

**NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENTS TO THE DISTRICT RULES  
OF THE BOARD OF DIRECTORS  
of the  
SANDY LAND UNDERGROUND WATER CONSERVATION DISTRICT**

Notice is hereby given that the Board of Directors for the Sandy Land Underground Water Conservation District will meet in **PUBLIC HEARING** on **WEDNESDAY, DECEMBER 14, 2022**, at **9:00 A.M.** in the District office of the Sandy Land Underground Water Conservation District, located at 1012 Avenue F, Plains, Texas. At such time the Board of Directors will discuss and may take action on any items on this agenda it may determine would be appropriate, to-wit:

**Public Hearing on Proposed Amendments to the District Rules**

- I. The President will call the public hearing to order and establish a quorum of the Board of Directors.**
- II. Introduction of the SLUWCD Board of Directors and Staff.**
- III. Introductory Statement from Board President Ross Hilburn.**
- IV. The Board will receive public comment on proposed amendments to the Rules of Sandy Land Underground Water Conservation District.**

The proposed amendments to the District Rules include: (1) revising and addition definitions of certain terms, (2) clarifying that engaging in any activity that constitutes waste of groundwater is a violation of the District Rules; (3) requiring specified information to be included in a well registration application; (4) authorizing the District Manager to approve or deny well registration applications and setting forth related procedures; (5) identifying the types of wells that are exempt from permitting requirements; (6) amending the requirements related to permit application deposits; (7) clarifying requirements regarding instantaneous groundwater production permit limits; (8) establishing annual groundwater production permit limits per contiguous acre owned for water wells, with the exception of wells in the Dockum aquifer; (9) authorizing the Board to amend the annual groundwater production or instantaneous groundwater production limits as necessary or appropriate to achieve the desired future conditions for the aquifers in the District; (10) addressing annual groundwater production limits in situations where mineral rights have been severed, sold, or leased; (11) clarifying record keeping requirements for water well owners; (12) establishing minimum water well spacing requirements between a landowner's own wells and from the nearest property line for wells for which a permit application is submitted to the District on or after January 1, 2023; (13) establishing requirements for replacement wells; (14) establishing processes and procedures for hearings on permit or permit amendment applications, exceptions to spacing requirements, rules enforcement, rulemaking, and proposed desired future conditions; (15) establishing an enforcement policy and civil penalty schedule for violations of the District Rules; (16) establishing a process to petition the District for adoption of a rule; and (17) other minor clarifying or nonsubstantive changes.

**V. Adjourn.**

*Comments on the proposed amendments to the District's rules may be presented in written or verbal form at the meeting. Written comments may also be submitted prior to the meeting by email at [amber@sandylandwater.com](mailto:amber@sandylandwater.com), or by mail or in person at 1012 Avenue F, Plains, Texas, 79355. Besides accepting public comment and discussing and adopting the proposed rules, no other substantive agenda items will be included at the special board meeting.*

*A copy of the proposed amendments to the District Rules may be requested by email at [amber@sandylandwater.com](mailto:amber@sandylandwater.com), is available for reviewing or downloading at [www.sandylandwater.com](http://www.sandylandwater.com), and may be reviewed, inspected, or obtained in person at the District office located at 1012 Avenue F, Plains, Texas, 79355. For more information, contact the District Manager, Amber Blount, at (806) 456-2155.*

*This Public Meeting is available to all persons regardless of disability. If you require special assistance to attend this meeting, please contact the Sandy Land UWCD at 806/456-2155 at least 24 hours in advance of the hearing.*

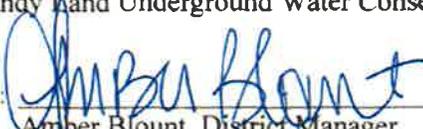
FILED 11-22 / 2022 AT 3 O'CLOCK P-M.  
SUMMER LOVELACE, COUNTY CLERK, YOAKUM COUNTY, TX  
BY [Signature] DEPUTY

*At any time during the meeting and in compliance with the Texas Open Meetings Act, Chapter 551, Government Code, Vernon's Texas Codes, Annotated, the Sandy Land UWCD Board of Directors may meet in executive session on any of the above agenda items for consultation concerning attorney-client matters (551:073); deliberation regarding real property (551:072); deliberation regarding prospective gift (551:073); personnel matters (551:074); and deliberations regarding security devices (551:076). Any subject discussed in executive session may be subject to action during the open meeting.*

#### CERTIFICATION

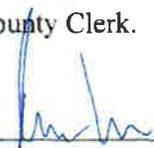
I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the Board of Directors of the Sandy Land Underground Water Conservation District, is a true and correct copy of said Notice; and that I posted a true and correct copy of said Notice on the front entrance of the Sandy Land Underground Water Conservation District office, located at 1012 Avenue F, Plains, Texas and said Notice was posted on November 22, 2022, and remained so posted continuously for at least 20 days immediately preceding the day of said Meeting; a true and correct copy of said Notice was furnished to the Yoakum County Clerk, in which the above named political subdivision is located.

Dated this the 22nd day of November 2022  
Sandy Land Underground Water Conservation District.

By:   
Amber Blount, District Manager  
Sandy Land Underground Water Conservation District

I, the undersigned County Clerk, do hereby certify that the Notice of Meeting of the Sandy Land Underground Water Conservation District, is a true and correct copy of said Notice received by me on the 22nd day of November, 2022 and that I posted a true and correct copy of said Notice on the bulletin board in the Yoakum County Courthouse, on the 22nd day of November, 2022, and said Notice remained so posted continuously for at least 20 days immediately preceding the day of said Meeting.

Dated this the 22nd day of November 2022  
Summer Lovelace  
Yoakum County Clerk.

By: 



RULES AND BYLAWS  
OF  
SANDY LAND UNDERGROUND WATER  
CONSERVATION DISTRICT

P.O. Box 130  
Plains, Texas 79355  
January 1991  
Amended August 29, 2003  
Amended December 13, 2006  
Amended February 8, 2007  
[Amended December 14, 2022](#)

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# **RULES OF THE SANDY LAND UNDERGROUND WATER CONSERVATION DISTRICT**

## The Rules of Sandy Land Underground Water Conservation District

In accordance with Section 59 of Article XVI of the Texas Constitution and with Act of June 14, 1989, 71<sup>st</sup> Leg., R.S., ch. 673, 1989 Tex. Gen. Laws 2219, codified as Chapter 8882 of the Texas Special District Local Laws Code (the “District Act”) and Chapters 35 and 36 of the Texas Water Code, the following rules are hereby ~~ratified and~~ adopted as the rules of the District by its Board of Directors. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended.

The rules, regulations, and modes of procedure herein contained are and have been adopted for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating the administration of the water laws of the State and the rules of the District. To the end that these objectives be attained, these rules shall be so construed.

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

### **RULE 1.0 - DEFINITIONS**

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

- A. “Affected person” means a person who has a personal ~~justifiable~~ justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District’s regulatory authority and is affected by the permit or permit amendment application to be considered, not including an interest common to members of the public.
- B. “Aquifer” means a groundwater reservoir.
- C. “Board” means the Board of Directors of the District.
- D. “Contiguous ” with respect to a landowner’s acreage means acreage that is touching or connected throughout in an unbroken sequence and located inside the District.
- E. “Desired future condition” means a quantitative description, adopted in accordance with Section 36.108, Texas Water Code, of the desired condition of the groundwater resources in a management area at one or more specified future times.

- F. “Director” means a member of the Bboard.
- G. “District” means the Sandy Land Underground Water Conservation District, headquartered in Plains, Texas, where applications, reports and other papers are required to be filed.
- H. “Domestic use” or “household use” means the use of groundwater by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes, for irrigation of lawns or of a family garden and/or family orchard, or for watering of domestic animals or livestock. Domestic use does not include water used 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. Domestic use does not include irrigation of crops in fields or pastures. Domestic use does not include water used for open-loop residential geothermal heating and cooling systems but does include water used for closed-loop residential geothermal systems. Domestic use does not include pumping groundwater into a pond or other surface water impoundment unless the impoundment has a surface area equal to or smaller than one-third of a surface acre (14,520 square feet).
- I. “Groundwater” means water percolating below the surface of the earth.
- J. “Groundwater reservoir” means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.
- K. “Landowner” means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on the land surface.
- L. “Livestock” means, in the singular or plural, grass or plant-eating, single or cloven- hooved mammals raised in an agricultural setting for subsistence, profit or for its labor, or to make produce such as food or fiber, including cattle, horses, mules, asses, sheep, goats, llamas, alpacas, and hogs, as well as species known as ungulates that are not indigenous to this state from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families, but does not mean a mammal defined as a game animal in section 63.001, Parks and Wildlife Code, or as a fur-bearing animal in section 71.001, Parks and Wildlife Code, or any other indigenous mammal regulated by the Texas Department of Parks and Wildlife as an endangered or threatened species. The term does not include any animal that is stabled, confined, or fed at a facility that is defined by Texas Commission on Environmental Quality rules as an Animal Feeding Operation or a Concentrated Animal Feeding Operation.
- M. “Open or Uncovered Well” means any artificial excavation drilled or dug for the purpose of exploring for or producing water from the underground-groundwater reservoir that has; not been capped, covered or plugged as required by these rules.
- N. “Owner” means and includes any person, firm, partnership or corporation that has the right

to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.

Q. “Person” means any individual, partnership, firm, ~~or~~ corporation, or other legal entity.

P. “Plugging” means an absolute sealing of the well bore.

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

R. “Underground Water” means groundwater.

S. “Undesirable Water” means water that is injurious to vegetation, to land, or to fresh water, or water that can cause pollution.

T. ~~The word~~ “Wwaste” as used herein shall have the same meaning as defined in Chapter 36 of the Texas Water Code.

U. “Well” or “Water Well” means any artificial excavation constructed to produce groundwater. Types of wells include:

(a) “Exempt well” means a well exempt from the requirement to obtain a permit under these rules permitting under Chapter 36, Water Code, as set forth in Rule 3.1.

(b) “Existing well” means a well that was in existence or for which drilling commenced prior to January 1, 2023, or which was approved by the District for drilling prior to January 21, 2023.

(c) “New well” means a well for which drilling commenced on or after January 1, 2023, except for a well drilled under a temporary drilling permit issued by the District prior to that date for drilling that in fact occurred after that date.

(d) “Leachate well” means a well used to remove contamination from soil or groundwater.

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

(f) “Dewatering well” means a well used for the removal or draining of groundwater from a construction site, caisson, or mine shaft, by pumping.

## RULE 2.0 - WASTE

- ~~(a)A.~~ No person shall produce or use groundwater ~~within or without the District from any~~ aquifers in the District, in such a manner as to constitute waste. Any person engaging in activity that constitutes waste, including without limitation any activity prohibited under this rule, shall be in violation of these rules.
- ~~(b)B.~~ No person may operate a well producing groundwater from ~~the~~ any aquifers ~~of~~ in the District in excess of the allowable production rate set forth in ~~R~~rule 6. Any such unauthorized production is illegal, wasteful per se, a nuisance, and a violation of these rules.
- ~~(c)C.~~ Any person producing or using groundwater shall use every possible precaution, in accordance with the latest approved methods, to stop and prevent waste of such water.
- ~~(d)D.~~ ~~—~~ No person shall pollute or harmfully alter the character of the groundwater reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata or from the surface of the ground.
- ~~(e)E.~~ Any person engaging in any activity that constitutes waste shall be in violation of these rules.

## RULE 3.0 - WELL REGISTRATION

- ~~(a)A.~~ Registration is required for all existing and future water wells in the District and shall be filed with the District on a form and in the manner required by the District, regardless of the size, capacity, or purpose of use of the well.
- ~~(b)B.~~ No person or entity shall drill, operate, modify, complete, plug, abandon, or increase the size or capacity of a well within the District without first registering the well with the District, even though the well may be exempt from the requirement to obtain a permit under Rule 5.0.
- ~~(c)C.~~ Any new well exempt from permitting (see ~~section~~ Rule 3.1) must be registered by the owner or agent prior to drilling.
- ~~C.~~ ~~—~~ ~~A person may not change the operation of the well that may render the well non-exempt without first applying for and obtaining a registration amendment or permit amendment, as applicable, from the District to authorize the change.~~
- ~~(d)D.~~ Failure of the owner of a well to timely file for and obtain a registration from the District under this ~~Section~~ rule shall constitute a violation of these ~~r~~Rules.
- ~~(e)E.~~ A person seeking to register a well shall provide the District with the following information in the registration application on a form provided by the District:

- (1) the name, mailing address, email address, phone number, and fax number of the registrant and the owner of the property, if different from the registrant, on which the well is or will be located, and the name of the well driller;
  - (2) if the registrant is other than the owner of the property, a statement that the registrant has the authority to file the application for well registration, serve as the registrant in lieu of the property owner, and construct and operate a well for the proposed use;
  - (3) a statement of the nature and purpose of the existing or proposed use of water from the well;
  - (4) tThe proposed location of the well to be drilled as provided in the application, including, the section, block, survey, or other adequate legal description;-
  - (5) a diagram or map indicating the approximate location of all existing wells on the property and the location of the proposed well;
  - (6) the estimated yields of existing wells on the property in gallons per minute;
  - (7) if such information is available to the applicant, the maximum designed production capacity or proposed maximum designed production capacity of the well, as equipped, in gallons per minute, as well as the manufacturer's horsepower rating of the pump and motor;
  - (8) the estimated date that drilling will begin;
  - (9) the location or proposed location of the use of water from the well, if used or proposed to be used at a location other than the location of the well;
  - (10) the number of contiguous surface acres of property at the site of the proposed well that are owned or leased for the right to produce groundwater by the registrant;
  - (11) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines, as set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and report closure to the District; and
  - (12) a statement that the water withdrawn from the well will be put to beneficial use at all times.
  - (13) an agreement by the applicant that a completed State Well Report will be furnished to the District by the applicant upon completion of the well and prior to the production of water therefrom (except for such production as may be necessary to the drilling and testing of such well).
- (f) An application will be considered administratively complete and may be approved by the District Manager without notice or hearing if it substantially complies with the requirements

of this rule, including providing all information required to be included in the application that may be obtained through reasonable diligence. If the District Manager denies the application, the applicant may appeal the District Manager's ruling by filing a written request for a hearing before the Board. The Board will hear the registration applicant's appeal at the next available regular Board meeting.

### RULE 3.1 – WELLS EXEMPT FROM PERMITTING REQUIREMENTS

- (a) Wells exempt from the requirement to obtain a permit under these rules include:
- (1) a ~~A~~ water well used solely for domestic or household use or for providing water for livestock or poultry if the well is drilled, completed, or equipped so that it is incapable of producing more than 17.5 gallons per minute or 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; or
  - (3) ~~drilling~~ a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.
  - (4) ~~Leachate wells, extraction wells, injections wells, relief wells, dewatering wells, and monitoring wells.~~
- (b) A well exempt under Subsection (a)(2) from permitting requirements does not include a well used to supply water for hydraulic fracturing purposes.
- (c) A well exempt under Subsection (a) will lose its exempt status and the well owner or operator must obtain a permit to continue operating the well if the well is subsequently used for a purpose or in a manner that is not exempt under Subsection (a).
- (d) A water well exempt under subsection (a) shall nonetheless be:
- (1) registered in accordance with these rules; and
  - (2) 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.

- (e) The driller of a well exempted under Subsection (a) shall file the completed well log form State Well Report with the District.

## **RULE 4.0 - DEPOSITS**

- (a) Each application for a permit to drill a well shall be accompanied by a deposit, which will be accepted and deposited by the District. The amount of the deposit will shall be in an amount to be established from time to time by the Board by resolution Board resolution,; which deposit shall be accepted by the District Manager or authorized personnel in the office of the District.

- (b) Except as provided in Subsections (c) and (d) of this rule, Said one half of the permit application deposit shall be returned to the applicant by the District if:

(1) the application is denied; or

—within ninety (90) days of the date the application was signed by the applicant:

(1) upon the applicant returns the temporary water well permit and submits receipt of a completed State well log form Well Report within (90) days of the date the application was signed by the applicant and the District staff confirms through a field check that the well was drilled in compliance with the permit; or

(2) if said the permit location is abandoned without having been drilled, upon return and surrender of the permit marked “abandoned” by the applicant within ninety (90) days of the date the application was signed by the applicant.

- (c) In the event neither the log of the well completed State Well Report nor the permit marked abandoned is returned to the District office within ninety (90) days after the date the permit application was signed by the applicant, the said entire permit application deposit shall become property of the District.

- (d) In the event a well is found to be in violation of the District rules prior to the return of the application deposit to applicant, the entire deposit shall become the property of the District.

## **RULE 5.0 - PERMITS AND PERMIT AMENDMENTS**

- (a) No person shall hereafter drill, equip, operate, or complete a well, or increase the size or capacity of a well, or pump therein without having first applied to the District and been issued a permit to do so.

- (b) No permit shall be required for the drilling of exempt wells (See Section 3.1). However, an exempt well shall:

- ~~(1) — be registered in accordance with Rule 3.0;~~
- ~~(2) — be equipped and maintained so as 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 of, or any harmful alteration to the character of the water in any groundwater reservoir; and~~
- ~~(3) — comply with the location and completion requirements of Rule 11.0.~~
- (c) Applications for permits to drill wells shall be made at the office of the District at Plains, Texas.
- (d) The following applies to applications for temporary drilling permits:
  - (1) Upon properly completing and signing the drilling permit application form, the District staff shall issue a copy of the completed application form to the applicant, which copy shall serve as the applicant's temporary permit from the District office to drill the well.
  - (2) The applicant may proceed at his/her own risk to drill such well after obtaining the temporary permit. The applicant is responsible for ensuring that the well is drilled and completed in compliance with these rules and the temporary drilling permit. The application shall not, however, be officially granted as a final permit for the drilling and operation of the well until the same shall have been set for a public hearing, passed upon, and approved by the Board.
  - (3) In drilling a well with a temporary permit prior to approval and issuance of a final permit by the Board, the applicant expressly assumes the risk that the permit application may ultimately be denied or granted only in part with special conditions by the Board, which may result in the well having to be equipped at a lesser capacity or plugged by the applicant or in the applicant having to obtain waivers from adjacent property owners in order to fully comply with the District ~~r~~Rules or such special permit conditions.
- (e) After the well has been drilled and either (1) the completed ~~well log form~~State Well Report has been returned to the District or (2) the passage of ninety (90) days from the date the completed permit application was signed by the applicant (plus extensions of time, if any, granted under Rule 7.0(e), the District ~~Manager staff~~ shall within sixty (60) additional days conduct a site investigation to confirm the location and spacing of the well and inspect its construction. The information obtained from the site investigation shall thereafter be entered onto the original well permit application in the District's records by the District staff. Once the information from the site investigation has been finally entered by the District staff on the well permit application, the application shall be deemed administratively complete and set for hearing and consideration by the Board in accordance with Rule 18.0. If after a hearing on the permit application, ~~three (3) or more the majority~~

~~of Directors~~ recommend ~~the granting approval~~ of the application ~~and sign it~~, then the permit shall be ~~granted-issued~~ and become final. The refusal of three (3) or more ~~Directors~~ to ~~grant approve and sign~~ the application shall constitute a rejection of the application. The ~~Directors~~ may ~~grant approve and issue~~ the permit ~~only~~ subject to special conditions.

- ~~(f)F.~~ A change to a permit may be made only after application to and approval by the District to so amend.
- ~~(g)G.~~ A permit or permit amendment is not required for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well to more than its authorized or permitted production.

### **RULE 6.0 - MAXIMUM ALLOWABLE PRODUCTION**

~~(a)A.~~ Determination of maximum allowable production will always and only be for the tract of land where the well or wells will be permitted. Other acres owned but not contiguous to the tract where a well or wells are being permitted will not be included in the computation for maximum allowable production.

~~(b)~~ ~~A well or wells may only be permitted to be drilled and equipped for instantaneous production of additional water up to the cumulative total of five (5) gpm per contiguous acre owned, whether such existing well or wells were drilled prior to or subsequent to enactment of this rule.~~

~~(b)~~ ~~The amount authorized by permit for instantaneous production of groundwater shall not exceed a cumulative total of five (5) gpm per contiguous acre owned, regardless of whether the well or wells were drilled prior to or subsequent to enactment of these rules. The District shall not approve additional groundwater production if the existing, authorized production amount combined with the additional amount of production sought exceeds five (5) gpm per contiguous acre owned.~~

~~(c)C.~~ ~~In no event may~~ With the exception of a well or wells drilled and completed solely in the Dockum aquifer, no well shall be operated such that the total annual production exceeds the following, which are all equivalent:

- ~~(1)~~ four (4) acre-feet of water per year per contiguous acre owned;:-
- ~~(2)~~ 31,033 barrels of water per year per contiguous acre owned; or
- ~~(3)~~ 1,303,404 gallons of water per year per contiguous acre owned.

The District does not presently restrict total production from wells completed solely in the Dockum aquifer, so long as the water is applied to a beneficial use without waste.

~~(d)D.E.~~ In the event an existing well or wells are located on property where a permit is applied to drill an additional well or wells, said cumulative gallonage per contiguous acre owned shall be computed by District personnel of existing wells. The maximum rate of production of each well established hereunder may not be considered the actual production rate if an existing well or wells are equipped to produce at a lesser rate of production.

~~(e)~~ After notice and hearing, the Board shall amend the authorized annual production or instantaneous production limits set forth under this rule or under any existing or future permit issued by the District as necessary or appropriate to achieve the adopted Desired Future Conditions for the aquifers in the District, as those Desired Future Conditions are described in the District Management Plan.

~~(f)~~ In instances where the right to explore for, develop, or produce minerals from land, including without limitation oil, gas, or other hydrocarbons, has been severed, sold, leased, or otherwise authorized to someone other than the landowner, the sum total of annual production of groundwater by the landowner and annual production of groundwater by the person authorized to explore for, develop, or produce such minerals shall not exceed the maximum annual groundwater production authorization limits applicable to a landowner only under these rules. These rules do not in any way authorize a person with an ownership or other interest in minerals to produce groundwater from a property where such right or other authorization to produce groundwater does not exist outside of these rules.

## **RULE 7.0 - ISSUANCE OF PERMITS**

~~(a)A.~~ A permit application shall be considered filed for purposes of obtaining a temporary drilling permit when properly ~~made~~ filled out, completed, signed, tendered, and accompanied by the required deposit. However, such permit application shall not be deemed administratively complete until the site investigation information has been entered onto the original permit application by District staff, as set forth under Rule 5.0(~~eE~~).

~~(b)B.~~ The Board shall issue or cause to be issued a final permit for a well properly spaced only after notice and hearing on an administratively complete application executed and filed by the owner containing the matters specified below.

Such applications shall be on forms provided by the District, shall be in writing, sworn to, and shall be prepared in accordance with and contain the information called for in the application form. Otherwise, the application will not be considered.

~~(c)C.~~ Rules for the filing of permit applications:

- (1) If the applicant is an individual, the application shall be signed by the applicant or his agent. The agent may be requested to present satisfactory evidence of his authority to represent the applicant.

- (2) If the application is by a partnership, the applicant shall be designated by the firm name followed by the words “a Partnership,”; and the application shall be signed by at least one of the general partners who is duly authorized to bind all of the partners.
- (3) In the case of a corporation, public district, county or municipality, the application shall be signed by a duly authorized official. A copy of the resolution of other authorization to make the application may be required by the officer or agent receiving the application.
- (4) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.

~~D.~~ (d) A permit application shall contain the following information:

- (1) The name and address of the ~~applicant and fee owner~~ landowner of the surface estate of the land upon which the well will be located and the owner of the groundwater rights if severed from the surface estate or leased.
- (2) The proposed location of the well to be drilled as provided in the application including, the section, block, survey ~~and township; labor and league;~~ or other adequate legal description.
- (3) The proposed use of the well to be drilled, whether municipal, industrial, irrigation, or other.
- (4) The name of the driller.
- (5) The approximate date drilling operation is to begin.
- (6) The diagram or map showing the location of all existing wells on the proposed tract.
- (7) The estimated yield of such existing wells.
- (8) The estimated yield of the proposed well.
- (9) An agreement by the applicant that a completed ~~well log form~~ State Well Report will be furnished to the District by the applicant upon completion of this well and prior to the production of water therefrom (except for such production as may be necessary to the drilling and testing of such well).
- ~~(10) A declaration that the applicant will comply with well plugging guidelines and report closure to the Texas Commission on Environmental Quality Texas Department of Licensing and Regulation (TDLR).~~
- (10) a water well closure plan or a declaration that the applicant will comply with well

plugging guidelines, as set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and report closure to the District.

- (11) A declaration that the applicant has the authority to construct and operate a well for the proposed use.
- (12) An attached drought contingency plan, if the applicant is otherwise required by law to develop a drought contingency plan.
- (13) Any additional data as may be required by the Board.

(e) Time during which a temporary drilling permit shall remain valid: A temporary drilling permit issued hereunder shall be valid if the work permitted shall have been completed within ninety (90) days from the date the completed permit application was signed by the applicant. It shall thereafter be void. Provided, however, that the District Manager, for good cause, may extend the life of such temporary permit for an additional sixty (60) days if an application for such extension shall have been made known to the District during the first ninety (90) day period. Provided, further, that when it is made known to the District that a proposed project will take more time to complete, the District Manager, upon receiving written application may grant such time as is reasonably necessary to complete such project.

## **RULE 8.0 - REQUIREMENTS OF DRILLERS LOGSTATE WELL REPORT, CASING AND PUMP DATA**

(a)A. ~~Complete records shall be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled. Such records shall include an accurate driller's log, any electric log which shall have been made and such additional data concerning the description of the well, its potential, hereinafter referred to as "maximum rate of production," and its actual equipment and rate of discharge permitted by said equipment as may be required by the Board. Accurate records shall be kept and reports thereof made to the District of all water wells drilled. Such records shall be filed with the District within thirty (30) days after completion of the well or within ninety (90) days of the date the completed permit application was signed by the applicant, whichever is earlier.~~

No person shall produce water from any well hereafter drilled and equipped within the District, except that necessary to the drilling and testing of such well and equipment, unless or until the District has been furnished an accurate driller's log, any electric log which shall have been made, and correctly furnishing all available information regarding the well required on the forms furnished by the District, with a completed state driller's logState Well Report (TDLR Form 001WWD State of Texas Well Report or its successors-) and

any electric log that was made of the well. After providing such required well information and logs to the District, the holder of the temporary drilling permit may operate and produce water from the well for beneficial use without waste until action on the application by the Board after notice and hearing to grant or deny the permit application in full or in part.

~~(b)B.~~ No person shall be required to equip and produce any well to its maximum rate of production. For purposes of reworking, redrilling-deepening, or replacing a well pursuant to Rule 12 hereof, the maximum rate of production of each well may not be considered the actual production rate if a well is equipped to produce at a lesser rate.

### **RULE 9.0 - SPACING OF PERMITTED WELLS**

Owners are encouraged to consider spacing wells over as wide an area as possible. Such action will help assure less well interference and opening of locally isolated zones to production, and, in turn, offer possibilities for maximizing yield and providing higher well productivity.

~~(a)A.~~ A well, subject to permitting, drilled All wells for which a permit is required and for which a permit application is submitted to the District on or after January 1, 2023, permitted subsequent to the effective date of enactment of this rule shall meet the following spacing and production limitations: ~~be located at least three hundred (300) feet from all property lines.~~

<u>Minimum Spacing Between Landowner's Wells</u>	<u>Minimum Spacing from Nearest Property Line</u>
<u>200 yards</u> <del>n/a</del>	<u>100 yards</u>

~~(b)B.~~ In instances where the landowner's tract size prohibits the well from meeting the minimum spacing requirements above, a landowner may follow the following spacing and production limitations:

<u>Well Production Capacity</u>	<u>Minimum Spacing Between Landowner's Wells</u>	<u>Minimum Spacing from Nearest Property Line</u>
<u>17.5 gpm or less</u>	<u>40 yards</u>	<u>20 yards</u>

This exception to reduced spacing rules under this subsection may be applied to a maximum number of three (3) wells per tract and only to tracts of land that limit the landowner from being drilled a well one hundred (100) yards from all property lines. To verify limitation in spacing, a map of the tract including property line distances must be submitted with the permit application.

To certify the size of pump for any well subject to permitting that produces 17.5 gpm or less and is less than one hundred (100) yards from the nearest property line, or for any well located on twenty (20) acres or less of land, the well owner must submit a Pump Installation Report, on forms provided by the District.

~~(c)CB.~~ In applying this rule with relation to spacing of wells within the District, any subdivision of property made subsequent to the drilling and approval of permitted wells shall not be regarded as a subdivision of property in determining the matter of spacing from property lines for permitted wells existing at the time of the subdividing of the property.

~~(d)DC.~~ The Board reserves the right to enter special orders to increase or decrease the distance provided by this rule for reasonable cause.

(e) Spacing requirements for wells that do not require a permit under the District rules are included in Section 11.0(b) of these rules.

## **RULE 10.0 - EXCEPTIONS TO SPACING AND PRODUCTION REQUIREMENTS**

~~(a)A.~~ The Board may grant exceptions to ~~the above~~ spacing ~~regulations~~requirements under Section 10.0. This rule shall not be construed so as to limit the power of the Board, and the powers stated are cumulative only of all other powers possessed by the Board.

~~(b)B.~~ If an exception to such spacing and production is desired, an application thereof shall be submitted by the applicant in writing to the Board at the District office on forms furnished by the District. The application shall be accompanied by a plat or sketch, ~~drawn to scale of one (1) inch equaling three hundred (300) feet~~. The plat or sketch shall show thereon all property lines of the tract, where the exception to well spacing is being applied for and shall show accurately to scale the location of all wells within six hundred (600) feet of all property lines of the tract. The application shall also contain the names and addresses of all property owners adjoining the tract on which the application for exception to spacing is to be located. Additionally, if wells located within six hundred (600) feet of the property line are owned by someone other than the owner of adjoining property, their names and addresses must also be included.

~~(c)C.~~ An exception may be granted after notice and a public hearing held in accordance with Rule 18.4, at which all interested persons may appear, including without limitation all adjoining property owners and other owners of wells within six hundred (600) feet of the proposed well for which an exception to spacing is applied.

~~(d)D.~~ Notwithstanding anything in this rule to the contrary, if all owners of adjoining property and all owners of wells within six hundred (600) feet of the proposed well for which an exception to spacing is applied shall execute a waiver in writing stating that they do not object to the granting of such exception, the Board may thereupon proceed to decide upon the granting or refusing of such application without notice of hearing.

## RULE 11.0 - WELL LOCATION AND COMPLETION

### ~~(a)~~A. Responsibility

All wells, if drilled, must be drilled on the location specified in the [registration or permit](#), and not elsewhere. If the well should be commenced or drilled at a different location, the drilling or operations of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code.

All well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of this rule prescribing the location of wells and proper completion.

### ~~(b)~~B. Location of Wells

~~(1)~~—All wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant. A well subject to permitting shall also comply with the spacing rules set forth under Rule 9.0.

### ~~(c)~~C. Standards of Completion ~~f~~For Wells

All wells must be completed in accordance with the well completion standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. Water well drillers shall indicate the method of completion performed on the appropriate forms.

### ~~(d)~~D. Recompletions

- (1) The landowner shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the wellbore to other porous strata.
- (2) If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well recompleted with 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.
- (3) The District Manager may direct the landowner to take proper steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

## **RULE 12.0 - REWORKING OR REPLACING OF WELL**

- (a) No person shall replace, rework, redrill, deepen, or reequip an existing well without first having made an application to the District. ~~Such an application to replace, rework, redrill, or reequip an existing well that does not meet spacing requirements shall be filed, processed and approved by the Board of Directors before commencement of the activities.~~
- (b) Procedures for replacement well:
- (1) A replacement well must be drilled within fifty (50) yards of the well being replaced, but may not be any closer to the nearest property line than the well being replaced.
  - ~~(1)~~(2) A replacement well may not be equipped to produce more than the original well was equipped to produce.
  - (3) Upon completion of the replacement well, the original well must be abandoned or plugged according to the District's rules.

## **RULE 13.0 - CHANGED CONDITIONS**

The decision of the Board on any matter contained herein may be reconsidered upon its own motion or upon motion showing changed conditions, or upon the discovery of new and different conditions or facts after the hearing or decision of such matter. If the Board should decide to reconsider a matter after having announced a ruling or decision, or after having finally granted or denied an application, it shall give notice in the manner required for the original action, including without limitation by regular mail to persons who were proper parties to an original action, and hold a hearing on the matter.

## **RULE 14.0 - FINAL ORDERS OF THE BOARD**

~~Except as provided under Rule 20.0,~~ The orders of the Board in any proceeding shall become the final order of the Board on the day it is entered by the Board.

## **RULE 15.0 - RIGHT TO INSPECT AND TEST WELLS**

Any authorized officer, employee, agent, or representative of the District shall have the right at all reasonable times to enter upon the lands which a well or wells may be located within the boundaries of the District, to inspect such well or wells and to read, or interpret any meter, or other instrument for the purpose of measuring production of water from said well or wells or for determining the pumping capacity of said well or wells; and any authorized officer, employee,

agent, or representative of the District shall have the right at reasonable times to enter upon any land upon which a well or wells may be located within the boundaries of the District for the purposes of testing the pump and the power unit of the well or wells and of making any other reasonable and necessary inspections and tests that may be required or necessary for the information or enforcement of the rules and regulations of the District. The operation of any well may be enjoined by the Board immediately upon refusal to permit the gathering of information as above provided from such well.

## **RULE 16.0 - OPEN WELLS TO BE CAPPED**

Every owner or operator of any land within the District upon which is located any open or uncovered well is, and shall be, required to close or cap and seal the same permanently with a covering capable of sustaining weight of not less than four hundred (400) pounds, except when said well is in actual use by the owner or operator thereof; and no such owner or operator shall permit or allow any open or uncovered well to exist in violation of this requirement. Officers, agents and employees of the District are authorized to serve or cause to be served written notice upon any owner or operator of a well in violation of this rule, thereby requesting such owner and/or operator to close or cap such well permanently with a covering in compliance herewith. In the event any owner or operator fails to comply with such request within ten (10) days after such written notice, any officer, agent, or employee of the District may go upon said land and close or cap said well in a manner complying with this rule and all expenditures thereby incurred shall constitute a lien upon the land where such well is located, provided, however, no such lien shall exceed \$500 for any single closing. Any officer, agent, or employee of the District, is authorized to perfect said lien by filing of the affidavit authorized by Chapter 36 of the Texas Water Code as amended. All of the powers and authority granted in such section are hereby adopted by the District, and its officers, agents, and employees are hereby bestowed with all of such powers and authority.

## **RULE 17.0 - STANDARDS FOR PLUGGING WELLS**

All wells which are required to be plugged under Texas Occupations Code Chapters 1901 or 1902 or by order of the Board must be plugged in accordance with the well plugging standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. All persons shall notify the District prior to the plugging of any well.

### **RULE 17.0 RULES GOVERNING PROTESTS**

~~A. — NOTICE OF PROTEST. The District Manager, the applicant, or an affected person may protest a permit or permit amendment application. To protest a matter, the person other than the District Manager or applicant shall either:~~

~~(1) file a written notice of protest or opposition that must be received by the District at least the day prior to the date on which such application or matter has been set for hearing and before final action on the application by the Board; or~~

~~(2) appear before the Board at the hearing and oppose the application.~~

~~For the convenience of the Board, it is urged that protests be received by the District at least five (5) days before the hearing date. A person protesting a matter that is unable to attend the first day of the proceeding must submit a continuance request in writing that is received by the District at least the day prior to the date of hearing setting forth good cause for his inability to appear at the proceeding. The Presiding Officer may grant or deny the request, at his discretion.~~

~~B. PROTEST REQUIREMENTS. Written and oral protests shall be timely under Section A. of this Rule and shall comply in substance with the following requirements:~~

~~(1) Each protest shall show the name and address of the protestant and show that protestant has read either the application or a notice relative thereto published by the Board.~~

~~(2) The protestant shall demonstrate that he is an affected person.~~

~~(3) If the protest is based upon claim of interference with some present right of protestant, it shall include a statement of the basis of protestant's claim of right.~~

~~(4) Protestant should call attention to any amendment of the application or adjustment which, if made, would result in withdrawal of the protest.~~

~~CONTESTED APPLICATIONS OR PROCEEDINGS DEFINED: The filing of an oral or written protest does not, in itself, mean that a hearing will be declared to be a contested case. An application or proceeding pending before the Board is considered contested when it is timely, the person appears at the hearing held on the application, motion, or proceeding and presents testimony of evidence in support of the contentions, or presents a question or questions of law with regard to the application, motion or proceedings, and the Presiding Officer of the Board determines that the person is an affected person and declares the matter to be contested. Where notice of protest is not timely filed, the person does not so appear and offer testimony or evidence in support of the contentions or raise a question of law with reference to any pending application, motion or proceeding, or where otherwise the Presiding Officer of the Board determines that the person is not an affected person, the same shall be considered and declared by the Presiding Officer as uncontested.~~

~~C. In the event of a contested hearing, each party shall furnish other parties to the proceeding with a copy of all motions, amendments or briefs filed by him with the Board.~~

**RULE 1878.0 – HEARINGS PROCESSES AND PROCEDURES GENERAL**  
**RULES OF PROCEDURE FOR HEARINGS**

**Rule 18.1 Types of Hearings**

- (a) The District conducts three general types of hearings under this section:
- (1) hearings involving the issuance of permits or permit amendments, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing;
  - (2) rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District; and
  - (3) hearings on proposed desired future conditions.
- (b) Any matter designated for hearing before the Board may be heard by a quorum of the Board, referred by the Board for hearing before a Hearing Examiner, or heard by a quorum of the Board along with an appointed Hearing Examiner who officiates during the hearing.

**Rule 18.2 General Procedures for All Hearings**

- (a) Authority of Presiding Officer: The Board president, or another Board member designated by the president, or a Hearing Examiner shall serve as the Presiding Officer for a hearing. The Presiding Officer may conduct a hearing or other proceeding in the manner the Presiding Officer determines most appropriate for the particular proceeding. The authority of a Hearing Examiner appointed by the Board to serve as Presiding Officer may be limited at the discretion of the Board. The Presiding Officer may:
- (1) convene the hearing at the time and place specified in the notice for public hearing;
  - (2) set hearing dates other than the initial hearing date on a permit matter, which is set by the District Manager;
  - (3) establish the jurisdiction of the District concerning the subject matter under consideration;
  - (4) rule on motions, the admissibility of evidence, and amendments to pleadings;
  - (5) designate parties and establish the order for presentation of evidence;
  - (6) administer oaths to all persons presenting testimony;

- (7) examine persons presenting testimony;
- (8) prescribe reasonable time limits for the presentation of evidence and oral argument;
- (9) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party to the proceeding;
- (10) conduct public hearings in an orderly manner in accordance with these rules;
- ~~(10)~~(11) recess a hearing from time to time and place to place;
- (12) reopen the record of a hearing for additional evidence when necessary to make the record more complete;
- (13) determine how to apportion between the parties' costs related to a contract for the services of a presiding officer and the preparation of the official hearing record; and
- (14) exercise any other lawful power necessary or convenient to effectively carry out the responsibilities of the Presiding Officer.

(b) Registration form: Each individual attending a hearing or other proceeding of the District who wishes to testify or otherwise provide information to the District must submit a form to the Presiding Officer providing the following information:

- (1) the individual's name and signature;
- (2) the individual's address;
- (3) whether the individual plans to testify;
- (4) whom the person represents, if the person is not there in the person's individual capacity; and
- (5) any other information relevant to the hearing or other proceeding.

(c) Appearance; representative capacity: An interested person may appear in person or may be represented by counsel, an engineer, or other representative, provided the representative is authorized to speak and act for the principal. The person or the person's representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. A partner may appear on behalf of a partnership. A duly authorized officer or agent of a public or private

corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear on behalf of the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority to so appear.

(d) Alignment of parties; number of representatives heard: Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The Presiding Officer may require the members of an aligned class to select one or more persons to represent the class in the proceeding or on any particular matter or ruling and may limit the number of representatives heard but must allow at least one representative from each aligned class to be heard in the proceeding or on any particular matter or ruling.

(e) Appearance by applicant, movant, or Respondent: The applicant, movant, party, or Respondent, or their authorized representative, should be present at the hearing or other proceeding. Failure to 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 determines that action is necessary to fully develop the record.

(f) Recording:

(1) Contested hearings: A record of the hearing in the form of an audio or video recording or a court reporter transcription shall be prepared and kept by the Presiding Officer in a contested hearing. The Presiding Officer shall have the hearing transcribed by a court reporter upon a request by a party to a contested hearing. The Presiding Officer may assess court reporter transcription costs against the party requesting the transcription or among the parties to the hearing. 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 rule, unless the parties have agreed that the costs assessed against such party will be paid by another party.

(2) Uncontested hearings: In an uncontested hearing the Presiding Officer may use the means available in Subsection (f)(1) of this rule to record a proceeding or substitute meeting minutes or the report set forth under Rule 18.5(c) for a method of recording the hearing.

(3) Rulemaking hearings: The Presiding Officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

(g) Filing of documents; time limit: Applications, petitions, motions, exceptions, communications, requests, briefs, or other papers and documents required to be filed under

these rules or by law must be received at the District office within the time limit, if any, set by these rules or by the Presiding Officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit, unless the filing party is able to demonstrate that a postal system error prevented the submission from arriving within the time limit.

- (h) Affidavit: If a party to a hearing or other proceeding is required to make an affidavit, the affidavit may be made by the party or the party's representative. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.
- (i) Broadening the issues: No person will be allowed to appear in a hearing or other proceeding that in the opinion of the Presiding Officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
- (j) Conduct and decorum: Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If, in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will 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 determines necessary.
- (k) Public comment on applications: Documents that are filed with the Board that comment on an application but do not request a hearing will be treated as public comment. The Presiding Officer may allow any person, including the District Manager or a District employee, to provide comments at a hearing on an uncontested application.

### **Rule 18.3 Permit Application Hearings**

- (a) Permit Applications and Amendments: The District shall hold a hearing for each activity for which a permit or permit amendment is required pursuant to Rule 5.0 of these rules, subject to the exception in Rule 18.3(b). A hearing involving permit matters may be scheduled before a Hearing Examiner.
- (b) The District shall hold a hearing for minor amendments, as determined by the District Manager and these rules only if the District Manager determines that a hearing is required.
- (c) Continuances: The Presiding Officer may continue a contested case from time to time and from place to place without providing notice under Rule 18.4. If the Presiding Officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the Presiding Officer must provide notice of the continued hearing by regular mail to the parties.

(d) Hearings on Motions for Rehearing: Motions for rehearing will be heard by the Board pursuant to Rule 18.15(d).

**Rule 18.4 Notice and Scheduling of Hearings on Permit and Permit Amendment Applications and Applications for an Exception to Minimum Tract Size and Spacing Requirements**

(a) This rule applies to all permit matters for which a hearing is required.

(b) Scheduling of Hearing. Unless these rules specifically provide that a hearing is not required for an application, the District Manager or Board will schedule the application for a hearing at a regular or special meeting of the Board. The Board may schedule hearings for additional dates, times, and places if the hearing is to be presided over by a Hearing Examiner. The District Manager or Board may schedule more than one application for consideration at a hearing. Well registrations do not require a hearing or Board action.

(c) Not later than the 10th day before the date of a hearing, the District Manager, as instructed by the Board, is responsible for giving notice in the following manner:

(1) by posting notice in a place readily accessible to the public at the District's office;

(2) by providing the notice to the County Clerk;

(3) by regular mail to the applicant;

(4) by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (d); and

(5) if an exception to the minimum well spacing distances is requested, by providing notice as required by consistent with the requirements of Rule 10.0; and

(6) by regular mail to any other person entitled to receive notice under the District's rules.

(d) A person having an interest in the subject matter of a hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service by first class mail, fax, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this subsection does not invalidate any action taken by the Board.

(e) The notice provided under Subsections (c) and (d) must include:

- (1) the name of the applicant;
  - (2) the name or names of the owner or owners of the land if different from the applicant;
  - (3) the address or approximate location of the well or proposed well;
  - (4) if the notice is for a permit, permit amendment, or exception from minimum well ~~tract size or spacing~~ requirements, provide a brief explanation, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
  - (5) the time, date, and location of the hearing; and
  - (6) any other information the Board or District Manager deems relevant and appropriate to include in the notice.
- (f) An administratively complete application shall be set for a hearing on a specific date within sixty (60) days after the date the administratively complete application is submitted to the District. A hearing shall be held within thirty-five (35) days after the setting of the date, and the District shall act on the application within sixty (60) days after the date the final hearing on the application is concluded.
- (g) A hearing may be scheduled during the District's regular business hours, excluding District holidays. All permit hearings will be held at the District office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location. The Board may change or schedule additional dates, times, and places for hearings.
- (h) Failure to provide notice in accordance with this rule does not invalidate an action taken by the District at the hearing.

#### **Rule 18.5 Uncontested Applications**

- (a) The Board may act on any uncontested permit or permit amendment application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The Board may issue a written order to:
- (1) grant the application;
  - (2) grant the application with special conditions; or
  - (3) deny the application.
- (b) The District may allow any person, including the District Manager or a District employee,

to provide comments at a hearing on an uncontested application.

- (c) Any case not declared a contested case under Rule 18.6 is an uncontested case, and the Presiding Officer will summarize the evidence and issue a report to the Board within thirty (30) days after the date a hearing is concluded. Such report must 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 to the Board. A copy of the report must be provided to the applicant and each person who provided comment. A report is not required if the hearing was conducted by a quorum of the Board and the hearing was recorded pursuant to Rule 18.2(f).

### **Rule 18.6 Contesting a Permit Application**

- (a) Contested case hearings may be requested in connection with the following applications:
- (1) a new permit; and
  - (2) major amendments to any existing permit.
- (b) The following may request a contested case hearing on an application for a permit or permit amendment:
- (1) the District Manager;
  - (2) the applicant; or
  - (3) a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by the permit or permit amendment application, not including persons who have an interest common to members of the public.
- (c) A request for a contested case hearing must be in writing and be filed on or before the date noticed for the initial public hearing, and before Board action on the application, regardless of any continuance of the public hearing.
- (d) Requirement for contested case hearing requests on applications: A request for a contested case hearing must substantially comply with the following:
- (1) provide the name, address, daytime telephone number, e-mail address, and fax number of the person who files the request. If the request is made by a corporation, partnership, or other business entity, or a group or an association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the entity, group, or association;

- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) state whether the person requesting the contested case hearing is the applicant for that permit, holder of another groundwater withdrawal permit, owner of a registered well, or a landowner or other person with a justiciable interest pursuant to Subsection (d)(2) of this rule;
- (4) set forth the grounds on which the person is protesting the application;
- (5) request a contested case hearing;
- (6) be timely under Rule 18.6(f);
- (7) be sworn to; and
- (8) provide any other information required by the public notice of application.
- (e) Contested case hearing request on more than one application: If a person or entity is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.
- (f) Deadline for contested case hearing requests on applications: A hearing request is considered timely if it complies with Rule 18.6(d) and:
  - (1) it is submitted in writing to and received by the District on or before the date of the hearing and action by the Board on the application; or
  - (2) the person appears before the Board at the hearing and opposes the application.
- (g) Contested case: A matter regarding an application is considered to be contested if a hearing request is made pursuant to Rule 18.6(d) and 18.6(e), made in a timely manner pursuant to Rule 18.6(f), and declared as such by the Presiding Officer. Any case not declared a contested case under this rule is an uncontested case.

### **Rule 18.7 Processing of Contested Case Hearing Requests**

- (a) After a contested case hearing request is timely filed, the Board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with these rules.

- (1) At least twenty (20) days prior to a preliminary hearing to hear the request for a contested case hearing, District staff will provide notice to the applicant and any persons who filed a timely hearing request. The District Manager is deemed to have constructive notice of the meeting.
  - (2) Potential parties may submit a written response to the hearing request no later than ten (10) days before the scheduled preliminary hearing to hear the request for a contested case hearing. Responses must be filed with the District and served on the District Manager, the applicant, and any other persons who timely filed a hearing request in connection with that matter.
  - (3) The person requesting a hearing may submit a written reply to a response no later than five (5) days before the scheduled preliminary hearing to hear the request for a contested case hearing. All replies shall be filed with the District and served on the same day on the District Manager, the applicant, and any other person who timely filed a hearing request.
- (b) The preliminary hearing may be conducted by:
- (1) a quorum of the Board, with or without an appointed hearing examiner, as authorized under Rule 18.1(b);
  - (2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or
  - (3) the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Rule 18.8.
- (c) The determination of whether a hearing request should be granted is not a contested case hearing. Following a preliminary hearing, the Board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the Board determines that no person who requested a contested case hearing has standing or that no justiciable issues were raised, the Board may take any action authorized under Texas Water Code Section 36.4051 and Rule 18.5.
- (d) An applicant may, not later than the 20<sup>th</sup> day after the date the Board issues an order granting the application, demand a contested case hearing if the order includes special conditions that were not part of the application as finally submitted, or grants a maximum amount of groundwater production that is less than the amount requested in the application.
- (e) At the discretion of the Board or hearing examiner, persons not designated as parties may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Board or

hearing examiner as evidence.

- (f) If the Board grants the contested case hearing request, a contested case hearing 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 hearing examiner over the hearing or matters related to the hearing; or
  - (3) the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Rule 18.8.
  
- (g) Except as provided by Rule 18.8, the Board president, or another Board member designated by the president, or a hearing examiner shall serve as the Presiding Officer for a hearing. The Presiding Officer shall:
  - (1) schedule a preliminary hearing;
  - (2) at least twenty-one (21) days after the preliminary hearing, schedule an evidentiary hearing; and
  - (3) following the evidentiary hearing, prepare a proposal for decision including proposed findings of fact and conclusions of law, and transmit that proposal to the Board.
  
- (h) The Board shall schedule a final hearing where it will consider the evidence and testimony presented during the evidentiary hearing and the Presiding Officer's proposal for decision.
  
- (i) Following the final hearing, the Board may:
  - (1) grant the application;
  - (2) grant the application with conditions; or
  - (3) deny the application.
  
- (j) The Presiding Officer may recommend issuance of a temporary permit for a period not to exceed four (4) months, with any special provisions the Presiding Officer deems necessary, for the purpose of completing the contested case process.

### **Rule 18.8 Delegation to State Office of Administrative Hearings**

- (a) By order, the Board may delegate to the State Office of Administrative Hearings the authority to conduct hearings designated by the Board.

- (b) If the Board refers a contested case hearing to the State Office of Administrative Hearings, then Subchapters C, D, and F, Chapter 2001, Texas Government Code, and the applicable rules of practice and procedure of the State Office of Administrative Hearings (1 TEX. ADMIN. CODE Ch. 155) govern any contested case hearing of the District, as supplemented by this subchapter.
- (c) If the Board refers a preliminary hearing or contested case hearing to the State Office of Administrative Hearings, the administrative law judge who conducts the contested case hearing shall serve as the Hearing Examiner and consider applicable District rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.
- (d) If the Board refers a contested case hearing to the State Office of Administrative Hearings, the District may not attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.
- (e) If requested by the applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct the hearing. The party must file such a request not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by the State Office of Administrative Hearings. The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall, before the hearing begins, deposit with the District an amount sufficient to pay the contract amount. At the conclusion of the hearing, the District shall refund any excess money to the paying party.

#### **Rule 18.9 Consolidated Hearing on Application**

- (a) Except as provided by Subsection (b), the Board shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant.
- (b) The Board is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.

#### **Rule 18.10 Remand to Board**

- (a) A Hearing Examiner may remand an application to the Board as follows:
  - (1) all timely hearing requests have been withdrawn;
  - (2) all parties to a contested case reach a settlement so that no facts or issues remain

controverted; or

(3) the party or parties requesting the hearing defaults.

(b) After remand, the application will be uncontested, and the applicant will either be deemed to have agreed to the action proposed by the District Manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration. District staff will set the application for consideration at a Board meeting.

### **Rule 18.11 Contested Permit Application Procedures**

(a) A procedural hearing may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process in contested matters. Matters that may be considered at a procedural hearing include:

(1) the designation of parties;

(2) the formulation and simplification of issues;

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

(4) the possibility of making admissions or stipulations;

(5) the scheduling of depositions, if authorized by the Presiding Officer;

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

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

(8) the procedure at the evidentiary hearing.

(b) A procedural hearing or evidentiary hearing may be held at a date, time, and place stated in a notice given in accordance with Rule 18.4, or at the date, time, and place for hearing stated in the notice of public hearing and may be continued at the discretion of the Presiding Officer.

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

(d) Designation of parties:

(1) Parties to a contested permit hearing will be designated as determined by the Presiding Officer in accordance with these rules.

- (2) The District Manager and the applicant are automatically designated as parties in matters involving permit or permit amendment applications.
- (3) In order to be admitted as a party, persons other than the automatic parties must appear at the hearing in person or by representation and seek to be designated as a party.
- (4) A person requesting a contested case hearing that is unable to attend the first day of the proceeding must submit a continuance request to the Presiding Officer, in writing, stating good cause for his inability to appear at the proceeding. The Presiding Officer may grant or deny the request, at his discretion.
- (5) After parties are designated, no other person may be admitted as a party unless, in the judgment of the Presiding Officer, there exists good cause and the hearing will not be unreasonably delayed.

(e) Service of Documents:

- (1) For any document filed in a contested case, the person filing that document must serve a copy on all parties.
- (2) 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.

(f) Continuances:

- (1) The Presiding Officer may continue a contested case from time to time and from place to place without providing notice under Rules 18.4 or 18.12.
- (2) If the Presiding Officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the Presiding Officer must provide notice of the continued hearing by regular mail to the parties.
- (3) Parties to a contested case hearing, with the approval of the Presiding Officer, may agree to modify any time limit prescribed by these rules related to conducting contested case hearings.

(g) Discovery:

Discovery in contested case proceedings will be governed by Chapter 2001, Subchapter D, TEX. GOV'T CODE and Title 1, Section 155.31, TEX. ADMIN CODE, as supplemented by this subchapter. Depositions in a contested case shall be governed by TEX. GOV'T CODE §§ 2001.096-2001.102.

(h) Evidentiary matters:

- (1) Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.
- (2) The rules of privilege recognized by law shall be given effect.
- (3) An objection to an evidentiary offer may be made and shall be noted in the record.
- (4) Evidence may be received in writing if:
  - (A) it will expedite the hearing; and
  - (B) the interests of the parties will not be substantially prejudiced.
- (5) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.
- (6) A party may conduct cross-examination required for a full and true disclosure of the facts.
- (7) Witnesses shall be sworn and their testimony taken under oath.
- (8) Official notice may be taken of:
  - (A) all facts that are judicially cognizable; and
  - (B) generally recognized facts within the area of the District's specialized knowledge. 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. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledge of District staff may be used in evaluating the evidence.

(i) Depositions and Subpoenas:

- (1) On the written request of a party, and on deposit of an amount that will reasonably ensure payment of the estimated total amount, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested matter pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case will be in writing and directed to the Board.

- (2) A party requesting the issuance of a commission requiring deposition or a subpoena will file an original of the request with the District. District staff will arrange for the request to be presented to the Board at its next meeting.
- (3) In the case of a deposition, the Board will issue a commission addressed to the officer authorized by statute to take a deposition, requiring that the deposition of a witness be taken. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers or other objects that may be necessary and proper for the purpose of the proceeding. Additionally, the commission will require the officer to whom it is addressed to examine the witness before the officer on the date and at the place named in the commission; and take answers under oath to questions asked the witness by a party to the proceeding, the District, or an attorney for a party or the District. The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.
- (4) In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the District will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers or other objects that may be necessary or proper for the purpose of the proceeding.
- (j) Furnishing copies of pleadings: After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every party or party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies to a party or a party's representative may be grounds for withholding consideration of the pleading or the matters set forth therein.
- (k) Disabled parties and witnesses: Persons who have special requests concerning their need for reasonable accommodation, as defined by the Americans With Disabilities Act, 42 U.S.C.12111(9), during a Board meeting or a hearing shall make advance arrangements with the District Manager of the District. Reasonable accommodation shall be made unless undue hardship, as defined in 42 U.S.C. 12111(10), would befall the District.
- (l) Interpreters for deaf parties and witnesses: If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

- (m) Agreements to be in writing: No agreement between parties or their representatives affecting any pending matter will be considered by the Presiding Officer unless it is in writing, signed by all parties, and filed as part of the record, or unless it is announced at the hearing and entered on the record.
- (n) Ex Parte communications: Neither the Presiding Officer nor a Board member may communicate, directly or indirectly, in connection with any issue of fact or law in a contested case with any agency, person, party, or representative, except with notice and an opportunity for all parties to participate. This subsection does not apply if:
- (1) the Board member abstains from voting on a matter in which he or she engaged in ex parte communications;
  - (2) the communications were by and between members of the Board consistent with the Texas Open Meetings Act;
  - (3) the communications are with District staff who have not participated in any hearing in the contested case and are for the purpose of using the special skills or knowledge of the staff in evaluating the evidence; or
  - (4) the communications are with legal counsel representing the Board.
- (o) Written testimony: The Presiding Officer may allow testimony to be submitted in writing, either in narrative or question and answer form, and may require the written testimony be sworn to. On the motion of a party to a hearing, the Presiding Officer may exclude written testimony if the person who submits the testimony is not available for cross-examination in person or by phone at the hearing, by deposition before the hearing, or other reasonable means.
- (p) Cross-examination: The opportunity for cross-examination shall be provided for all testimony offered in a contested case hearing.
- (q) Evidence: The Presiding Officer shall admit evidence if it is relevant to an issue at the hearing. The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
- (r) Burden of Proof:
- (1) The District Manager has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed remedial provisions and penalties. The Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted.
  - (2) Except as provided by Paragraph (1) of this subsection, the burden of proof is on

the moving party by a preponderance of the evidence.

### **Rule 18.12 Proposal for Decision**

- (a) Except as provided by Subsection (e) of this rule, the Presiding Officer shall submit a proposal for decision to the Board not later than the 30<sup>th</sup> day after the date the evidentiary hearing is concluded. The Presiding Officer may direct the District Manager or other District representative to prepare the proposal for decision and recommendation required by this rule.
- (b) The proposal for decision must include a summary of the subject matter of the hearing, a summary of the evidence, and the Presiding Officer's recommendations for Board action on the subject matter of the hearing.
- (c) The Presiding Officer or the District Manager must provide a copy of the proposal for decision to the Board and each designated party to the proceeding.
- (d) A party may submit to the Board written exception to the proposal for decision.
- (e) If the hearing was conducted by a quorum of the Board and if the Presiding Officer prepared a record of the hearing as provided by Rule 18.2(f), the Presiding Officer shall determine whether to prepare and submit a proposal for decision to the Board under this rule.
- (f) The Board shall consider the proposal for decision, any exceptions to the proposal for decision, and replies to the exceptions at a final hearing. Additional evidence may not be presented during the final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued in accordance with these rules.
- (g) In a proceeding for a permit application or amendment in which the District has contracted with the State Office of Administrative Hearings for a contested case hearing, the Board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge. The Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, only if the Board determines:
  - (1) that the administrative law judge did not properly apply or interpret applicable law, the District rules or written District policies provided to the administrative law judge pursuant to Texas Water Code Section 36.416(e), or prior administrative decisions;
  - (2) that a prior administrative decision on which the administrative law judge relied is

incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

### **Rule 18.13 Final Decision; Appeal**

(a) Board Action on rulemaking hearings: After the record is closed on a rulemaking hearing and the matter is submitted to the Board, the Board may take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought, grant the action sought in whole or part, or take any other appropriate action. Board action on a rulemaking hearing takes effect at the conclusion of the meeting in which the Board took the action and is not affected by a request for rehearing.

(b) Board Action on permit hearings: The Board shall act on a matter involving an application for a permit or an application for a permit renewal or amendment not later than the 60<sup>th</sup> day after the date the final hearing on the matter is concluded. The Board may act on an uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The public meeting may be held in conjunction with a regularly scheduled or special called Board meeting. The Board may issue a written order to grant an application, grant the application with special conditions, or deny the application. The Board, on the motion of any party or on its own motion, may order a remand to reopen the record for further proceedings on specific issues of dispute.

(c) Requests for Rehearing or Findings and Conclusions

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

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

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

- (4) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- (5) A timely filed motion for rehearing shall be denied under operation of law should the Board fail to grant or deny the request before the 91st day after the date the request is submitted.
- (d) Decision; when final: A decision by the Board on a permit or permit amendment application is final:
  - (1) if a request for rehearing is not timely filed, on the expiration of the period for filing a request for rehearing; or
  - (2) if a request for rehearing is timely filed, on the date:
    - (A) the Board denies the request for rehearing, either expressly or by operation of law; or
    - (B) the Board renders a written decision after rehearing.

**Rule 18.14 Notice and Scheduling of Rulemaking Hearings**

- (a) Not later than the 20th day before the date of a rulemaking hearing for rulemaking hearings that require notice under Section 36.101, Water Code, the District Manager, as instructed by the Board, is responsible for giving notice in the following manner:
  - (1) Publish notice of the hearing at least once in one or more newspapers of general circulation in Yoakum County;
  - (2) Post a copy of the notice in a place readily accessible to the public at the District's office;
  - (3) Provide notice of the hearing to the County Clerk;
  - (4) Provide notice by mail, fax, or electronic mail to any person who has requested notice under Subsection (b); and
  - (5) Make available a copy of all proposed rules at the District's offices during normal business hours and post an electronic copy on the District's website.
- (b) A person having an interest in the subject matter of a hearing may receive written notice of the hearing if the person submits to the District a written request to receive notice of the hearing. The request remains valid for the remainder of the calendar year in which the

request is received by the District. To receive notice of a public 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. Failure by the District to provide written notice to a person under this subsection does not invalidate any action taken by the Board.

(c) The notice provided under Subsection (a) must include:

(1) the time, date, and location of the rulemaking hearing;

(2) a brief explanation of the subject of the rulemaking hearing; and

(3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

(d) A hearing may be scheduled during the District's regular business hours, excluding District holidays. All rulemaking hearings will be held at the District office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location. The Board may change or schedule additional dates, times, and places for hearings.

### **Rule 18.15 Rulemaking Hearings Procedures**

(a) General procedures: The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer determines most appropriate to obtain all relevant information pertaining to the subject matter of the hearing as conveniently, inexpensively, and expeditiously as possible. In conducting a rulemaking hearing, the Presiding Officer may elect to utilize procedures set forth in these rules for permit hearings to the extent that and in the manner that the Presiding Officer deems most appropriate for the particular rulemaking hearing. The Presiding Officer will prepare and keep a record of the rulemaking hearing in the form of an audio or video recording or a court reporter transcription at his discretion.

(b) Submission of documents: Any interested person may submit to the Presiding Officer written statements, protests, comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject matter of the hearing. Such documents must be submitted no later than the time of the hearing as stated in the notice of hearing given in accordance with Rule 18.16. The Presiding Officer may grant additional time for the submission of documents.

(c) Oral presentations: Any person desiring to testify on the subject matter of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer

establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. The Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

#### **Rule 18.16 Hearings on Desired Future Conditions**

- (a) At least ten (10) calendar days before a public hearing or a Board meeting required for the adoption of the Desired Future Condition(s) under Section 36.108(d-2) or (d-4) of the Texas Water Code, the District shall post notice that includes the following:
- (1) the proposed Desired Future Condition(s) and a list of any other agenda items;
  - (2) the date, time, and location of the meeting or hearing;
  - (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
  - (4) the name of the other groundwater districts in the Groundwater Management Area; and
  - (5) information on how the public may submit comments.
- (b) Notice required under this rule shall be posted and published in the same manner as that for rulemaking hearings in Rule 18.16.
- (c) During the public comment period, the District shall make available in its office a copy of the proposed Desired Future Condition(s) and any supporting materials.

#### **Rule 18.17 Appeal of Desired Future Conditions**

- (a) Not later than one hundred twenty (120) calendar days after the date on which the District adopts a Desired Future Condition under Subsection 36.108(d-4), Texas Water Code, a person determined by the District to be an affected person may file a petition appealing the reasonableness of a Desired Future Condition. The petition must include:
- (1) evidence that the petitioner is an affected person;
  - (2) a request that the District contract with the State Office of Administrative Hearings to conduct a hearing on the petitioner's appeal of the reasonableness of the Desired Future Condition;
  - (3) evidence that the districts did not establish a reasonable Desired Future Condition

of the groundwater resources within the Groundwater Management Area.

(b) Not later than ten (10) calendar days after receiving a petition described by Subsection (a), the District shall determine whether the petition was timely filed and meets the requirements of Rule 18.19(a) and, if so, shall submit a copy of the petition to the Texas Water Development Board. If the petition was untimely or did not meet the requirements of Rule 18.19(a), the District shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than sixty (60) calendar days after receiving a petition under Rule 18.19(a), the District shall:

(1) contract with the State Office of Administrative Hearings to conduct the requested hearing; and

(2) submit to the State Office of Administrative Hearings a copy of any petitions related to the hearing requested under Rule 18.19(a) and received by the District.

(c) A hearing under Rule 18.19(a) and (b) must be held:

(1) at the District office unless the District's Board provides for a different location; and

(2) in accordance with Chapter 2001, Texas Government Code, and the State Office of Administrative Hearings rules.

(d) Not less than ten (10) calendar days prior to the date of the State Office of Administrative Hearings hearing under this rule, notice shall be issued by the District and meet the following requirements:

(1) state the subject matter, time, date, and location of the hearing;

(2) be posted at a place readily accessible to the public at the District's office;

(3) be provided to the county clerk's office for posting; and

(4) be sent by certified mail, return receipt requested; hand delivery; first class mail; fax; email; FedEx; UPS; or any other type of public or private courier or delivery service to:

(A) the petitioner;

(B) any person who has requested notice in writing to the District;

(C) each nonparty district and regional water planning group located within the

applicable Groundwater Management Area;

(D) Texas Water Development Board's Executive Administrator; and

(E) TCEQ's Executive Director.

(e) Before a hearing is conducted under this rule, the State Office of Administrative Hearings shall hold a prehearing conference to determine preliminary matters, including:

(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and

(3) each affected person that shall be named as a party to the hearing.

(f) The burden of proof is on the petitioner to demonstrate at the hearing that the adopted Desired Future Condition is unreasonable.

(g) The petitioner shall pay the costs associated with the contract for the hearing conducted by the State Office of Administrative Hearings under this rule. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, the State Office of Administrative Hearings may assess costs to one or more of the parties participating in the hearing and the District shall refund any money exceeding actual hearing costs to the petitioner. the State Office of Administrative Hearings shall consider the following in apportioning costs of the hearing:

(1) the party who requested the hearing;

(2) the party who prevailed in the hearing;

(3) the financial ability of the party to pay the costs;

(4) the extent to which the party participated in the hearing; and

(5) any other factor relevant to a just and reasonable assessment of costs.

(h) On receipt of the Administrative Law Judge's findings of fact and conclusions of law in a proposal for decision, which may include a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter and the District's findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the Administrative Law Judge or may vacate or modify an order

issued by the Administrative Law Judge, as provided by Section 2001.058(e), Texas Government Code.

- (i) If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the Administrative Law Judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.
- (j) If the District in its final order finds that a Desired Future Condition is unreasonable, not later than the 60th calendar day after the date of the final order, the District shall coordinate with the districts in the Groundwater Management Area at issue to reconvene in a joint planning meeting for the purpose of revising the Desired Future Condition found to be unreasonable. The districts in the Groundwater Management Area shall follow the procedures in Section 36.108, Texas Water Code, to adopt new Desired Future Conditions applicable to the District.
- (k) The Administrative Law Judge may consolidate hearings requested under this rule that affect two or more districts. The Administrative Law Judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

#### **RULE 1821.0 – STANDARDS FOR PLUGGING WELLS**

~~All wells which are required to be plugged under Texas Occupation Code Chapters 1901 or 1902 or by order of the Board must be plugged in accordance with the well plugging standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. All persons shall notify the District prior to the plugging of any well.~~

#### **RULE 1922.0 - GENERAL RULES**

- (a)A- COMPUTING TIME. In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday.
- (b)B- TIME LIMIT. Applications, requests, or other papers of documents required or permitted to be filed under these rules or by law must be received for filing at the Board's offices at Plains, Texas, within the time limit, if any, for such filing. The date of receipt and not the date of posting is determinative.

~~(c)C. SHOW CAUSE ORDERS AND COMPLAINTS. The Board, either on its own motion, upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, any person operating within the District to appear before it in a public hearing and require him to show cause why his operating authority registration or permit should not be suspended, cancelled, or otherwise restricted and limited, for failure to comply with the orders or rules of the board or the relevant laws of the State, or for failure to abide by the terms and provisions of the permit or operating authority registration itself. The matter of evidence and all other matters of procedure at any such hearing will be conducted in accordance with these rules of procedures and practice.~~

(cd) REPEAL OF PRIOR REGULATIONS. All of the previous rules and regulations of the District have been revised and amended; and except as they are herein republished, they are repealed. Any previous rule or regulation which conflicts with or it contrary to these rules is hereby repealed.

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

Amended: October 8, 2003  
Amended: December 13, 2006  
Amended: December 14, 2022

## APPENDIX 1.

### SANDY LAND UNDERGROUND WATER CONSERVATION DISTRICT ENFORCEMENT POLICY AND CIVIL PENALTY SCHEDULE

#### General Guidelines

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

The District Manager shall recommend to the Board an appropriate settlement offer to settle the violation in lieu of litigation based upon the Civil Penalty Schedule set forth below or as otherwise provided in District rules. The Board may instruct the District Manager to tender an offer to settle the violation or to institute a civil suit in the appropriate court to seek remedies, including, but not limited to civil penalties, injunctive relief, and costs of court and expert witnesses, damages, and attorneys' fees.

#### I. Minor Violations

The following acts each constitute a minor violation:

1. Failure to timely file a registration on a new well that qualifies for an exemption from permitting under Rule 3.1.

~~Failure to timely notify District regarding change of ownership.~~

2. Failure to timely file Well Report.

~~Failure to timely submit required documentation reflecting alterations or increased production.~~

#### CIVIL PENALTY SCHEDULE FOR MINOR VIOLATIONS

First Violation: Loss of well registration deposit and up to \$250.00 penalty

Second Violation: Up to \$500.00

Third Violation: Major Violation

A second violation shall be any minor violation within three (3) years of the first minor violation. A third violation shall be any minor violation following the second minor violation within five (5) years of the first minor violation. Each day of a continuing violation constitutes a separate violation.

## **II. Major Violations**

The following acts each constitute a major violation:

1. Failure to apply for a permit for a well where mandated by rules, including drilling, equipping, completing, altering, or operating a well without a compliant and approved permit.
2. Drilling a well at a different location than authorized or in violation of spacing requirements.\*
3. Failure to close or cap an open or uncovered well.
4. Intentionally or knowingly submitting inaccurate and untruthful information on District forms or to the Board.
5. Committing waste.

### **CIVIL PENALTY SCHEDULE FOR MAJOR VIOLATIONS**

<b><u>First Violation:</u></b>	<b><u>Up to \$1,000.00</u></b>
<b><u>Second Violation:</u></b>	<b><u>Up to \$5,000.00</u></b>
<b><u>Third Violation:</u></b>	<b><u>Civil Penalty Up to \$10,000.00 or Civil Suit for injunction and damages</u></b>

A second violation shall be any major violation within three (3) years of the first major violation. A third violation shall be any major violation following the second major violation within five (5) years of the first major violation. Each day of a continuing violation constitutes a separate violation.

\* In addition to the applicable penalty provided for in the Civil Penalty Schedule for Major Violations, persons who drill a well in violation of applicable spacing and location requirements may be required to plug the well.

## **III. Water Well Construction and Completion Requirements**

### **CIVIL PENALTY SCHEDULE: WATER WELL CONSTRUCTION & COMPLETION REQUIREMENTS**

Failure to use approved construction materials: Up to \$250.00

Failure to properly cement annular space: Up to \$500.00

The terms “approved construction materials” and “properly cement annular space” refer to the construction material and annular space requirements for wells that are set forth in the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code. In addition to the civil penalties provided for in this schedule, persons who drill a well in violation of applicable spacing or completion requirements may be required to recomplete or reconstruct the well in accordance with the District's rules or may be ordered to plug the well.

#### **IV. Other Violations of District Rules Not Specifically Listed Herein**

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

*This Enforcement Policy and Civil Penalty Schedule was originally adopted by the Board of Directors on December 14, 2022, as and in the manner of a rule of the District, after notice and hearing in accordance with the rulemaking hearing provisions of Chapter 36, Water Code, and in compliance with the provisions of the Texas Open Meetings Act, Chapter 551, Government Code.*

## APPENDIX II. PETITION FOR RULEMAKING

- (a) A person with a real property interest in groundwater in the District may file a petition with the District to request the adoption of a rule.
- (b) Petitions must be submitted in writing to the District office and must comply with the following requirements:
  - (1) each rule requested must be submitted by separate petition;
  - (2) each petition must be signed and state the name and address of each person signing the petition;
  - (3) each petition must include:
    - (A) a brief description of the petitioner's real property interest in groundwater in the District;
    - (B) a brief explanation of the proposed rule;
    - (C) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any; and
    - (D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.
- (c) The General Manager may reject any petition for failure to comply with the requirements of Subsection (b) of this section and shall provide notice to the petitioner of the reason for the rejection.
- (d) Within 90 days after submission of a petition that complies with this section, the Board shall either deny the petition, stating its reasons for denial in the minutes of the board meeting or in a letter providing a written explanation to the petitioner, or initiate rulemaking proceedings as provided by Section 36.101, Water Code.