless the applicant also has obtained a groundwater exportation permit from the District;
- (9) the applicant is in compliance with any permits the applicant holds from the District and with District rules; the activities of the applicant will be managed to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of groundwater from, and achieve the conservation of groundwater in and produced from, the aquifer;
- (10) the proposed production of water will not unreasonably affect existing groundwater or surface water resources or existing holders of permits issued by the District or exceed the MAG for the aquifer from which production would be made;
- (11) operation of the well will not cause unreasonable interference between wells; and
- (12) the application is consistent with the District's certified groundwater management plan.

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

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

#### **§ 5.215 Contents of Non-Historic Use Production Permits**

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

- (1) the name of the person or entity to whom the permit is issued;
- (2) the date the permit is issued and the permit term;
- (3) the location of the well;
- (4) the purpose of use for which the water produced from the well will be used;
- (5) the specific location of the place of use of the water produced from the well;
- (6) except as provided in §§ 5.301(b) and 5.312, if the place of use is not within the District's boundaries, the permittee must obtain a groundwater exportation permit from the District prior to the withdrawal of groundwater under the permit;
- (7) the requirements for the conveyance of water produced from the well to the place of use;
- (8) the maximum rate of production in gpm, and any conditions relative thereto;
- (9) the maximum amount of production in acre-feet per annum, and any conditions relative thereto;
- (10) a water well closure plan or a declaration that the applicant will comply with well plugging requirements and report closure to the District and TCEQ;
- (11) metering and reporting requirements;
- (12) a statement that the permit is subject to the standard permit conditions set forth in § 5.216 of these rules;
- (13) a statement that the permit is subject to limitation or modification as may be provided in the District's rules or other applicable law; and
- (14) any other terms and conditions as may be required by the Board.

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

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

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

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

- (b) the duty to conserve water in accordance with applicable law, and comply with the District's water conservation plan, and the permittee's plan approved by the District, as applicable;
- (c) the duty to properly close (cap or plug) all wells in accordance with applicable law, and comply with the District's well closure plan, if any, and the permittee's plan approved by the District, as applicable;
- (d) the duty to file all applicable reports with the District, and other appropriate federal, state, or local governments;
- (e) the duty to reduce water or production or consumption during times of drought in accordance with applicable law, and comply with the District's drought management plan, and the permittee's plan approved by the District, as applicable;
- (f) the duty to comply with the District's certified groundwater management plan;
- (g) the duty to use diligence to protect the groundwater quality within the District;
- (h) the duty to comply with the District's rules;
- (i) any permit review, renewal, or extension conditions;
- (j) the duty to locate all wells, and confirm the actual location with the proposed location in the application or as provided for in the permit, consistent with the District's well spacing rules, prior to the production from any wells identified in the permit or application;
- (k) the continuing right of the District to supervise and manage groundwater production and protect the aquifer;
- (l) the duty to install, equip, operate, maintain, and close all wells in accordance with the District's rules, and other applicable federal, state, and local law;
- (m) the duty to comply with the District's rules relating to transfers and amendments of permits;
- (n) the duty to pay and be current in the payment of all applicable fees;
- (o) except as provided in § 5.301(b), the duty not to export groundwater from a well within the District's boundaries to a place of use outside the District's boundaries without a groundwater exportation permit issued by the District;
- (p) the duty to give notice to the District of any changes in name, address, or telephone number of the permittee, or the authorized representative, as applicable, in accordance with these rules;
- (q) the duty to comply with all of the terms and conditions of the permit;
- (r) the duty to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;
- (s) the right of the District to enter land under Section 36.123 of the Texas Water Code;

- (t) the duty to comply with the metering and reporting requirements set forth in Chapter 8 of these rules;
- (u) the duty to comply with any proportional adjustments mandated by subchapter B of Chapter 5; and
- (v) such other conditions as the Board deems appropriate.

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

- (a) If all or part of the water authorized to be produced under a Non-Historic Use Production Permit has not been put to beneficial use at any time during the ten years from the date of the permit's issuance, then the permit is subject to cancellation by the District or a reduction in the annual volume of production authorized by the permit.
- (b) Prior to any cancellation or reduction, the District shall provide the opportunity for a hearing and give notice to the permittee at least 45 days before the date of the hearing.
- (c) The District shall also have the notice of the hearing published once a week for two consecutive weeks, ending at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized or proposed to be used, as shown by the records of the District. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.
- (d) The District shall hold a hearing and shall give the permittee and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.
- (e) At the conclusion of the hearing, the Board may cancel the permit in whole or revise and amend it in part to the extent that it finds that:
  - (1) the water or any portion of the water authorized to be produced under the permit has not been put to a beneficial use during the 10-year period; and
  - (2) the permittee has not used reasonable diligence in applying the water or the unused portion of the water to an authorized beneficial use or is otherwise unjustified in the nonuse.

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

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

**§ 5.219 Transfer of Ownership or Lease of Non-Historic Use Production Permit**

- (a) Within 30 days after the transfer of ownership of all of a Historic Use Production Permit, the transferee shall file with the District a notice of transfer of ownership on a form prescribed by the District. The general manager will update the District's permit records to reflect the transfer.

(b) Within 30 days after the lease of the right to withdraw groundwater under a Non-Historic Use Production Permit, the permittee shall file with the District a transfer application on a form prescribed by the District. The general manager will update the District's permit records to reflect the lease. The term of such leases shall not exceed ten years.

**§ 5.220 Non-Historic Use Production Permit Transfers and Amendments**

(a) Subject to Board approval, a Non-Historic Use Production Permit may be transferred or amended to reflect a change in the following circumstances:

- (1) place of use;
- (2) the total volume of groundwater authorized to be withdrawn in acre-feet per annum;
- (3) rate of production in gpm;
- (4) ownership; or
- (5) the point of withdrawal, including the addition of a back-up well.

(b) Any person seeking to transfer a permit temporarily under subsection (a), must first file with the District an application to transfer on a form prescribed by the District.

(c) Any person seeking to amend a permit permanently under subsection (a), must first file with the District an application to amend on a form prescribed by the District.

(d) No permit transfer or amendment under this section is effective until the amendment has been approved by the Board.

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

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

- (a) the elements in § 5.214 are established; and
- (b) the applicant, transferor, or transferee, as may be appropriate, are in compliance with any permits from the District and with the District's rules.

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

### **§ 5.301 Applicability**

- (a) Except as provided in subsection (b), this subchapter applies to any person who seeks to export groundwater that is produced from a well within the District's boundaries to a place of use outside the District's boundaries.
- (b) This subchapter does not apply to:
  - (1) a groundwater export arrangement in effect prior to January 1, 1994, and continuing thereafter, so long as there is no increase in the annual amount exported after August 24, 2011;
  - (2) groundwater that is incorporated into a finished, manufactured product within the District and then exported for sale outside the District;
  - (3) groundwater that is produced from a well located within the District, where the well is situated on a contiguous tract of land that straddles the District's boundaries and the groundwater is placed to use solely on that tract, but including portions outside the District's boundaries;
  - (4) groundwater that is produced from a non-exempt well located within the District and delivered by the permittee to end users pursuant to a certificate of convenience and necessity (CCN), where the CCN boundaries straddle the District boundaries; or
  - (5) any well that is exempt from regulation pursuant to Section 36.121 of the Texas Water Code.

### **§ 5.302 Groundwater Exportation Permit Required**

- (a) Exporting groundwater from the District without a required groundwater exportation permit is illegal, wasteful per se, and a nuisance.
- (b) Any person seeking to export groundwater to a place of use outside of the District's boundaries is required to file with the District an application to export groundwater on a form prescribed by the District and obtain a groundwater exportation permit from the District.
- (c) An application filed to comply with this section shall be considered and processed under the same procedures as other applications for other permits and may be combined with applications filed to obtain a permit for in-District water use from the same applicant.
- (d) The District may not deny a permit under this subchapter because the applicant seeks to export groundwater outside of the boundaries of the District, but may restrict a groundwater exportation permit to the annual production of groundwater and the purpose of use allowed under the associated groundwater production permit.

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

In addition to the information specified in § 9.104, an application for a groundwater exportation permit shall contain information reasonably related to the information to be contained in a groundwater exportation permit under §§ 5.304 and 5.305 and the elements to be considered by the Board in determining whether to grant or deny the application under § 5.304. The application shall be submitted on the form developed and prescribed by the District.

#### **§ 5.304 Basis for Action on Groundwater Exportation Permit Applications**

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

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

#### **§ 5.305 Groundwater Exportation Permit Term; Renewal**

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

- (1) the permit term shall be six years, if construction of a conveyance system in the District's boundaries has not been initiated prior to the issuance of the permit; or
  - (2) the permit term shall be 30 years, if construction of a conveyance system has been initiated in the District's boundaries prior to the issuance of the permit.
- (b) The six-year term specified in Subsection (a)(1) shall automatically be extended to thirty years if construction of a conveyance system is begun before the expiration of the six-year period. For the purposes of this section, construction of a conveyance system shall be considered to have been initiated when the permittee has completed construction of at least 10% of the portion of the conveyance facilities located within the District that will be used to convey the maximum annual quantity of groundwater permitted for transfer outside of the boundaries of the District. Such portion of the conveyance facilities does not include any existing or previously constructed facilities that were not constructed specifically for use in exporting the groundwater considered under the permittee's groundwater exportation permit application.
- (c) An exportation permit may be renewed. Any person seeking the renewal of a groundwater exportation permit must file with the District an application to renew on a form prescribed by the District. The application must be filed with the District no later than 30 days prior to the expiration of the permit term. Such extension application shall be considered and acted upon by the Board consistent with these rules and subsections (j-1) and (k) of Section 36.122 of the Texas Water Code.
- (d) If either subsection (e) or subsection (h) of § 5.304 have not been satisfied at the time of Board action on a groundwater exportation permit application, the Board nonetheless may in its discretion issue the permit but only subject to the following conditions:
- (1) the permit term of six years is not automatically extended under subsection (b); and
  - (2) the permit shall be subject to a public hearing, following notice published to the public, no later than six years from the date of issuance; and
  - (3) no later than six months before the hearing in subsection (d)(2), the permittee shall have satisfied the conditions in subsections (e) and (h) of § 5.304.
- (e) Exportation permits with a term of three years that are in effect on February 12, 2020, shall have their permit term extended by an additional three years.

### **§ 5.306 Contents of Groundwater Exportation Permits**

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

- (a) the name, address, and telephone number of the permittee;
- (b) the groundwater production permit number to be tied to the groundwater exportation permit;
- (c) if the permittee does not own the well(s) from which the production for exportation is made, then the name, address and telephone number of the well owner;

- (d) if not the permittee, the name, address and telephone number of the owner of the land on which the well(s) is located;
- (e) the permit term, including dates of issuance, effectiveness, and termination;
- (f) the purpose of use for which the water produced from the well(s) is to be used;
- (g) a requirement that the water produced under the permit be put to beneficial use without waste;
- (h) the location of the place of use outside the District's boundaries;
- (i) the maximum amount of production in acre-feet per annum that may be exported from the District, which will be limited to the amount that could be produced by the well(s) for in-district use pursuant to the production limitations set forth in these rules, and any conditions or restrictions relative thereto;
- (j) the metering and reporting requirements; and
- (k) other terms and conditions as may be required by the Board.

#### **§ 5.307 Standard Permit Conditions for Groundwater Exportation Permits**

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

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

- (n) the duty to give notice to the District of any changes in name, address, or telephone number of the permittee, or the authorized representative, or the landowner, as may be appropriate;
- (o) the duty to comply with all of the terms and conditions of the permit;
- (p) the duty to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;
- (q) the right of the District to enter land under Section 36.123, Texas Water Code; and
- (r) such other conditions as the Board may deem appropriate.

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

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

### **§ 5.309 Lease of Groundwater Exportation Permit**

Within 30 days after the lease of the right to export groundwater under a groundwater exportation permit, the permittee shall file with the District a transfer application on a form prescribed by the District. The general manager will update the District's permit records to reflect the lease. The term of such leases shall not exceed ten years.

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

- (a) Subject to Board approval, a groundwater exportation permit may be transferred or amended to reflect a change in the following circumstances:
  - (1) purpose of use;
  - (2) place of use;
  - (3) the total volume of groundwater exported in acre-feet per annum; or
  - (4) rate of production in gpm.
- (b) Any person seeking to transfer a permit temporarily under subsection (a) must first file with the District an application to transfer on a form prescribed by the District.
- (c) Any person seeking to amend their permit permanently as provided in subsection (a) must first file with the District an application to amend on a form prescribed by the District.
- (d) No permit transfer or amendment is effective until it has been approved by the Board.

### **§ 5.311 Basis for Granting Applications to Amend Groundwater Exportation Permits**

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

- (a) the requirements in § 5.304 are satisfied; and

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

### **§ 5.312 Special Provisions for Term-Limited, Small-Volume, In-County Use**

(a) Notwithstanding the foregoing provisions in this subchapter, a permittee, or a landowner exempted from production permitting requirements under § 1.007(b), seeking to use groundwater outside the District boundaries but inside the County may seek an exemption from provisions requiring groundwater exportation permits if a registration notice meeting the requirements of subsection (b) is filed, and the following conditions are met:

- (1) such use is for a period of no more than one year from the authorization;
- (2) such use is only inside the county lines of Culberson County; and
- (3) such use is for no more than 10 acre-feet annually; and
- (4) such use remains subject to the total annual production limitations under any applicable production permit; and
- (5) such use is only for an industrial or municipal use.

(b) A registration notice to qualify for an exemption under this section shall be on a form prescribed by the District, and shall be subject to the provisions of § 5.216. The Board shall consider whether the registrant meets the requirements of this section and may approve or deny the exemption.

(c) The exemption provided under this section is not operative until the Board has approved the exemption. The notice shall be accompanied by a non-refundable filing fee in an amount set by Board resolution.

(d) Export under the exemption provided in this section shall be treated as a groundwater exportation permit for purposes of § 5.207(o).

## **Subchapter E. Wells Exempt from Permits**

### **§ 5.401 Exempt Wells**

- (a) An owner or operator is exempt from the duty to obtain a permit for:
- (1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:
    - (A) located or to be located on a tract of land larger than 10 acres; and
    - (B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
  - (2) 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;
  - (3) drilling a well for temporary use solely to supply water for a rig that is actively engaged in drilling a well to produce groundwater authorized by a drilling permit from the District; or
  - (4) drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134 of the Texas 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;
  - (5) operating a well solely for domestic use that produces less than 1 acre-foot per year of groundwater and is equipped with a flow restriction device limiting the flow to less than 7 gallons per minute for which no public water supply is available;
  - (6) drilling or operating a dewatering well;
  - (7) drilling or operating a monitoring well; or
  - (8) operating a well exempt under § 1.007(b).
- (b) Notwithstanding subsection (a), the District may require a well to be permitted pursuant to these rules if any of the applicable criteria in § 36.117(d) of the Texas Water Code, is satisfied.
- (c) A person holding a permit issued by the Railroad Commission of Texas under Chapter 134 of the Texas Natural Resource Code that authorizes the drilling of a water well shall report monthly to the District the total amount of water withdrawn from the well, the quantity of water necessary for mining purposes, and the quantity of water withdrawn for other purposes.
- (d) All wells qualifying as exempt wells pursuant to subsection (a), shall be registered with the District in accordance with these rules.
- (e) All exempt wells shall be equipped and maintained to conform to the District's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a

groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

- (f) All exempt wells shall comply with the spacing requirements set forth in these rules.
- (g) The driller of an exempt well shall file the drilling log for the well with the District within 60 days of completion of the exempt well.
- (h) An exempt well will lose its exempt status if the well is subsequently altered, equipped, or used for a purpose or in a manner that is not exempt.
- (i) The owner and/or operator of an exempt well must ensure that the well site is accessible to District representatives for inspection, and must cooperate fully in any reasonable inspection of the well and well site by District representatives.
- (j) An exemption provided under this section does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232 of the Texas Local Government Code.
- (k) Groundwater withdrawn under an exemption provided in accordance with this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 and 36.205 of the Texas Water Code.

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

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

#### **§ 5.403 Well Conversions**

- (a) If the owner and/or operator of a well for which a groundwater withdrawal permit has been issued desires to convert the well to one exempt from the duty to obtain a groundwater withdrawal permit, the owner and/or operator must claim the exemption by abandoning the groundwater withdrawal permit and registering the well as provided in § 5.501.
- (b) If the owner and/or operator of a well exempt from the duty to obtain a groundwater withdrawal permit desires to convert the well to one for which a groundwater withdrawal permit is required, then the owner and/or operator must apply for and obtain a groundwater withdrawal permit.

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

### **§ 5.501 Registration of Exempt Wells and Wells within the District Not Requiring a Permit**

- (a) No person may drill or operate an exempt well within the boundaries of the District without first registering the well with the District using a registration form approved by the District, and obtaining written District approval of the registration and agreement that the well qualifies as exempt.
- (b) No person may drill or operate a well within the boundaries of the District for which a groundwater production permit is not required without first registering the well with the District using a registration form approved by the District, and obtaining written District approval of the registration.
- (c) In addition to the information specified in § 9.104 of these rules (Contents of and Requirements for All Applications and Registrations), a well registration shall contain the following, as applicable:
- (1) the name, address and phone number of the registrant and the owner of the land on which the well is or will be located;
  - (2) if the registrant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
  - (3) a statement of the nature and purpose of the existing or proposed use and the annual amount of water used or to be used for each purpose;
  - (4) the location of the well and the estimated rate at which water is or will be withdrawn;
  - (5) the physical address of the property upon which the well is or will be located;
  - (6) the location where the water from the well will be used;
  - (7) information relating to the size, source of power, and estimated production rate in gpm of the pump used or to be used in the well;
  - (8) the depth or proposed depth of the well and the depth of the casing;
  - (9) the internal diameter of the well casing.
  - (10) the approximate date that the well was or will be constructed;
  - (11) the name, address, and telephone number of the well driller who constructed or will construct the well, and related information;
  - (12) a copy of any well drilling and completion report, driller's logs, geophysical logs, or well equipping report which pertain to the well;
  - (13) the size of the tract of land on which the well site is located, including the total number of acres owned by the registrant upon which the well is or will be located;

- (14) a legal description of the location of the well, including: the county, section, block and survey, and the number of feet to the two nearest public streets or highways; or other adequate legal description approved by the District;
  - (15) if requested by the District:
    - (A) a city or county map with the location of the property on which the well is located highlighted and the location of the well pinpointed; and
    - (B) a map or plat of the property on which the well is located, drawn to scale, not greater than 1000 feet to an inch (1" = 1000') that shows the pinpoint location of the well;
  - (16) the maximum amount of groundwater that the well is or will be capable of withdrawing per day stated in gallons;
  - (17) where applicable, a copy of any permit issued by the Railroad Commission of Texas relevant to the well;
  - (18) any available information in the applicant's possession about the effect of the well on existing groundwater or surface water resources or existing permits issued by the District;
  - (19) any other information deemed necessary by the District in order to determine whether the well qualifies for exempt well status.
- (d) The general manager may approve a well registration if the general manager finds that:
- (1) the well is eligible to be registered;
  - (2) the registration is complete;
  - (3) the registration complies with the rules of the District;
  - (4) all applicable fees have been paid;
  - (5) the registration identifies a proposed or an existing well;
  - (6) the wellhead is or will be physically located within the boundaries of the District;
  - (7) the production from the well is proposed to be placed to a beneficial use;
  - (8) the registrant has a legal right to make withdrawals from the well;
  - (9) for new wells, the proposed well location complies with the spacing rules;
  - (10) the registrant is in compliance with any permits the registrant holds from the District and with District rules;
  - (11) the well will be installed, equipped, operated, maintained, or closed, as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of, and achieve the conservation of groundwater in the aquifer;

- (12) the registrant intends to install, equip, operate, maintain, and close the well, as appropriate, in accordance with the manufacturer's standards, instructions, or recommendations, as may be applicable; and
  - (13) the well meets the criteria for exempt well status pursuant to § 5.401 of these Rules.
- (e) If the general manager makes a preliminary determination that the well is ineligible to be registered, then the matter shall be referred to the Board for its consideration. If the Board determines that the well is ineligible to be registered, then the owner and/or operator of the well shall file an application for, as applicable, a groundwater withdrawal permit, and/or a well drilling permit, under these rules.

## **CHAPTER 6. WELL MANAGEMENT**

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

#### **§ 6.001 Responsibility for Well Management**

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

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

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

(b) Any existing well or pump that is altered, re-worked, re-drilled, re-equipped, or replaced must be done in accordance with the standards in subsection (a), regardless of whether the well owner and operator is required to obtain a drilling permit from the District.

#### **§ 6.003 Re-completions**

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

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

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

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

### **§ 6.101 Location of Wells**

- (a) All new wells must comply with the location requirements set forth in the Texas Department of Licensing and Regulation's rules in Title 16, Chapter 76, of the Texas Administrative Code.
- (b) All new wells must be located a minimum horizontal distance of 50 feet from any property line.
- (c) No new well may be located within five hundred (500) feet of a sewage treatment plant, solid waste disposal site, or land irrigated by sewage plant effluent, or within three hundred (300) feet of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.

### **§ 6.102 Required Well Spacing**

- (a) All new wells drilled shall be located a minimum distance of one thousand three hundred and twenty (1,320) feet from any other well not owned by the permittee.
- (b) The spacing requirements set forth in subsection (a) of this section are not applicable to any well that was completed on or before August 24, 2011. However, any modification to increase the capacity of a well that was originally completed on or prior to August 24, 2011, requires approval of the Board.

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

In addition to the information specified in § 9.104 (Contents of and Requirements for All Applications and Registrations), an application for variance from well spacing limitations shall contain the following:

- (a) Name and Address of Owner. The full name, address, telephone number, and email address of the owner of the proposed well.
- (b) Name and Address of Operator. The full name, address, telephone number, and email address of the operator of the proposed well if not operated by the well owner.
- (c) Drilling Application Number. The drilling permit application number for the proposed well.
- (d) The names and addresses of owners of wells located within the applicable minimum well spacing distance mandated in § 6.102 from the proposed well.
- (e) Information about why the applicable well spacing requirements mandated in § 6.102 cannot be complied with, if applicable.
- (f) Information demonstrating that the operation of the proposed well will not substantially interfere with the use and enjoyment of wells located within the minimum well spacing distance mandated in § 6.102, if applicable.

(g) Signed waivers from all owners of wells located within the applicable minimum well spacing distance mandated in § 6.102 from the proposed well stating that they have no objection to the District granting the requested variance, if applicable.

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

#### **§ 6.104 Variances from Well Spacing Limitations; Protesting Variance Applications**

(a) The Board may grant a variance from the well spacing limitations set forth in § 6.102 if the Board finds that:

- (1) an administratively complete application for variance from well spacing limitations has been filed;
- (2) the application complies with the rules of the District;
- (3) all applicable fees have been paid;
- (4) the applicant has shown good cause why the applicable well spacing limitations mandated in § 6.102 cannot be complied with; and
- (5) the applicant has demonstrated that the operation of the proposed well will not substantially interfere with the use of wells located within the minimum well spacing distance mandated in § 6.102.

(b) The Board may also grant a variance from the well spacing limitations set forth in § 6.102 if the Board finds that:

- (1) an administratively complete application for a variance from the well spacing limitations has been filed;
- (2) the application complies with the rules of the District;
- (3) all applicable fees have been paid; and
- (4) the applicant presents signed waivers from all owners of wells located within the applicable minimum well spacing distance mandated in § 6.102 from the proposed well stating that they have no objection to the District granting the requested variance.

(c) A well owner with a well located within the applicable minimum well spacing distance mandated in § 6.102 from the proposed well may protest the application for variance from spacing limitations pursuant to the procedures set forth in subchapter D of Chapter 9. If timely protested, the issue of spacing limitations will be decided utilizing the contested case process set out in subchapter D of Chapter 9. If the Board chooses to grant a variance to drill a well that does not meet the spacing limitations mandated in § 6.102, the Board may limit the production of the well to ensure that the well will not substantially interfere with the use and enjoyment of wells located within the minimum well spacing distance mandated in § 6.102.

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

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

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

- (a) Drilling, equipping, or completing any non-exempt well or substantially altering the size of a non-exempt well or well pump without a well drilling permit required by this subchapter is illegal, waste, and a nuisance per se.
- (b) The owner and operator of a well or proposed well must apply for and obtain from the District a well drilling permit before drilling, equipping, or completing any non-exempt well or substantially altering the size of a well or well pump.
- (c) Any person seeking to perform any of the activities identified in subsection (b) must file with the District an application for a well drilling permit on a form prescribed by the District.
- (d) A drilling permit is not required for well maintenance or repair that does not increase the production capabilities of the well to more than its authorized production rate.

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

In addition to the information specified in § 9.104 (Contents of and Requirements for All Applications and Registrations), an application for a well drilling permit shall contain the following:

- (a) Name and Address of Owner. The full name, address, telephone number, and email address of the owner of the well or proposed well.
- (b) Name and Address of Operator. The full name, address, telephone number, and email address of the operator of the well or proposed well if not operated by the well owner.
- (c) Description of Proposed Activity. A description of the activity for which a well drilling permit is being sought (*e.g.*, drilling a new well, altering an existing well, installing a larger pump).
- (d) Well Address. The physical address of the property upon which the well or proposed well will or is to be located.
- (e) Well Location. A description of the actual or proposed location of the well, including: the county; section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines), and the latitude and longitude for the well based on readings from a global positioning satellite (GPS) accurate to within 50 feet.
- (f) Map. A city or county map with the location of the property on which the well is or will be located highlighted and the location of the well pinpointed.
- (g) Purpose of Use. The proposed purpose of use for the water stated in definite terms.
- (h) Amount of Annual Withdrawal. The total amount of groundwater proposed to be withdrawn from the aquifer and beneficially used on an annual basis, stated in number of acre-feet or gallons.

- (i) Rate of Withdrawal. The maximum rate of withdrawal in gpm that the well will be capable of.
- (j) Depth. The proposed depth of the well and proposed depth of cement casing.
- (k) Casing. The proposed depth of the cemented casing and cementing methodology.
- (l) Depth of Strata. The predicted depth to the top of targeted water-bearing strata.
- (m) Pump. The size of the proposed pump and pumping method.
- (n) Proposed Construction Date. The approximate date that well construction operations are proposed to begin.
- (o) Identity of Well Driller. The name, address, telephone number and driller's license number of the well driller.
- (p) Water source. The applicant shall identify the intended source or sources of water for the well.
- (q) Legal Basis of Right to Withdraw Groundwater. The applicant shall identify the legal basis under which groundwater will be withdrawn from the well (groundwater withdrawal permit) which the applicant either owns or is seeking to obtain.
- (r) Such other information as may be required by the District.

**§ 6.203 Basis for Action on Well Drilling Permit Applications**

The general manager shall grant an application for a well drilling permit if she finds that:

- (a) the application is complete;
- (b) the application complies with the rules of the District;
- (c) all applicable fees have been paid;
- (d) the applicant owns the well;
- (e) the application identifies a proposed or an existing well;
- (f) the wellhead is or will be physically located within the boundaries of the District;
- (g) the well is designed to produce groundwater from a groundwater source within the District;
- (h) the withdrawals are proposed to be placed to a beneficial use;
- (i) the applicant has a legal right to make withdrawals from the well;
- (j) the well location complies with the spacing rules;
- (k) the applicant is in compliance with any permits the applicant holds from the District and with the District's rules;

- (l) the well will be installed, equipped, operated, maintained, or closed, as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of, and achieve the conservation of groundwater;
- (m) the applicant intends to install, equip, operate, maintain, and close the well, as appropriate, in accordance with the manufacturer's standards, instructions, or recommendations, as may be applicable; and
- (n) the well will be installed, equipped, operated, maintained, or closed, as appropriate, consistent with applicable local, state, and federal law.

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

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

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

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

#### **§ 6.206 Multiple Test Wells Authorized**

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

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

The general manager shall grant an application to extend a drilling permit term if she finds that:

- (a) the application is complete;
- (b) the application complies with the rules of the District;
- (c) all applicable fees have been paid;
- (d) the applicant filed the original drilling permit application;

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

(f) a reasonable basis for the need for the extension is established and demonstrates that the failure to complete the well is not due to the applicant's own lack of due diligence.

### **§ 6.208 Contents of Well Drilling Permits**

Well drilling permits shall contain the following:

- (a) name, address and telephone number of the permittee;
- (b) name, address and telephone number of an authorized representative, if any, of the permittee;
- (c) permit term;
- (d) purpose of use of the well;
- (e) maximum rate of withdrawal in gallons per minute;
- (f) legal description of the location of the well, including, county, section, block and survey, and the latitude and longitude for the well based on readings from a global positioning satellite (GPS) accurate to within 50 feet;
- (g) identification of the legal authority to produce groundwater from the well (groundwater withdrawal permit) which the applicant either owns or is seeking to obtain;
- (h) the groundwater source;
- (i) size of the pump, pumping rate, and pumping method;
- (j) meter specifications, if any;
- (k) borehole diameter; external and internal diameter of casing; total depth of casing; depth of grout; total well depth; screen, perforation, and filter pack intervals; and other well installation specifications, as appropriate;
- (l) any conservation-oriented methods of drilling prescribed by the District;
- (m) all applicable reporting requirements;
- (n) installation and completion schedule;
- (o) a requirement that the permittee must file all applicable reports with the District prior to the production of water from the well, except for such production necessary to the drilling and testing of the well;
- (p) a requirement that the permittee use reasonable diligence to protect groundwater quality and that all well plugging laws will be followed at the time of well closure;
- (q) a copy of the approved water well closure plan, if any, or a requirement that the permittee will comply with well plugging law and report closure to the Texas Department of Licensing and Regulation and the District; and

(r) such other appropriate conditions as determined by the Board.

### **§ 6.209 Standard Permit Conditions**

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

- (a) the duty to properly close (cap or plug) all wells in accordance with applicable law, and comply with either the District's well closure plan, if any, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;
- (b) the duty to file all applicable reports with the District, and other appropriate federal, state, or local governments;
- (c) the duty to use diligence to protect the groundwater quality of the aquifer;
- (d) the duty to comply with the District's Rules;
- (e) permit review, or extension conditions;
- (f) the duty to locate all wells, and confirm the actual location with the proposed location in the application or as provided for in the permit, consistent with the District's well spacing rules, prior to the production from any wells identified in the permit or application;
- (g) the continuing right of the District to supervise and manage groundwater production and the depletion of the aquifer;
- (h) installation, equipping, operation, maintenance, and closure of all wells in accordance with the District's Rules, and other applicable federal, state, and local law;
- (i) installation, equipping, operation, and maintenance of all meters in accordance with the District's Rules;
- (j) the duty to pay and be current in the payment of all applicable fees;
- (k) the duty to give notice to District of any changes in name, address, or telephone number of the permittee, or the authorized representative, the landowner, well owner, or well operator, as may be appropriate;
- (l) the duty to comply with all of the terms and conditions of the permit;
- (m) the duty to ensure that the well site is accessible to District representatives for inspection, and to cooperate fully in any reasonable inspection of the well and well site by District representatives;
- (n) the right of the District to enter land under Section 36.123 of the Texas Water Code; and
- (o) such other conditions as the Board may deem appropriate.

### **§ 6.210 Notice of Condition Affecting Groundwater Quality; Corrective Action**

If at any time a well owner or operator has reason to believe that a well condition may exist that may cause the pollution, degradation, or harmful alteration of the character of the groundwater in the aquifer, then the owner and/or operator shall, within forty-eight (48) hours of learning of the

fact(s), notify the District in writing of the well condition. The District may conduct an investigation and, if facts warrant, direct the owner and/or operator of the well, at the owner's or operator cost, to evaluate and test the well conditions and take appropriate corrective action, including replacement, to bring the well into proper working condition in conformance with this chapter.

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

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

#### **§ 6.212 Replacement of Wells**

A well owner or operator may rework, re-equip, re-drill, or replace an existing permitted or registered well by filing an application to amend such permit or registration, and providing such information as may be required by the general manager, without notice and hearing under the following conditions:

- (1) The replacement well must be drilled within 100 feet of the original permitted location;
- (2) The replacement well shall not be located any closer to any other permitted well or authorized well site than the well being replaced, unless the new location complies with the minimum spacing requirements set out in subchapter B of Chapter 6 of these rules;
- (3) The replacement well or pump shall not be changed to a larger size or capacity so as to increase the rate of production authorized in such permit; and
- (4) If a replacement well is drilled, the well owner or operator shall cease production from the existing permitted or registered well and ensure that the replaced well is, within 90 days:
  - (A) plugged;
  - (B) capped; or
  - (C) re-equipped to meet the eligibility requirements applicable to an exempt well and registered under subchapters E and F of Chapter 5 of these rules or applicable to a monitoring well under these rules.

#### **§ 6.213 Transfer of Well Drilling Permit Prohibited**

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

## **Subchapter D. Well Drillers**

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

- (a) Except as otherwise provided in subsection (b) of this section, no person may drill or construct a water well within the District's boundaries unless the person first holds a well driller's license issued by the Texas Department of Licensing and Regulation under Chapter 1901 of the Texas Occupations Code and Title 16, Chapter 76, of the Texas Administrative Code.
- (b) The requirement to hold a well driller's license in subsection (a) of this section does not apply to any person who personally drills, constructs or alters a water well on his own property for his own use.
- (c) Except as otherwise provided in subsection (d) of this section, no person may install or repair a water well pump within the District's boundaries unless the person first holds a pump installer's license issued by the TDLR under Chapter 1902 of the Texas Occupations Code and Title 16, Chapter 76, of the Texas Administrative Code.
- (d) The requirement to hold a pump installer's license issued by the TDLR pursuant to subsection (c) of this section does not apply to:
- (1) any person who personally installs or repairs a water well pump on his own property, or on property that he has leased or rented, for his own use; or
  - (2) any person who is a ranch or farm employee whose general duties include personally installing or repairing a water well pump or equipment on his employer's property for his employer's use, but who is not employed or otherwise in the business of installation or repair of water pumps or equipment.
- (e) Regardless of whether a license is required, all persons engaging in well drilling or pump installation or repair must comply with the applicable standards set forth in Title 16, Sections 76.701, 76.702, 76.1000, 76.1001, 76.1003, and 76.1004, of the Texas Administrative Code (TDLR's rules), and the District's rules. In the event that a specific provision in the District's Rules conflicts with a specific provision in the TDLR's rules, the more stringent provision will govern.

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

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

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

Any well driller engaged to drill or otherwise construct a well within the District shall, before undertaking any drilling or construction operations, confirm with the District that any required well drilling permit or other permit or registration has been approved for the well and is in effect. In addition, at all times during well drilling or construction operations, the driller shall post a copy

of any permit or registration for the well at a location at the well site that can be easily seen by visitors to the well site.

#### **§ 6.304 Well Records, Reports, and Logs**

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

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

### **§ 6.401 Capping Requirements**

- (a) Every owner or operator of any land within the District upon which is located any open or uncovered well shall be required to cap or close the well with a covering capable of preventing the entrance of surface pollutants into the well and of sustaining a weight of at least four hundred (400) pounds, except when said well is in actual use by the owner or operator thereof.
- (b) In addition, every owner or operator of any land within the District upon which is located a flowing artesian water well shall be required to cap or close the well with a covering capable of preventing any flow and therefore preventing waste, except when the well is in actual use by the owner or operator thereof.
- (c) If the owner or operator fails or refuses to close or cap the well in compliance with this section, the District, or its employees or agents, may go on the land and close or cap the well safely and securely. Reasonable expenses incurred by the District in closing or capping a well constitute a lien on the land on which the well is located. The lien arises and attaches upon recordation of an affidavit in the deed records of the county where the well is located, executed by any person conversant with the facts, stating the following:
- (1) the existence of the well;
  - (2) the legal description of the property on which the well is located;
  - (3) the approximate location of the well on the property;
  - (4) the failure or refusal of the owner or operator, after notification, to close the well within 10 days after the notification;
  - (5) the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
  - (6) the expense incurred by the District in closing the well.

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

### **§ 6.501 Responsibility**

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

### **§ 6.502 Report on Plugging of Wells**

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

## **Subchapter G. Reworking and Replacing a Well**

### **§ 6.601 Procedures**

- (a) An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well's status.
- (b) A permit must be applied for and the Board will consider approving the permit, if a party wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe and gpm rate by reworking, re-equipping, or re-drilling such well.
- (c) A permit must be applied for and granted by the Board if a party wishes to replace an existing well with a replacement well.
- (d) A replacement well, in order to be considered such, must be drilled within ten yards (30 feet) of the existing well and shall not be drilled nearer to the property line than the original well.

## **CHAPTER 7. FEES**

### **§ 7.001 Registration Fees**

(a) For exempt wells completed so as, in the opinion of the District, to be capable of producing water from the Wild Horse Flat or Lobo Flat Aquifers, or for wells in areas in the District outside those two aquifers, the District shall assess a non-refundable fee per well to file a well registration with the District. The amount of such fee shall be set by Board resolution.

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

### **§ 7.002 Application Fees**

(a) The District shall assess a non-refundable application fee in an amount set by the Board. The application fee shall be assessed to compensate the District for the administrative functions associated with the following applications:

- (1) a new, annual renewal, or amended groundwater withdrawal permit application;
- (2) a new, annual renewal, or amended groundwater exportation permit application;
- and
- (3) a well drilling application.

(b) All required fees must accompany the application form and be paid at the time of filing. If the applicant fails to pay the fee at the time of filing, the District may refuse to accept the application for filing, or otherwise cease processing the application.

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

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

The District shall assess groundwater production fee, but not in an amount greater than is reasonably necessary for the annual operating revenue requirements for the administration of the District as reflected in its adopted annual fiscal year budget.

#### **§ 7.004 Enforcement for Nonpayment**

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

- (1) by suspending the processing of any application that the person owing the fee, or his successor in interest, may have pending before the District; or
- (2) by commencing any action to enforce payment and collection of the delinquent fee as may be authorized by law.

#### **§ 7.005 Prohibitions**

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

#### **§ 7.006 Unauthorized Withdrawals**

- (a) Any person who withdraws groundwater from within the boundaries of the District in violation of a requirement that the withdrawals be authorized by a groundwater production permit shall pay to the District the groundwater production fees in force and effect for the period of time during which the unauthorized withdrawals were made.
- (b) If a person makes withdrawals of groundwater that are not being metered in accordance with Chapter 8 of these rules, the Board may assess groundwater production fees based on the amount of water the permittee is authorized to withdraw under a groundwater withdrawal permit.

#### **§ 7.007 Groundwater Export Fees**

- (a) In addition to any production fees assessed by the District, the District shall assess, and all persons exporting groundwater produced from a well within the District's boundaries to a place of use outside of the District's boundaries shall pay, a groundwater export fee on the metered volume of groundwater produced for export; provided, however, that the groundwater export fee for groundwater exports authorized under § 5.312 shall be assessed without regard to whether the groundwater was actually produced for export.
- (b) The groundwater export fee applies to and will be assessed on all groundwater produced as follows:
  - (1) water actually exported from the District's boundaries to a place of use outside the District's boundaries;
  - (2) operational water that is lost in the operation and maintenance of the export project and not actually exported from the District's boundaries; and

- (3) reject water processed in order to produce water of a suitable quality for export and not actually exported from the District's boundaries.
- (c) The groundwater export fee shall be calculated and assessed as follows: 50% of the groundwater production fee assessed under § 7.003 of these Rules for the use authorized under the production permit.
- (d) The District will bill and collect the groundwater export fee. The monthly groundwater exportation report shall constitute the groundwater export fee invoice. At the end of each month, the holder of a groundwater export permit shall complete a groundwater exportation report, using the District's form, reporting the total amount of groundwater exported during the immediately preceding month, and return the completed form, along with payment of the applicable groundwater export fees, to the District by no later than the 15th day after the end of the month for which the fees are assessed. The amount due becomes delinquent if payment in full is not received by the District by the 30th day after the end of the month for which the fees were assessed.
- (e) For any export fee that is delinquent, if payment in full is not received on or before 10 days after the date the amount becomes delinquent, then the District shall assess, for every month thereafter that the invoice remains delinquent, an additional fee of 10%. Additionally, each day that an export fee is delinquent constitutes a separate violation of the District's rules.
- (f) No person may export groundwater outside the District's boundaries if the owner and/or operator of the well from which the exported groundwater is produced is delinquent in the payment of any fee that is due and payable to the District.
- (g) Any person who, without any legal authority, exports groundwater outside the District's boundaries shall pay to the District the export fee then in force and effect for the period of time during which the unauthorized exports were made.
- (h) Any person who exports groundwater outside the District's boundaries without metering in accordance with Chapter 8 of these rules, shall pay to the District the export fee then in force and effect based on the maximum amount of water the person is authorized to export under a groundwater exportation permit.
- (i) A groundwater export fee shall not be assessed against:
- (1) groundwater produced from within the District that is incorporated into a finished, manufactured product within the District and then exported for sale outside of the District;
  - (2) groundwater produced from within the District, where the well is situated on a contiguous tract of land that straddles the District boundary and the groundwater is placed to use solely on that tract, but including portions outside the District's boundaries; and
  - (3) groundwater produced from within the District and supplied by a public water system to customers within the public water system's retail service area where that retail service area straddles the District boundaries. This exception does not apply to any water produced within the District's boundaries by a public water system that is conveyed outside

the District's boundaries for any use other than retail service to the public water system's own customers.

**§ 7.008 Inspection and Plan Review Fees**

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

## CHAPTER 8. METERS AND REPORTING

### § 8.001 Meters Required

(a) Duty to Install: The owner and/or operator of a non-exempt well located within the District shall equip the well with a meter meeting the specifications of these Rules and shall operate and maintain the meter to measure the instantaneous flow rate and cumulative amount of groundwater withdrawn from the well. A meter shall be installed before any groundwater is withdrawn from the well.

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

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

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

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

appropriate steps to remedy any problem, and to retest the meter within 90 calendar days from the date the problem is discovered and reported to the permittee.

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

(a) The owner and operator of an existing, non-exempt well shall register with the District any meter or alternative measurement(s) method installed and in use on the well.

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

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

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

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

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

(b) Only the well owner or operator or his or her authorized representative may remove or otherwise disable a meter.

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

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

The well owner and operator must read the meter associated with the well and record the meter readings and the actual amount of pumping in a log at least monthly. The logs containing the recordings shall be available for inspection by the District during reasonable business hours. By no later than January 31st of each year, each non-exempt well owner and/or operator must submit to the District an annual groundwater use report, on a form provided by the District. The report shall provide the following: (1) name of the well owner and/or operator; (2) the well number; (3) the total amount of groundwater produced by the well or aggregate system during the immediately preceding calendar year (January 1 through December 31); (4) the total amount of groundwater

produced by the well or aggregate system during each separate month of the immediately preceding calendar year; (5) the purpose for which the groundwater was used; and (6) any other information requested by the District as indicated on the report form.

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

### **Subchapter A. General**

#### **§ 9.001 Purpose**

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

#### **§ 9.002 Applicability**

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

#### **§ 9.003 Service of Documents**

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

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

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

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

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

or the affidavit of any person showing service of a document, shall be prima facie evidence of service.

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

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

(g) § 1.005 governs to the extent of any conflict with this section.

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

### **§ 9.101 Purpose**

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

### **§ 9.102 Applicability**

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

### **§ 9.103 Proper Applicant or Registrant**

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

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

All applications and registrations filed with the District shall be in writing and sworn to by the applicant and shall be typewritten or printed legibly in ink and shall include:

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

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

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

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

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

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

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

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

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

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

## **Subchapter C. Application and Registration Processing by the District**

### **§ 9.201 Purpose**

The purpose of this subchapter is to provide the procedures to be followed in the processing of applications and registrations filed with the District.

### **§ 9.202 Applicability**

This subchapter applies to the processing of all applications or registrations filed with the District unless otherwise specified.

### **§ 9.203 Initial Action on Applications and Registrations**

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

#### **§ 9.2031 Concurrent Application Processing**

For any applications submitted to the District which the applicant has requested be processed concurrently with other applications, the District may process and the Board may consider such applications concurrently according to the standards and rules applicable to each.

#### **§ 9.204 Review for Administrative Completeness**

(a) Before presentation of a matter to the Board, the general manager will conduct an initial review of each application, registration notice, and registration for administrative completeness and advise the applicant or registrant of the results of the review. Such determination of administrative completeness shall be made consistent with Section 36.114(b) of the Texas Water Code, including rules of the District adopted under Section 36.113(c)(8) of the Texas Water Code.

(b) Subsection (a) of this section applies to reviews for administrative completeness of applications, registration notices under § 5.312, and registrations under § 5.501.

(c) Reviews for administrative completeness shall include an assessment of whether the application or registration contains all of the information requested by the District in its forms and in sufficient detail and legible form to allow:

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

(d) Upon a determination that an application, registration notice, or notice is administratively complete, the District will notify the applicant or registrant by mail.

#### **§ 9.205 Return of Applications and Registrations Deemed Not Administratively Complete**

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

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

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

#### **§ 9.206 Technical Review**

(a) After an application, or registration notice under § 5.312, is determined by the District to be administratively complete, District staff will commence a technical review of the application or registration as necessary and appropriate.

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

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

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

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

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

- (1) the applicant's name and address;
- (2) a summary of the application;
- (3) the location of each point of withdrawal;
- (4) the reasons and technical basis for the recommended action;
- (5) if applicable, a summary of the proposed permit;

- (6) the proposed purpose(s) of use;
  - (7) notice that the general manager may modify his or her recommendation, or seek additional information from the applicant, in the course of the District's proceeding on the application;
  - (8) as may be authorized by this chapter, a statement that the applicant or other affected persons may file a request for a contested case hearing on the application on or before the deadline set forth in § 9.304; and
  - (9) any other information that the general manager determines to be appropriate.
- (c) The general manager will provide the applicant with a copy of the general manager's statement, any proposed permit (or denial) and the technical summary.

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

- (a) **Applicability.** This section applies to all registrations and applications other than applications for groundwater withdrawal permits, groundwater exportation permits, and applications for a variance from well spacing limitations.
- (b) **Scheduling the Board Meeting.** Following technical review and the referral of the proposed action to the Board, the general manager will schedule the presentation of the application or registration and the proposed permit, approval, authorization or denial to the Board. The Board may reschedule the presentation of the application or registration and the proposed permit, approval, authorization, or denial.
- (c) **Notice of Board Meeting.** At least 10 days prior to the Board meeting, the District will notify the applicant or registrant of the date of the Board meeting referred to above. If rescheduled by the Board, the District will send notice of the rescheduled meeting date to the applicant or registrant no later than ten days before the rescheduled meeting. In addition, the District will provide public notice that the application or registration and the permit, approval, authorization or denial will be considered by the Board by including an item on the Board's agenda pursuant to the Open Meetings Act. Except to the extent that such items contain information excepted from public disclosure under the Public Information Act, copies of the application or registration and the proposed permit, approval, authorization, or denial will be made available to the public for inspection and copying at the offices of the District during regular business hours.
- (d) **Consolidation or Severance of Matters.** Consistent with notices required by law, the Board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The Board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.
- (e) **Oral Presentation Before the Board.** The applicant or registrant and the general manager or his or her designee may make an oral presentation at the Board meeting at which the application

or registration and the proposed permit, approval, authorization or denial are presented to the Board. Oral presentations before the Board will be limited to 15 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the Board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions will be directed to the Board.

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

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

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

(a) Applicability. This section applies only to all applications for groundwater withdrawal permits, groundwater exportation permits, and applications for a variance from well spacing limitations where, after the time for the filing of a hearing request provided in § 9.304:

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

(b) Scheduling the Board Meeting. Following the expiration of the time to file a hearing request pursuant to § 9.304 of this chapter, and if all of the conditions stated in Subsection (a)(1)-(3) of this section have been met, the District will schedule the presentation of the application and the proposed permit, approval, authorization, or denial to the Board. The Board may reschedule the presentation of the application and the proposed permit, approval, authorization, or denial.

(c) Notice of Board Meeting. At least 10 days prior to the Board meeting, the District will notify the applicant of the date of the Board meeting referred to above via certified mail/return-receipt requested. If rescheduled by the Board, the District will send notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting. In addition, the District will provide public notice that the application and the proposed permit, approval, authorization or denial will be considered by the Board by including an item on the Board's agenda pursuant to the Open Meetings Act. Copies of the application and the proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the District office during regular business hours.

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

proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

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

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

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

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

(a) Applicability. This section applies only to applications for groundwater withdrawal permits, groundwater exportation permits, applications to transfer a permit to increase the total volume of water authorized or to change the place of use to a place of use not included within the current place of use, and applications for a variance from well spacing limitations. A notice of hearing on an application for a permit shall be prepared by the District. At a minimum, the notice shall state the following information:

- (1) the name and address of the applicant;
- (2) the name or names of the owner or owners of the land or well, if different from the applicant;
- (3) the name or names of the operator or operators of the land or well, if different from the applicant;
- (4) the date the application was filed and the number assigned to it;
- (5) the time, date, and location of the hearing;
- (6) the address or approximate location of the well or proposed well;
- (7) a brief explanation of the permit or permit amendment sought, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
- (8) a summary of the action on the application recommended by the general manager pursuant to § 9.204 of these rules;
- (9) a statement of the legal authority and jurisdiction under which the hearing is to be held;

- (10) a brief description of the technical summary;
  - (11) a statement that a copy of the proposed action, technical summary, and application are available for inspection by the public at the offices of the District;
  - (12) a statement that the application will be presented to the Board for action at the hearing unless a request for a contested case hearing is submitted at least five days prior to the date of the hearing pursuant to § 9.304; and
  - (13) a statement that the applicant or another affected person may request a contested case hearing on the application by filing a request with the District, at least five days before the date of the hearing, in accordance with § 9.304.
  - (14) any other information the Board or general manager considers relevant and appropriate.
- (b) The District shall, not less than 10 days before the date of the hearing:
- (1) Post the notice in a place readily accessible to the public at the District's office;
  - (2) Provide the notice for posting at the county courthouse to the county clerk of each county in which the District is located;
  - (3) Provide the notice:
    - (A) By regular mail to the applicant; and
    - (B) By regular mail, facsimile, or electronic mail to any person who has requested notice under subsection (c) below; and
  - (4) Publish the notice at least once in a newspaper of general circulation in the District.
- (c) Any person may request to receive written notice of permit hearings by submitting a request to the District in writing. The request must identify with as much specificity as possible the types of permit hearings for which written notice is requested. The request remains valid for the remainder of the calendar year in which the request is received by the District, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service of notice by first class mail, facsimile, or email to a person required pursuant to subsection (b)(3)(B), above, in accordance with the information provided by that person is proof that notice was provided by the District. Failure to provide notice under subsection (b)(3)(B) does not invalidate an action taken by the District at the hearing.
- (d) The applicant, at the applicant's expense, shall give the notification by first class mail to the owner of any land contiguous to the land identified by the applicant in the application, or to the extent not already provided, to an owner of an operating water well within one thousand three hundred and twenty (1,320) feet of the proposed well, not less than ten (10) days before the hearing. The applicant will provide the District with proof of service including a list of names and addresses of the landowners and well owners that were notified.

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

(a) Applicability. This section applies only to applications for groundwater withdrawal permits, groundwater exportation permits, applications to transfer a permit to increase the total volume of water authorized or to change the place of use to a place of use not included within the current place of use, and applications for variance from well spacing limitations.

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

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

### **§ 9.301 Purpose**

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

### **§ 9.302 Applicability**

This subchapter applies to matters subject to a contested case hearing under § 9.210 for which a timely request for contested case hearing is pending before the District and the request has not been withdrawn because of settlement or for some other reason.

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

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

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

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

- (a) A request for a contested case hearing may only be made for applications for groundwater withdrawal permits, groundwater exportation permits, applications to transfer or amend a permit to increase the total volume of water authorized or the rate of production or to change the point of withdrawal to a point of withdrawal that is not currently on the permit's place of use, and applications for a variance from well spacing limitations.
- (b) A request for a contested case hearing must be in writing and be filed by United States mail, facsimile, email, or hand delivery to the District by no later than five days before the date of the hearing specified in the notice made pursuant to § 9.210.
- (c) A hearing request must substantially include the following:
  - (1) the name, address, daytime telephone number, fax number, and email address of the person filing the request. If the request is made by a corporation, partnership, or other business entity, the request must identify the entity and one person by name, physical and mailing address, daytime telephone number, fax number, and email address, who shall be responsible for receiving all documents on behalf of the entity;
  - (2) the basis for the contention that the person will be injured and has a personal justiciable interest in the matter such that a contested case hearing is appropriate;
  - (3) request a contested case hearing;
  - (4) provide any other information requested in the notice of hearing; and

- (5) the person filing the request shall subscribe and swear or affirm under oath that the facts set out in the request are true and correct before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the request.
- (d) Where a request for a contested case hearing is filed by a person other than the applicant, a copy of that request must be served on the applicant at or before the time that the request is filed with the District. The request shall include a certificate indicating the date and manner of service and the name and address of all persons served.
- (e) If a person is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

### **§ 9.305 Processing of Hearing Requests**

- (a) Except as provided in subsection (d), the general manager shall schedule any timely filed contested case hearing request for Board consideration. At least three days prior to the Board hearing, the general manager shall provide notice to the applicant and other persons making a timely hearing request of the hearing. The Board may receive relevant oral testimony or documentary evidence at a Board hearing during which the contested case hearing request is evaluated.
- (b) The hearing request will be the initial matter considered at the hearing on the permit application.
- (c) Persons may submit a written response to the hearing request. Responses shall be filed with the District, the applicant and any persons filing a hearing request in connection with that matter. The response should address the question of whether the person requesting the contested case hearing has a personal justiciable interest related to the application at issue.
- (d) The Board shall evaluate the hearing request and any written responses thereto at the scheduled board hearing and shall determine that the person requesting the hearing:
- (1) does not have a personal justiciable interest related to the application and deny the hearing request and not admit the person as a party to the hearing; or
  - (2) has a personal justiciable interest relating to the application, refer the application to a contested case hearing, and admit the person as a party to the hearing.
- (e) The Board may delegate to a presiding officer the processing of requests for contested case hearing.
- (f) The determination of whether a hearing request should be granted is not itself a contested case hearing.

### **§ 9.306 General Hearing Procedures in Contested Cases**

- (a) Except as otherwise provided for a hearing referred to SOAH, the procedures provided in this subchapter apply to contested case hearings. If the Board refers a contested case hearing to SOAH, then the hearing shall be conducted as provided by Sections 36.416(b) and (c) and 36.4165

of the Texas Water Code and Subchapters C, D, and F of Chapter 2001 of the Texas Government Code, and the applicable rules of practice and procedure of SOAH (Chapter 155, Title 1, of the Texas Administrative Code) govern any contested case hearing of the District conducted by SOAH, as supplemented by this subchapter.

(b) At the Board's determination, a contested case hearing of the District must be conducted by:

- (1) a quorum of the Board;
- (2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
- (3) a SOAH administrative law judge.

(c) If requested by any party to a contested case, the District must contract with SOAH to conduct a contested case hearing.

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

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

(f) Authority of presiding officer: The presiding officer may conduct the hearing in the manner the presiding officer deems most appropriate for the particular proceeding. The presiding officer has the authority to:

- (1) convene the hearing at the time and place specified in the notice for public hearing;
- (2) set hearing dates;
- (3) designate the parties;
- (4) establish the order for presentation of evidence;
- (5) administer oaths to all persons presenting testimony;
- (6) examine persons presenting testimony or comments;
- (7) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- (8) prescribe reasonable time limits for testimony and the presentation of evidence;
- (9) exercise the procedural rules of the District;
- (10) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
- (11) require the taking of depositions and compel other forms of discovery under these rules;

- (12) reopen the record of a hearing for additional evidence when necessary to make the record more complete;
- (13) establish the jurisdiction of the District concerning the subject matter under consideration;
- (14) rule on motions and on the admissibility of evidence and amendments to pleadings;
- (15) conduct public hearings in an orderly manner in accordance with these rules;
- (16) recess any hearing from time to time and place to place; and
- (17) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of the presiding officer.

(g) **Alignment of Parties in a Contested Case Hearing; Number of Representatives Heard:** Parties in a contested case hearing may be aligned according to the nature of the hearing and their relationship to it. The presiding officer may require the participants of an aligned class to select one or more persons to represent them in the hearing or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.

(h) **Appearance by Applicant or Movant:** The applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to so appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the presiding officer deems it necessary in order to fully develop the record.

(i) **Reporting:** Contested case hearings will be recorded by audio or video recording or, at the discretion of the presiding officer, may be recorded by a certified court reporter transcription. The District does not prepare transcripts of hearings or other proceedings recorded on District equipment for the public, but the District will arrange access to the recording. On the request of a party to a contested case hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party. If a proceeding other than a contested case hearing is recorded by a reporter, and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original of any transcript will be filed with the District and placed in the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.

(j) Continuance: The presiding officer may continue hearings in a contested case hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice under § 9.210. If the presiding officer continues a contested case hearing without announcing at the hearing the time, date and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to all parties.

(k) Any request under Section 36.416(b) of the Texas Water Code to have a contested case hearing conducted by SOAH shall be filed with the District no later than the 10<sup>th</sup> day after the matter becomes a contested case.

### **§ 9.307 Conduct and Decorum**

Every person participating in or observing a contested case hearing, or other associated proceeding, must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants or observers. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If, in the judgment of the presiding officer, a person is acting in violation of this provision, the presiding officer shall first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.

### **§ 9.308 Hearing Registration Forms**

Each individual attending who provides comments or testimony in a contested case hearing shall submit a hearing registration form providing the following information: name, address, who the person represents, if the person is not there in person's individual capacity, whether the person plans to testify or provide comments, and any other information relevant to the hearing.

### **§ 9.309 Opportunity for Hearing and Participation; Notice of Hearing**

In a contested case, each party is entitled to an opportunity:

- (a) for hearing; and
- (b) to respond and to present evidence and argument on each issue involved in the case.

### **§ 9.310 Pre-Hearing Conferences**

(a) The presiding officer may hold one or more pre-hearing conferences at which the presiding officer may consider any matter which may expedite the hearing or otherwise facilitate the hearing process.

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

- (1) the withdrawal of protest;
- (2) the designation of parties;
- (3) the formulation and simplification of issues;

- (4) the necessity or desirability of amending applications or other pleadings;
- (5) the possibility of making admissions or stipulations;
- (6) the scheduling of discovery;
- (7) the identification of and specification of the number of witnesses;
- (8) the filing and exchange of prepared testimony and exhibits; and
- (9) the procedure at the hearing.

(c) Conference Action. Action taken at a pre-hearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.

### **§ 9.311 Designation of Parties**

The following persons shall be designated as parties in a contested case hearing:

- (a) the general manager of the District is a party in all contested case hearings;
- (b) the applicant is a party in a contested case hearing on its application; and
- (c) any person who timely requested a contested case hearing pursuant to § 9.304, and who has been determined by the presiding officer to be a person entitled to a contested case hearing under the standard set forth in § 9.305.

### **§ 9.312 Right to Counsel**

- (a) Each party to a contested case hearing may have the assistance of legal counsel before the District.
- (b) A party to a contested case hearing may choose not to have the assistance of legal counsel.

### **§ 9.313 Interpreters for Deaf or Hearing Impaired Parties and Witnesses**

- (a) In a contested case hearing, the District shall provide an interpreter whose qualifications are approved by the Texas Office for Deaf and Hard of Hearing Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.
- (b) In this section, “deaf or hearing impaired” means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

### **§ 9.314 Informal Disposition of Contested Case Hearing**

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

- (a) stipulation;
- (b) agreed settlement;
- (c) consent order; or
- (d) default.

### **§ 9.315 Hearing Conducted by Hearings Examiner**

- (a) This section applies only to contested case hearings presided over by a hearings examiner.
- (b) A hearings examiner who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing.
- (c) The District shall provide the hearings examiner with the District rules or policies applicable to the matter under consideration in the hearing.
- (d) The District may not attempt to influence the findings of fact or the hearings examiner's application of law in a contested case hearing except by proper evidence and legal argument.
- (e) The District may change a finding of fact or conclusion of law made by the hearings examiner, or may vacate or modify an order issued by the hearings examiner, only if the District determines:
  - (1) that the hearings examiner did not properly apply or interpret applicable law, District rules or policies provided under Subsection (c), or prior administrative decisions;
  - (2) that a prior administrative decision on which the hearings examiner relied is incorrect or should be changed; or
  - (3) that a technical error in a finding of fact should be changed.
- (f) The District shall state in writing the specific reason and legal basis for a change made under this subsection.

### **§ 9.316 Certified Questions**

- (a) At any time during a contested case hearing presided over by a hearings examiner, on a motion by a party or on the hearings examiner's own motion, the hearings examiner may certify a question to the District.
- (b) Issues regarding District policy, jurisdiction or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are among the types of issues appropriate for certification. Policy questions for certification purposes include, but are not limited to:
  - (1) the District's interpretation of its rules and applicable statutes;
  - (2) which rules or statutes are applicable to a proceeding; or
  - (3) whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
- (c) If a question is certified, the hearings examiner shall submit the certified issue to the general manager. The general manager will place the certified issue on the agenda of the earliest possible meeting of the Board, in compliance with the Open Meetings Act and other applicable law. The general manager will give the hearings examiner and parties notice of the meeting at which the certified question will be considered. The parties to the proceeding may file with the District briefs

on the certified question. Briefs shall be filed with the parties with a copy served on the hearings examiner. The general manager will provide copies of the certified question and any briefs to the Board. The hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.

(d) The District will issue a written decision on the certified issue within 30 days following the meeting at which the certified issue is considered. A decision on a certified issue is not subject to a request for written findings and conclusions, motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

### **§ 9.317 Service of Documents filed in a Contested Case Hearing**

(a) Service of all Documents Required. For any document filed with the District or the judge in a contested case hearing, the person filing that document must serve a copy on all parties to the contested case including the general manager at or before the time that the request is filed.

(b) Certificate of Service. A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The docket clerk may permit a document to be filed without a certificate of service but will require the certificate to be filed promptly thereafter.

### **§ 9.318 Privilege**

In a contested case hearing, the District shall give effect to the rules of privilege recognized by Texas law.

### **§ 9.319 Objections to Evidence**

An objection to an evidentiary offer in a contested hearing may be made and shall be noted in the record.

### **§ 9.320 Burden of Proof**

The burden of proof is on the applicant to establish, by a preponderance of the evidence, that the applicant is entitled to have the application granted.

### **§ 9.321 Assessing Costs**

(a) The party or parties requesting a contested case hearing before SOAH shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party or parties.

(b) Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may make a recommendation to the Board regarding the assessment of the costs incurred by the District for the hearing, including the District's expenditures for attorney's fees and technical experts, and any reporting and transcription costs to one or more of the parties. If the hearing is conducted by the Board, a hearing report with recommendations need not be filed, and

the Board may directly assess the District's hearing costs and reporting and transcription costs to one or more of the parties. The presiding officer must consider the following factors in assessing the District's hearing costs and the reporting and transcription costs:

- (1) the party who requested the transcript;
- (2) the financial ability of the party to pay the costs;
- (3) the extent to which the party participated in the hearing;
- (4) the relative benefits to the various parties of having a transcript;
- (5) the budgetary constraints of a governmental entity participating in the proceeding;  
and
- (6) any other factor that is relevant to a just and reasonable assessment of costs.

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

#### **§ 9.322 Rights of Designated Parties**

Subject to the direction and orders of the presiding officer, parties have the right to conduct discovery; present a direct case; cross-examine witnesses; make oral and written arguments; obtain copies of all documents filed in the proceeding; receive copies of all notices issued by the District concerning the proceeding; and otherwise fully participate in the proceeding.

#### **§ 9.323 Persons Not Designated Parties**

At the discretion of the presiding officer, a person not designated as a party to a proceeding may submit a comment or statement, orally or in writing. Comments or statements submitted by nonparties may be included in the record, but may not be considered by the presiding officer.

#### **§ 9.324 Ex Parte Communications**

Except as otherwise provided below, the presiding officer or a member of the Board assigned to render a decision or to make findings of fact or conclusions of law on a contested permit application may not communicate, directly or indirectly, about any issue of fact or law during the pendency of the contested case with any representative of the District or other designated party to the contested case, except on notice and opportunity for all parties to participate. This rule does not apply to a Board member who abstains from voting on any matter in which he or she engaged in *ex parte* communications. A member of the Board may communicate *ex parte* with other members of the Board consistent with the requirements of other law, such as the Open Meetings Act. A member of the Board or the presiding officer may communicate *ex parte* with a District employee who has not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the District employee in evaluating the evidence.

#### **§ 9.325 Evidence**

The presiding officer shall admit evidence that is relevant to an issue at the hearing. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The Texas Rules of Evidence may be referred to in order to determine the admissibility and introduction of evidence in contested case hearings. However, evidence not admissible under the Texas Rules of Evidence may be admitted if the evidence is:

- (a) necessary to ascertain facts not reasonably susceptible of proof under those rules;
- (b) not precluded by statute; and
- (c) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

In addition, evidence may be stipulated to by agreement of all parties.

### **§ 9.326 Written Testimony**

- (a) When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially thereby, the presiding officer may allow testimony in a contested case hearing to be received in written form.
- (b) The written testimony of a witness, either in narrative or question and answer form, must be sworn to by the witness and may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness must be available, in person, by phone, or by other reasonable means, for clarifying questions and cross-examination, and the prepared testimony will be subject to objection. On the motion of a party, the presiding officer may exclude written testimony if the person who submits the testimony is unavailable for cross-examination by phone, a deposition before the hearing, or other reasonable means.

### **§ 9.327 Requirements for Exhibits**

- (a) Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
- (b) Abstracts of Documents. When documents are numerous, the presiding officer may receive in evidence only those which are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.
- (c) Introduction and Copies of Exhibits. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the presiding officer and to each of the parties, unless the presiding officer rules otherwise.
- (d) Excluding Exhibits. In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.

### **§ 9.328 Official Notice; District Evaluation of Evidence**

- (a) In connection with a contested case hearing, the presiding officer may take official notice of:
  - (1) all facts that are judicially cognizable; and
  - (2) generally recognized facts within the area of the District's specialized knowledge.
- (b) Each party shall be notified, either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information.
- (c) Each party is entitled to be given an opportunity to object to material that is officially noticed.

### **§ 9.329 Agreement of Parties; Remand to Board**

- (a) No agreement between parties or their representatives affecting any pending matter shall be considered by the presiding officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the prehearing conference or the hearing and entered of record.
- (b) An agreed disposition of a contested case may be made by stipulation, settlement, consent order, or the withdrawal of all requests for a contested case hearing so that no facts or issues remain controverted. Upon settlement of a matter, the presiding officer shall remand the matter to the Board. If the person requesting the contested case hearing defaults, then the presiding officer may also deem the request for a contested case hearing to have been withdrawn by the person and remand the case to the Board. Applications remanded under this section shall be considered to be uncontested and shall be considered under § 9.208. The presiding officer shall summarize the evidence, including findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing. Any stipulations, settlements, consent orders, withdrawals of requests for contested case hearing, orders, findings of default, presiding officer summary of the proceedings, and other relevant documents shall be presented to the Board for its consideration.

### **§ 9.330 Discovery**

Discovery may be conducted upon such terms and conditions, and at such times and places, as directed by the presiding officer. Unless specifically modified by this subchapter or by order of the presiding officer, discovery shall be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer.

### **§ 9.331 Documents in District Files**

Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.

### **§ 9.332 Oral Argument**

At the discretion of the presiding officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The presiding officer may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, further oral arguments may be heard by the Board if the Board did not preside over the hearing.

### **§ 9.333 Closing the Record**

At the conclusion of the presentation of evidence and any oral argument, the presiding officer may close the record or, if the Board has not taken final action on the application, keep it open and allow the submission of additional testimony by a person who testified at the hearing, or exhibits, briefs, or proposed findings and conclusions from one or more of the parties. Any supplementation of the record must be filed not later than the 10th day after the date of the final hearing. A person who files additional written material with the presiding officer under this section must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested case hearing. A person who receives additional written material under this section may file a response to the material with the presiding officer not later than the 10th day after the date the material was received. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer.

### **§ 9.334 Proposal for Decision**

Except for contested cases presided over by a quorum of the Board, no later than 30 days following the completion of the contested case hearing, the presiding officer shall submit a proposal for decision to the District and serve a copy on the applicant and each designated party to the contested case. A proposal for decision shall include a summary of the subject matter of the hearing, a summary of the evidence or public comments received, and the presiding officer's recommendations for board action on the subject matter of the hearing. The presiding officer, when submitting the proposal for decision, shall notify the parties of the deadlines for the filing of exceptions and replies.

### **§ 9.335 Exceptions to the Proposal for Decision**

Prior to board action, any party in a contested case may file written exceptions to the proposal for decision. Upon review of the exceptions, the hearing examiner may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the proposal for decision and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the hearing examiner for further proceedings.

### **§ 9.336 Scheduling a Meeting of the Board**

(a) After receiving the proposal for decision or proposed order, the general manager shall schedule the presentation of the proposal for decision or proposed order to the Board. The general manager shall provide at least 10 days' prior notice to the parties of the date of the Board meeting

at which the proposal for decision or proposed order will be presented and considered. The Board may reschedule the presentation of the proposal for decision or proposed order. The general manager shall send notice of the rescheduled meeting date to the parties no later than 10 days before the rescheduled meeting.

(b) Consistent with notices required by law, the Board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The Board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

### **§ 9.337 Oral Presentation Before the Board**

(a) Any party to the contested case hearing may make an oral presentation at the Board meeting in which the proposal for decision in that case is presented to the Board.

(b) Any party to the contested case hearing may make an oral presentation at the Board meeting in which the proposed order in that case is considered by the Board.

(c) Oral presentations before the Board shall be limited to 5 minutes each, excluding time for answering questions, unless the president establishes other limitations. Before the Board meeting, the president may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the Board.

### **§ 9.338 Reopening the Record**

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

### **§ 9.339 Decision**

(a) No later than 60 days after the date of the final hearing on the application is concluded, the Board shall render its decision. The decision, if adverse to any party, must be in writing or stated in the record. If a timely written request is filed with the District in accordance with § 9.341(b), then the Board's decision must be in writing and shall include findings of fact and conclusions of law separately stated regarding the decision of the Board. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the Board received the request.

(b) The Board may change a finding of fact or conclusion of law made by the presiding officer, or may vacate or modify an order issued by the presiding officer, only if the Board determines:

- (1) that the presiding officer did not properly apply or interpret applicable law, District rules, written policies provided to the presiding officer by the District, or prior administrative decisions:
- (2) that a prior administrative decision on which the presiding officer relied is incorrect or should be changed; or
- (3) that a technical error in a finding of fact should be changed.

### **§ 9.340 Notification of Decisions and Orders**

- (a) The District shall notify all parties in a contested case either personally or by certified mail, return-receipt requested, of any decision or order.
- (b) The District shall send a copy of the decision or order in a contested case by first-class mail to attorneys of record and shall keep an appropriate record of the mailing. If a party is not represented by an attorney, the District shall send a copy of the decision or order by first-class mail to the party and shall keep an appropriate record of the mailing.
- (c) A party or attorney of record notified by mail under subsection (b) is presumed to have been notified on the third day after the date on which the notice is mailed.

### **§ 9.341 Requests for Findings and Conclusions; Motions for Rehearing**

- (a) Filing motion. Only a party to the contested case or an applicant in an uncontested hearing may file a request for written findings and conclusions (“request”) or a motion for rehearing (“motion”).
- (b) A request shall be filed with the District within 20 days after the date of the Board’s decision. If no request is filed, a motion shall be filed with the District within this same time period. If a timely request is filed, a motion shall be filed no later than the 20th day after the date the Board issues its written findings and conclusions. Failure to timely file a request or motion shall result in the Board not considering the request or motion.
- (c) On or before the date of filing a request or motion, the party filing the request or motion shall mail or deliver a true and correct copy of the request or motion to all parties with certification of service furnished to the District.
- (d) A request or motion shall contain:
  - (1) the name and representative capacity of the person filing the request or motion;
  - (2) the style and official docket number assigned by the District;
  - (3) the date of the decision; and
  - (4) for motions, the grounds for the motion, including a concise statement of each allegation of error.
- (e) Consolidation of motions for rehearing. The Board shall hear motions filed by multiple parties together, and no more than one set of motions may be considered with respect to a particular matter.

- (f) On receipt of a timely filed written request, the Board shall make written findings and conclusions regarding a decision of the Board. The Board shall provide certified copies of its written findings and conclusions to each party to the contested case proceeding not later than the 35<sup>th</sup> day after the request was filed with the District.
- (g) Only a party to the contested case proceeding may reply to a request or a motion. A reply to a motion for rehearing must be filed with the general manager within 20 days after the date the request or motion is filed.
- (h) A timely filed motion shall be scheduled for consideration during a Board meeting. If any party has timely filed a request, the motion shall not be scheduled for consideration by the Board prior to the Board's issuance of its written findings and conclusions.
- (i) A motion may be granted in whole or in part. When a motion is granted, the decision is nullified. The Board may reopen the hearing to the extent it deems necessary. If the Board grants a motion, the Board shall schedule the rehearing not later than the 45<sup>th</sup> day after the date the motion is granted. Thereafter, the Board shall render its decision not later than 90 days after the date of the decision that was the subject of the motion for rehearing.

### **§ 9.342 Decision Final**

- (a) If the Board fails to render a decision within 180 days of the issuance of a final proposal for decision by the administrative law judge in matters referred to SOAH, the administrative law judge's proposal for decision is final and appealable 180 days from issuance.
- (b) Except as provided in Subsection (a), in the absence of a timely filed request or motion in accordance with § 9.341(b), a decision of the Board is final on the expiration of the period for filing a motion as provided for in § 9.341(b).
- (c) Except as provided in Subsections (a) and (b), if a party files a timely request and/or motion, a decision of the Board is final on the later of the following dates:
  - (1) if no request is filed and the motion is denied, the date the Board denies the motion, including a denial by operation of law if the motion is not denied within 90 days of the date the motion was filed;
  - (2) if no request is filed and the motion is granted, the date the Board issues its written decision after the rehearing;
  - (3) if no motion is filed but a request is filed, the date the Board issues its written findings and conclusions;
  - (4) if a request is filed, and a party thereafter timely files a motion as provided in § 9.341(b), and the motion is denied, the date the Board denies the motion, including a denial by operation of law if the motion is not denied within 90 days of the date the motion was filed;
  - (5) if a request is filed, and a party thereafter timely files a motion as provided in § 9.341(b), and the motion is granted, the date the Board issues its written decision after the rehearing;
  - (6) if a motion is filed, and a party thereafter timely files a request as provided in § 9.341(b), and the motion is subsequently denied after the Board issues its written findings

and conclusions, the date the Board denies the motion, including a denial by operation of law if the motion is not denied within 90 days of the date the motion was filed; or

(7) if a motion is filed, and a party thereafter timely files a request as provided in § 9.341(b), and the motion is subsequently granted after the Board issues its written findings and conclusions, the date the Board issues its written decision after the rehearing.

### **§ 9.343 Appeal of Final Decision**

(a) Not later than the 60th day after the date on which the decision of the Board becomes final, a party to a contested case hearing or an applicant in an uncontested hearing may file suit under § 36.251 of the Texas Water Code to administratively appeal the decision. Regardless of whether or not a motion for rehearing is timely filed, a suit may not be filed against the District under § 36.251 if a request for written findings and conclusions was not filed on time as provided in § 9.341(b) or if a request for rehearing was not filed on time.

(b) The record. The record in a contested case shall include the following:

- (1) all pleadings, motions and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings on them;
- (5) summaries of the results of any conferences held before or during the hearing;
- (6) proposed findings, exceptions and briefs;
- (7) any decision, opinion or report issued by the presiding officer;
- (8) pre-filed testimony;
- (9) all memoranda or data submitted to or considered by the presiding officer; and
- (10) the final order and all interlocutory orders.

### **§ 9.344 Costs of Record on Appeal**

A party who appeals a final decision in a contested case shall pay all costs of preparation of the record of the proceeding that is required to be transmitted to the reviewing court. A charge imposed as provided by this section is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

## **Subchapter E. Procedures for Adoption of Rules and Management Plan**

### **§ 9.401 Petition for Rulemaking**

(a) A person with a real property interest in groundwater in the District may file a petition with the District to request the adoption of a rule or to request a change to an existing rule.

(b) Petitions must be submitted in writing to the District office and must comply with the following requirements:

(1) each rule requested must be submitted by separate petition;

(2) each petition must be signed and must state the name and address of each person signing the petition;

(3) each petition must include:

(A) a brief description of the petitioner's real property interest in groundwater in the District;

(B) a brief explanation of the proposed rule;

(C) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any; and

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(c) The general manager of the District may reject any petition for failure to comply with the requirements of Subsection (b) of this section and shall provide notice to the petitioner of the reasons for the rejection.

(d) Within 90 days after submission of a petition that complies with this section, the Board shall either:

(1) deny the petition, stating its reasons for denial in the minutes of the Board meeting or in a letter providing a written explanation to the petitioner; or

(2) initiate rulemaking proceedings as provided by Section 36.101, Texas Water Code.

### **§ 9.402 Rulemaking and Management Plan Hearing Procedures**

(a) The District shall adopt rules and its management plan following the notice and hearing procedures set forth in this subchapter.

(b) Not later than the 20th day before the date of a rulemaking or management plan hearing, the general manager shall provide notice of the public hearing as follows:

- (1) post a notice in a place readily accessible to the public at the District office;
  - (2) provide a copy of the notice to the county clerk of each county in which the District is located, to be posted at the County courthouse;
  - (3) publish the notice in one or more newspapers of general circulation in the District;
  - (4) provide the notice by mail, facsimile, or email to any person who has requested the notice pursuant to subsection (g); and
  - (5) make available a copy of the proposed rule or management plan at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on its website.
- (c) The notice shall include the following information:
- (1) the time, date, and location of the rulemaking or management plan hearing;
  - (2) a brief explanation of the subject of the rulemaking or management plan hearing; and
  - (3) the procedures for submitting oral or written comments, and a location or internet site at which a copy of the proposed rules or management plan may be reviewed or copied, if any.
- (d) The general manager may designate a person to be the presiding officer to conduct the public hearing. The presiding officer shall conduct a rulemaking or management plan hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule or management plan as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments. The District shall allow at least 20 days for submission of written public comments on a proposed rule or management plan before adopting the proposed rule or plan.
- (e) Any person participating in a rulemaking hearing must submit to the District a registration form indicating the person's name, address, and who the person represents, if not in attendance or his or her behalf.
- (f) The presiding officer shall prepare and keep a record of each rulemaking or management plan hearing in the form of an audio or video recording or a court reporter transcription.
- (g) A person may submit to the District a written request for notice of a rulemaking or management plan hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking or management plan hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(h) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about a contemplated rule or management plan provision and may appoint an advisory committee of experts, interested persons, or public representatives to advise the District about a contemplated rule or management plan provision.

(i) Failure to provide notice under subsection (b)(4) does not invalidate an action taken by the District at a rulemaking or management plan hearing.

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

(k) Adoption of Proposed Rules or Management Plan. After the conclusion of the hearing and the time period for submission of written comments, the Board shall consider all timely written comments and shall, in the order adopting the rule or plan, state the District's responses to the written comments.

(l) A proposed rule becomes final and effective on the day it is adopted by the Board, unless otherwise specified by the Board.

#### **§ 9.403 Emergency Rulemaking**

(a) The District may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board:

(1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its findings under subsection (a).

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

(c) If notice of a hearing on the final rule is given not later than the 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 the Open Meetings Act.

## **CHAPTER 10. WATER QUALITY**

### **§ 10.001 Prohibition on Pollution of Groundwater**

A person may not pollute or contribute to the pollution of groundwater in the District.

## **CHAPTER 11. INVESTIGATIONS AND ENFORCEMENT**

### **§ 11.001 Right to Enter Land**

Any District Board member or District employee, agent or representative is entitled to enter any public or private property within the boundaries of the District at any reasonable time for the purpose of inspecting or investigating conditions relating to the quality or quantity of groundwater or in regard to the compliance with the District Act, Chapter 36 of the Texas Water Code, or any rule, permit, or order of the District. Such persons acting under this authority who enter private property shall, prior to entry, give notice in writing (including electronic communication) or in person or by telephone to the owner, lessee, or operator, agent, or employee of the property, as determined by information contained in the application or other information on file with the District, if any.

### **§ 11.002 Conduct of Investigation**

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

### **§ 11.003 Judicial Civil Enforcement**

- (a) The District may seek enforcement of the District Act and its rules by requesting relief, including injunctive relief, declaratory relief, monetary relief in the form of penalties, or such other appropriate remedy in a court of competent jurisdiction.
- (b) If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, in the same action, civil penalties, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court.
- (c) Civil penalties for breach of any rule of the District shall be not less than \$100 per day per violation and not more than \$25,000 per day per violation.
- (d) A penalty assessed under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaint or petition filed in an appropriate court of jurisdiction in the District.

### **§ 11.004 Enforcement Action by the General Manager**

If the general manager determines that a person, or his predecessor in interest, is in violation of the District Act, these Rules, or the terms or conditions of a permit, the general manager may suspend the processing of any application or authorization that the person has pending before the District.

### **§ 11.005 Enforcement Action by the Board**

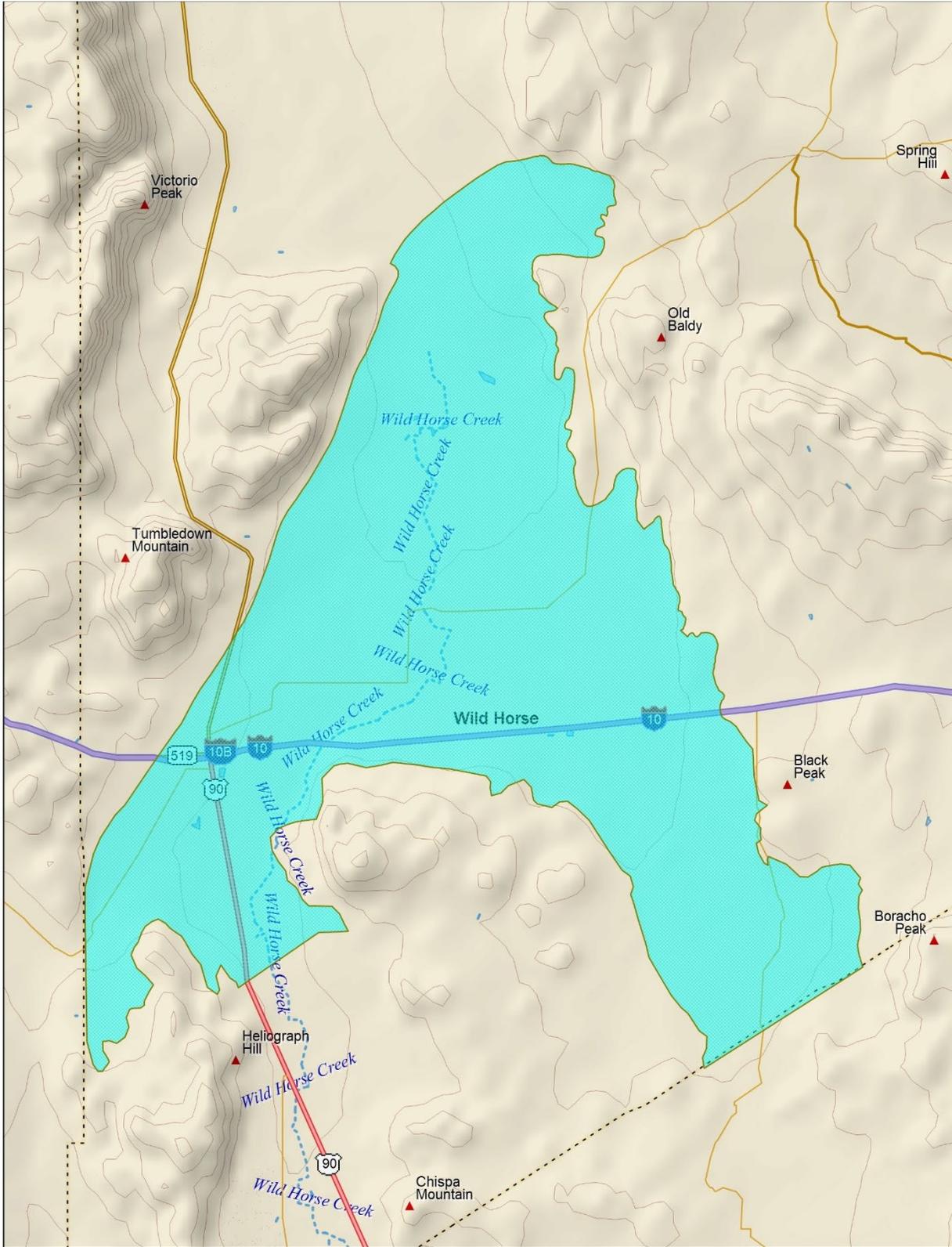
If the Board determines that a person, or his predecessor in interest, violated, is violating, or is threatening to violate the District Act, these Rules, or the terms or conditions of a permit, it may, after providing a 10-day written notice to the person and an opportunity for the person to appear and be heard at a meeting of the Board:

- (a) suspend the processing of any application or authorization that the person has pending before the District, until the violation is remedied;
- (b) suspend any permit, or authorization issued by the District, which is held by that person, until the violation is remedied;
- (c) commence any action authorized by law to address the violation, including filing a civil suit in state district court seeking an injunction, a mandatory injunction, civil penalties, and attorney's fees, and other costs associated with bringing a suit; or
- (d) enter into, or authorize the general manager to enter into, a settlement agreement with the person.

**§ 11.006 Civil Penalties**

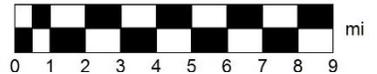
Violations of these rules shall be subject to civil penalties of \$100 to \$25,000 per day per violation, and each day of a continuing violation constitutes a separate violation.

Appendix A – Wild Horse Flat Management Area

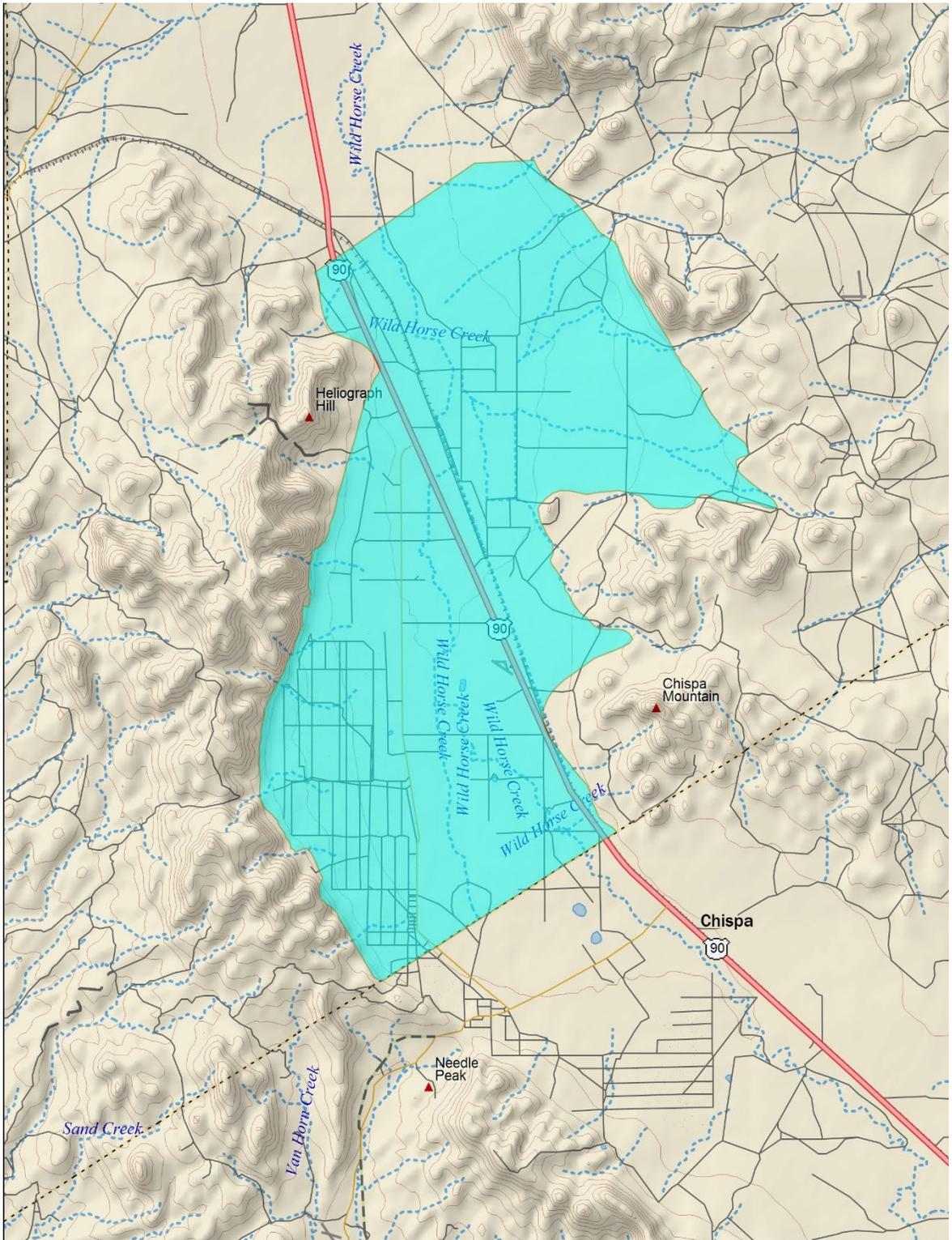


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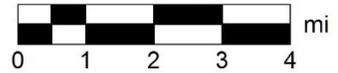


# Appendix B – Lobo Flat Management Area



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### Appendix C – Estimated Modeled Available Groundwater for Management Area

The Modeled Available Groundwater (MAG) for the portion of the West Texas Bolsons within CCGCD for the year 2020 is 35,634 ac-ft/year (Table 4, TWDB GR10-037\_MAG.pdf). This includes the portions of the West Texas Bolson within Lobo, Michigan, and Wild Horse Flats. The TWDB’s estimate of total aquifer storage the same area is 5.3 million acre-feet (Table 2, TWDB GAM Task 13-028).

The estimate of fresh water (TDS<1,000 mg/l) of the 5.3M acre-feet of total storage is 2.426 million acre-feet with 0.746, 1.365, 0.315 million acre-feet within the Lobo, Wild Horse, and Michigan Flat areas, respectively (2012, Texas Water Development Board, Draft of Total Estimate of Recoverable Storage GMA 4).

Table A-1 below list the estimated MAG for each of the management zones based on their respective percentage of fresh water in storage.

| Table A-1 Prorated MAG                                 | HUPP Permits | %    | TWDB GAM Estimate of Fresh Water in Storage | %    | MAG       |
|--|--------------|------|---|------|-----------|
|  | acres        |      | acre-feet                                   |      | acre-feet |
| Lobo Flat Management Area                              | 6,250        | 33%  | 746,000                                     | 31%  | 10,958    |
| Wild Horse Management Area*                            | 12,840       | 67%  | 1,680,000                                   | 69%  | 24,676    |
| Total  | 19,091       | 100% | 2,426,000                                   | 100% | 35,634    |
| * combined area of Wild Horse and Michigan flats areas |              |      |   |      |           |