

Proposed Draft for 5-16-22 Public Hearing

**RULES OF THE COW CREEK  
GROUNDWATER CONSERVATION DISTRICT**

*As Amended, Effective November 8, 2021*

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### **PREAMBLE**

#### **Cow Creek Groundwater Conservation District Rules**

Throughout the State of Texas, groundwater conservation districts embody local representative government at its most basic level: local representatives determining the destiny of our most essential natural resource.

The Cow Creek Groundwater Conservation District, like our contemporaries throughout the state, was established to serve the people, while protecting our groundwater--now and for the future. To fulfill its role as a political subdivision of the State of Texas, the Cow Creek Groundwater Conservation District strives to be fair, open, consistent, just, and transparent at all times.

To that end, the Cow Creek Groundwater Conservation District will:

- Make and implement rules that are understandable while always equitable and legal;
- Welcome and encourage public participation at every opportunity;
- Support and recognize private property rights, thereby ensuring the value of available groundwater resources are shared by all, not just a select few;
- Follow the Texas Water Code, which is the legal framework of water regulation in the state and cannot be changed without Legislative action;
- Comply with all state and federal laws;
- Make rules and regulations that strive to preserve spring flows, and base flows to rivers, streams and creeks;
- Develop rules and regulations that preserve and protect recharge features from pollution and destruction
- Create and foster policies that encourage protection of open space and all the societal benefits that come from the responsible management of land resources;
- Help enable high quality-of-life for all citizens: rural, urban and suburban;
- Encourage policies and programs which reward water conservation, such as the use of drought-tolerant landscaping, by all citizens;
- Establish and enforce drought management rules and policies that are fair, understandable, consistent, and reasonable for everyone;
- Assist relevant state agencies to protect groundwater quality, as appropriate;
- Equitably administer and regulate groundwater resources according to availability as established by sound science and all applicable laws;
- Always focus policies, programs, and rules toward strictly adhering to due process;
- Promote balance between rural water-producing areas and urban water-consuming areas of the district's jurisdiction, without jeopardizing appropriate growth in either;
- Protect beneficial uses of groundwater.

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### RULE REVISION RECORD

The history of each specific Rule is noted following that Rule.

<b>Date Adopted</b>	<b>Effective Date</b>	<b>Affected Rules</b>
10/7/03	10/7/03	Original Adoption
6/1/04	6/1/04	Original Adoption
5/17/05	5/17/05	Original Adoption and Amendment
9/12/05	9/14/05	Original Adoption and Amendment
10/20/05	10/25/05	Amendment
9/5/06	9/5/06	Amendment
1/8/07	1/8/07	Amendment
8/20/07	8/23/07	Original Adoption and Amendment
5/20/08	5/23/08	Original Adoption and Amendment
08/09/10	08/12/10	Original Adoption, Amendment, and Repeal
12/10/12	12/12/12	Original Adoption, Amendment, and Repeal
2/13/17	2/13/17	Original Adoption and Amendment
12/11/17	12/11/17	Original Adoption and Amendment
6/10/19	6/10/19	Amendment
4/12/21	4/12/21	Amendment
11/8/21	11/8/21	Amendment

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### **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, 79<sup>th</sup> 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.*

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### Rule 1.7 Groundwater Management Policies

*Repealed December 10, 2012 by Board Order 2012-008; effective December 12, 2012.*

### Rule 2 Definitions

Unless the context indicates a contrary meaning, the words hereinafter defined shall have the following meanings in the Rules of the Cow Creek Groundwater Conservation District:

**Abandoned Well** – a well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

- (1) a non-deteriorated well which contains the casing, pump, and pump column in good condition; or
- (2) non-deteriorated well which has been capped.

**Administratively Complete Application** – a permit application received by the District that includes all documentation and fees required by Texas Water Code Sections 36.113 and 36.1131 and District Rules. In order for an application to be deemed administratively complete, it must include all administrative and technical information required by the District and there must be no unresolved compliance issues against the applicant or the well.

**Agent** – one who is authorized to act for or in place of another; a representative. The agent shall provide written proof of authorization.

**Aggrieved party** - for purposes of District Rule 7.1 and Texas Water Code Section 36.119, a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which the well subject to a complaint is located, or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the subject well.

**Agricultural Use or Purpose** – means the use of groundwater for:

- (1) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (2) practicing floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media, by a nursery grower;

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- (3) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
- (4) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
- (5) engaging in wildlife management as defined in Texas Tax Code Section 23.51(7); and,
- (6) raising or keeping equine animals.

**Annual Water Production Report for Non-Exempt Wells** - A District form required to be completed and submitted under Rule 5.6.C.

**Annular Space** – the space between the casing and borehole wall.

**Aquifer** – a geologic formation that will yield water to a well in sufficient quantities to make the production of water from this formation feasible for beneficial use.

**Aquifer Mining or Groundwater Mining** – a condition where the average available recharge of an aquifer or portion of an aquifer is less than the annual production from that aquifer or that portion of that aquifer. For purposes of these Rules, the terms “aquifer overdrafting,” “reduction of artesian pressure,” “subsidence,” and the “drawdown of the water table or aquifer” shall mean aquifer mining.

**Aquifer storage and recovery project** means a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator.

**ASR injection well** means a Class V injection well used for the injection of water into a geologic formation as part of an aquifer storage and recovery project.

**ASR recovery well** means a well used for the recovery of water from a geologic formation as part of an aquifer storage and recovery project.

**Application Fee** – a fee assessed under Rule 4.1. for processing applications for well registrations and permits.

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**Artesian Pressure** – where water is confined in an aquifer under pressure so that the water will rise in the well casing or drilled hole above the bottom of the confining bed overlying the aquifer.

**Beneficial Use** – the use of groundwater for domestic, municipal, stock raising, agricultural, industrial, commercial, mining, manufacturing, irrigation, gardening, recreational, or any other purpose that is useful and beneficial to the user.

**Best Available Science** – means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

**Board** – the Board of Directors of the Cow Creek Groundwater Conservation District.

**Capping** – closing a well with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

**Casing** – a watertight pipe installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving; to advance the borehole; in conjunction with cementing and/or bentonite grouting, to confine groundwater to its respective zones of origin; and to prevent surface contaminant infiltration.

(1) Plastic casing--National Sanitation Foundation (NSF-WC) or American Society of Testing Material (ASTM) F-480 minimum SDR 26 approved water well casing.

(2) Steel Casing--New ASTM A-53 Grade B or better with a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(3) Monitoring wells may use other materials, such as fluoropolymer (Teflon), glass-fiber-reinforced epoxy, or various stainless steel alloys.

**Cave** - A natural underground open space formed by dissolution of limestone that is large enough for an average-sized person to enter. Note that caves are commonly partly filled by breakdown, loose rocks, debris, or soil.

**Chapter 36** – means Chapter 36 of the Texas Water Code, as amended.

**Closed Loop Geothermal Well** – a closed system well used to circulate water and other fluids or gases through the earth as a heat source or heat sink.

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**Commercial Use or Purpose** – the use of groundwater to supply water to properties or establishments that are in business to build, supply or sell products, or provide goods, services or repairs and that use water in those processes, or to supply water to the business establishment primarily for employee and customer conveniences (i.e. flushing of toilets, sanitary purposes, or limited landscape watering). Does not include agricultural, livestock, industrial, or irrigation use.

**Community Water System** – a public water system that has the potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

**Complaint Under Texas Water Code § 36.119** – a written complaint filed pursuant to Rule 7.1 by an aggrieved party citing to Texas Water Code §36.119 alleging drilling or operating a well without a required permit or producing groundwater in violation of a District Rule adopted under Texas Water Code § 36.116(a)(2).

**Completion or Complete** – sealing off access of undesirable water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods. Same as surface completion.

**Conservation** – those water saving practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

**Contested Case Hearing** – an operating permit hearing requested as authorized by Rule 8.4.I, which is noticed and conducted according to the procedures of Rule 8.5, and as applicable, Rule 8.6.

**Contested Case Hearing Fee** – a fee under Rule 4.2.A for administrative acts of the District, if the District receives a request for a contested case hearing.

**Contested Case SOAH Hearing Fee** – a fee under Rule 4.2.B for costs associated with the SOAH contract as authorized by Texas Water Code section 36.416(c).

**Contested Case Hearing Fee Deposit** - Under Texas Water Code 36.416(c) and District Rules 4.2.A and 4.2.B, the amount required to be provided to the District as determined at the preliminary hearing on the application.

**Contested Case Hearing Request** - A written request made within 10 days of issuance of an order under Rule 8.4.I ruling on an operating permit application, which asks that the District convene a contested case hearing.

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**Desired Future Conditions (DFC)** - a quantitative description, adopted in accordance with Texas Water Code section 36.108, of the desired condition of the groundwater resources in a groundwater management area (GMA) at one or more specified future times.

**DFC Hearing Summary Report** - the report required by Texas Water Code section 36.108(d-2), which includes a summary of relevant comments received on GMA-9's proposed DFC, any suggested revisions to the proposed DFC, and the basis for the revisions.

**DFC Explanatory Report** - the report prepared by the groundwater conservation districts in GMA-9 after final adoption of the DFC, as required by Texas Water Code 36.108(d-4).

**Deteriorated Well** – a well that, because of its condition, will cause or is likely to cause pollution of any water in the State, including groundwater.

**Dewatering Well** – an artificial excavation that is constructed to produce groundwater to lower the water table or potentiometric surface and that is not used to produce or to facilitate the production of minerals under a state regulatory program.

**Director** – an elected or appointed member of the Board of Directors of the District.

**Discharge** – the volume of water that passes a given point within a given period of time. The amount of water that leaves an aquifer by natural or artificial means.

**District** – the Cow Creek Groundwater Conservation District (CCGCD) or one of its authorized representatives.

**District Office** – the main office of the District at such location as may be established by the Board.

**Domestic Use or Purpose** – use of groundwater by a residence (not a business or other commercial structure) to support essential domestic activity, including but not limited to: uses inside the residence; watering of lawns, flower beds, shrubs, trees shading the residence, or of a garden or orchard that produces vegetables and fruit for consumption within the residence and not for sale; protection of foundations; and non-commercial recreation associated with the residence.

**Drill** – drilling, equipping, completing wells, or modifying the size of wells or well pumps/motors (resulting in an increase in production volume capability) whereby a drilling or service rig must be on location to perform the activity.

**Drillers' Log** - see definition of State of Texas Well Report.

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**Electric Log** - a record of certain electrical characteristics (such as resistivity and conductivity) of formations traversed by the borehole. It is made to identify the formations, determine the nature and amount of fluids they contain, and estimate their depth. It is a type of geophysical log.

**Drilling Permit** – authorization under Rule 3.2., which is required before drilling a new well or substantially altering an existing well located within the District.

**Drip System**- Drip or micro-irrigation is a generic term for a family of irrigation equipment that provides for distribution of water directly to the plant root zone by means of surface or sub-surface applicators or emitters. The three most common types of micro-irrigation used in Texas are micro-spray or bubblers, sub-surface (buried) drip and orchard surface drip or micro-spray irrigation.

**Emergency Rule** – a rule adopted under Rule 8.2.

**Enabling Legislation** – special law enactments that created the District, as summarized in Rule 1.1, which have been codified in Texas District and Local Laws Code chapter 8838, which becomes effective April 30, 2013, and as may be amended from time to time.

**Enforcement Action** – an action taken by the District to enforce District Rules, orders, or permits, or any other law within its enforcement authority.

**Enforcement Hearing** – a hearing held under Rule 8.7.

**Environmental Monitoring Well** – well drilled or developed to a depth of 30 feet or less for the purpose of collecting groundwater samples to ascertain the presence or absence of hazardous materials, hazardous waste, petroleum products, oils, solvents, or other hazardous constituents in groundwater.

**Environmental Sampling Well** – well or bore 30 feet or less in depth drilled or cored for the purpose of collecting subsurface soil samples to ascertain the presence or absence of hazardous materials, hazardous waste, petroleum products, oils, solvents, or other hazardous constituents in subsurface soils.

**Environmental Soil Boring** – a man-made excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

**Exempt Domestic or Livestock Well** – a well used primarily for domestic or livestock uses that qualifies as exempt from obtaining an operating permit under Rule 3.5.

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A well used for domestic or livestock use is exempt under Rule 3.5 if the well is used solely for domestic use, as defined in this Rule 2, or for livestock use, as defined in this Rule 2, and is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day. However, a well is not an exempt domestic or livestock well if groundwater withdrawn from the well is transported outside the boundaries of the District.

A well is deemed capable of producing more than 25,000 gallons of groundwater per day unless the well is drilled, completed, or equipped so that it is incapable of producing more than 17.36 gallons per minute.

**Exempt Well** – a well exempted under Rule 3.5 for which the owner is not required to obtain an operating permit.

**Existing Well** – a well located within the District that was drilled and properly completed on or before May 17, 2005.

**Fees** – charges imposed by the District pursuant to Texas Water Code Chapter 36 and the District's Enabling Legislation.

**Geologic Exploration Well** – a well drilled for the purpose of exploring for, or otherwise determining the presence or absence of, subsurface minerals, including oil and natural gas.

**Geologic Formation** – the basic unit for the naming of rocks in stratigraphy: a set of rocks that are or once were horizontally continuous, that share some distinctive feature of lithology, and are large enough to be mapped.

**Geophysical Log** – physical measurements of various geophysical properties of subsurface rock formations. The log is made by instruments lowered into the borehole and can be open borehole or closed borehole. An electric log is one category of geophysical log.

**GMA-9 Joint Planning Committee** - the group comprised of all groundwater conservation districts in GMA-9 organized for the purposes required under Texas Water Code section 36.108, including adoption of a DFC.

**Geotechnical Well** – a well drilled or bored to determine engineering properties of soils or geologic formations for the purpose of construction.

**Groundwater Conservation District (GCD)** - a governmental entity formed by special legislation or through a petition to the Texas Commission on Environmental Quality with the power and duties to manage groundwater resources within its boundaries.

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**Groundwater or Underground Water** – water percolating beneath the earth's surface, except the underflow of rivers, streams and lakes which is considered State water under Texas Water Code 11.021(a).

**Groundwater Management Plan or Management Plan** – a management plan developed by the District and certified or approved by the Texas Water Development Board pursuant to Texas Water Code Section 36.1071.

**Groundwater Reservoir** – a specific subsurface water-bearing reservoir having ascertainable boundaries and containing groundwater.

**Hand-Dug Well** – a well installed by hand digging or by auger drilling.

**Hearings Examiner** – a person, other than a Board member, appointed by the Board to conduct a hearing on a permit, rule, or enforcement action.

**Hydrologic Unit** – The aquifers described as Alluvium; Edwards and associated limestones; Upper Trinity; Middle Trinity; and Lower Trinity.

**Industrial Use or Purpose** – water used in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial fish and shellfish production, aquaculture, and the development of power by means other than hydroelectric, but does not include agricultural use. Water used in the oil and gas industry, other than for temporary rig supply or secondary recovery supply as defined in this District Rule 2, is considered industrial use or purpose.

**Injection Well** – a well used to inject water or other material into a subsurface formation or into pipe or tubing placed in the formation for the purpose of storage or disposal of the fluid. Injection Well includes a well listed in 16 Texas Administrative Code Section 76.10(29).

**Investigation Report** – a report prepared by the District summarizing its investigation of a possible violation of law and making a recommendation to the Board regarding any further action.

**Irrigation Use or Purpose** – use of groundwater to supply water for application to plants or land in order to promote growth of plants, turf, or trees, other than for domestic lawn watering.

**Licensed Water Well Driller** – a person who holds a license issued by the Executive Director of the Texas Department of Licensing and Regulation pursuant to Texas Occupations Code Chapter 1901.

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**Licensed Water Well Pump Installer** – a person who holds a license issued by the Executive Director of the Texas Department of Licensing and Regulation pursuant to Texas Occupations Code Chapter 1902.

**Lithological Log** – a graphic representation of geological formations being drilled through and drawn on a log called a mud log. As cuttings are circulated out of the borehole, they are sampled and examined to create the mud log or lithological log.

**Livestock Use or Purpose** – use of groundwater to provide water to domesticated horses, cattle, goats, sheep, swine, poultry, ostriches, emus, rheas, exotic deer and antelope, and other similar animals involved in farming or ranching operations. Dogs, cats, birds, fish, reptiles, small mammals, potbellied pigs, and other animals typically kept as pets are not considered livestock. Livestock-type animals kept as pets or in a pet-like environment are not considered livestock although providing water to such pets may be considered domestic use when associated with a residence. Water used for concentrated animal feeding operations (CAFOs) as defined in 30 Texas Administrative Code section 321.32(13), is not considered livestock use under these Rules; it is considered to be industrial use.

**Major Amendment** – a change to an operating permit to authorize an increase in the annual production limit, a change in the type of use, or a change in the location of withdrawal. See Rule 3.4.F(3).

**Management Plan** – see Groundwater Management Plan.

**Meter** - A District approved, totalizing flow meter properly sized for the well's production capability, which is not capable of being "reset" by the well owner.

**Minor Amendment** – a change to an operating permit to authorize a change in the ownership of the well; the size or depth of a well, well pump, or the well's pumping volume that does not increase the authorized annual production amount or the annual production capability of the well; or a change in the approved conservation and drought contingency plan. See Rule 3.4.F(4).

**Modeled Available Groundwater** - the amount of water calculated by the Texas Water Development Board under Texas Water Code section 36.1084(b) based upon the DFCs adopted by the GCDs in a groundwater management area and which is one of the elements to be considered by a district when making permitting decisions.

**Monitor or Monitoring Well** – an excavation constructed to measure or monitor the quality and/or quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. Included within this definition are piezometer wells, observation wells, and recovery wells. The term shall not include any well that is used in conjunction with the production of oil, gas, coal, lignite, or other minerals.

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**New Well** – a well that is drilled or properly completed after May 17, 2005 or an existing well that has been substantially altered after May 17, 2005.

**Non-exempt Domestic or Livestock Well** – a well used primarily for domestic or livestock use that must obtain an operating permit under Rule 3.5. A domestic or livestock well is non-exempt if it is drilled, completed, or equipped so that it is capable of producing 25,000 gallons or more of groundwater a day. A domestic or livestock well of any sized production capability is non-exempt if groundwater withdrawn from the well is transported outside the boundaries of the District.

**Non-exempt Well** – a well for which the owner is required to obtain an operating permit under Rule 3.5.

**Non-potable Water** – water that is not fit for human consumption due to dissolved solids, mineral content, hardness, turbidity, microbial or bacteriological level, or other chemical, physical, or biological parameter exceeding Maximum Contaminant Level (MCL) or Secondary Constituent Levels, as defined in 30 Texas Administrative Code Chapter 290.

**Notice of Violation (NOV)** – written correspondence from the District notifying a person that they are in violation of law, including violation of a District Rule, Order, or permit.

**One-Time Authorization** – a well used for a limited purpose, production volume, and duration specified in that authorization. Such authorization is limited solely to the terms specified in the authorization and does not create a right to produce water from the well in the future.

**Open Meetings Act** – Texas Government Code, chapter 551.

**Open or Uncovered Well** – an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and that is not capped or covered as required by District Rules.

**Operate or Operations** – to produce or cause to produce water from a well or to use a well for injection or closed loop heat exchange purposes.

**Operating Permit** – authorization issued under Rule 3, which is required to operate within the District a water well described in Rule 3.5.

**Owner** – a person who has the right to produce groundwater from the land, either by ownership, contract, lease, easement, or any other estate in the land.

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**Party in Contested Case Hearing** – an applicant or other person defined under Rule 8.4.1.(2).

**Permit Amendment** – a District approved change in an operating permit under Rule 3.4.F.

**Permitted Well** – a well for which an operating permit under Rule 3 has been issued by the Cow Creek Groundwater Conservation District, as required by Rule 3.5.

**Permittee or Permit Holder** – a person who holds either a drilling permit or an operating permit issued by the District.

**Person** – a corporation, individual, organization, cooperative, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

**Piezometer Well** – a well of a temporary nature constructed to monitor well standards for the purpose of measuring water levels or used for the installation of a piezometer (a device constructed and sealed to measure hydraulic head at a point in the subsurface) resulting in the determination of locations and depths of permanent monitor wells.

**Plugging** – an absolute and permanent sealing of the well bore.

**Pollution** – the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any reasonable purpose.

**Pollution Source** – a person, business, corporation, industry, operation, activity, or event, whether intentional or unintentional that causes, allows, or enables contaminants to be discharged to the environment, thereby causing pollution.

**Pool** - A structure or impoundment with an impermeable lining used primarily for recreational or athletic purposes (includes spas and hot tubs).

**Potable Water** – water that is suitable for human consumption, or can be made suitable for human consumption by primary filtration or chemical or ultraviolet disinfection. Potable water must comply with Maximum Contaminant Levels (MCL) or Secondary Constituent Levels, as defined in Title 30 Texas Administrative Code Chapter 290.

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**Preliminary Hearing** - the hearing held under Rule 8.4.J to consider issues relevant to a contested case hearing request. It is considered to be the beginning of a contested case hearing unless it results in a finding that there are no parties under Rule 8.4.I.

**Presiding Officer** – Either the Director or the hearings examiner designated under Rule 8.5.G. to conduct a contested case hearing. Also refers to the person under Rule 8.7.F who is designated to conduct an enforcement hearing.

**Priority Groundwater Management Area (PGMA)** – an area designated and delineated by the State under Texas Water Code Chapter 35 as an area experiencing or expected to experience critical groundwater problems.

**Production Capability or Capacity** – the volume of water a well can produce as determined by either the rated pumping capability of the installed pump or as determined by the District.

**Production Fee** – a fee authorized under Texas Water Code Chapter 36 and required under Rule 4.4.

**Public Water System** – a system as defined in 30 Texas Administrative Code Chapter 290 for providing water for human consumption to the public.

**Pump Test** - a well test as described in District Rule 5.13.

**Pumping or Groundwater Production** – all water withdrawn from the ground, measured at the wellhead.

**Ornamental fountain** - a structure or excavation with an impermeable lining used primarily for aesthetic purposes containing water which is mechanically moved from one level to a higher elevation, either by being sprayed into the air or pumped to a higher level from which it flows or cascades to a lower elevation.

**Ornamental pond** - a structure or excavation with an impermeable lining used primarily for aesthetic purposes. It may contain fish and/or aquatic plants. Water may be re-circulated for filtration purposes but is not mechanically sprayed or moved to a higher elevation.

**Recharge**– the amount of water that infiltrates to the water table of an aquifer.

**Recovery Well** – a well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

**Region L Water Plan** – regional water plan under Texas Water Code Section 16.053, which is generated every five years by the regional planning group within which

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the District is located. The plan must be approved by the Texas Water Development Board.

**Regional Water Planning Areas** – areas established by the Texas Water Development Board under Texas Water Code Section 16.053. Planning groups in these areas generate regional water plans every five years as required by Texas Water Code Section 16.053.

**Replacement Well** – a well designed to replace a registered or permitted well that fulfills the requirements of Rule 3.4.H.

**Remediation Well** – a well used to pump or vent contaminated air, water, or fluids from the ground.

**Respondent** – an individual who receives a Notice of Violation or other correspondence from the District regarding the individual's non-compliance with District Rules or other law within the District's enforcement authority.

**Retail Water Utility or Retail Public Water Utility** – as defined by Texas Water Code Section 13.002 and 30 Texas Administrative Code Section 291.3, any person, corporation, public utility, water supply corporation, municipality, political subdivision or agency operating, maintaining, or controlling within the District facilities for providing potable water service for compensation.

**Rules** – standards and regulations promulgated by the District.

**Seal** – an official seal, tag, or label placed on a well or its equipment, or the act of placing the tag or label, to indicate that further pumping of groundwater, or operation of the well, or continuing with other District regulated activities is not permitted by the District, shall be in violation of District Rules, and may subject the well owner to civil suit and/or penalties.

**Sensitive recharge feature** - a permeable geologic or manmade feature where a potential for hydraulic interconnectedness between the surface and the Aquifer exists and rapid infiltration to the subsurface may occur. These features include but are not limited to closed depressions, sinkholes, caves, solution cavities, solution-enlarged fractures, swallet holes, faults, fractures, bedding plane surfaces, and reef deposits.

**Sinkhole** - a shallow, broad topographic depression formed in response to karst processes. Sinkholes are pragmatically defined as features greater than 6 feet in diameter having more than 6 inches of topographic relief. Smaller karst features can be described as solution cavities. Sinkholes are usually circular or funnel shaped and sometimes have exposed rimrock at the perimeter. It is common for

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sinkholes to have other karst openings (caves, solution cavities, or solution-enlarged fractures) in the floor. Sinkhole implies that processes including collapse, subsidence, and soil sapping over geologic time have caused the land surface to sink below the surrounding area.

**Solution Cavity** - a natural cavity or depression formed as a result of dissolution of limestone. This category is designed to capture features that are not large enough for a normal sized person to enter but appear to be part of a system of interconnected voids that connect the surface with the subsurface.

**Solution-enlarged fracture(s)** - fractures that show evidence of being locally enlarged by dissolution of limestone. Solution enlargement can be recognized by mismatched fracture surface shapes on measurable (larger than hairline) openings.

**Swallet or swallow hole** - a focused recharge feature in an intermittent drainage or stream in karst terrain. Some swallow holes have a surface expression, for example, a cave opening or formation of a whirlpool in the stream at high flow. The general case is that fine soil and sediment as well as gravel are deposited over the bedrock feature during falling stages of flow thereby intermittently or frequently obscure it.

~~**Single-Family Residence** – an equivalent single-family connection or ESFC. An ESFC is defined as equaling a typical detached single-family house using an average of 600 gallons of water per day.~~

**SOAH Contested Case Hearing** - a contested case hearing administered by the State Office of Administrative Hearings because of a request made under Texas Water Code 36.416(b).

**Special Provisions** – conditions or requirements added to a drilling or operating permit, which may be more or less restrictive than the Rules as a result of circumstances unique to a particular situation.

**Spring** – a point of natural discharge from an aquifer.

**State of Texas Plugging Report** – the report that a person who plugs a well is required to complete under 16 Texas Administrative Code Section 76.700(2).

**State of Texas Well Report** – the report that every well driller who drills, completes, deepens, or alters a well is required to complete under the Texas Department of Licensing and Regulation Rules as defined in 16 Texas Administrative Code Sections 76.10(45) and 76.700(1), which is also commonly referred to as the driller's log or well log.

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**State Office of Administrative Hearings (SOAH)** - the executive branch State agency with jurisdiction to hold contested case hearings for administrative agencies and for groundwater conservation districts as provided in Texas Water Code Chapter 36 and District Rule 8.6.

**Subdivision** – a tract or parcel of land for which a plat is required in accordance with Chapter 232 of the Texas Local Government Code.

**Substantial Alteration of a Well** – to change the physical or mechanical characteristics of a well, its equipment, production capabilities, or its purpose or location of use of the water produced in a way that may impact the level of fees the well is subject to or may impact whether an operating permit or amendment to an operating permit is required. This does not include repair of well equipment, well houses or enclosures, or replacement with comparable equipment.

**Surface Impoundment** – any excavation or manmade structure that impounds or stores groundwater and is open to the air allowing evaporation. A nonpermeable excavation or artificial structure that impounds less than 20,000 gallons of groundwater is not considered a surface impoundment.

**Temporary Permit** – see One-Time Authorization.

**Test Well** – a well drilled to explore for groundwater.

**Uncontested Matter or Uncontested Permit Application** - An application under District Rule 8.3 that is either decided by the District's General Manager or is referred to the Board of Directors for consideration under Rule 8.4, as defined in Rule 8.4.A.

**Variance** – an exception to requirements or provisions of the Rules granted by the District as authorized under District Rules.

**Waste** –

- (1) The withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes.
- (2) The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose.
- (3) The escape of groundwater from one groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater.

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- (4) The pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground.
- (5) Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26 "Water Quality Control".
- (6) Groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge.
- (7) Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste and unlawful to willfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

**Water Table** – the upper boundary of the saturated zone in an unconfined aquifer.

**Water Well** – a man-made excavation constructed to explore for or produce groundwater. The term does not include:

- (1) a test or blast hole in a quarry or mine or a well or excavation constructed to explore for or produce oil, gas, or other minerals unless the hole is also used to produce groundwater; or
- (2) an injection water source well associated with oil and gas activities that penetrates the base of usable quality water regulated under Section 91.101, Natural Resources Code.

**Well** – an excavation drilled or dug into the ground that may intercept or penetrate a water-bearing stratum or formation.

**Well Log or State of Texas Well Report** – the report that every well driller who drills, deepens, or alters a well is required to complete under the Texas Department of Licensing and Regulation Rules, as defined in 16 Texas Administrative Code Sections 76.10 and 76.700, including any special purpose geophysical log that may be available for any given well, such as a gamma ray log, a temperature log, an electric log, or a caliper log.

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**Well Operator** – a person who has the right to produce or use groundwater, but who does not own the well.

**Well Owner** – a person who has the right to drill a well and to produce or use groundwater and who owns the well once drilled.

**Well Pumps and Equipment** – devices and materials used to obtain water from a well, including the seals and safeguards necessary to protect the water from contamination.

**Well Registration** – the creation of a record of a well, under Rule 3, for purposes of registering the well as to its geographic location and for notification to the well owner in cases of spills or accidents, data collection, record keeping, or future planning purposes. First step in the process required by Rule 3 for drilling or operating a well located within the District.

**Withdraw or Withdrawal** – the act of extracting groundwater by pumping or any other method, other than the discharge of natural springs.

*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 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. 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. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021.*

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### Rule 3 Well Registration, Drilling Permits, and Operating Permits

#### **Rule 3.0 Registration and Permitting**

- 3.0.A.** All wells located within the District except environmental sampling wells, environmental monitoring wells, environmental soil borings, geotechnical wells, and geologic exploration wells, shall be registered with the District. Based on the registration information, certain well owners shall be required to obtain operating permits.
- 3.0.B.** All registrations and permits issued by the District shall be subject to the District's Rules and to terms and conditions regarding the drilling, equipping, completion, or alteration of wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practical the drawdown of the water table or the reduction of artesian pressure, or lessen interference between wells.
- 3.0.C.** The District reserves the authority, to the extent allowed by law, to adopt, revise, and supersede its Rules applicable to wells subject to registration and permitting. Registration of a well, issuance of a drilling permit, operating permit, or permit to substantially alter a well does not limit the District's authority to regulate a well or the production of water from a well.
- 3.0.D.** The District may conduct well and well site inspections during the registration, application, drilling, or completion process to confirm well location, status, production capability, measure water levels, take water samples, or conduct other appropriate well-related investigations and inspection activities deemed necessary by the District. All well and well site access shall be conducted in accordance with Rule 5.10.
- 3.0.E.** The District makes no representations and shall have no responsibility with respect to the availability or quality of water.

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

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### **Rule 3.1 Existing Wells**

Any well in the District that was drilled and properly completed on or before May 17, 2005, is an existing well under these Rules. All existing wells are required to either register with the District under Rule 3.1.A. or obtain an operating permit from the District under Rule 3.1.B. A failure to take these steps may result in issuance of a notice of violation and assessment of a penalty under Rule 7.2. If an existing well is substantially altered, as defined by District Rules, after May 17, 2005, it becomes subject to the requirements of the District Rules applicable to new wells. Wells that were registered prior to May 17, 2005 with Kendall County are considered registered with the District.

*Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

#### **3.1.A. Registration for Existing Well**

The owner or agent of an existing well located within the District shall register the well with the District. Forms for registering existing wells are available from the District Office. The owner shall provide all information required on the form and a copy of the completed State of Texas Well Report. This information shall include, but is not limited to:

- (1) The name of the well owner, mailing address, and telephone number;
- (2) A location map or property plat drawn on a scale that adequately details the well site, provides the latitude and longitude (WGS 84) of the well head, the property lines, the location of other existing wells on the subject tract, the location of the existing use(s), the location of any existing or proposed on-site wastewater system, and the location of any other potential source of contamination within 100 feet of the existing well;
- (3) Casing size, well depth, pump size, and production capability;
- (4) What the well is used for; and
- (5) If it is a water well, the information shall include what water from the well is used for and where water from the well is used.

No application fee under Rule 4.1. shall be charged for registering an existing well. The District shall issue a well number.

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The District shall determine under Rule 3.5. whether the existing well must obtain an operating permit, and whether it is currently operational, abandoned, or plugged. No further approval is required of existing wells, except as may be required by Rule 3.4. regarding changes in ownership or well conditions or operations. Changes in well conditions or operations or purpose of use of water from the well, may make the well subject to production limits under Rule 10. Increases in the production capability may require an operating permit.

### 3.1.B Operating Permit for Existing Well

**All existing water wells in the District shall apply for an operating permit, except the following, which shall only require a registration:**

- (1) domestic and livestock groundwater wells in the District that are either drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons of groundwater per day;
- (2) the drilling of 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 well is located on the same lease or field associated with the drilling rig; or
- (3) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities.

The owner or agent shall submit to the District an operating permit application on a form obtained from the District. All operating permit applications shall be signed and sworn to as required by Texas Water Code Section 36.113(b). In addition to the information required under Rule 3.1.A., the owner shall provide other information such as a water conservation plan and a drought contingency plan, and any other information deemed necessary by the District. No application shall be deemed administratively complete if the applicant has unpaid fees or has unresolved compliance issues with the District. No application fee under Rule 4.1. shall be charged for issuing an operating permit for an existing well.

If the application seeks less than 131,400 gallons per year, once the application is deemed administratively complete, the General Manager will either deny the application or determine the production amount under Rule 10 and issue the permit. Per Rule 8.3, the application will be referred to the

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Board for a public hearing if the General Manager denies the application or if requested by the applicant.

If the application seeks 131,400 gallons per year or more, once the application is deemed administratively complete, the District will determine the production amount under Rule 10. The application will be processed per Rule 8.3.

An operating permit shall require installation of a meter, specify and authorize the annual maximum groundwater production from the well as provided by Rule 10, the owner of the well, the well number, the purpose of use permitted, and any special permit conditions, including the production fee, if required under Rule 4.4. All meters must be registered with the District under Rule 5.11.

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### **Rule 3.2 New Wells – Registration of Exempt Wells**

#### **3.2.A. Exempt Water Wells**

- (1) The operating permit requirements in Section 3.3 do NOT apply to the following new water wells, however Rule 6 spacing rules do apply to all wells, except wells registered under (c) below:
  - (a) domestic and livestock or poultry groundwater wells in the District that are:
    - (1) located on a tract of land 6 acres or larger or meet 6-acre density, both specified under Rule 10.4; and
    - (2) either drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons of groundwater per day, which is 17.36 gallons per minute;
  - (b) the drilling of 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 well is located on the same lease or field associated with the drilling rig; or
  - (c) the drilling of a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining activities.

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- (2) The District may require a well to be permitted by the District and to comply with all District rules if:
- (a) a groundwater well exempted under Subsection (a)(1) is altered to be capable of producing more than 25,000 gallons of groundwater per day or 17.36 gallons per minute;
  - (b) the purpose of a well exempted under Subsection (a)(2) is no longer 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; or
  - (c) the withdrawals from a well exempted under Subsection (a)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

### **3.2.B. All exempt water wells, under Rule 3.2A, shall be registered with the District.**

- (1) **All exempt wells, whether new or existing, shall be registered with the District by the well owner or operator on a form(s) prescribed by the General Manager as an application for a Registration.** After review and determination by the General Manager that the well is exempt, the owner or operator shall be issued a Certificate of Registration. A fee may be charged for the registration of exempt wells.
- (2) **New exempt wells shall obtain a Certificate of Registration from the District prior to the well being drilled.** The applicant and/or the well driller violate the District's Rules and Chapter 36, Texas Water Code, by drilling or causing to be drilled, a well(s) without prior authorization from the District;
- (3) Exempt wells that are not registered with the District shall be subject to District enforcement for violation of District Rules.
- (4) Exempt wells that do not have a Registration shall not be protected by the District.

**3.2.C.** Forms for registering new wells are available from the District Office. The owner of an existing well that will be substantially altered shall seek authorization from the District, as required by Rule 3.4, prior to altering the well.

**3.2.D.** The owner shall provide all information required on the registration form. This information shall include, but is not limited to the information below and what may be required in Rule 3.3.A:

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- (1) The name of the well owner, mailing address, and telephone number;
- (2) The proposed well location, including a location map or property plat drawn on a scale that adequately details the well site, the property lines, the location of other existing wells, any existing or proposed wastewater systems, and other known potential sources of contamination within 300 feet of the proposed well showing compliance with Rule 6 spacing requirements. This map or plat shall provide adequate detail to allow the District to determine compliance with Rule 10.4, if applicable.
- (3) Certification that the well is not located within 50 feet of or within the service area of a retail public water utility or community water system;
- (4) If the well is to be located within 50 feet of or within the service area of a retail public water utility or community water system, a document from the retail public water utility or community water system stating that it is unable or unwilling to provide service or that it has no objection to the location of the proposed well;
- (5) Casing size, well depth, pump size, and production capability;
- (6) What the well will be used for; and
- (7) If it is a water well, the information shall include what water from the well will be used for and where water from the well will be used. It shall also include a demonstration of beneficial use without waste.

**3.2.E.** The District shall issue a well number for the registered exempt well.

**3.2.F.** If the District determines that the information is complete, that the application fee has been paid, that location of the proposed well complies with Rule 6 spacing requirements, and Rule 10.4, if applicable, that no operating permit under Rule 3.3. is required, and that the registrant is in compliance with all District Rules and all required fees have been paid, the District shall issue a registration.

**3.2.G.** If no operating permit under Rule 3.3 is required, upon issuance of the registration, the owner may drill the well. A copy of the Registration shall be on-site while the well is being drilled. The issuance of a registration is not a guaranty of the availability of groundwater. The well shall comply with

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all State and District well construction and spacing requirements. The owner shall ensure that the driller files a copy of the State of Texas Well Report with the District within 60 days of well completion. Although no further approval is required, except as may be required by Rule 3.4. regarding changes in ownership or well conditions or operations, all new wells are subject to the production limits imposed by Rule 10. Increases in the production capability or purpose of use may result in the well being reclassified so that the well owner would be required to apply for an operating permit and be subject to annual production fees under Rule 4.4.

- 3.2.H.** Drilling shall begin within one year of approval of a registration. At that time, if no drilling has begun, the registration expires. The application fee in non-refundable. After expiration of a registration, an owner shall submit a new registration application, accompanied by the appropriate application fee prior to drilling the well. The District may grant a one-time extension of no more than 180 days upon written request to the District.

*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 September 5, 2006 by Board Order 2006-025; effective September 5, 2006. Amended August 20, 2007 by Board Order 2007029; effective August 23, 2007. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. 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 November 8, 2021 by Board Order 2021-005; effective November 8, 2021.*

### **Rule 3.3 New Wells – Operating Permit for Non-Exempt Well**

- (1) **No person, including a well owner or well driller, shall construct or drill a well without first obtaining an operating permit from the District, unless the well is exempt under Rule 3.2.A.** An application for an operating permit must be completed in accordance with Rule 3.3.
- (2) **All new and existing wells shall be permitted by the District, unless the well is exempt under Rule 3.2.A** The permit shall be applied for by the well owner or operator on a form(s) prescribed by the General Manager as an application for an Operating Permit.
- (3) No person shall modify or alter an existing well or alter the size of a pump without an operating permit or permit amendment, unless the well is exempt under Rule **3.2.A.**
- (4) all permitted wells must comply with District Rules.

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### 3.3.A. Application

***An application for an operating permit shall be submitted on a form obtained from the District and shall be signed and sworn to by the well owner as required by Texas Water Code Section 36.113(b). The operating permit application must be granted by the District prior to the drilling of a water well and proposed production of water, all in accordance with the provisions of District Rules.***

A separate application is required for each well. Each application shall include the following:

- (1) Name, address, phone number, and facsimile number of the well owner or owners;
- (2) Name, address, phone number, and facsimile number of the person submitting the permit application;
- (3) Name of the proposed project, if any;
- (4) Any previous or other name(s) that identifies the tract of land;
- (5) Location and legal property description of the proposed project, including the location of the well(s), with physical address or description and GPS coordinates. The District may access the well location and take GPS coordinates and photographs;
- (6) the applicant must provide evidence that they have the legal authority to produce the groundwater associated with the land surface and the permit application. The applicant must also provide any documents that transfers that right to own, control, or produce the groundwater rights to another person/entity that are associated with the land surface and the permit application. A permit may be amended or revoked if the groundwater rights or right to produce are legally transferred to another person/entity. The applicant shall attest to the information required in this rule by a District-provided affidavit form and submit the affidavit with the permit application;  
  
a notarized original of any legal document affecting the legal authority to produce groundwater on real property in Kendall County is required to be filed with the Kendall County Deed Records;
- ~~(6)~~(7) if the applicant is not the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;

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- ~~(7)~~(8) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose and any evidence supporting the authenticity of the intended beneficial use, including but not limited to a detailed water balance for the permitted water that describes the flow of water in and out of the system and identifies water loss;
- ~~(8)~~(9) identify the well owner's/operator's total number of acres of land and/or water rights contiguous in ownership with the land where the well is to be located, as required by Rule 10.2;
- ~~(9)~~(10) state the anticipated time within which the proposed construction or alteration is to begin;
- ~~(10)~~(11) provide information showing the anticipated effect of the proposed production on the quantity and quality of water available for future use both inside and outside the District, including but not limited to any studies performed related to the proposed well or general well site within the last five years;
- ~~(11)~~(12) the District may require a report by a registered professional in hydrogeology be submitted with operating permit applications or amendments to evaluate the projected effect of the proposed withdrawal on the aquifer or any other aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users in the District. The District may also require a well demonstration or test well and/or monitoring well;
- ~~(12)~~(13) if the water is to be resold, provide a description of:
- (A) the service area, the metering and leak detection and repair program,
  - (B) the drought or emergency water management plan, and
  - (C) information on each customer's water demands, including population and customer data, water use data, water supply system data, wastewater data, water conservation measures and goals, and the means for implementation and enforcement;
- ~~(13)~~(14) identify well(s) producing from the same formation on land adjacent to the property where the well is located and where the proposed well is to be located;
- ~~(14)~~(15) describe the location and use of existing wells on the property where the well is located or where the proposed well is to be located;
- ~~(15)~~(16) state the depth of the water-bearing formation which the applicant proposes to utilize for the well;

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~~(16)~~(17) the application may be required to be accompanied by a map or plat drawn on a scale that adequately details the proposed project, showing:

- (A) the location of the existing or proposed well(s);
- (B) the location of the existing or proposed production monitoring device(s);
- (C) the location of the existing or proposed water use facilities; and
- (D) the location of the proposed or increased use or uses;

~~(17)~~(18) the permit application must be accompanied by an application fee;

~~(18)~~(19) a well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the applicable authorities, including the District;

~~(19)~~(20) the identity of the well driller, including the well driller's license number;

~~(20)~~(21) The permit and registration application may also require additional information, including but not limited to: a physical address of the well site location, a legal description of the property (plat or survey); a site map that shows the location and distance of the proposed well to existing wells, property lines, septic tank, drain field, structures, neighboring septic systems if located closer than 150 feet and any other sources of contamination within 50 feet; and a copy of the warranty deed, a construction diagram for well construction and/or plugging, pump specifications (including type, horsepower, and pump curve);

~~(21)~~(22) The District shall determine whether the application, maps, and other materials comply with the requirements of this rule. If the application does not comply with the requirements of these rules it shall be deemed administratively incomplete and returned to the applicant;

~~(22)~~(23) A copy of the well registration, if applicable;

~~(23)~~—The maximum well pumping capacity denoted in gallons per minute, as well as the annual maximum production requested ~~(in gallons per year or acre-foot per year,)~~ that which will be used for the specified beneficial purpose ~~and a demonstration of compliance with Rules~~

~~(24)~~ 10.3 and 10.4, if applicable;

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For permits issued after \_\_\_\_\_, 2022, the maximum well pumping capacity denoted in gallons per minute does not mean that the well is authorized by the District to pump that maximum capacity. The authorized amount of water to be produced annually by a permittee is not tied to the pump size. The authorized withdrawal amount of groundwater is stated in each well permit as the rate of production, which authorizes a maximum gpm production, not to exceed a specified number of acre-feet of groundwater production each year.

- ~~(24)~~(25) A water conservation plan;
- ~~(25)~~(26) A drought contingency plan;
- ~~(26)~~(27) A demonstration that the purpose of use and production amount are consistent with the District Management Plan;
- ~~(27)~~(28) A demonstration of other sources of water available for the requested production amount and use;
- ~~(28)~~(29) A pump test as described in Rule 5.13, unless waived by the District;
- ~~(29)~~(30) Any other information deemed necessary by the District to comply with the requirements of Texas Water Code Chapter 36 and address specific District needs; and
- ~~(30)~~(31) Application fee required by Rule 4.1.A(2).

### 3.3.B. Administrative Completeness of Application

In order to adequately address the purposes and requirements of Texas Water Code Chapter 36 and District Rules, the District may require further clarification or additional documentation from the applicant. The applicant shall be notified when the application has been reviewed and deemed administratively complete. No application shall be deemed administratively complete if the applicant has unpaid fees or has unresolved compliance issues with the District. If an application remains administratively incomplete for more than 180 days following either the original application date or the date that the District notified the applicant of the need to submit additional clarification or documentation, the application shall expire.

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### 3.3.C. Consideration of Operating Permit Applications

The District shall promptly act on each administratively complete application for an operating permit. An application seeking less than 131,400 gallons per year may be acted on by the General Manager. Within 60 days after the date an operating permit application or application to substantially alter a well is determined to be administratively complete, the application shall either be acted on by the General Manager or referred to the Board in accordance with the provisions of Rule 8.3.

The District shall be guided by these Rules and Chapter 36, Texas Water Code in consideration of each application. The District shall consider the following, which include the considerations required by Texas Water Code Section 36.113(d):

- (1) Does the application conform to the requirements of Chapter 36 and these Rules?
- (2) Is the well located within 50 feet or within the service area of a retail public water utility or community water system? If so, has the applicant shown that the utility or community water system is unable or unwilling to provide water service or that it has no objection to the location of the well?

~~(3) Has the applicant demonstrated compliance with Rules 10.3 and 10.4, if applicable?~~

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~~(4)~~(3) Has the applicant considered other sources of water available for the requested use and production amount?

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~~(5)~~(4) Does the proposed use of water unreasonably affect existing groundwater and surface water resources or existing permit holders?

~~(6)~~(5) Has the applicant demonstrated that the proposed well will be for beneficial use without waste?

~~(7)~~(6) Are the proposed use of water and production amount consistent with the District's approved District Management Plan?

~~(8)~~(7) Has the applicant agreed to avoid waste and achieve water conservation?

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- ~~(9)~~(8) Will the conditions and limitations in the permit prevent waste, achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, or lessen interference between wells?
- ~~(10)~~(9) Does the application include an acceptable drought contingency plan?
- ~~(11)~~(10) Does the application include an acceptable water conservation plan?
- ~~(12)~~(11) Has the applicant agreed to use reasonable diligence to protect groundwater quality?
- ~~(13)~~(12) Has the applicant agreed to follow the District's rules on well plugging at the time of well closure?"
- ~~(14)~~(13) Are the applicant and the well in compliance with all District rules and have all required fees been paid?
- ~~(15)~~(14) Is the proposed use of water from the well wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape?
- ~~(16)~~(15) This section does not apply to the renewal of an operating permit issued under §36.1145.
- D.** An operating permit shall require installation of a meter, and specify and authorize the annual maximum groundwater production from the well as provided by Rule 10. All meters must be registered with the District under Rule 5.11.
- E.** The issuance or amendment of an operating permit is not a guaranty of the availability of groundwater.
- F.** The District shall issue a well number for the permitted well.
- G.** Drilling shall begin within one year of approval of an operating permit. At that time, if no drilling has begun, the operating permit expires. The application fee is non-refundable. After expiration of an operating permit, an owner shall submit a new operating permit application accompanied by the appropriate application fee prior to drilling the well. The District may

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grant a one-time extension of no more than 180 days upon written request to the District.

*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 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Renumbered 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 3.4 Change in Well Conditions or Operations, and Permit Renewal, Amendment, and Revocation**

#### **3.4.A Change in Well Conditions or Operations**

- (1) No person shall take any of the following actions related to a well located in the District without notifying and receiving authorization from the District:
  - (a) change the type of use of a well;
  - (b) change the place of use of the water produced from the well;
  - (c) alter the size or depth of a well, the well pump, or its pumping volume;
  - (d) plug a well; or
  - (e) change the status of a well from active to non-active.
- (2) Changes may be processed administratively, may require an amendment to an existing operating permit, may make an exempt well be required to obtain an operating permit, and may make a well subject to the production limits of Rule 10.
- (3) Changes that affect compliance with spacing requirements of Rule 6 will be denied unless a Variance is obtained under Rule 7.
- (4) No pump installer or water well driller shall make changes to a well if the owner or agent has not applied for and obtained the appropriate authorization under this Rule.

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### **3.4.B. Change in Use That Requires a Well to Have an Operating Permit**

- (1) If the production of groundwater from a well or the capability to produce groundwater from a well increases to more than 25,000 gpd (17.36 gpm), an operating permit shall be required.
- (2) It is the responsibility of the owner of such a well to apply for an operating permit no later than 90 days prior to making the changes that render such well subject to this Rule.
- (3) A change in use from domestic or livestock to any other purpose or use, regardless of production capability, shall likewise require the owner to obtain an operating permit.
- (4) No pump installer or water well driller shall make changes to a well if the owner or agent has not applied for and obtained the appropriate authorization under this Rule.

### **3.4.C. Change in Ownership**

- (1) Any change in ownership of a well shall be reported to the District by the purchaser on an approved form within 60 days after the change.
- (2) Both the seller and the purchaser shall sign the change in ownership form.
- (3) If there are unpaid production fees at the time of transfer, the new owner shall become responsible for payment of such fees.
- (4) For wells with an operating permit, failure to timely notify the District may result in the permit being revoked under Rule 3.4.G.
- (5) Change in ownership is considered a minor amendment.

### **3.4.D. Operating Permit Term**

- (1) Operating permits issued by the District are valid for a period of five (5) years from the effective date, unless otherwise specified by the District as a special permit condition.
- (2) Such a special permit condition may include the need for additional data regarding the impact of the well on the aquifer or surrounding wells.

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- (3) The District reserves the authority to adopt, revise, and supersede rules applicable to wells subject to an operating permit.

### 3.4.E. Renewal of Operating Permits

- (1) An application for renewal of an operating permit shall be submitted no later than 90 days prior to the expiration date of the operating permit and shall be accompanied by the appropriate application fee under Rule 4.1. The renewal application may require that the applicant identify the amount of water loss in the well system and permitted use. If an application to renew a permit is not received during this time, the permit may lapse and the well owner may be subject to penalty if the well is operated without a valid permit. Once the permit has lapsed, the landowner or well owner may have to apply for a new operating permit.
- (2) Decision on Renewal Application—
  - (a) Except as provided by Subsection (ii), the District, by its General Manager, shall without a hearing renew or approve an application to renew an operating permit before the date on which the permit expires, provided that:
    - i the application is submitted in a timely manner and accompanied by any required fees in accordance with District rules; and
    - ii the permit holder is not requesting a change related to the renewal that would require a permit amendment under District rules.
  - (b) The District is not required to renew a permit under this section if the applicant:
    - i is delinquent in paying a fee required by the District;
    - ii is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; or
    - iii has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or rule.

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- (c) If the District is not required to renew a permit under Subsection (b)(ii), the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.
- (d)
  - (i) If the holder of an operating permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District rules, the permit as it existed before the permit amendment process remains in effect until the later of:
    - ii. the conclusion of the permit amendment or renewal process, as applicable; or
    - iii. final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.
- (e) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under Section 36.1145 without penalty, unless Subsection (b) of that section applies to the applicant.
- (f) The District may initiate an amendment to an operating permit, in connection with the renewal of a permit or otherwise, in accordance with the District's rules. If the District initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

### **3.4.F. Well Changes Requiring an Operating Permit Amendment**

- (1) An amendment to an operating permit is required for any change to the operation, use, or condition of a non-exempt well, including changing the production limit, the type of use of the well, the place of use of the water produced from the well, the size or depth of a well, a well pump, or its pumping volume.
- (2) Amendments are characterized as major or minor according to the requirements of this Rule 3.4.F. Such characterization will determine the process involved for consideration and approval of an amendment.

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- (3) Major Amendment
  - (a) A major amendment to an operating permit is required to increase the annual production limit, to change the type of use or to change the location of withdrawal.
  - (b) An application for a major amendment shall be submitted at least 90 days prior to the date the change is to take place, on a form obtained from the District and accompanied by the appropriate application fee under Rule 4.
  - (c) The District shall notify the applicant when the application has been reviewed and deemed administratively complete. No major amendment application shall be deemed administratively complete if the applicant has unpaid fees or has unresolved compliance issues with the District.
  - (d) Within 60 days after the date a major amendment application is determined to be administratively complete, the application shall be referred to the Board in accordance with the provisions of Rule 8.3.
  - (e) The application for a major amendment shall be considered as provided in Rule 3.3.C.
  - (f) No pump installer or water well driller shall make changes to a well if the owner has not applied for and obtained the appropriate authorization under this Rule.
- (4) Minor Amendment
  - (a) A minor amendment to an operating permit a change in the ownership of the well; the size or depth of a well, well pump, or the well's pumping volume that does not increase the authorized annual production amount or the annual production capability of the well; or a change in the approved conservation and drought contingency plan.
  - (b) An application for a minor amendment, on a form obtained from the District, must be submitted at least 30 days prior to the date the change is to take place. A minor amendment application fee must also be submitted, if one has been established under Rule 4.

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- (c) The General Manager may process and approve a minor amendment.
- (d) No pump installer or water well driller shall make changes to a well if the well owner has not applied for and obtained the appropriate authorization under this Rule.

### **3.4.G. Operating Permit Involuntary Amendment or Revocation**

- (1) Operating permits are subject to involuntary amendment or revocation if a change in State law or District Rules requires such action; for violation of District Rules; violation of the permit, including special permit conditions; violation of the provisions of Texas Water Code Chapter 36; waste of groundwater; nonpayment of production fees; or other actions that the District determines to be detrimental to the groundwater resources within the District, including noncompliance with the District's conservation plan or drought contingency plan.
- (2) If an involuntary amendment or revocation is the result of an enforcement action under District Rule 7 and the respondent permit holder requests a hearing, it shall be referred to the Board for action under District Rule 8.7.
- (3) If an involuntary amendment or revocation is not the result of an enforcement action under District Rule 7 and the permit holder requests a hearing, it shall be referred to the Board for action under District Rule 8.4.

### **3.4.H. Replacing a Well**

- (1) In order to qualify as a replacement well, the well that is being replaced must be properly registered or have an operating permit and be in compliance with District Rules.
- (2) The replacement well must be no nearer to adjoining property lines than the well it is replacing, unless the replacement well is an exempt well and the owner of the replacement Well complies with Rule 6.
- (3) The replacement well shall not have the capability of producing more water than the original capacity of the well it is replacing, unless the replacement well is an exempt well and the owner of the replacement well complies with Rule 6.

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- (4) Prior to drilling a replacement well, the well owner must submit a replacement well form to the District. If the General Manager determines that the well is a replacement well as described in this Rule 3.4.H, the District will make changes in the approved registration and operating permit, if any, authorizing drilling and operation of the replacement well.
- (5) In case of emergency with the potential to affect human or livestock health or safety, a replacement well may be drilled and the required replacement well form must be submitted within 2 business days.
- (6) A well that has been replaced under this Rule 3.4.H must be plugged within 30 days.
- (7) The drilling and completion standards in effect at the time of drilling the replacement well shall apply to the replacement well.

*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 20, 2007 by Board Order 2007-029; effective August 23, 2007. 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. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021.*

### **Rule 3.5 Wells Subject to Operating Permits**

- 3.5.A.** All water wells located within the District, having the capacity to produce more than 25,000 gallons per day (17.36 gallons per minute) shall be required to obtain an operating permit under Rules 3.1.B. or 3.3. and pay a production fee under Rule 4.4.
- 3.5.B.** All water wells located within the District incapable of producing more than 25,000 gallons per day (17.36 gallons per minute), except such wells used for domestic or livestock purposes as defined in Rule 2, shall be required to obtain an operating permit under Rules 3.1.B. or 3.3. Such wells are not required to pay a production fee under Rule 4.4.
- 3.5.C.** A well may be issued a temporary or one-time authorization for the limited purpose, production volume, and duration specified in the authorization. Such authorization is limited solely to the terms specified in the authorization and does not create a right to produce water from the well in the future. Such authorization shall be obtained under Rules 3.1.B. or 3.3 and shall pay a production fee under Rule 4.4.

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*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008.*

### **Rule 4 Fees**

#### **Rule 4.1 Application Fee**

**4.1.A.** An application fee shall be paid to the District when submitting a new well registration/drilling permit application under Rule 3.2; a new well application for an operating permit under Rule 3.3; an application to renew an operating permit under Rule 3.4.E; or an application to amend an operating permit under Rule 3.4.F. In this Rule 4.1, references to "application" cover the aforementioned submittals. The application fee shall be adopted by the Board and will be posted on the District website.

**4.1.B.** An application fee required by Rule 4.1.A. is a non-refundable minimum and no portion of the fee shall be returned to the applicant. The application fee is charged each time an application as described in Rule 4.1.A. is submitted. The District may assess an additional fee if the District incurs non-routine expenses relating to the investigation of the application, a protest to the application requiring a hearing, or recurring inspections caused by the applicant or the applicant's agent failing to comply with District Rules and requirements. Such an additional fee shall be paid before the District will deem the application administratively complete.

**4.1.C.** The amount of the application fee assessed under Rule 4.1.A. is based on the information provided in the application. If the District later determines that the information was incorrect and a higher application fee should have been paid, all work on the well or production of groundwater from the well shall cease until the higher fee, plus a late payment, is paid.

*Adopted June 1, 2004 by Board Order; effective June 1, 2004. Amended May 17, 2005 by Board Order; effective May 17, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended December 10, 2012 by Board Order 2012-008; effective December 12, 2012.*

#### **Rule 4.2 Contested Case Hearing Fees**

**4.2.A.** The parties to a contested case hearing will be required to pay the hearing facility rental fees, and other expenses associated with the hearing. The parties shall deposit with the District reasonable fees determined by the District to cover these costs. The minimum total deposit shall be assessed against one or more parties. Any of the deposit that is not used by the

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District for this purpose, shall be refunded after the final action is taken on the permit application.

- 4.2.B.** If a request under District Rule 8.4.I includes a request that the contested case hearing be heard by the State Office of Administrative Hearings, as authorized by District Rule 8.6 and Texas Water Code 36.416, the party requesting the hearing before SOAH shall pay all costs associated with the SOAH contract for the hearing. Such party shall deposit with the District the District's estimate of an amount sufficient to pay the contract amount.
- 4.2.C.** At any time during a contested case hearing that it becomes apparent to the District that the deposits required under an order or resolution under District Rule 8.4.J(2) are not sufficient to cover the expenses or costs under Rules 4.2.A and 4.2.B, the District may issue an order or resolution assessing additional deposits.
- 4.2.D.** All deposits required under this Rule 4.2 must be received by the District within 10 days of issuance of the order or resolution assessing such deposits. The District shall consider the request for contested case hearing to be withdrawn if a deposit is not timely received and shall take appropriate action based on such withdrawal.
- 4.2.E.** At the conclusion of the contested case hearing, the District shall refund any excess deposit to the paying party.

*Adopted September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended December 10, 2012 by Board Order 2012-008; effective December 12, 2012.*

### **Rule 4.3 Annual Well Fee**

*Repealed November 8, 2021 by Board Order 2021-005; effective November 8, 2021.*

### **Rule 4.4 Production Fee**

#### **4.4.A Wells Subject to a Production Fee**

All wells that are required by Rule 3.5.A. to obtain an operating permit shall pay a production fee under this Rule 4.4. Wells required by Rule 3.5.B. to obtain an operating permit are exempt from this fee.

#### **4.4.B Amount of Production Fees**

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- (1) Groundwater used for agricultural purposes, as defined in District Rule 2: \$1 per acre-foot per year (\$0.0030689 per thousand gallons).
- (2) Groundwater used for all other purposes: \$10 per acre-foot per year (\$0.030689 per thousand gallons).

### 4.4.C. How Production Fees Are Calculated

Production fees are calculated based on the amount of water the operating permit authorizes the well to produce on an annual basis. One fourth of this amount shall be paid each quarter, as follows. On January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup>, and October 15<sup>th</sup> of each year, the owner shall submit payment to the District of twenty-five percent of the annual production fee, or as stipulated in the operating permit. If requested by the Permittee, annual production fees of less than \$10.00 per year can be paid upon permit renewal rather than annually.

*Adopted October 7, 2003 by Board Order; effective October 7, 2003. Amended May 17, 2005 by Board Order; effective May 17, 2005. Renumbered September 12, 2005 by Board Order 2005007; effective September 14, 2005. Amended September 5, 2006 by Board Order 2006-025; effective September 5, 2006. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010.*

### Rule 4.5 Administrative Fees

Administrative fees shall be adopted by the Board and will be posted on the District website.

*Adopted October 7, 2003 by Board Order; effective October 7, 2003. Amended May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended September 5, 2006 by Board Order 2006-025; effective September 5, 2006. 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.*

## Rule 5 Well Construction, Completion, and Technical Standards

### Rule 5.1 Preamble

The following well construction and completion standards are required in order to provide for the health and safety of individuals and communities utilizing groundwater within the District, to prevent the unintentional contamination of potable groundwater resources, and to ensure the long-term quality of potable water supplies within the boundaries of the District.

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A copy of the drilling permit (authorization to construct) must be on-site while the well is being constructed, a pump is being installed, or the well or pump is being re-worked or modified. The owner or agent, water well driller, and pump installer are equally responsible for compliance with this requirement.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended December 10, 2012 by Board Order 2012-008, effective December 12, 2012.*

### **Rule 5.2     **Applicability****

Construction of all wells and installation of all pumps located within the District shall be in accordance with the Texas Occupations Code Chapter 1901, "Water Well Drillers" and Chapter 1902, "Water Well Pump Installers," as amended, and the Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code ("TAC"), Chapter 76, as amended. In addition, all wells and pumps must comply with the additional requirements of Rule 5.4, unless exempted from the Rule 5.4 requirements.

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

### **Rule 5.3     **Exemptions****

**5.3.A.** The following wells are exempt from the Rule 5.4 requirements: environmental sampling wells, environmental monitoring wells, geotechnical wells, and geologic exploration wells.

**5.3.B.** Geothermal wells are exempt from the Rule 5.4 and 6.4.B. requirements, but shall comply with Rule 5.2 and 5.12.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. Amended August 9, 2010 by Board Order 2010016; effective August 12, 2010.*

### **Rule 5.4 Additional Well Construction and Completion Standards**

**5.4.A.** All wells and pumps shall comply with these additional standards unless exempted under Rule 5.3.

**5.4.B.** The District shall be notified at least 24 hours prior to commencing any well drilling, deepening, clean out, recompletion operation, or grouting.

**5.4.C.** The borehole shall be a minimum of three inches (3") larger in diameter than the outside diameter of the casing to be used. The casing shall extend

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from at least twenty-four (24") above land surface to twenty feet (20') into the hydrologic unit that is to be utilized as a water source.

- 5.4.D.** All water wells shall be pressure grouted with the annular space outside the casing filled with grout and extending twenty (20) feet into the hydraulic unit open to the well.
- 5.4.E.** Cement grout/slurry shall consist of neat cement with up to six (6) percent bentonite gel additive by weight or cement with sand added with the weight ratio between cement and sand being no less than one (1) part cement to three (3) parts sand. The District may require a sample of the cement grout/slurry.
- 5.4.F.** When pressure sealing the annular space with cement grout/slurry, the end of the tremie pipe shall be set within twenty (20) feet of the grouting point. Cement grout/slurry shall be placed in successive lifts of appropriate depths so as not to collapse the casing. Each lift shall be allowed to cure prior to beginning the next lift. An adequate number of lifts shall be placed until the slurry reaches land surface.
- 5.4.G.** When sealing the annular space with bentonite, bentonite slurry may be utilized except at the grouting point. At a minimum, a cement grout/slurry plug of fifty (50) feet shall be set in the annular space at the bottom of the casing on top of the packer or on top of the gravel pack if the well is constructed with gravel packed screen intervals. Sealing of the annular space shall begin within twenty (20) feet of the bottom of the casing, top of the packer, or top of the gravel pack. Bentonite slurry shall be placed in successive lifts to ensure proper hydration. Successive lifts shall be placed until the top of the bentonite seal reaches no less than twenty (20) feet from the land surface. The annular space from the top of the bentonite seal to the land surface shall be filled with cement grout/slurry or concrete slurry.
- 5.4.H.** Bentonite grout shall not be used to fill the annular space of a new non-exempt well that requires an operating permit under Rule 3.5.
- 5.4.I.** The casing shall extend at least twenty-four inches (24") above land surface at a site not within the 1 percent annual chance flood area, as determined from Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA).
- 5.4.J.** If a well is placed within the 1 percent annual chance flood area, it shall be completed with a watertight sanitary well seal and steel casing sleeve extending a minimum of thirty-six inches (36") above the 1 percent annual chance flood level and thirty-six inches (36") below ground level. The well

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owner shall provide a certificate, signed and sealed by a Registered Professional Land Surveyor, or Professional Engineer, which indicates the base flood elevation as indicated on the FEMA map, along with the elevation of the top of the casing. Alternatively, for property without a suitable well site out of the 1-percent annual chance flood area, a steel sleeve extending thirty-six (36") inches above ground surface and thirty-six (36") inches below ground surface with an annulus of four (4") inches larger than the sleeve and utilizing a pitless adapter placed at least three (3") inches below ground surface may be used. At a minimum twenty-four (24") inches of the inside and outside of the sleeve shall be grouted with concrete. This method requires a watertight cap or seal on top of the steel sleeve that is not easily removed. The casing shall not extend past the top of the steel sleeve and shall also have a watertight cap or seal. Associated electrical wires that exit the casing and sleeve shall be in a conduit made for electrical components and shall be made watertight to the extent possible.

**5.4.K.** All wells completed with PVC casing shall be completed according to one of the three surface completion methods as described by the following:

- (1) **Slab** - The slab or block shall extend at least two feet (2') from the well in all directions and have a minimum thickness of four inches (4"), and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing. The surface of the slab shall be sloped to drain away from the well. The top of the casing shall extend a minimum of twenty-four inches (24") above ground level.
- (2) **Steel and PVC Sleeve** - The steel sleeve shall be a minimum of 3/16" in thickness and/or the plastic sleeve shall be a minimum of Schedule 80 sun resistant and twenty-four inches (24") in length and shall extend twelve inches (12") into the cement, except when steel casing or a pitless adapter is used. The sleeve shall extend a minimum of twelve inches (12") above the original ground surface, and the sleeve shall be two inches (2"), larger in diameter than the plastic casing being used.
- (3) **Pitless Adapters** - In wells with Steel or Plastic Casings completed with pitless adapters, the adapters shall be welded to the casing or fitted with another suitably effective seal, and the borehole-casing annulus filled with cement grout/slurry or bentonite grout/slurry down to within fifty (50) feet of the top of the water bearing formation to be utilized as a water source. The bottom fifty (50) feet of annular space shall be filled with cement grout/slurry. All wells completed with

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pitless adapters shall satisfy all State water well completion and annular space sealing requirements that pertain to pitless adapters.

- 5.4.L.** All wells shall be equipped with a watertight sanitary well seal with an inspection port, or some other means which allows for free access to the water table for the purpose of water level measurement and well and pump disinfection. Any well presently not equipped with a water-tight sanitary well seal is required to be so equipped in the future when that well is serviced. On those wells with odd sized casing, which cannot be fitted with a factory-made watertight sanitary well seal, the completion shall be done in a manner that shall prevent any pollutants from entering the well.
- 5.4.M.** All wells must have a marker permanently installed in the concrete slab or between the sleeve and the casing to identify the well's registration or permit number. The marker will be provided by the District at the time of registration.
- 5.4.N.** A geophysical log shall be run on all wells completed that filed an application to drill a new water well after April 12, 2021. The geophysical log shall be done prior to setting casing to ensure proper grouting point, maintain hydrological separation, and to verify borehole size. At a minimum the log shall include gamma, caliper and single point resistivity. Depending on subsurface geology at the well site, the requirement to run a geophysical log prior to setting casing may be waived by District staff. Non-exempt wells that require an operating permit under Rule 3.5 shall provide qualitative information on aquifer characteristics and groundwater quality. At a minimum, the geophysical logs shall include an electrical log with gamma, caliper, and multipoint resistivity. The geophysical log shall be submitted to the District within 24 hours of completion. Depending on subsurface geology at the well site, the requirement to log prior to setting casing may be waived by the District staff.
- 5.4.O.** This Rule 5.4.L applies to all water wells located within the Comfort, Waring, Turkey Knob, Ranger Creek, and Jack Mountain USGS quadrangles not mandatorily exempt from permitting under Texas Water Code Section 36.117(b)(1) that are proposed to be drilled at a site with a ground surface elevation at or above 1700 feet msl (mean sea level), as determined from the USGS 7 ½ minute quadrangle topographic map, other acceptable published data, or an elevation certificate. Casing for such wells shall be set no shallower than twenty (20) feet into the Upper Glen Rose.
- 5.4.P.** A temporary surface cover shall be used between the casing and the annulus to prevent debris, animals, runoff, or other pollutants from entering the bore hole during the grouting process.

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- 5.4.Q.** All newly constructed wells / recompleted wells must be grouted to surface within 7 days of setting final casing, unless authorized by District staff. The bottom of the casing, top of the packer, or top of the gravel pack must be grouted within twenty-four (24) hours.
- 5.4.R.** Fire Protection/Monitor well additional construction standards
- At least 6.9" OD (outside diameter) casing or casing that has an ID (inside diameter) of not less than 6".
  - A water level measuring tube with an ID (inside diameter) of not less than 1¼" shall be installed to enclose a pressure transducer and associated cable. The water level measuring tube shall extend from the top of the casing to at least the depth of the total depth of the pump setting and shall have drilled holes or perforations to allow water inside the tube. At a minimum 20' of the submerged water level measuring tube shall be perforated starting at its total depth setting.
  - All other construction standards (Rule 5) and well spacing (Rule 6) shall be followed.

*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 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 5.5 Authorized Well Drillers and Well Pump Installers**

- 5.5.A.** Only persons who have a license issued by the Executive Director of the Texas Department of Licensing and Regulation pursuant to Texas Occupations Code Chapter 1091 and whose licenses are verified with the District are allowed to commercially drill wells within the District. Licenses must be verified with the District on forms provided by the District and be in accordance with and contain information called for in the form of verification.
- 5.5.B.** Commercial Pump Installers are required to verify that they have a license issued by the Executive Director of the Texas Department of Licensing and Regulation pursuant to Texas Occupations Code Chapter 1902. License verification shall be on forms provided by the District and shall be in accordance with and contain the information called for in the form of verification.
- 5.5.C.** The only exceptions from the requirements of Rules 5.5.A and 5.5.B are the exceptions provided by 16 Texas Administrative Code Chapter 76, which includes an exception for owners drilling wells on their own property.

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**5.5.D.** When a water well driller or pump installer is performing activities within the District, they are subject to the authority of the District and these Rules. When such activities are undertaken on behalf of a well owner, the driller or installer is acting as the well owner's agent and is subject to enforcement for non-compliance to the same extent as the well owner.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 5.6 Reporting and Recordkeeping**

#### **5.6.A. Well Drilling and Completion Reports**

The State of Texas Well Report, any pump test data, water level data, water quality data, or any other data pertinent to a well shall be submitted electronically to the District office within 60 days after completion of the well or after the data is compiled or prepared, whichever is earlier. This shall include information about the production capability of the well and the type of and location of use of the groundwater. Although the information will ordinarily be submitted by the well driller or pump installer, the owner is equally responsible for ensuring compliance with this Rule.

#### **5.6.B. Pump Report**

When there is a change in the size or depth of a well pump, or a replacement pump is installed, the serial number and size of the pump shall be submitted to the District office electronically within 60 days after the work is completed. Although the information will ordinarily be submitted by the well driller or pump installer, owner is equally responsible for ensuring compliance with this Rule.

#### **5.6.C. Water Use Report / Meter Readings**

The production from all wells required under Rule 3.5 to obtain an operating permit shall be recorded using a meter. The owner shall keep a record of monthly water production. The water production records shall be submitted to the District on a monthly basis, by the 10<sup>th</sup> of each month for the preceding month, unless the District imposes alternate recordkeeping and reporting requirements in the operating permit for the well.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

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### **Rule 5.7     Sealing of Wells**

Following public notice, the Board may order the sealing of a well that is in violation of District Rules or that has been prohibited from producing groundwater. The reasons for ordering the sealing of a well include, but are not limited to: (1) failure to apply for an operating permit prior to drilling a well that requires such permit under Rule 3.5; (2) operating such a well without an operating permit; or (3) when the Board has denied, cancelled, or revoked an operating permit.

Once the Board has ordered a well sealed, the District, following the procedures of Rule 5.10, shall seal the well by physical means, tag it to indicate that the well has been sealed by the District, or take any other appropriate action necessary to clearly indicate that the well has been sealed. The seal is intended to preclude operation of the well and/or identify unauthorized operation of the well.

Tampering with, altering, damaging, removing, or violating the seal of a sealed well in any way, or pumping groundwater from a well that has been sealed constitutes a violation of District Rules and subjects the person who performs that action, as well as the well owner, to enforcement and penalties pursuant to all applicable District Rules.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 5.8     Capping of Wells**

The District shall require an open or uncovered well that is in a non-deteriorated condition to be capped to prevent waste, pollution, or prevent deterioration. The well shall remain capped until conditions that led to the capping are eliminated. The cap shall provide a sanitary seal to prevent the introduction of potential contaminants and shall be capable of sustaining a weight of at least four hundred (400) pounds. If the owner fails to close or cap the well in compliance with District Rules, the District, following the procedures of Rule 5.10, shall cap the well. Reasonable expenses incurred by the District in capping a well constitute a lien on the land on which the well is located pursuant to Texas Water Code Section 36.118.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 5.9     Plugging of Wells**

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- 5.9.A.** Not later than the 180th day after the date a landowner or other person who possesses a deteriorated or abandoned well learns of its condition, the well shall be plugged in accordance with Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 76, as amended, as modified by this Rule 5.9.
- 5.9.B.** Prior to plugging a well, casing, liner, or bore hole, a plugging plan shall be submitted to the District. Written authorization shall be obtained from the District prior to initiating the plugging operation. The plugging plan shall include:
- (1) Completed well plugging application signed by the property owner or their designated agent on file with Kendall County Development Management.
  - (2) Copy of the State of Texas Well Report for the well to be plugged. If the well predates State of Texas Well Reports a copy of the driller field notes will be sufficient. Additionally, a geophysical log may be required if unable to determine hydrologic unit depth or if more than one hydrological unit is present.
  - (3) Location of the well to be plugged.
  - (4) Reason for plugging the well.
  - (5) Method in which the well is to be plugged.
- 5.9.C.** The District shall be notified at least 24 hours prior to the plugging operation. Once written authorization has been granted by the District, this notification can be done by telephone, text, or email.
- 5.9.D.** All removable casing shall be removed from the borehole. Non-removable casing shall be cut off at the ground level. The well must be free of any obstructions to the bottom of the borehole. If the borehole has obstructions all debris shall be removed prior to the commencement of the plugging operation.
- 5.9.E.** The total depth of the well shall be determined by tagging or logging the borehole. When more than one hydrologic unit is present, the well may be plugged by filling the borehole to within twenty (20) feet of the top of the deepest hydrologic unit that was utilized as a water source with:
- (1) washed and disinfected pea gravel free of flocculants or other chemicals; or
  - (2) 3/8 inch bentonite pellets.
  - (3) cement grout/slurry shall be installed for a length of 40 feet at the interface of the water producing hydrologic unit and

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the formation above the unit and the cement grout shall extend to land surface.

- (4) if based on data available regarding the well and aquifers present at the well location, additional well plugging steps are needed, they shall be developed at that time with input from the District.

**5.9.F.** Wells completed with screen or perforated casing that could not be removed shall be pressure-grouted via tremie pipe from the total well depth to within at least three (3) feet of land surface. The well screened interval shall be filled with cement grout/slurry. Bentonite grout may also be used to fill the casing above the screened interval to a depth of twenty (20) feet below land surface. From twenty (20) feet below land surface to within at least three (3) feet of land surface the casing shall be filled with cement grout/slurry or concrete slurry.

**5.9.G.** If only one hydrologic unit is present, the borehole shall be filled with washed and disinfected pea gravel or 3/8 inch bentonite pellets to the water level or to the casing point if the casing point has a lower elevation than the water level.

**5.9.H.** The remainder of the borehole shall be pressure-grouted via tremie pipe from the top of the washed and disinfected pea gravel free of flocculants or other chemicals or 3/8 inch bentonite pellets to the land surface.

**5.9.I.** If the well to be plugged has one hundred (100) feet or less of standing water the entire well may be filled with concrete or cement grout/slurry, washed and disinfected pea gravel free of flocculants or other chemicals, or a solid column of 3/8 inch granular sodium bentonite pellets hydrated at frequent intervals while strictly adhering to the manufacturers' recommended rate and method of application. The top ~~ten-twenty~~ (1020) feet above any bentonite pellets or gravel shall be filled with concrete or cement grout/slurry to within at least three (3) feet of land surface. Bentonite may not be used if a water zone contains chlorides above 1500 ppm or if hydrocarbons are present.

**5.9.J.** Large diameter hand dug well (36" or greater) shall be filled with concrete from the top of the water level back to the ground surface. Chlorinated pea gravel or concrete or cement slurry shall be used from the water level down to the total depth. Chlorination rate for pea gravel should be one (1) gallon chlorine bleach to five hundred (500) gallons standing water.

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- 5.9.K.** It is the responsibility of the landowner to ensure that such a well is plugged in order to prevent pollution of the groundwater and to prevent injury to persons.
- 5.9.L.** Not later than the 30th day after the date the well is plugged, a State of Texas Plugging Report and any driller's or geologist's logs (field notes on stratigraphy), shall be submitted to the District electronically.
- 5.9.M.** Environmental sampling wells, environmental monitoring wells, geotechnical wells, and geologic exploration wells shall comply with Rule 5.9.A and Texas Department of Licensing and Regulation, 16 Texas Administrative Code § 76.1004, except that submittal of a plugging plan prior to plugging is not required.
- 5.9.N.** If the owner fails to plug the well in compliance with District Rules, the District, following the procedures of Rule 5.10, shall plug the well. Reasonable expenses incurred by the District in plugging a well constitute a lien on the land on which the well is located pursuant to Texas Water Code section 36.118.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. Amended December 10, 2012 by Board Order 2012-008; effective December 12, 2012. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 5.10 Right to Inspect and Enter Property**

The District has authority under Texas Water Code Section 36.123 to enter any public or private property located within the District at any reasonable time for purposes of inspecting and investigating conditions relating to water quality, wells, or compliance with District Rules, regulations, permits, or orders. The District respects individual property rights and shall endeavor to minimize any inconvenience to property owners while conducting District business. Whenever possible, the District shall notify, coordinate, and schedule well and property access in advance with the property owner, his agent, tenant, or other local contact. Notice is not required if prior permission to enter land or access wells has been granted by the property owner, his agent, tenant, or other local contact. District employees or agents accessing public or private wells or property shall exhibit proper credentials upon request. District employees or agents acting under this authority shall observe all applicable rules and regulations concerning safety, internal security, and fire protection. If unexpected, emergency, or critical conditions require the District to access public or private wells or property without prior access arrangements, the District shall, at the first reasonable opportunity, contact the property owner, his agent, tenant, or other local contact. The District shall inform him that the District accessed the well or property, the reasons for the

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District access, and any pertinent information or action resulting from the District's access.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 5.11 Meter Registration**

**5.11.A.** A meter must be installed and must be registered with the District before the District will issue an operating permit for a well.

**5.11.B.** All meters installed to comply with District Rules or permits must be registered within 30 days of installation. The registration form is available in the District office.

*Adopted August 20, 2007 by Board Order 2007-029; effective August 23, 2007 Amended December 10, 2012 by Board Order 2012-008; effective December 12, 2012.*

### **Rule 5.12 Geothermal Wells**

**5.12.A.** All geothermal wells shall comply with these minimum standards, as well as the requirements of Rule 5.2. Each system shall register with the District on a form available from the District office.

**5.12.B.** Pressure cemented/bentonite to a minimum of 20 feet below the land surface, except in the case where the borehole encounters more than one hydrologic unit as defined in these Rules. Boreholes that encounter more than one hydrologic unit shall be cemented from twenty feet into the hydrologic unit being utilized to the land surface. No commingling of hydrologic units is allowed.

**5.12.C.** All fill used in the borehole (i.e. gravel or crushed limestone) shall be washed and disinfected prior to use.

**5.12.D.** Open loop geothermal wells are prohibited in the District.

**5.12.E.** Within 60 days after completion, a State of Texas Well Report for at least one of the boreholes drilled shall be submitted to the District electronically to ensure compliance with Rule 5.12.B.

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*Adopted May 20, 2008 by Board Order No. 2008-007; effective May 23, 2008. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 5.13 Pump Test**

When a pump test is required by the District, it must conform to the minimum standards set out in this Rule 5.13.

**5.13.A.** The well shall be pumped with a pump capable of varying its discharge rate. During the testing period, the discharge rate shall be adjusted until the water level in the well stabilizes and remains constant for a pumping period of thirty-six (36) hours.

**5.13.B.** After the well is pumped, water levels shall be taken every hour for thirty-six (36) hours after the test to determine the recovery rate of the well. If the water level recovers to within one (1) foot of the pre-test level before the thirty-six (36) hour period following the test, the test can be concluded.

**5.13.C.** The well shall be equipped with a meter properly sized for the flow rate of the well. Meter readings and water levels shall be taken prior to and at the conclusion of each test, and at least every hour during the test (pumping and recovery).

*Adopted August 9, 2010 by Board Order 2010-016; effective August 12, 2010.*

### **Rule 6 Well Spacing**

The purpose of these well spacing requirements is to promote groundwater conservation, provide for long-term availability of groundwater resources, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference drawdown between wells, and prevent the degradation of groundwater quality.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

#### **Rule 6.1 Applicability**

The requirements of this Rule 6 apply to all wells drilled within the District unless specifically noted. As authorized by Texas Water Code Section 36.116, some of the required distances are more stringent than those required by 16 Texas Administrative Code Section 76.100, as amended.

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*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 6.2 Determining Distances of a Tract Bordered by a Public Roadway**

In determining the minimum distances set out in this Rule 6, it is permissible to use the public roadway or right-of-way to calculate the distance required for the setback of a tract bordered by such a roadway. Note that any setback imposed by subdivision, plat, AOL, deed, or covenant must be respected.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended December 10, 2012 by Board Order 2012-008; effective December 12, 2012. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 6.3 Spacing from Potential Sources of Pollution**

**6.3.A.** All wells must comply with the location standards of 16 Texas Administrative Code § 76.100 and with the minimum required separation distance for on-site sewage facilities of 30 Texas Administrative Code §285.91(10), which dictate horizontal distance from potential sources of pollution. In the case of a conflict between these two standards, the most stringent shall apply. Section 76.100 excludes monitoring wells, environmental soil borings, dewatering wells, piezometer wells, and recovery wells from these requirements. Such wells may be located where necessity dictates.

**6.3.B.** Public Water System Wells must comply with the 150-foot sanitary control easements as required by Title 30 Texas Administrative Code Chapter 290.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended December 10, 2012 by Board Order 2012-008; effective December 12, 2012. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 6.4 Spacing from Property Lines and Other Wells**

**6.4.A.** All new wells shall be located a minimum horizontal distance from existing wells and property lines as required by 16 Texas Administrative Code Section 76.100, unless covered by the more stringent spacing requirements of this Rule 6.4.

**6.4.B.** All new water wells shall be located a minimum horizontal distance from existing water wells as specified in the following Table.

Any subdivision of existing tracts of land shall be done in such a fashion that new property lines shall be located no closer than the spacing requirements of this Rule from any existing or proposed water well.

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Actual Pumping Capacity of Well as Equipped (gallons per minute or gpm)	Minimum Distance (in feet) Between Existing Water Wells and the New Water Well	Distance of new Water Well from Property Lines (in feet)
Less than 17.36 gpm	100 <sup>1</sup>	50
17.36 gpm through 25 gpm	200	100
25 gpm through 35 gpm	300	150
35 gpm through 50 gpm	1,000	500
50 gpm through 100 gpm	1,200	600
100 gpm through 200 gpm	1,500	750
200 gpm through 400 gpm	2,000	1,000
greater than 400 gpm	2,400	1,200

<sup>1</sup> unless on the same property but completed into two different aquifers

**6.4.C.** Geothermal wells are exempt from the requirements of Rule 6.4.B.

**6.4.D.** For the purposes of well spacing, in issuing an operating permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District, at the discretion of the District.

**6.4.E.** Wells that were gravity grouted prior to April 12, 2021 shall have a one hundred (100') foot sanitary control easement.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

### **Rule 6.5 Spacing from Retail Water Utility Service Area or Community Water System**

In order to minimize the drawdown of the water table, minimize the reduction of artesian pressure, control subsidence, prevent interference between wells, prevent the degradation of the quality of groundwater, prevent waste of groundwater,

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preserve historic use of groundwater, and give consideration to the service areas of retail water utilities, all new wells other than those belonging to the retail water utility or the community water system shall be required to be spaced such that they are located a minimum of fifty feet (50 feet) outside the service area of a retail water utility or community water system unless additional spacing is required under this Rule 6.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005.*

### **Rule 6.6      *Variance Procedures***

The owner of a proposed new water well or someone desiring to subdivide existing tracts of land who, due to the peculiarities of the property shape or the local geology or hydrology, may need to locate a well closer than the spacing requirements of Rule 6.4., may apply for a variance. The owner shall obtain a waiver or easement of the property line distances from adjoining, affected property owners. The owner shall prepare a plat and legal description of the affected property, and such plat shall be signed and sealed by a Registered Professional Land Surveyor. The deed, plat, and waiver shall be notarized, filed with the Kendall County Clerk, and copies shall be submitted with the application for a variance to the District office prior to drilling the proposed water well or subdividing the land. If the property is within a recorded subdivision, an amending plat approved by Kendall County may be required. Such a waiver or easement will affect drilling options on the property of the owner granting it by causing the distance requirements from property lines and between water wells to be adjusted inward on the property for which the waiver is granted. The District shall not accept reciprocal waivers or easements from adjoining property owners if the waivers or easements would involve the same portion of the adjoining properties.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended April 12, 2021 by Board Order 2021-001, effective April 12, 2021.*

## **Rule 7      *Enforcement and Variances***

### **Rule 7.1      *Complaints and Investigations***

**7.1.A.** All complaints shall be reflected on a District complaint form. These forms are available at the District office. If a complaint is made verbally, by telephone, or in person, District personnel will ensure that the information is recorded on a District complaint form. The complainant must inform the District if they want to qualify as an aggrieved party under the citizen suit provision of Texas Water Code §36.119.

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**7.1.B.** For purposes of this Rule 7.1 and § 36.119, an aggrieved party is a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which the well subject to the complaint is located, or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the subject well.

**7.1.C.** A complainant may ask to remain anonymous, unless they want to qualify as an aggrieved party under the citizen suit provision of Texas Water Code §36.119.

**7.1.D.** A District representative will investigate the complaint promptly and will memorialize his findings in a written investigation report.

**7.1.E.** A copy of the investigation report will be sent to the person about whom the complaint was made. If the complainant has provided his name and address, a copy of the investigation report will be sent to the complainant.

### **7.1.F.** Board Consideration of Investigation Reports

- (1) The investigation reports for all complaints must be presented to the Board for consideration not later than 90 days from the date of receipt of the complaint.
- (2) Notice of the date, time, and location of the Board meeting at which the investigation report will be considered and a copy of the investigation report shall be mailed to the person about whom the complaint was made and to the complainant by certified mail, return receipt requested, at least ten days prior to the scheduled Board meeting.
- (3) At the Board meeting, the Board may decide that there was no violation and close the complaint file. If the Board decides that there has been a violation, it may direct the District staff to issue a notice of violation under Rule 7.2.B or initiate civil enforcement under Rule 7.2.A.

**7.1.G.** If the District has concurrent legal authority with another local, state, or federal government, the District may defer investigation and enforcement to the other governmental entity on the matter.

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*Adopted May 20, 2008 by Board Order No. 2008-007; effective May 23, 2008. 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 7.2 Enforcement**

#### **7.2.A. Civil Enforcement**

- (1) As authorized by Texas Water Code Section 36.102, the violation of any District Rule shall be subject to a civil penalty not to exceed \$10,000.00 per day per violation, and each day of a continuing violation constitutes a separate violation.
- (2) The Board may seek enforcement of such civil penalties against any person by injunction, mandatory injunction, or other appropriate remedy through a complaint filed in a court of competent jurisdiction.
- (3) If the District prevails in any suit to enforce its rules, the District may seek, and the court shall grant, recovery of attorney's fees, costs for expert witnesses, and any other costs incurred by the District before the court.
- (4) In an enforcement action by the District against any person that is a governmental entity for a violation of District Rules, the limits on the amount of fees, costs, and penalties that the District may impose under Sections 36.122, 36.205, or 36.102 or under a special law governing a GCD, constitute a limit of liability of the governmental entity for the violation. The District is not prohibited the recovery of fees and costs under District Rule 7.5.C in an action against any person that is a governmental entity.

#### **7.2.B. Notice of Violation**

The District shall send a notice of violation to a person who is believed to be in violation of law, including violation of a District Rule, Order, or permit. The notice shall include a copy of the investigation report. The notice may require remedial action and may assess a penalty. The notice shall provide the opportunity for public hearing under Rule 8.6.

#### **7.2.C. Penalty Schedule**

- (1) The District may assess penalties for non-compliance with District

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Rules including failure to comply with conditions of a permit issued by the District. Penalties will be assessed in accordance with the penalty schedule adopted by the Board and posted on the District website.

- (2) Penalties may be assessed per day per violation, with each day of a continuing violation constituting a separate violation.

### 7.2.D. Enforcement Fee

In addition to any penalty authorized by Rule 7.2.C., if the District is required to incur expenses to enforce District Rules, including the payment of a production fee, the person responsible for causing the District to incur the expense shall reimburse the District for such expenses within ten days after receipt of a demand for payment from the District.

### 7.2.E. Regulatory Compliance

All wells and well owners located within the District shall comply with all applicable Rules, orders, requirements, resolutions, policies, directives, standards, guidelines, or any other regulatory measures implemented by the District.

*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 20, 2007 by Board Order 2007-029; effective August 23, 2007. Renumbered (previously 7.1) and amended May 20, 2008 by Board Order No. 2008-007; effective May 23, 2008. 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.*

### **Rule 7.3      Variances**

Any exceptions or variances to the requirements imposed by District Rules shall be considered on a case-by-case basis. A request for variance shall be submitted in writing and include the reasons for the request. A request for a variance from the requirements of Rule 6 Well Spacing shall comply with Rule 6.6. A variance from Rules 3.2(A)(1) and 10.4 may only be granted if the applicant meets a Kendall County Development Rule 102 platting exception and the well may be limited in production capability to 7 gallons per minute or less. This Rule 7.3 is not applicable to a request for a variance from a permit requirement. A variance from a permit requirement requires an application for an amendment and shall comply with Rule 3.4.F.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Renumbered (previously 7.2) May 20, 2008 by Board Order No. 2008-007; effective May 23, 2008. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021.*

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### **Rule 8 Procedural Rules**

#### ***Rule 8.1 Hearings on Management Plan, Budget and Rules Other Than Emergency Rules***

**8.1.A.** Once the District has developed a proposal involving its management plan, budget, or Rules, other than emergency rules, the District will decide at which Board meeting the proposal will be considered for action. The Board meeting at which the proposal is considered under this Rule shall be considered the public hearing on the proposal and fulfills the requirement, if any, for a public hearing. All proposed changes to District Rules must comply with District Rule 1.4.

**8.1.B.** Notice required by the Open Meetings Act shall be provided for the hearing.

**8.1.C.** In addition to the notice required by the Open Meetings Act, not later than the 20<sup>th</sup> day before the date of the hearing, notice shall be provided as follows:

- (1) Post notice in a place readily accessible to the public at the District office;
- (2) Provide notice to the county clerk of Kendall County;
- (3) Publish notice in one or more newspapers of general circulation in the county or counties in which the District is located; and
- (4) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.1.F. Failure to provide notice under this Rule 8.1.C(4) does not invalidate an action taken by the District at a rulemaking hearing.

**8.1.D.** Notice of the hearing on the proposal required by Rule 8.1.C shall include:

- (1) A brief explanation of the subject of the rulemaking hearing, including a statement that the District's Board of Directors will consider changes to the District's Rules, Management Plan, or budget, at the Board meeting, which will serve as the public hearing on the matter.
- (2) The time, date, and location of the hearing.
- (3) The agenda of the hearing.

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- (4) A statement that the proposal is available to be reviewed or copied at the District Office prior to the hearing.
  - (5) A statement that the District will accept written comments and give the deadline for submitting written comments.
  - (6) A statement that oral public comment will be taken at the hearing.
- 8.1.E.** Copies of the proposal shall be available at the District Office during normal business hours at least 20 days prior to the hearing.
- 8.1.F.** A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request.
- 8.1.G.** Anyone interested in the proposal may submit written comments about the proposal to the District at least 5 days prior to the scheduled hearing at which the proposal will be considered by the Board.
- 8.1.H.** Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.
- 8.1.I.** The District shall make and keep in its files an audio recording of the hearing.
- 8.1.J.** The Board shall issue a written order or resolution reflecting its decision. The proposal that the Board has approved shall be an attachment to that written order or resolution.
- 8.1.K.** The effective date of the written order or resolution shall be the date on which the President of the District signs the order or resolution. The order or resolution shall include a statement that the proposed Rules become effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final.
- 8.1.L.** If in the course of the deliberation during the meeting, the Board decides it wants to substantially change the proposal, the Board shall “continue” or postpone the matter until a future Board meeting. Prior to consideration of the substantially changed proposal, the District shall provide notice and opportunity for comment and hold a hearing on the substantially changed proposal under this Rule. It is solely within the discretion of the Board what constitutes a substantial change to a proposal under this Rule.

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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 December 10, 2012, by Board Order 2012-008, effective December 12, 2012.*

### **Rule 8.2 Adoption of Emergency Rules**

**8.2.A.** The District may adopt an emergency rule without following the notice and hearing provisions of Rule 8.1, if the Board complies with this Rule 8.2.A. Such emergency rule shall be consistent with District Rule 1.4,

- (1) Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
- (2) Prepares a written statement of the reasons for its finding under Rule 8.2.A(1).

**8.2.B.** An emergency rule under this Rule 8.2 must be adopted at a meeting of the Board subject to the requirements of the Open Meetings Act. Notice required by the Open Meetings Act shall be provided.

**8.2.C.** Except as provided by Rule 8.2.D., a rule adopted under this Rule may not be effective for longer than 90 days.

**8.2.D.** If notice of a hearing under Rule 8.1 is given before the emergency rule expires under Rule 8.2.C., the emergency rule is effective for an additional 90 days.

*Adopted 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.*

### **Rule 8.3 Actions on Drilling and Operating Permits**

**8.3.A.** Within 60 days after the date it is deemed administratively complete by the District, an application under this Rule 8.3 shall be acted on by the District's General Manager or set on a specific date for action at a meeting of the District Board.

**8.3.B.** An application for a drilling permit for a new exempt well under Rule 3.2 may be approved by the District's General Manager without further Board action. Denial of a drilling permit for a new exempt well shall be referred to the Board for action under Rule 8.4. An application for a drilling permit for a new non-exempt well shall be referred to the Board for action with the associated application for an operating permit.

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- 8.3.C.** An application for an operating permit for either an existing or new well, which requests production of less than 131,400 gallons per year, may be approved by the District's General Manager without further Board action. Upon denial of such an application, or upon request of the applicant, the application shall be referred to the Board for action under Rule 8.4. All other applications for an operating permit for an existing or new well under Rules 3.1.B and 3.3, or an amendment to an operating permit, shall be referred to the Board for action under Rule 8.4.
- 8.3.D.** An application for renewal or minor amendment of an operating permit under Rules 3.4.E or 3.4.F may be approved by the District's General Manager without further Board action. Denial of an operating permit renewal or minor amendment shall be referred to the Board for action under Rule 8.4.
- 8.3.E.** An application for a major amendment of an operating permit under Rule 3.4.F shall be referred to the Board for action under Rule 8.4.
- 8.3.F.** If an involuntary amendment or revocation is the result of an enforcement action under District Rule 7 and the respondent permit holder requests a hearing, it shall be referred to the Board for action under District Rule 8.7.
- 8.3.G.** The District may initiate a permit amendment(s) to Permits with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, including but not limited to enforce the adopted desired future conditions of the aquifer(s), lessen interference between wells, or control and prevent subsidence. District-initiated permit amendments are subject to notice and hearing under Rule 14. If the District initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable. If an involuntary amendment or revocation is not the result of an enforcement action under District Rule 7 and the permit holder requests a hearing, it shall be referred to the Board for action under District Rule 8.4.

*Adopted September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. 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 8.4 Permit Actions by the Board**

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- 8.4.A.** In this Rule, “Applications” means applications referred to the Board for action under the requirements of Rule 8.3 and establishes that prior to the Board decision under Rule 8.4.H, the Application is considered uncontested, whether or not there is opposition to the Application and whether or not a request for contested case hearing has been prematurely submitted. Rule 8.4.I establishes when an Application becomes contested.
- 8.4.B.** Within 60 days of the date on which the District determines that an Application is administratively complete, it shall be set on the agenda as an uncontested matter for Board action at a Board meeting. This setting serves to fulfill the requirement of Texas Water Code 36.114(e). Such setting shall be no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by Rule 8.4.E.
- 8.4.C.** An Application that is referred to the Board shall be considered by the Board within 95 days of the date on which the Application was determined to be administratively complete.
- 8.4.D.** Notice required by the Open Meetings Act shall be provided for the meeting and shall include the name of the applicant, the address or approximate location of the well, the amount of water production requested, and the purpose or use of the requested water.
- 8.4.E.** Notice of the Board meeting at which the Application will be considered shall be mailed to the applicant at least seven days prior to the scheduled meeting date. Such notice may be waived by the applicant.
- 8.4.F.** Anyone interested in the Application may attend the meeting and make oral comments at the time designated for comments.
- 8.4.G.** The Board, at its sole discretion, may administer an oath to the staff, the applicant, and anyone who makes oral comments on the Application.
- 8.4.H.** The Board shall issue a written order or resolution reflecting its decision. If the Board approves the Application, the permit shall be an attachment to that written order or resolution. The Board’s decision shall be made within 60 days after the Board meeting at which the Application was considered.
- 8.4.I.** A request for contested case hearing, which will be conducted under Rule 8.5, shall be in writing and must be received by the District by the District by 5:00 p.m. the day before the permit hearing. If a contested case hearing requester intends to request that the hearing be sent to the State Office of Administrative Hearings, as authorized by Texas Water Code 36.416(b) and District Rule 8.6, that request must be included in the request for contested

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case hearing or it is waived. The following individuals may submit a contested case hearing request and may be named parties at the preliminary hearing:

- (1) The applicant; or
- (2) A person who (a) has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority, that is not merely an interest common to members of the public; and (b) is affected by the Board's action on the Application.

**8.4.J.** If the District receives a written contested case hearing request during the period required under District Rule 8.4.I, the District shall schedule a preliminary hearing no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by this Rule 8.5, but in no event longer than 35 days after the date of the request. Notice of the preliminary hearing shall be provided as required under District Rules 8.5.B, C, D, E and F.

- (1) The preliminary hearing may be conducted by:
  - (a) a quorum of the board;
  - (b) 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
  - (c) the State Office of Administrative Hearings under Section 36.416.
- (2) At the preliminary hearing, any matter which may expedite the hearing or otherwise facilitate the hearing process may be considered, including:
  - (a) whether a valid contested case hearing request has been submitted and if so, the designation of parties. If the District's decision on an operating permit application is opposed by one or more individuals requesting a contested case hearing, the General Manager is automatically a party.
  - (b) the contested case hearing fee deposit amount required to be paid by each designated party under Rule 4.2. If a request under District Rule 8.6 has been made to send the contested case hearing to the State Office of Administrative Hearings, the amount of the contested case hearing fee deposit under Texas Water Code section 36.416(c) and District Rule 4.2.B.

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- (c) if a request under District Rule 8.6 has been made to send the contested case hearing to the State Office of Administrative Hearings, the location of the hearing either in Travis County, Texas, or as described in Texas Water Code section 36.403(c).
  - (d) formulation and simplification of issues.
  - (e) the hearing schedule, including any necessary discovery.
- (3) The District's decisions made in the preliminary hearing will be in the form of a written order. If the District determines that there will be a contested case hearing, the written order shall also specify, if applicable, a ten (10) day deadline to submit to the District the required contested case hearing fee deposits under Texas Water Code section 36.416(c) and District Rules 4.2.A and B. The 10-day deadline shall run from the date of the written order under this Rule 8.4.J(2).

**8.4.K.** The effective date of the Board's written order or resolution reflecting its decision on the application under Rule 8.4.H shall be 10 days after the date on which the President of the District signs the order or resolution, if no contested case hearing request is submitted under Rule 8.4.I. is received by the District. The order or resolution shall include a statement that the order or resolution and its attachment become effective and final within 10 days of that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final, unless there is a contested case hearing request.

### **8.4.L. Effective Date**

- (1) The effective date of the Board's written order or resolution reflecting its decision on the Application under Rule 8.4.H shall be the date on which the Board signs a written order or resolution under 8.4.J(2) denying the Contested Case Hearing Request under the following circumstances. If there is:
- (a) a timely filed contested case hearing request,
  - (b) a preliminary hearing is held under Rule 8.4.J, and

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- (c) the Board determines that there will be no contested case hearing.
  - (2) Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final
- 8.4.M.** If the contested case hearing fee deposit described in 8.4.J (1)(b) is not submitted to the District by the deadline prescribed in the Board order under Rule 8.4.J(2), the contested case hearing request is considered withdrawn. Under these circumstances, the Board's written order or resolution reflecting its decision on the Application under Rule 8.4.H shall become effective. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the District are final.
- 8.4.N.** 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 had standing or that no justiciable issues were raised, the Board may take any action authorized under Subsection (8.4.O.).
- 8.4.O.** The Board may take action on any 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 Board may issue a written order to:
- (1) grant the application;
  - (2) grant the application with special conditions; or
  - (3) deny the application.
- 8.4.P.** An applicant may, not later than the 20th day after the date the Board issues an order granting the application, demand a contested case hearing if the order:
- (1) includes special conditions that were not part of the application as finally submitted; or
  - (2) grants a maximum amount of groundwater production that is less than the amount requested in the application.

*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*

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*Order 2012-008, effective December 12, 2012. Amended February 13, 2017 by Board Order 2012-008; effective February 13, 2017.*

### **Rule 8.5 Permit Actions Requiring a Contested Case Hearing**

- 8.5.A.** Rule 8.5 applies only to Applications for which the District has received a timely filed request for a contested case hearing under Rule 8.4.I. Additional requirements for a SOAH contested case hearing are in District Rule 8.6.
- 8.5.B.** If the District receives a timely filed request for a contested case hearing under Rule 8.4.I., the Application shall be set for the initial hearing no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by this Rule 8.5. Setting of a prehearing conference under Rule 8.4.J. shall be considered the setting of the initial hearing.
- 8.5.C.** Notice required by the Open Meetings Act shall be provided for the preliminary hearing and any other settings of a contested case hearing, if conducted by a quorum of the Board.
- 8.5.D.** In addition to the notice required by the Open Meetings Act, not later than the 10<sup>th</sup> day before the date of the preliminary hearing, notice shall be provided as follows:
- (1) Post notice in a place readily accessible to the public at the District office;
  - (2) Provide notice to the county clerk of Kendall County;
  - (3) Mail notice to the applicant by regular mail;
  - (4) Mail notice to the individual requesting a contested case hearing by regular mail; and
  - (5) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.5.F. Failure to provide notice under this Rule 8.5.D(5) does not invalidate an action taken by the District at the preliminary hearing or any other settings of a contested case hearing.
- 8.5.E.** Notice of the hearing on the Application shall include the following:
- (1) The name of the applicant;

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- (2) The address or approximate location of the well or proposed well;
- (3) A brief explanation of the proposed permit, permit amendment, or permit renewal, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
- (4) The time, date and location of the preliminary hearing; and
- (5) Any other information the District considers relevant and appropriate.

**8.5.F.** A person may submit to the District a written request for notice of a hearing on a permit or permit amendment. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a hearing in a later year, a person must submit a new request.

**8.5.G.** The hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a hearings examiner to preside at and conduct the hearing on the application. Additionally, a hearing may be held by SOAH under District Rule 8.6. The appointment of a hearings examiner shall be made in writing. If the hearing is conducted by a quorum of the Board, the President shall preside. If the President is not present, the Board shall select one of the Directors who are present to preside.

**8.5.H.** The presiding officer has the following authority and obligations:

- (1) May convene the hearing at the time and place specified in the notice;
- (2) May set any necessary additional hearing dates;
- (3) May designate the parties regarding a contested application;
- (4) May establish the order for presentation of evidence;
- (5) May administer oaths to all persons presenting testimony;
- (6) May examine persons presenting testimony;
- (7) May ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;

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- (8) Shall admit relevant evidence and may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
- (9) May prescribe reasonable time limits for testimony and the presentation of evidence.
- (10) May allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
- (11) May refer parties to an alternative dispute resolution (ADR) procedure on any matter at issue in the hearing, apportion costs for ADR, and appoint an impartial third party as provided by Section 2009.053 of the Government Code to facilitate that procedure; and
- (12) May continue a hearing from time to time and from place to place without providing notice under Rule 8.5.D. and E. If the continuance is not announced on the record at the hearing, the presiding officer shall provide notice of the continued hearing by regular mail to the parties. In any event, if the hearing is being conducted by a quorum of the Board, Open Meetings notice under Rule 8.5.C. shall be provided.
- (13) exercise the procedural rules adopted herein; and
- (14) determine how to apportion among the parties the costs related to:
  - (A) a contract for the services of a presiding officer; and
  - (B) the preparation of the official hearing record.

**8.5.I** The presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to the contested case hearing and payment of an appropriate deposit, as set by the presiding officer, the hearing shall be transcribed by a court reporter. The costs of such court reporter may be assessed against the party requesting it or among the parties to the hearing. The presiding officer may exclude a party from further

participation in the hearing for failure to pay in a timely manner costs assessed against that party under this Rule 8.5.I.

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**8.5.J.** If the Board has appointed a hearings examiner to be the presiding officer at the hearing, the hearings examiner 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. A copy shall be provided to the applicant and each party to the hearing. The applicant and other parties to the hearing may submit to the Board written exceptions to the report within 10 days of issuance of the proposal for decision. The proposal for decision shall include:

- (1) A summary of the subject matter of the hearing;
- (2) A summary of the evidence received; and
- (3) The hearing examiner's recommendations for Board action on the subject matter of the hearing.

**8.5.K.** The Board shall consider the hearings examiner's proposal for decision at a final hearing. Additional evidence may not be presented during a 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 as provided by Section 36.409. The Board shall issue a written order or resolution reflecting its decision, which shall be made at the hearing or at a meeting subject to the requirements of the Open Meetings Act. A copy of the permit shall be an attachment to that written order or resolution. The Board's decision shall be made within 60 days after the final hearing on the Application is concluded.

**8.5.K.i.** 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 Section 36.408(a), the presiding officer shall determine whether to prepare and submit a proposal for decision [~~report~~] to the Board under this section.

**8.5.L.** Request for rehearing or findings and conclusions shall be considered as follows:

- (1) Not later than the 20<sup>th</sup> day after the date of the Board's decision, an applicant or a party to a contested hearing may administratively appeal a decision of the Board on an Application by requesting written findings and conclusions.
- (2) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on an Application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each

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designated party, not later than the 35th day after the date the Board receives the request. The applicant or a party to the contested case hearing 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. The party 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. Any action by the Board on a request for rehearing shall be made at a Board meeting subject to the Open Meetings Act.
- (5) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

**8.5.M.** A decision by the Board on an Application is final if:

- (1) A request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
- (2) A request for rehearing is filed on time, on the date:
  - (a) the Board denies the request for rehearing; or
  - (b) the Board renders a written decision after rehearing.

**8.5.N.** An applicant or a party to a contested hearing may file a suit against the District under Texas Water Code Section 36.251 to appeal a decision on an Application not later than the 60th day after the date on which the decision becomes final. A timely filed request for rehearing is a prerequisite to any such suit. Only the District, the applicant, and the parties to a contested case hearing may participate in an appeal of a decision on the application that was the subject of that contested case hearing. An appeal of a decision on a permit application must include the applicant as a necessary party.

*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 February 13, 2017 by Board Order 2012-008; effective February 13, 2017.*

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### **Rule 8.6**     **Contested Case Hearing Referred to SOAH**

- 8.6.A.** If the Board determines that a contested case hearing will be held, a request by the applicant or other party was timely filed under District Rule 8.4.I, and the contested case hearing deposit fee was timely received by the District under District Rule 8.4.K, the District shall contract with the State Office of Administrative Hearings to conduct the hearing.
- 8.6.B.** The contested case hearing shall be conducted in Travis County or at the District Office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location.
- 8.6.C.** The party requesting the hearing before SOAH shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount. This contested case hearing deposit fee shall be received by the District within 10 days of issuance of the order or resolution under District Rule 8.4.J(2). At the conclusion of the contested case hearing, the District shall refund any excess money to the paying party. All other costs may be assessed as authorized by Texas Water Code Chapter 36 or District Rules.
- 8.6.D.** The hearing shall be conducted as provided in District Rule 8.5, to the extent District Rule 8.5 does not conflict with subchapters C, D, and F of the Texas Government Code, Chapter 2011 and the procedural rules of the State Office of Administrative Hearings.
- 8.6.E.** The District order or resolution under District Rule 8.4.J(2) shall control on the issues addressed in that order.
- 8.6.F.** (1) The District Board has the authority to make a final decision on consideration of a proposal for decision issued by a SOAH Administrative Law Judge consistent with Texas Government Code 2001.058.
- (2) A 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 judge, only if the Board determines:
- (a) that the administrative law judge did not properly apply or interpret applicable law, District rules, written policies provided under Section 36.416(e), or prior administrative decisions;

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- (b) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
  - (c) that a technical error in a finding of fact should be changed.
- 8.6.G.** An administrative law judge who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing, but the District deciding the case may not supervise the administrative law judge.
- 8.6.H.** The District shall provide the administrative law judge with a written statement of applicable rules or policies.
- 8.6.I.** The District may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

*Adopted 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 8.7     **Hearings on Enforcement Actions****

- 8.7.A.** If the District receives a timely filed written request for hearing from a respondent who has received a notice of violation from the District, the District shall decide at which Board meeting the enforcement action will be considered. The Board meeting at which the enforcement action is considered under this Rule shall be considered the public hearing on the matter and fulfills the requirement, if any, for a public hearing.
- 8.7.B.** Notice required by the Open Meetings Act shall be provided for the meeting.
- 8.7.C.** Notice of the enforcement hearing shall be mailed to the respondent by certified mail, return receipt requested, at least ten days prior to the scheduled hearing date.
- 8.7.D.** Anyone attending the meeting on the enforcement action may make oral comments at the time designated for comments.
- 8.7.E.** The Board, at its sole discretion, may administer an oath to the staff, the Respondent, and anyone who makes oral comments on the enforcement action.

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- 8.7.F.** The hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a hearings examiner to preside at and conduct the enforcement hearing. Appointment of a hearings examiner shall be made in writing. If the hearing is conducted by a quorum of the Board, the President shall preside. If the President is not present, the Board shall select one of the Directors who are present to preside. If the matter is referred to a hearings examiner, upon completion of the hearing the hearings examiner shall submit a written recommendation to the Board of Directors.
- 8.7.G.** At the close of the enforcement hearing, the Board of Directors shall make a decision on the issues before it. If that matter was referred for hearing, the Board of Directors is not required to approve the written recommendation submitted by the hearings examiner.
- 8.7.H.** The Board of Directors shall issue a written order or resolution reflecting its decision.
- 8.7.I.** The effective date of the written order shall be the date on which the President of the District signs the order or resolution. The order or resolution shall include a statement that the order or resolution becomes effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Renumbered September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029 effective August 23, 2007. Amended December 10, 2012, by Board Order 2012-008, effective December 12, 2012.*

### **Rule 8.8      Procedures for Joint Planning**

#### **8.8.A. Notice and Public Hearing on Proposed Relevant DFCs**

- (1) When the GMA-9 joint planning committee mails a copy of the proposed desired future conditions proposed under Texas Water Code 36.108(d), a 90-day comment period begins.
- (2) During the public comment period, the District shall post notice and hold a public hearing on any proposed DFCs relevant to the District.
- (3) During the public comment period, the District shall make available in the District Office a copy of the proposed DFC and any

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supporting materials, such as the documentation of factors considered under Texas Water Code 36.108(d) and groundwater availability model run results.

- (4) At least 10 days before a hearing on the proposed desired future conditions proposed by the GMA-9 Joint Planning Committee under Texas Water Code 36.108(d), the District must post notice of public hearing on the proposed DFC that includes the following:
  - (a) the proposed desired future conditions and a list of any other agenda items;
  - (b) the date, time, and location of the public hearing;
  - (c) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
  - (d) the names of the other districts in GMA-9; and
  - (e) information on how the public may submit comments
- (5) The notice must be:
  - (a) posted in a place readily accessible to the public at the District Office;
  - (b) provided to the county clerk of each county in the District;
  - (c) published in one or more newspapers of general circulation in the counties in which the District is located; and
  - (d) provided by mail, facsimile, or electronic mail to any person who has requested notice under District Rule 8.1.F.
- (6) At least 10 days before a hearing on the proposed desired future conditions proposed by the GMA-9 joint planning committee, the District shall make available a copy of the proposed desired future conditions at a place accessible to the public during normal business hours and on the District website.
- (7) Anyone interested in the proposal may submit written comments about the proposal to the District at least 5 days prior to the

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scheduled hearing at which the proposal will be considered by the Board.

- (8) Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.
- (9) The District shall make and keep in its files an audio recording of the hearing.
- (10) The Board shall issue a written order or resolution reflecting its decision. The proposal that the Board has approved shall be an attachment to that written order or resolution.
- (11) After the public hearing, the District shall compile for consideration at the next GMA-9 joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions.
- (12) The District shall submit the DFC hearing summary report to GMA9 no later than the end of the 90-day public comment period.

### **8.8.B. District Adoption of the DFCs**

- (1) As soon as possible after the District receives the DFC resolution and explanatory report, the District shall adopt the DFCs in the resolution and report that apply to the District.
- (2) The notice and hearing provisions of District Rule 8.8.A(2) - (9) apply to the District's adoption of the DFCs.
- (3) An appeal of District-adopted desired future conditions shall follow §§36.1083 and 36.10835, Water Code.

*Adopted 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 9 Prohibition Against Waste**

Groundwater shall not be produced within the District in such a manner as to constitute waste, as defined in these Rules. In the event of a conflict between determining whether a use is a beneficial use or waste, beneficial use is subordinate to waste.

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

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### Rule 10 Groundwater Production Limits

#### Rule 10.1 Preamble

Rule 10 limits the production of groundwater as authorized by the District's Enabling Legislation and Texas Water Code Sections 36.101 and 36.116. This method of limiting groundwater is appropriate based on the hydrogeological conditions of the aquifers in the District and is consistent with the District's comprehensive Groundwater Management Plan developed and adopted under Texas Water Code Section 36.1071.

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

#### Rule 10.2 Production Limits for All Wells Requiring an Operating Permit

**10.2.A.** The District shall set production limits on all wells requiring an operating permit under Rule 3.5. during the permitting process set out in Rule 3. Production limits shall comply with the limits enumerated within this rule, if applicable. Maximum production rates may be limited in the Operating Permits based on the evaluation of the studies that may be required to be submitted with the permit application in Rule 3.3(a) to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, including but not limited to enforce the adopted desired future conditions of the aquifer(s), and lessen interference between wells.

**10.2.B.** These production limits shall be established on the basis of beneficial use without waste. Establishing a production limit on the basis of beneficial use without waste shall be based on, in the following order:

(1) a demonstration of beneficial use without waste based on industry standards of water use for the same purpose;

~~(2) a demonstration of compliance with Rule 10.3, if applicable;~~

~~(3)~~(2) a demonstration that the purpose of use and production amount are consistent with the approved District Management Plan;

~~(4)~~(3) a consideration of other sources of water available for the requested use and production amount; and

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~~(5)~~(4) the well's production capability, which shall be verified by the District and the permit shall be adjusted accordingly.

### 10.2.C. Maximum Production Limits:

If an administratively complete permit application for a well or a permit amendment application to increase use of a permitted well is submitted to the District after \_\_\_\_\_, 2022, the following maximum production limits apply, regardless of type or location of use:

(1) for wells in all aquifers, except the Lower Trinity Unit: ~~A-a~~ a maximum production limit on a ~~new~~ well in an operating permit shall not exceed ~~04-0.8~~ acre-feet/acre/year for contiguous groundwater rights owned or controlled, but may be less than that amount based on the considerations of 10.2.A. and 10.2.B.; and

(2) for wells in the Lower Trinity Unit: a maximum production limit on a well in an operating permit shall not exceed 0.4 acre-feet/acre/year for contiguous groundwater rights owned or controlled, but may be less than that amount based on the considerations of 10.2.A. and 10.2.B.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended May 20, 2008, by Board Order 2008-007; effective May 23, 2008. Amended August 9, 2010 by Board Order 2010016; effective August 12, 2010. Amended June 10, 2019 by Board Order 2019-001; effective June 10, 2019. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021. Amended*

### **Rule 10.3 Production Limits for Wells Supplying Retail Water Utilities**

~~In regulating the production of groundwater based on tract size or acreage, the District may consider the service needs or service area of a retail public utility. For the purposes of this subsection, "retail public utility" shall have the meaning provided by §13.002 of the Texas Water Code. For a retail public water utility, which utilizes groundwater as a source of supply but does not own or control the groundwater rights for the service area, the maximum production limit on a well in an operating permit shall not exceed one single family residential unit connection per four (4) acres of service area taking into consideration other sources of water available for the requested use. This Rule applies to new wells supplying groundwater to a community water system or retail public water utility and to existing wells if, after May 23, 2008 the retail public water utility increases its service area.~~

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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 May 20, 2008, by Board Order 2008-007; effective May 23, 2008. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021. Repealed.

### **Rule 10.4 Production Limits for New Domestic or Livestock Wells Incapable of Producing More Than 25,000 Gallons Per Day**

#### **10.4.A. Applicability**

This Rule 10.4 applies to a new well used for domestic or livestock purposes, as these terms are defined in Rule 2, and which is incapable of producing more than 25,000 gallons per day or 17.36 gallons per minute and registered under Rule 3.2(A)(1).

**10.4.B.** A well subject to this Rule 10.4 shall not be drilled on a tract or property of less than six (6) acres. There shall not be another water well located on the same six acres. Recognizing that a subdivision using groundwater as a source of potable water and platted before May 17, 2005 may include tracts smaller than six (6) acres, this Rule 10.4.B is modified for such existing subdivisions as follows. In an existing subdivision, tracts of six (6) acres or larger shall comply with the one well per six (6) acre tract restriction. Wells shall be limited on tracts smaller than six (6) acres to no more than one well per tract.

**10.4.C.** This Rule 10.4.C applies to a well subject to the six-acre tract size restriction of Rule 10.4.B that is located within a subdivision that uses groundwater as a source of potable water and that is platted after May 17, 2005. The six (6) acre restriction shall be modified so that the total number of wells located in the subdivision, or section thereof, shall be no more than the total acres in the subdivision, or section thereof, divided by six. When computing the average density of wells for compliance with this Rule 10.4.C, the owner may include in the area calculation all property within the subdivision. This includes all lots, easements, roadways, park areas, dedications, and common areas under common ownership.

**10.4.D.** Rule 10.4 applies to wells located in subdivisions and on land described in abstract and survey. A parcel or tract of land shall only have one domestic or livestock well per six acres. The total number of wells located on the parcel or tract shall be no more than the total acreage of the tract divided by six.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended August 20, 2007 by

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*Board Order 2007-029; effective August 23, 2007. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010. Amended November 8, 2021 by Board Order 2021-005; effective November 8, 2021.*

### **Rule 11 Drought Management**

#### **Rule 11.1 Determination of Waste**

Water uses regulated or prohibited under this Rule are considered to be nonessential and continuation of such uses during times of water restrictions, as defined herein, are deemed to constitute a waste of water. Person(s) violating these rules are subject to penalties as defined in District Rule 7, including Rule 7.1.A, which specifies that the District, as authorized by Texas Water Code 36.102, may assess civil penalties not to exceed \$10,000.00 per day per violation, and that each day of a continuing violation constitutes a separate violation.

*Adopted January 8, 2007 by Board Order 2007-001; effective January 8, 2007. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010.*

#### **Rule 11.2 Applicability**

**11.2.A.** The provisions of this Rule shall apply to all persons or organizations, public or private, having or operating wells, or person(s) utilizing groundwater within the District, regardless of purpose of use, size, capacity, and date of drilling or ownership of the wells.

**11.2.B.** The District recognizes that permittees within the district may have developed and utilize their own drought management plans. If a permittee has multiple water sources, the groundwater component must be in compliance with the current stage. The Permittee must either:

- (1) comply with this Rule 11,
- (2) or provide the District written documentation, as a requirement of the permit application or permit renewal application prior to permit issuance or renewal, which demonstrates to the District's satisfaction that the permittee's groundwater conservation measures are sufficient to meet the intent of, and be at least as restrictive as, this Rule.

The District shall make a determination of sufficiency based on information presented by the permittee and inform the permittee of such determinations in writing.

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**11.2.C.** The restrictions set forth herein shall not apply to the uses of water to alleviate conditions threatening health, safety, or welfare of the public, the suppression of fires or the watering of landscape using solely grey water, surface water, harvested rain water or reclaimed water.

*Adopted January 8, 2007 by Board Order 2007-001; effective January 8, 2007. Amended August 9, 2010 by Board Order 2010-016; effective August 12, 2010.*

### **Rule 11.3    *Initiation and Determination of Drought Stages***

Each of the drought stages shall be initiated by action of the Board after analysis of the District's network of monitor wells, stream flow in the Guadalupe River, cumulative rainfall and/or other factors as deemed appropriate by the Board and shall remain in effect for a minimum of thirty (30) days. Mandatory percentage reductions in groundwater use under this Rule 11.3 shall not apply to health and safety uses, such as sanitation and firefighting.

#### **11.3.A. Year-Round Best Management Practices**

All well owners and users of groundwater will minimize the use of groundwater especially for non-essential uses year-round through good water use and water conservation practices.

- (1) No sprinkler shall be operated between the hours of 10:00 A.M. and 8:00 P.M. Automatic sprinklers shall be equipped with rain sensors.
- (2) All ornamental fountains and water features shall be closed loop recirculating systems.
- (3) All leaks shall be repaired immediately (some corrective action taken within 24 hours of notification).
- (4) Leak proof troughs shall be used to provide water for livestock. Water troughs or any water receptacles with mechanical float controls shall be routinely inspected and properly maintained to prevent leaks and waste of water.
- (5) Foundation watering shall be accomplished by a drip system or a hand-held hose and may be done any day before 10:00 A.M.
- (6) A positive shutoff valve shall be used when car washing.
- (7) Swimming pools, when not in active use, should have at least 80% of some form of surface cover to limit the evaporation of water.

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- (8) The District encourages the use of reclaimed, recycled, or re-use water for construction activities.
- (9) Groundwater may be added to pools to replace water lost due to use or evaporation.

### 11.3.B. Stage 1

- (1) Water Reduction for Permitted Users – Mandatory 10% reduction in groundwater use or as specified in the operating permit.
- (2) All other users must implement the following conservation practices:
  - (a) Lawn and turf grass watering by hose-end sprinklers, automatic sprinklers, soaker hoses, or drip system is allowed before 10:00 A.M. and after 8:00 P.M. No sprinklers or sprinkler systems are allowed between the hours of 10:00 A.M. and 8:00 P.M. Handheld hoses or hand-held buckets are allowed at any time.
  - (b) Home vegetable and fruit gardens may be watered at any time with a drip system, hand-held hose or hand-held buckets. Sprinklers are allowed only before 10:00 A.M. or after 8:00 P.M.
  - (c) Pools may be filled with groundwater.
  - (d) Exempt domestic and livestock wells are allowed to supplement surface impoundments, fountains, and ornamental ponds based on the District's watering schedule.

Day of the Week	Address ends with #
Monday	0 or 1
Tuesday	2 or 3
Wednesday	4 or 5
Thursday	6 or 7
Friday	8 or 9

### 11.3.C. Stage 2

- (1) Water Reduction for Permitted Users – Mandatory 20% reduction in groundwater use or as specified in the operating permit.
- (2) All other users must implement the following conservation practices.

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- (a) Lawn and turf grass watering by hose-end sprinklers, automatic sprinklers, soaker hoses, or drip system is allowed one day a week based on the District's watering schedule as provided in Rule 11.3.B. Sprinklers are allowed on the watering day before 10:00 A.M. and after 8:00 P.M. No sprinklers or sprinkler systems are allowed between the hours of 10:00 A.M. and 8:00 P.M.
- (b) Hand-held hoses or hand-held buckets are allowed at any time.
- (c) Home vegetable and fruit gardens may be watered at any time with a drip system, hand-held hose or hand-held buckets. Sprinklers are allowed only before 10:00 A.M. or after 8:00 P.M.
- (d) Use of groundwater to fill or refill swimming pools is prohibited except on designated watering days during the designated watering hours. Groundwater may be added to pools to replace water lost due to use or evaporation.
- (e) Water from exempt domestic and livestock wells may be used to supplement surface impoundments, fountains, and ornamental ponds on designated watering days before 10:00 A.M. and after 8:00 P.M.

### 11.3.D. Stage 3

- (1) Water Reduction for Permitted Users – Mandatory 30% reduction in groundwater use or as specified in the operating permit.
- (2) All other users must implement the following conservation practices, as imposed by the Board when it initiates this Stage.
  - (a) Lawn and turf grass watering by hose-end sprinklers, automatic sprinklers, soaker hoses, or drip system is not allowed. Lawn and turf grass watering must be accomplished by hand-held hose on designated watering days before 10:00 A.M. and after 8:00 P.M.

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- (b) Hand-held hoses or hand-held buckets are allowed any day before 10:00 A.M. and after 8:00 P.M. for landscape other than lawns and turf grass.
- (c) Home vegetable and fruit gardens may be watered any day before 10:00 A.M. or after 8:00 P.M. with a drip system, hand-held hose or hand-held buckets.
- (d) The use of groundwater to fill and refill pools, other than portable wading pools, is prohibited. Groundwater may be added to pools to replace water lost due to use or evaporation.
- (e) The use of groundwater to fill ponds, lakes, tanks, fountains, ornamental ponds, reservoirs or other surface impoundments is prohibited. The operation, other than for basic filtration and/or recirculation, of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited. Surface impoundments with less than 250 square feet of surface area may add groundwater only to replace water lost due to evaporation.
- (f) Other measures deemed necessary by the Board to protect public health and safety.

### **11.3.E. Drought Emergency**

- (1) Water reduction for permitted users – Mandatory 40% reduction in groundwater use or as specified in the operating permit.
- (2) Community water systems and retail water utilities using groundwater are prohibited from allowing or approving the use of groundwater for additional, expanded or increase-in-size water service connections, meters, service lines, pipeline extensions, mains or water service facilities of any kind. In the event of system failure, the water supply will be managed by such measures necessary to maintain public health and safety, including elimination of service to part or all of the water system.
- (3) Irrigation of hay crops is prohibited, unless specified in an operating permit.
- (4) The conservation practices from Stage 3 shall remain in effect and mandatory unless a more stringent rule is imposed by the Board when it initiates this Stage.

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- (a) No lawn or turf grass watering is allowed with groundwater at any time by any means.
- (b) Hand-held hoses or hand-held buckets are allowed any day before 10:00 A.M. and after 8:00 P.M. for landscape other than lawns and turf grass.
- (c) Home vegetable and fruit gardens may be watered before 10:00 A.M. or after 8:00 P.M. with a drip system, hand-held hose or hand-held buckets only.
- (d) The use of groundwater to fill or refill pools, other than portable wading pools, is prohibited. Groundwater may be added to pools to replace water lost due to use or evaporation only on the designated watering day.
- (e) Filling of ponds, lakes, tanks, fountains, ornamental ponds, reservoirs or other surface impoundments with groundwater is prohibited. Surface impoundments with less than 250 square feet of surface area may add groundwater only to replace water lost due to evaporation.
- (f) Use of groundwater for construction activities is prohibited, unless authorized by an operating permit.
- (g) Use of groundwater to wash any motor vehicle, motorbike, boat, trailer, airplane, or any other mobile vehicle is prohibited.
- (h) The issuance of new well drilling permits, operating permits and amendments may be suspended except to replace an existing well.

Adopted January 8, 2007 by Board Order 2007-001; effective January 8, 2007. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. 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.

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### Rule 12 Groundwater Protection

#### ***Rule 12.1 Protection of sensitive recharge features affecting groundwater and subsurface flow***

Large portions of the District have relatively shallow aquifers. Recharge of water into these aquifers is rapid, with little chance for filtration and purification. As the population of the District grows, it will become increasingly important to ensure that the flow of this water is not impaired and that the water which enters these aquifers is not contaminated with natural or man-made pollutants.

#### ***Rule 12.2 Digging and Trenching***

In the event that any digging or trenching transects known or potential water-bearing strata or exposes a sensitive recharge feature, refilling of this area must be done in a manner which recreates the original geologic profile of the area and protects the sensitive recharge feature from pollution sources.

#### ***Rule 12.3 Protection of Sensitive Recharge Features***

- A.** Landowners shall not allow any grading work or construction which would impair the natural flow of water to a sensitive recharge feature.
- B.** No portion of a septic system may be constructed within at least 150 feet of a sensitive recharge feature.
- C.** No continuous livestock feeding may be done within at least 150 feet of a sensitive recharge feature.
- D.** No cleansing or rinsing of any type of spray equipment may be done within at least 150 feet of a sensitive recharge feature.
- E.** No storage of hazardous materials, toxic or caustic chemicals may be done within 150 feet of a sensitive recharge feature. This shall include, but is not limited to, fertilizers, fuels, lubricants, paints, solvents and cleaning agents, and pesticides, including insecticides, fungicides and herbicides.

*Adopted December 10, 2012 by Board Order 2012-008; effective December 12, 2012.*

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### Rule 13. Aquifer Storage and Recovery Projects

- A. In this section, "aquifer storage and recovery project," "ASR injection well," "ASR recovery well," and "project operator" have the meanings assigned by Section 27.151.
- B. REGISTRATION AND REPORTING OF WELLS.
- (1) A project operator shall:
    - (a) register the ASR injection wells and ASR recovery wells associated with the aquifer storage and recovery project with any district in which the wells are located;
    - (b) each calendar month by the deadline established by the commission for reporting to the commission, provide the District with a copy of the written or electronic report required to be provided to the commission under Section 27.155; and
    - (c) annually by the deadline established by the commission for reporting to the commission, provide the District with a copy of the written or electronic report required to be provided to the commission under Section 27.156.
  - (2) If an aquifer storage and recovery project recovers an amount of groundwater that exceeds the volume authorized by the commission to be recovered under the project, the project operator shall report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by Subsection (1)(b).
  - (3) The ASR recovery wells that are associated with an aquifer storage and recovery project are subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells exceeds the volume authorized by the commission to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR recovery wells that exceeds the volume authorized by the commission to be recovered.
  - (4) A project operator may not recover groundwater by an aquifer storage and recovery project in an amount that exceeds the volume authorized by the commission to be recovered under the project unless the project operator complies with the applicable requirements of the District as described by this section.
  - (5) FEES AND SURCHARGES.

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- (a) The District may not assess a production fee or a transportation or export fee or surcharge for groundwater recovered from an ASR recovery well, except to the extent that the amount of groundwater recovered under the aquifer storage and recovery project exceeds the volume authorized by the commission to be recovered.
  - (b) The District may assess a well registration fee or other administrative fee for an ASR recovery well in the same manner that the District assesses such a fee for other wells registered with the District.
- (6) DESIRED FUTURE CONDITIONS. The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an aquifer storage and recovery project in the planning for and monitoring of the achievement of a desired future condition for the aquifer in which the wells associated with the project are located.