

Rule 1 Introduction and Regulatory Authority

Rule 1.1 Authority to Promulgate Rules

- 1.1.A.** The Cow Creek Groundwater Conservation District (the District) is a political subdivision of the State of Texas. The District was formed as a temporary District by Act of June 18, 1999, 76th Legislature Regular Session, chapter 1331, 1999 Texas General Laws 4536 (Senate Bill 1911). The 77th Legislature (2001) ratified the District as a permanent district subject to voter approval under Act of May 23, 2001, 77th Legislature Regular Session, chapter 1349, 2001 Texas General Laws 3337 (House Bill 3544) and Article 3, Act of June 15, 2001, 77th Legislature Regular Session, chapter 966, 2001 Texas General Laws 1991 (Senate Bill 2). Both House Bill 3544 and Senate Bill 2 give the district all of the rights, powers, privileges, authority, functions and duties provided under the general law of this state, including Texas Water Code Chapter 36, applicable to groundwater conservation districts created under Section 59, Article XVI, of the Texas Constitution. House Bill 3544 and Senate Bill 2 prevail over conflicts with the earlier legislation (Senate Bill 1911) and general law. The District's authority has been amended by the following legislation: Act of June 18, 2005, 79th Legislature, Regular Session, chapter 1349, 2005 Texas General Laws 163 (Senate Bill 839); and Act of June 19, 2009, 81st Legislature, Regular Session, chapter 1064, 2009 Texas General Laws 2720 (House Bill 4713). These special bills have been codified as Texas Special Districts Local Laws Code chapter 8838, to be effective April 1, 2013.
- 1.1.B.** In a confirmation election held on November 5, 2002, Kendall County voters approved the creation of the District and elected five Directors to the Board of Directors. As a duly created groundwater conservation district, the District may exercise any and all statutory authority or power conferred under its Enabling Legislation, codified as Texas Special District Local Laws Code chapter 8838, effective April 1, 2013, and under Chapter 36 of the Texas Water Code, including the adoption and enforcement of rules under Section 36.101 Rule Making Power. All references to statutory provisions are to those provisions as may be amended from time to time.
- 1.1.C.** The District is located within the Hill Country Priority Groundwater Management Area (PGMA), which was designated and delineated in 1990 under Texas Water Code Chapter 35 as an area experiencing or expected to experience critical groundwater problems.
- 1.1.D.** The District is located within Groundwater Management Area 9 and in Regional Water Planning Area L.

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Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Amended December 10, 2012 by Board Order 2012008; effective December 12, 2012.

Rule 1.2 Purpose of the Rules

- 1.2.A.** The District acknowledges that groundwater is a limited resource within the District. Balancing the allocation of water among competing uses such as domestic, municipal, agricultural, and industrial, with the intent to maintain spring flow, riparian rights, and wildlife needs is beneficial to all residents within the District. Continuing population growth within the District and surrounding areas will place increasing demands on groundwater resources within the District. In order to meet future water availability needs, the District has developed these Rules.
- 1.2.B.** The District Rules are promulgated under its Enabling Legislation and the Texas Water Code Chapter 36 authority to make and enforce rules to provide for the conservation, preservation, protection, and recharge of groundwater and aquifers within the District. These Rules are also intended to minimize the drawdown of the water table, minimize the reduction of artesian pressure, prevent interference between wells, prevent the degradation of the quality of groundwater, prevent waste of groundwater, give consideration to the service needs of retail water utilities, and carry out the powers and duties conferred under Chapter 36 and the District's Enabling Legislation.
- 1.2.C.** The District recognizes that a landowner owns the groundwater below the surface of his land as real property. This entitles the landowner, his lessees, heirs, or assigns, to drill for and produce the groundwater without causing waste or malicious drainage of other property or negligently causing subsidence, but it does not give them the right to capture a specific amount of groundwater and does not affect any defenses to liability under the rule of capture, and other rights recognized under common law.
- 1.2.D.** While the District does not have the authority to deprive or divest a landowner, his lessees, heirs, or assigns of the groundwater ownership and rights described in Rule 1.2.C, the District does have the authority to adopt and enforce Rules:
- (1) to limit or prohibit the drilling of a well if the location does not comply with minimum spacing or tract size requirements adopted by the District;

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- (2) to regulate groundwater production as authorized under Texas Water Code Chapter 36 or a special law governing the District; and
- (3) to allocate to each landowner a proportionate share of available groundwater for production from an aquifer based on the number of acres owned.

1.2.E. These Rules, and any orders, requirements, resolutions, policies, directives, standards, guidelines, management plan, or other regulatory measures implemented by the Board, have been promulgated to fulfill these objectives. These Rules may not be construed to limit, restrict, or deprive the District or Board of any exercise of any power, duty, or jurisdiction conferred by the District's Enabling Legislation, Texas Water Code Chapter 36, or any other applicable law or statute.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Amended December 10, 2012 by Board Order 2012-008; effective December 12, 2012. Amended February 13, 2017 by Board Order 2012-008; effective February 13, 2017.

Rule 1.3 *Effective Date*

These Rules and any amendment are effective *on the effective dates indicated following each subsection.*

Adopted May 17, 2005 by Board Order; effective May 17, 2005.

Rule 1.4 *Action on Rules*

1.4.A. The Board may from time to time, following notice and public hearing, amend or revoke Rules or adopt new Rules following the procedures of Rule 8.1.

1.4.B. The Board may adopt an emergency Rule without prior notice or hearing, or with an abbreviated notice and hearing, according to Rule 8.2.

1.4.C. In adopting, amending, or revoking a rule, the District must:

- (1) consider all groundwater needs and uses;
- (2) develop rules that are fair and impartial;
- (3) consider the groundwater ownership rights described in Texas Water Code 36.002 and District Rule 1.2.C;

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- (4) be consistent with the objectives of Section 59, Article XVI of the Texas Constitution, consider the public interest in conservation, preservation, protection, recharging and prevention of waste of groundwater, and controlling subsidence;
- (5) consider the goals of the District's Management Plan; and
- (6) not discriminate between land that is irrigated for production, and land that was irrigated for production and enrolled or participating in a federal conservation program.

1.4.D. District permitting and production acreage rules applicable to a well are the Rules that were in effect when an administratively complete application was submitted to the District, or when the well was in existence. The District reserves the right to amend those permits, as authorized by Chapter 36 of the Texas Water Code.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended December 10, 2012 by Board Order 2012-008; effective December 12, 2012. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021.

Rule 1.5 Savings Clause

If any Rule, provision, section, sentence, paragraph, clause, word, or other portion of these Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other Rules or portions thereof, and these Rules shall be construed as if such invalid, illegal, or unenforceable Rule or of portions thereof had never been contained herein.

Adopted May 17, 2005 by Board Order; effective May 17, 2005.

Rule 1.6 Boundaries of the District

The boundary of the District is contiguous with the county lines of Kendall County, Texas, and includes all land within Kendall County except for land located within the City Limits of the City of Fair Oaks Ranch, Texas. Fair Oaks Ranch is excluded pursuant to Act of June 16, 2001, 77th Legislature Regular Session, chapter 1312, 2001 Texas General Laws 3222 (House Bill 2005); and Act of June 19, 2009, 81st Legislature Regular Session, chapter 381, 2009 Texas General Laws 919 (House Bill 1518), and subsequent elections.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010.