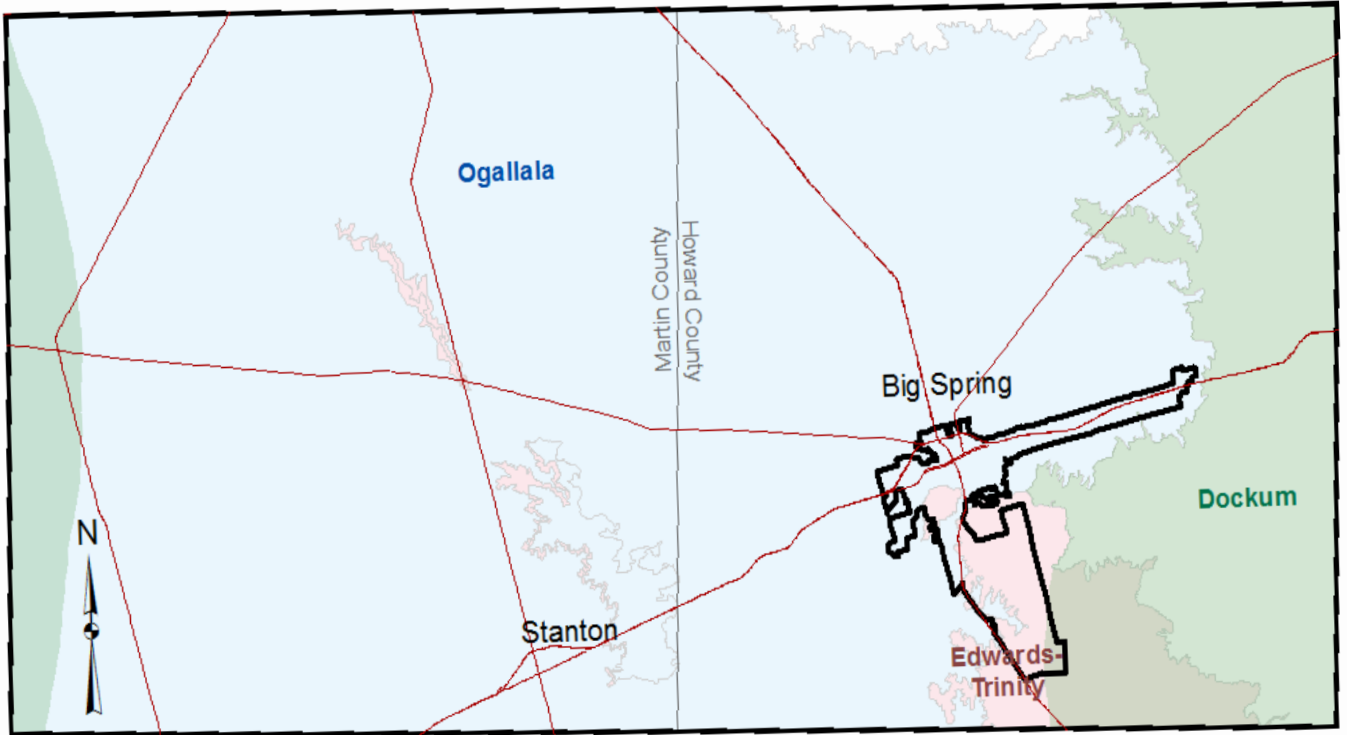


**Rules of  
The Permian Basin  
Underground Water Conservation District**



**Enacted February 8, 1993  
Amended November 30, 2023  
Effective December 1, 2023**

*Permian Basin Underground Water Conservation District  
Boundaries and Aquifers*



***(The yellow area is not within the District)***

## **PREAMBLE**

The Permian Basin Underground Water Conservation District represents the people of Howard and Martin Counties by responsibly managing local aquifers and protecting local landowners' property rights in these important groundwater resources. The District is a political subdivision of the State of Texas created under Article 15, Section 59 of the Texas Constitution and operating under Chapter 36 of the Texas Water Code and its enabling legislation. Since 1985, when the District was created, the District has made its constituents' needs its top priority.

To fulfill its constitutional and statutory duties, the District has adopted these rules to ensure a fair, open, and consistent process for stakeholders to participate in the State's preferred, local approach to groundwater management. Groundwater districts embody local government at its most basic level: local representatives establishing guidelines for the use and conservation of precious privately owned natural resources for the benefit of the citizens and economy of the District.

### **RULE 1 - DEFINITIONS**

In the administration of its duties, the District defines terms as set forth in Chapter 36 of the Texas Water Code unless otherwise modified or defined herein as necessary to apply to unique attributes of the District. The specific terms hereinafter defined shall have the following meaning in these rules, the District's Management Plan, forms, and other documents of the District:

- (a) The "Board" shall mean the Board of Directors of the Permian Basin Underground Water Conservation District, consisting of not less than five and no more than nine duly elected members.
- (b) "District" shall mean the Permian Basin Underground Water Conservation District, maintaining its office in Stanton, Texas. Where applications, reports and other papers are required to be filed with or sent to "The District," this means the District Headquarters in Stanton, Texas.
- (c) The term "Well" or "Water Well" shall mean and include any artificial excavation that may intercept or penetrate a water-bearing stratum or formation and is used either to produce or test the characteristics of groundwater.
- (d) "Groundwater" and "underground water," shall mean water percolating beneath the earth's surface.
- (e) "Owner" shall mean and include any person, firm, partnership or corporation that has the right to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.

- (f) “Person” shall mean any individual, partnership, firm, corporation, organization, cooperative, government or governmental subdivision or agency, business trust, estate, trust, association, or any other legal entity.
- (g) The word “Waste” as used herein shall have the same meaning as defined by the Legislature as follows:
  - (1) The withdrawal of underground water from an underground water reservoir at such rate and in such amount so as to cause the intrusion therein of water not suitable for agricultural, gardening, domestic, or stock raising purposes.
  - (2) The flowing or producing of wells from an underground water reservoir when the water produced therefrom is not used for a beneficial purpose.
  - (3) The escape of underground water from one underground water reservoir to any other reservoir or geologic strata not containing underground water.
  - (4) The pollution or harmful alteration of the character of the underground water within the underground water reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata or from the surface of the ground.
  - (5) Willfully or negligently causing, suffering, or allowing underground water to escape into any river, creek, or other natural watercourse, depression, or lake, reservoir, drain, or into any sewer, street, highway, road, road ditch, or upon the land of any other person than the owner of such well, or upon public land, unless such discharge is authorized by permit, rule, or order by the Texas Commission on Environmental Quality under Chapter 26 of the Texas Water Code.
- (h) An “Authorized Well Site” shall be:
  - (1) The location of a proposed well on an application duly filed until such application is denied; or
  - (2) The location of a proposed well on a valid permit. (An authorized well site is not a permit to drill.)
- (i) “Open” or “Uncovered Well” shall mean any artificial excavation drilled or dug for the purpose of producing or testing water from the underground reservoir, not capped or covered as required by these rules.
- (j) “SOAH” shall mean “State Office of Administrative Hearings.”
- (k) “Desired Future Condition” or “DFC” shall mean a quantitative description, adopted in accordance with § 36.108 of the Texas Water Code, of the desired

condition of the groundwater resources in a Groundwater Management Area at one or more specified future times.

- (l) “Presiding Officer” shall mean the Board President or, in the Board President’s absence, a Director delegated authority by the Board to preside over a hearing.
- (m) “TCEQ” shall mean Texas Commission on Environmental Quality.
- (n) “TWDB” shall mean “Texas Water Development Board.

## **RULE 2 – WASTE**

- (a) Underground water shall not be produced within, or used within or outside the District, in such a manner or under such conditions as to constitute waste as defined in Rule 1 hereof.
- (b) Any person producing or using underground water shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of such water.
- (c) No person shall pollute or harmfully alter the character of the underground water reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata or from the surface of the ground, or from the operation of a well.
- (d) No person shall commit waste as that term is defined by Section (g), Rule 1 of the Rules of the District.
- (e) No person shall cause pollution or harmfully alter the character of the underground water of the District by activities on the surface of the ground which cause or allow pollutants to enter the groundwater through recharge features, whether natural or manmade.
- (f) No person shall cause degradation of the quality of groundwater.
- (g) The District’s procedure to prevent waste, pollution or degradation of groundwater quality is set forth in Rule 21.

## **RULE 3A – WELL PERMIT AND REGISTRATION**

- (a) No person shall hereafter drill, operate, equip, complete, or alter the size of a well or well pump without having first applied to the Board, and had issued a permit (non-exempt wells) or approved registration (exempt wells) to do so.

- (b) A permit amendment is required prior to any deviation from the permit terms regarding the purpose of use of the groundwater, or the drilling and operation of additional wells, even if aggregate withdrawals remain the same.
- (c) If ownership of a well changes, the predecessor or successor well owner shall notify the District in writing.
- (d) Administrative Fees: The District may charge an administrative fee for Permits or for the registration of Exempt Wells. The Board shall set the amount of administrative fees by resolution. An Administrative fee shall be the same amount per application regardless of the type of Well Registration or Well Permit.

**RULE 3B – EXEMPTIONS; EXCEPTIONS; LIMITATIONS**

- (a) A district shall provide an exemption from the district requirement to obtain a permit for:
  - (1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:
    - (A) located or to be located on a tract of land larger than 10 acres; and
    - (B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
  - (2) drilling a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; or
  - (3) drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for surface coal mining and reclamation operations regardless of any subsequent use of the water.
  - (4) drilling a water well for temporary use to supply water to a rig that is actively engaged in drilling a groundwater production well permitted by the District except that this exemption may not exceed 180 (one hundred eighty) calendar days but may be extended until the groundwater production well is complete.
  - (5) a well used for an ASR Project, except as provided under District Rule;
  - (6) monitoring wells and
  - (7) leachate wells
- (b) The District may not restrict the production of water from any well described by Subsection (a)(1).
- (c) The District may cancel a previously granted exemption and may require a permit if:

- (1) the groundwater withdrawals that were exempted under Subsection (a)(1) are no longer used solely for domestic use or to provide water for livestock or poultry;
  - (2) the groundwater withdrawals that were exempted under Subsection (a)(2) are 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
  - (3) the groundwater withdrawals that were 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.
  - (4) the groundwater withdrawals that were exempted under Subsection (a)(4) exceed the amount allowed by TCEQ in a TCEQ-issued ASR permit.
- (d) An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the District:
- (1) the total amount of water withdrawn during the month;
  - (2) the quantity of water necessary for mining activities; and
  - (3) the quantity of water withdrawn for other purposes.
- (e) The District's well spacing rules apply to the drilling of all exempt wells except a well exempted under Subsection (a)(3).
- (f) An exemption provided under Subsection (a) does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.
- (g) Groundwater withdrawn under an exemption provided in accordance with this section and subsequently transported outside the boundaries of the district is subject to any applicable production and export fees under Sections 36.122 and 36.205.
- (h) A water well exempted under Section (a) above shall:
- (1) be registered in accordance with rules promulgated by the District; and
  - (2) be equipped and maintained so as to conform to the District's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution of harmful alteration of the character of the water in any groundwater reservoir.
- (i) Registered wells observe exemptions that were in place at the time of filing the registration.
- (j) A well exempt under this section will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt.

## **RULE 4 – ISSUANCE OF PERMITS**

- (a) The Board shall issue or cause to be issued a permit for a well upon proper application executed and filed by the owner with the District and containing the matters specified below. An application shall be considered filed when properly made out, completed, signed, and received at the District.

Such applications shall be on forms provided by the District and shall be in writing and shall be prepared in accordance with and contain the information called for in the form of application, if any, prescribed by the Board and these rules, and all instructions which may have been issued by the Board with respect to the filing of an application. Otherwise, the application will not be considered.

Once a permit application is filed with the District and determined to be administratively complete, the District will attempt to schedule the application for consideration at the next regularly scheduled and noticed District Board meeting and no later than 60 days after the date the application is determined to be administratively complete. The General Manager may issue permits subject to final Board approval provided that the well meets all requirements in the District Rules, the District Management Plan, and Chapter 36 of the Texas Water Code. Until approved by the Board, the holder of a permit issued by the General Manager may proceed with drilling at their own risk with the understanding that the Board may ultimately deny their application.

Notice of the application shall be included in the notice of the Board meeting at which the Board will consider the permit application, and such notice shall be in the manner required by the Texas Open Meetings Act, Government Code § 551.001, et seq.

Following the Board's decision to grant or deny a permit application, the applicant or other interested party may file a protest within 20 days of the Board's action. A protest will cause the permit to be set for hearing under Rule 17.

- (b) Rules for filing applications:
- (1) If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent. The agent may be requested to present satisfactory evidence of his authority to represent the applicant.
  - (2) If the application is by a partnership, the applicant shall be designated by the firm name followed by the words "a Partnership" and the application shall be signed by at least one of the general partners who is duly authorized to bind all of the partners.
  - (3) In the case of corporation, public district, county or municipality, the application shall be signed by a duly authorized official. A copy of the



resolution or other authorization to make the application may be required by the officer or agent receiving the application.

- (4) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.
- (5) If a lessee is involved in the application process, a copy of the lease agreement or a memorandum that reflects who owns and controls the well and the interest in the groundwater between lessee and landowner will be required at the time the application is made.

(c) Such applications shall set forth the following:

- (1) the name and mailing address of the applicant and the owner of the land on which the well will be located;
- (2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
- (3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
- (4) the location of each well and the estimated rate at which water will be withdrawn;
- (5) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission;
- (6) the approximate date drilling operations are to begin;
- (7) an agreement by the applicant that a completed well log will be furnished to the District by the applicant upon completion of this well and prior to the production of water therefrom (except for such production as may be necessary to the drilling and testing of such well);
- (8) If the property has been platted, a copy of the plat and groundwater availability certification as approved by the platting authority.

#### **RULE 4A - WELL DRILLING AND COMPLETION**

All wells shall be drilled, completed, and recompleted in accordance with the standards set out in the Texas Administrative Code, Title 16, Chapter 76 (Water Well Drillers and Water Well Pump Installers rules of the Texas Department of Licensing and Regulation).

#### **RULE 5 - REQUIREMENT OF DRILLER'S LOG, CASING AND PUMP DATA AND WELL REGISTRATION**

- (A) Complete records shall be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled. Such records shall include an accurate driller's log, any geophysical or electric log, and such additional data concerning the description of the well, its discharge, and its equipment as may be required by the District's Board. Such records shall be filed with

the District Board within 60 days after completion of the well. Every licensed well driller shall submit a copy of the State Well Report to the District within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.

- (B) No person shall produce water from any existing or new, exempt or nonexempt well drilled and equipped within the District, except that necessary to the drilling and testing of such equipment, unless or until the well has been registered or permitted correctly furnishing all available information required on the forms furnished by the District. If a new well is proposed to be drilled or an existing exempt well is proposed to be reworked, redrilled, or reequipped, a registration form must be filed with the District and approved by the District's staff prior to proceeding with the work.

## **RULE 6 – LOCATION OF DRILLING AND SPACING OF WELLS**

- (a) An exempt water well, subject to registration, drilled subsequent to the Effective Date of this rule shall be located at least fifty (50) feet from all property lines.
- (b) A water well, subject to permitting and drilled subsequent to the Effective Date of this rule, shall be located at least one hundred fifty (150) feet from all property lines and three hundred (300) feet from any other existing well.
- (c) After an application for a well permit has been granted, the well, if drilled, must be drilled within 30 feet of the location specified in the permit, and not elsewhere. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code.
- (d) Wells drilled prior to the Effective Date of these rules are not subject to spacing requirements of this rule.
- (e)(1) Uncontested Waiver to Permitted Well Spacing Requirements – If an exception to spacing rules is desired the District requires a notarized waiver. The waiver form, provided by the District, must be signed by each landowner whose property would be located within the applicable minimum distance (150') established under these Rules. Each landowner must agree to the proposed location of the new well site. The District spacing requirements will then be waived for the proposed well location. The requirements of the Texas Administrative Code, Title 16, Chapter 76.100(b)(2) apply.
- (e)(2) Contested Waiver to Permitted Well Spacing Requirements - For property line distance reduction, the potential well owner shall be required to:
  - (i) at the potential well owner's expense, drill and install an observation well at the nearest property boundary of each potentially affected property or

an existing well that meets the requirements for such an observation well may be used, with prior District approval, and;

- (ii) conduct an aquifer evaluation based on the desired production. The aquifer evaluation shall be subject to the following criteria:
  - a. the aquifer evaluation shall be performed by a Texas-licensed professional geoscientist or a Texas-licensed professional engineer with experience in aquifer testing to establish the maximum potential production;
  - b. the calculated effect will be based on a drawdown in the observation wells at one year of production from the proposed well not to exceed 15% of the total saturated thickness at each of the potentially affected property boundaries, and;
  - c. the results of the evaluation shall be submitted to the District for review by the District hydrogeologist and shall be kept on file at the District office for public viewing upon request.
- (iii) On tracts of less than 10 acres, the Groundwater Availability Certification study provided with a certified plat may be used as credible evidence to grant a spacing exception.

(e)(3) Each granted well spacing exception waiver shall be filed and recorded at the District office and county clerk's office of the county where the well is located.

- (f) New non-exempt wells installed on a tract of ten (10) acres or less may reduce the one hundred fifty (150) feet property line setback spacing distance required under Rule 6(b) to a distance of fifty (50) feet from a property line and one hundred (100) feet from any other existing well so long as the well is equipped to not exceed a production rate greater than 40 gallons per minute. If multiple wells are to be installed on the same tract of ten (10) acres or less utilizing the reduced setback provision of this rule, wells within the reduced setback area must be equipped to ensure a cumulative production rate not to exceed 40 gallons per minute. Alternatively, a potential well owner may refer to section (e)(1) or section (e)(2) of this rule for additional spacing and production options.

## **RULE 7 – REPLACING OF A WELL**

- (a) No person shall drill a replacement well without a permit from the Board. A replacement well, in order to be considered as such, must be drilled within one hundred fifty (150) feet of the old well and not elsewhere. Provided, however, that the Board may grant an exception without notice or hearing in any instance where the replacement well is placed farther away from any existing wells or authorized well sites.

Immediately after drilling the new well, the old well shall be:

- (1) Filled and abandoned; or
- (2) Properly equipped in such a manner that it cannot produce more than 25,000 gallons of water a day; or
- (3) Closed in accordance with § 756.001 or § 756.002 of the Texas Health & Safety Code. Violation of such Article is made punishable thereby a fine or not less than \$100.00 nor more than \$500.00

An application to replace an existing well may be granted by the Board without notice or hearing beyond notice under the Texas Open Meetings Act.

## **RULE 8 – TIME DURING WHICH A PERMIT SHALL REMAIN VALID**

Any permit granted hereunder shall be valid if the drilling and completion work permitted shall have been completed within four (4) months from the approval date of the application. It shall thereafter be void. Provided, however, that the Board, for good cause, may extend the life of such permit for an additional four (4) months if an application for such extension shall have been made to the Board during the first four (4) months period. Provided, further, that when it is made known to the Board that a proposed project will take more time to complete, the Board, upon receiving written application may grant such time as a reasonably necessary complete such project.

## **RULE 9 – RECHARGE WELLS**

Applications shall be made to and permits must be obtained from the Board to drill and complete recharge wells. Applications therefore shall state that it is an application for a recharge well. It shall be filed with the Board and shall contain the information required herein for new wells insofar as is applicable. After the well shall have been drilled, the owner shall promptly furnish the District with a completion report.

Recharge wells shall be completed and equipped in such a manner as to protect human life. The owner of such recharge well shall assume and shall be charged with full responsibility for the prevention of pollution from such well. This Rule is not intended to conflict with Rule 26 and the statutory aquifer storage and recovery program.

## **RULE 10 – CHANGED CONDITIONS**

The decision of the Board on any matter contained herein may be reconsidered by it on its own motion or upon motion showing changed conditions, or upon the discovery of new or different conditions or facts after the hearing or decision on such matter. If the Board should decide to reconsider a matter after having announced a ruling or decision, or after having finally granted or denied an application, it shall give notice to persons who were proper parties to the original action, and such persons shall be entitled to a hearing thereon if they file a request therefore within fifteen days from the date of the mailing of such notice.

## **RULE 11 – RIGHT TO INSPECT AND TEST WELLS**

In accordance with § 36.123 of the Texas Water Code, any authorized officer, employee, agent, or representative of the District shall have the right at all reasonable times to enter upon lands upon which a well or wells may be located within the boundaries of the District, to inspect for the purpose of measuring production of water from said well or wells or for employee, agent, or representative of the District shall have the right at all reasonable times to enter upon any lands upon which a well or wells may be located within the boundaries of the District for the purposes of testing the pump and the power unit of the well or wells and of making any other reasonable and necessary inspections and tests that may be required or necessary for the information or any well may be enjoined by the Board immediately upon the refusal to permit the gathering of information as above provided from such well. Prior approval to enter is required, which shall not be unreasonably withheld. Prohibiting access to the District constitutes a rules violation.

## **RULE 12 – OPEN WELLS TO BE CAPPED**

Every owner or operator of any land within the District upon which is located any open or uncovered well is, and shall be, required to close or cap the same permanently with a covering capable of sustaining weight of not less than four hundred (400) pounds, except when said well is in actual use by the owner or operator thereof; and no such owner or operator shall permit or allow any open or uncovered well to exist in violation of this requirement. Officers, agents and employees the District are authorized to serve or cause to be served written notice upon any owner or operator of a well in violation of this rule, thereby requesting such owner and/or operator to close or cap such well permanently with a covering in compliance herewith. In the event any owner or operator fails to comply with such request within ten (10) days after such written notice, any officer, agent, or employee of the District may go upon said land and close or cap said well in a manner complying with this rule and all expenditures thereby incurred shall constitute a lien upon the land where such well is located, provided, however, no such lien shall exceed the sum of One Hundred Dollars (\$100.00) for any single closing. Any officer, agent, or employee of the District, is authorized to perfect said lien by the filing of the affidavit authorized by § 36.119 of the Texas Water Code. All of the powers and authority granted in such section are hereby adopted by the District, and its officers, agents, and employees are hereby bestowed with all of such powers and authority.

## **RULE 13 – FINAL ORDERS AND DECISIONS OF THE BOARD**

The orders and decisions of the Board in any uncontested application or proceeding shall become final on the day action is taken by the Board. All orders and decisions of the Board in contested applications, appeals or other proceedings shall contain a statement that the same was contested. In such event the order will become final after fifteen (15) days from the entry thereof and be binding on the parties thereto unless a motion for rehearing is filed under Rule 15 hereof.

## **RULE 14 – REHEARING AND APPEAL**

- (a) An applicant in a contested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the Board not later than the 20th calendar day after the date of the Board's decision. Alternatively, an applicant with an uncontested permit may request a contested case hearing if the District's decision includes a special condition that was not part of the application as finally submitted or grants a maximum amount of groundwater production that is less than the amount requested in the application. The District's decision reached after conducting a contested case hearing under the alternative procedure provided for under this Rule may be appealed by requesting written findings and conclusions or a rehearing before the Board not later than the 20th calendar day after the date of the Board's decision.
- (b) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the party who requested them, and to each designated party, not later than the 35th calendar day after the date the Board receives the request. A party to the contested case hearing may request a rehearing before the Board not later than the 20th calendar day after the date the Board issues the findings and conclusions. A request for rehearing must be filed in the District office and must state clear and concise grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.
- (c) If the Board grants a request for rehearing, the Board shall, after proper notice, schedule the rehearing not later than the 45th calendar day after the date the request is granted. The failure of the Board to grant or deny a request for rehearing before the 91st calendar day after the date the request is submitted is a denial of the request. The Board shall consolidate requests for rehearing filed by multiple parties to the contested case hearing but only one rehearing may be considered per matter.
- (d) A decision by the Board on a permit or permit amendment application is final:
  - (1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing;
  - (2) if a request for rehearing is filed on time and the Board denies the request for rehearing, on the date the Board denies the request for rehearing; or
  - (3) if a request for rehearing is filed on time and the Board grants the request for rehearing:
    - (A) on the final date of the rehearing if the Board does not take further action;
    - (B) if the Board takes further action after rehearing, on the expiration of the period for filing a request for rehearing on the Board's modified decision if a request for rehearing is not timely filed; or

- (C) if the Board takes further action after rehearing and another request for rehearing on this Board action is timely filed, then Subsections 3(A) and (C) of this rule shall govern the finality of the Board's decision.
- (e) The applicant or party to a contested case hearing must exhaust all administrative remedies with the District prior to seeking judicial relief from a District decision on a permit or permit amendment application. An applicant or a party to a contested case hearing dissatisfied with the District's decision must file a written request for a rehearing or for written findings and conclusions within twenty (20) calendar days of the Board's decision in order to seek reconsideration of the District's decision. If an applicant or a party timely files a request for written findings and conclusions, the applicant or party must thereafter file a request for a rehearing within twenty (20) calendar days of the District's issuance of the written findings and conclusions. Once all administrative remedies are exhausted with the District, an applicant or a party to a contested case hearing must file suit in a court of competent jurisdiction in Howard or Martin Counties to appeal the District's decision on a permit or permit amendment application within sixty (60) calendar days after the date the District's decision is final. An applicant or party to a contested case hearing is prohibited from filing suit to appeal a District's permitting decision if a request for rehearing was not timely filed.
- (f) To appeal a decision of the Board concerning any matter not related to permitting, a request for rehearing may be filed with the District within twenty (20) calendar days of the date of the Board's decision. Such request for rehearing must be in writing and must state clear and concise grounds for the request. If the rehearing request is granted by the Board, the rehearing will be conducted within forty-five (45) calendar days thereafter. The failure of the Board to grant or deny the request for rehearing within forty-five (45) calendar days of the date of submission shall constitute a denial of the request.

## **RULE 15 - RULES GOVERNING PROTESTS**

- (a) NOTICE OF PROTEST: In the event anyone should desire to protest or oppose any pending matter before the Board, or desires to prosecute his appeal from action of the Board, a written notice of protest or opposition shall be filed with the Board within twenty (20) days of the Board's action on the permit application.
- (b) PROTEST REQUIREMENTS: Protests shall be submitted in writing with a duplicate copy to the opposite party or parties and shall comply in substance with § 36.415 of the Texas Water Code and the following requirements:
  - (1) Each protest shall show the name and address of the Protestant and show that Protestant has read either the application or a notice relative thereto published by the Board.

- (2) each protest shall describe the potential protestant's personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority;
  - (3) each protest shall describe how the justiciable interest may be affected by the activities contemplated by a permit or permit amendment application; and
  - (4) Protestant should call attention to any amendment of the application or adjustment which, if made, would result in withdrawal of the protest.
- (c) **CONTESTED APPLICATIONS OR PROCEEDINGS DEFINED:**  
 An application, appeal, motion or proceeding pending before the Board is considered contested when either Protestants or interveners, or both files the notice of protest as above set out and appears at the hearing held on the application, or present a question or questions of law with regard to the application, motion or proceeding. Where neither Protestants nor interveners so appear and offer testimony or evidence in support of their contentions, or raise a question of law with reference to any pending application, motion or proceeding, the same shall be considered as non-contested.
- (d) In the event of a contested hearing each party shall furnish other parties to the proceeding with a copy of all motion, amendments or briefs filed by him with the Board.
- (e) **Request for SOAH Hearing:** If an application is contested, any party to the hearing may request that the District contract with SOAH to conduct further proceedings in the hearing. A request for a SOAH hearing under this rule must be made to the Board at the initial, preliminary hearing and is untimely if submitted after the conclusion of the preliminary hearing.

## **RULE 16 – GENERAL RULES OF PROCEDURE FOR HEARING**

The District conducts five general types of hearings: (1) hearings involving permit matters governed by Rule 17, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing; (2) rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District governed by Rule 18; (3) hearings on the Desired Future Conditions governed by Rule 19; (4) show cause hearings governed by Rule 24; and (5) hearings on the appeal of the reasonableness of a Desired Future Condition under Rule 25. Any matter designated for hearing before the Board may be conducted by a Presiding Officer and quorum of the Board or referred by the Board for hearing before a Hearings Examiner. A permit hearing may be conducted by SOAH if required under these rules or if the Board desires to refer the hearing to SOAH.

- (a) Hearings will be conducted in such manner as the Board deems most suitable to the particular case. It is the purpose of the Board to obtain all the relevant information and testimony pertaining to the issue before it as conveniently, inexpensively and expeditiously as possible without prejudicing the rights of either applicants or



Protestants. The Presiding Officer may conduct the preliminary and evidentiary hearings or other proceedings in the manner the Presiding Officer deems most appropriate for the particular hearing. The Presiding Officer has the authority to:

- (1) set hearing dates, other than the preliminary hearing date for permit matters set by the General Manager;
- (2) convene the hearing at the time and place specified in the notice for public hearing;
- (3) establish the jurisdiction of the District concerning the subject matter under consideration;
- (4) rule on motions and on the admissibility of evidence and amendments to pleadings;
- (5) designate and align parties and establish reasonable time limits and the order for testimony and presentation of evidence;
- (6) administer oaths to all persons presenting testimony;
- (7) examine witnesses;
- (8) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
- (9) require the taking of depositions and compel other forms of discovery under these rules—discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Hearings Examiner or Presiding Officer; unless specifically modified by order of the Hearings Examiner or Presiding Officer, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Hearings Examiner or Presiding Officer;
- (10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- (11) conduct public hearings in an orderly manner in accordance with these rules;
- (12) recess any hearing from time to time and place to place;
- (13) reopen the record of a hearing for additional evidence when necessary to make the record more complete;
- (14) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer; and
- (15) permit hearings may be conducted informally when, in the judgment of the Hearings Examiner or Presiding Officer, the conduct of a proceeding under informal procedures will result in a savings of time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party. If all parties reach a negotiated or agreed settlement that settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the General Manager will summarize the evidence, including findings of fact and conclusions of

law based on the existing record and any other evidence submitted by the parties at the hearing.

- (b) After giving proper notice, hearings may be held in conjunction with any regular or special-called meeting of the Board or hearings may be scheduled at other times as deemed appropriate by the Board. All hearings will be held at the District office unless the Board determines that another location would be more appropriate for a specific hearing.
- (c) **REPORTING:** Hearings and other proceedings will be recorded by digital recorder or, at the discretion of the Presiding Officer, may be recorded by a certified shorthand reporter. If a hearing is uncontested, the Presiding Officer may substitute minutes for the hearing report required under these rules and § 36.410 of the Texas Water Code for a method of recording the hearing provided by § 36.410(a). Subject to availability of space, any party at interest may, at its own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. On the request of a party to a contested hearing, the Presiding Officer shall have the hearing transcribed by a court reporter. The Presiding Officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the Presiding Officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The Presiding Officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.

## **RULE 17 – PERMIT HEARINGS**

- (a) Notices of all permit hearings of the District shall be prepared by the District and shall, at a minimum, state the following information:
  - (1) the name of the applicant;
  - (2) the name or names of the owner or owners of the land if different from the applicant;
  - (3) the time, date, and location of the hearing;
  - (4) the address or approximate proposed location of the well, if different than the address of the applicant;
  - (5) a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use; and
  - (6) any other information the Board or General Manager deems relevant and appropriate to include in the notice.
- (b) Not later than 10 days prior to the date of the hearing, notice shall be:

- (1) posted by the General Manager, with the Board President's approval, at a place readily accessible to the public in the District's office.
  - (2) provided by the General Manager, with the Board President's approval, to the County Clerk of Howard and Martin Counties, whereupon the County Clerks shall post the notice on a bulletin board at a place convenient to the public in the county courthouse annex;
  - (3) provided to the applicant by regular mail; and
  - (4) provided to any person who has requested notice under subsection (c) of this rule by regular mail, facsimile, or electronic mail.
- (c) A person may request notice from the District of a hearing on a permit or a permit amendment application. The request must be in writing and 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. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the district. Failure to provide notice under this subsection does not invalidate an action taken by the District at the hearing.
- (d) The Board shall conduct an evidentiary hearing on a permit or permit amendment application if a party appears to protest that applications or if the General Manager proposes to deny an application in whole or in part, unless the applicant or other party in a contested hearing requests the District to contract with SOAH to conduct the evidentiary hearing. If no one appears at the initial, preliminary hearing and the General Manager proposes to grant the application, the permit or permit amendment application is considered to be uncontested, and the General Manager may act on the permit application without conducting an evidentiary hearing on the application. Unless one of the parties in a contested hearing requests a continuance and demonstrates good cause for the continuance, the Board may conduct the preliminary and evidentiary hearings on the same date. A continuance may not exceed the time limit for the issuance of a final decision under Section 36.4165 of the Texas Water Code.
- (e) **UNCONTESTED PERMITS:** If no one appears at the Board meeting during which the permit or permit amendment application is originally considered, or a protest is not filed with the District within 20 days after the Board's action, then the permit application will be considered to be uncontested.
- (1) The Board may take action on any application at a properly noticed public Board meeting held at any time after the application is filed. The Board may issue a written order to grant the application, grant the application with special conditions, or deny the application.
  - (2) 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 includes special conditions that were not part of the application as finally submitted.

- (3) If, during a contested case hearing, all interested persons contesting the application withdraw their protests or are found by the Board not to have a justiciable interest affected by the application, or the parties reach a negotiated or agreed settlement which, in the judgment of the Board, settles the facts or issues in controversy, the proceeding will be considered an uncontested hearing.
- (f) **ADMISSIBILITY OF EVIDENCE:** Except as modified by these rules and to the extent consistent with these rules and Chapter 36 of the Texas Water Code and the District's enabling act, the Texas Rules of Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. It is intended that needful and proper evidence shall be conveniently, inexpensively and speedily produced while preserving the substantial rights of the parties to the proceedings. When a proceeding will be expedited and the interests of the parties not substantially prejudiced, testimony may be received in written form and evidence may be agreed to in the form of a stipulation. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- (g) **CONCLUSION OF HEARING CONDUCTED BY THE DISTRICT:**
- (1) **Closing the Record; Proposal for Decision:** At the conclusion of the presentation of evidence and any oral argument, the Hearings Examiner or Presiding Officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Hearings Examiner or Presiding Officer. After the record is closed, the Hearings Examiner or Presiding Officer shall prepare and submit a Proposal for Decision ("PFD") to the Board, applicant, and each person who provided comments or each designated party not later than the 30th day after the date a hearing is concluded. The PFD will include a summary of the evidence, together with the Hearings Examiner's or Presiding Officer's findings and conclusions and recommendations for action. The Presiding Officer may direct the General Manager or another District representative to prepare the PFD and recommendations required by this Rule.
  - (2) Upon completion and issuance of the Hearings Examiner's or Presiding Officer's PFD, a copy will be submitted to the Board and delivered to each

party to the proceeding. In a contested case, delivery to the parties will be by certified mail. 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 § 36.408(a) of the Texas Water Code, the Presiding Officer shall determine whether to prepare and submit a PFD under this section, but shall not be required to prepare a PFD. If a PFD is prepared, then prior to Board action any party in a contested case may file written exceptions to the Hearings Examiner's or Presiding Officer's PFD, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board. Upon review of the PFD and exceptions, the Hearings Examiner or Presiding Officer may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the PFD and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the Hearings Examiner or Presiding Officer for further proceedings.

- (3) Time for Board Action on Certain Permit Matters: In the case of hearings involving original permit applications, or applications for permit renewals or amendments, the Hearings Examiner's or Presiding Officer's PFD should be submitted, and the Board should act, within 60 calendar days after the close of the hearing record. The Board shall consider the PFD at a final hearing. Additional evidence may not be presented during this final hearing, however the parties may present oral argument to summarize the evidence, present legal argument, or argue an exception to the PFD. A final hearing may be continued in accordance with this rule and § 36.409 of the Texas Water Code if good cause is shown.

(h) HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS: If timely requested by the applicant or other party to a contested hearing in accordance with this rule, the District shall contract with SOAH to conduct the hearing on the application. All hearings that are required to be held by SOAH shall be conducted as follows:

- (1) The Board shall determine whether the hearing will be held in Travis County or at the District Office or other regular meeting place of the Board, after considering the interests and convenience of the parties, and the expense of a contract with SOAH.
- (2) The party requesting that the hearing be conducted by SOAH shall pay all costs associated with the contract for the hearing and shall make a deposit with the District in an amount that is sufficient to pay the estimated contract amount before the hearing begins. If the total cost for the contract exceeds the amount deposited by the paying party at the conclusion of the hearing, the party that requested the hearing shall pay the remaining amount due to pay the final price of the contract. If there are unused funds remaining from the deposit at the conclusion of the hearing, the unused funds shall be refunded to the paying party.

- (3) Upon execution of a contract with SOAH and receipt of the deposit from the appropriate party or parties, the District's Presiding Officer shall refer the application in accordance with the contract. The Presiding Officer's referral shall be in writing and shall include procedures established by the Presiding Officer; a copy of the permit application, all evidence admitted at the preliminary hearing, the District's rules and other relevant policies and precedents, the District Management Plan, and the District's enabling act; and guidance and the District's interpretation regarding its regulations, permitting criteria, and other relevant law to be addressed in a Proposal for Decision and Findings of Fact and Conclusions of Law to be prepared by SOAH. The District or Presiding Officer 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. SOAH may certify one or more questions to the District's Board seeking the District Board's guidance on District precedent or the District Board's interpretation of its regulations or other relevant law, in which case the District's Board shall reply to SOAH in writing.
- (4) A hearing conducted under this rule is governed by SOAH's procedural rules, in Subchapters C, D, and F, Chapter 2001, Texas Government Code; and, to the extent, not inconsistent with these provisions, any procedures established by the Presiding Officer.
- (5) The District's Board shall conduct a hearing within 45 calendar days of receipt of the Proposal for Decision and Findings of Fact and Conclusions of Law issued by SOAH, and shall act on the application at this hearing or no later than 60 calendar days after the date that the Board's final hearing on the application is concluded in a manner consistent with § 2001.058 of the Texas Government Code. At least 10 calendar days prior to this hearing, the Presiding Officer shall provide written notice to the parties of the time and place of the Board's hearing under this subsection by mail and facsimile, for each party with a facsimile number.
- (6) The Board may remand an issue germane to the application or the proposed findings of fact and conclusions of law, change a finding of fact or conclusion of law made by the Administrative Law Judge, or vacate or modify an order issued by the Administrative Law Judge, only if the Board determines:
  - (A) that the Administrative Law Judge did not properly apply or interpret applicable law, District rules, written policies, or prior administrative decisions;
  - (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.
- (7) A final decision issued by the Board must be in writing and must either adopt the findings of fact and conclusions of law as proposed by the Administrative Law Judge or include revised findings of fact and conclusions of law consistent with District Rule 17(h)(6).

- (8) Notwithstanding any other rule, for hearings conducted by the State Office of Administrative Hearings, the Board shall issue a final decision not later than the 180th calendar day after the date of receipt of the final proposal for decision from State Office of Administrative Hearings. The deadline may be extended if all parties agree to the extension.
- (9) Notwithstanding any other rule, if a motion for rehearing is filed and granted by the Board under Section 36.412 of the Texas Water Code, the Board shall make a final decision on the application not later than the 90th calendar day after the date of the decision by the Board that was subject to the motion for rehearing.
- (10) Notwithstanding any other rule, the Board is considered to have adopted the final proposed for decision of the Administrative Law Judge as a final order on the 181st calendar day after the date the Administrative Law Judge issued the final proposed for decision if the Board has not issued a final decision by:
  - (A) adopting the findings of fact and conclusions of law as proposed by the Administrative Law Judge; or
  - (B) issuing revised findings of fact and conclusions of law as set forth in this rule and the Texas Water Code.
- (11) A proposed final decision adopted under District Rule 17(h)(8) is final, immediately appealable, and not subject to a request for rehearing.

## **RULE 18 – RULEMAKING HEARINGS**

- (a) **GENERAL PROCEDURES FOR RULEMAKING HEARINGS:** The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. A quorum of the District’s Board will participate in all rulemaking hearings, which will render a hearing report unnecessary.
- (b) **SUBMISSION OF PUBLIC COMMENTS:** Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing; provided, however, that the Presiding Officer may grant additional time for the submission of documents. Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer will establish the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- (c) **CONCLUSION OF RULEMAKING HEARING:** At the conclusion of the hearing, the Board may take action on the subject matter of the hearing, take no action, or

postpone action until a future meeting or hearing of the Board. When adopting, amending, or repealing any rule, the District shall:

- (1) consider all groundwater uses and needs;
  - (2) develop rules that are fair and impartial;
  - (3) consider the groundwater ownership and rights described by § 36.002 of the Texas Water Code;
  - (4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater reservoirs or their subdivision, consistent with the objectives of Section 59, Article XVI, Texas Constitution;
  - (5) consider the goals developed as part of the District Management Plan under § 36.1071 of the Texas Water Code; 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.
- (d) **NOTICE OF RULEMAKING HEARINGS:** Notices for all rulemaking hearings must include a brief explanation of the subject matter of the hearing, the time, date, and place of the hearing, location or Internet site at which a copy of the proposed rules may be reviewed or copied, if the District has a functioning Internet site, and any other information deemed relevant by the General Manager or Board. Not less than 20 calendar days prior to the date of a rulemaking hearing, the General Manager or Board shall:
- (1) post notice in a place readily accessible to the public at the District office;
  - (2) provide notice to the County Clerk of Howard and Martin Counties;
  - (3) publish notice in one or more newspapers of general circulation in the District;
  - (4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (e) of this rule; and
  - (5) make available a copy of all proposed rules at a place accessible to the public during normal business hours, and post an electronic copy on the District's Internet site, if the District has a functioning internet site.
- (e) A person may submit to the District a written request for notice of a rulemaking hearing. Such 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. Failure to provide notice under this subsection does not invalidate an action taken by the District at a rulemaking hearing.
- (f) **EMERGENCY RULES:** The Board may adopt an emergency rule without prior notice and/or hearing if the Board 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 calendar days' notice. The Board shall prepare a written statement of the reasons for this finding. An emergency rule adopted shall be effective for not more than 90 calendar days after its adoption by the Board. The Board may extend the 90-day period for an additional 90 calendar days if notice of a hearing on the final rule is given not later than the 90th calendar day after the date the rules is adopted. An emergency rule adopted without notice and/or a hearing must be adopted at a meeting conducted under Chapter 551, Texas Government Code.

- (g) PETITION TO MODIFY OR ADOPT A DISTRICT RULE: A person with a real property interest in groundwater located within the District's jurisdictional boundaries may file a petition with the District to request the adoption or modification of a rule.
- (1) Petitions under this rule must be submitted in writing on the Petition to Adopt or Modify Rules Form appended to these rules to the District office and must comply with the following requirements:
    - (A) A separate petition must be filed for each general topic proposed to be addressed by a rule modification or change;
    - (B) Each petition must be signed and state the full name of each person signing the petition and the person's contact information, including phone number, physical address, mailing address, and email address, if any;
    - (C) Each petition must include:
      - (i) proof that the person submitting the petition has a real property interest in groundwater located within the District's jurisdictional boundaries;
      - (ii) a written explanation of the proposed rule or rule modification's intended purpose;
      - (iii) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any; and
      - (iv) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.
  - (2) If a person is unable to comply with any procedures required under this rule, then the person must submit to the District, on the same day that the person submits a petition under this rule, a written explanation as to why compliance with the required procedure(s) is not possible and must submit a written request that the Board waive the specific procedure(s) at issue. Upon receipt of a written explanation and request as described herein, the Board may, at its sole discretion, waive any procedure set forth under this rule. A petition may be denied for failure to comply with the requirements under this rule.
  - (3) Notice of the Board's consideration of and action on a petition shall be included on a Board agenda with three (3) calendar days' notice compliant with the Texas Open Meetings Act.
  - (4) Any person desiring to testify on a petition during a hearing must so indicate

on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, and the time period for oral presentations. In addition, the Presiding Officer may limit or exclude question and cumulative, irrelevant, or unduly repetitious presentations.

- (5) Within 90 (ninety) calendar days after submission of a petition that complies with this rule, the Board shall consider the petition at a Board meeting and either:
  - (A) grant the petition in part or in its entirety and initiate rulemaking proceedings on the subject matter identified in the granted petition in accordance with the rulemaking procedure set forth in these rules; or
  - (B) deny the petition in part or in its entirety and provide an explanation for denial in the minutes of the Board meeting or in a separate written statement to be kept in the District's records.
- (6) Nothing in this rule may be construed to create a private cause of action for a decision to accept or deny a petition filed under this rule.

## **RULE 19 – HEARINGS ON DESIRED FUTURE CONDITIONS**

- (a) Upon receipt of proposed Desired Future Conditions from the Groundwater Management Area's district representatives, a public comment period of 90 calendar days commences, during which the District will receive written public comments and conduct at least one hearing to allow public comment on the proposed Desired Future Conditions relevant to the District. The District will make available at the District office a copy of the proposed Desired Future Conditions and any supporting materials, such as the documentation of factors considered under § 36.108(d) of the Texas Water Code and groundwater availability model run results. At least 10 calendar days before the hearing, the Board must post notice that includes:
  - (1) the proposed Desired Future Conditions and a list of any other agenda items;
  - (2) the date, time, and location of the hearing;
  - (3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
  - (4) the names of the other districts in the District's management area; and
  - (5) information on how the public may submit comments.
- (b) Except as provided by this subsection, the hearing and meeting notice must be provided in the manner prescribed for a rulemaking hearing under these rules and § 36.101(d) of the Texas Water Code.

- (c) After the close of the public comment period, the District shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed Desired Future Conditions, and the basis for any suggested revisions.
- (d) After the District receives notice from TWDB that the Desired Future Conditions resolution and explanatory report from the Groundwater Management Area's district representatives pursuant to § 36.108(d-3) of the Texas Water Code are administratively complete, the Board shall adopt the Desired Future Conditions in the resolution and explanatory report that apply to the District. The Board shall issue notice of its meeting at which it will take action on the Desired Future Conditions in accordance with Subsection (a) of this rule.

## **RULE 20 – MANAGEMENT PLAN**

- (a) The Board shall adopt a Management Plan that specifies the acts, procedures, performance and avoidance necessary to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to prevent interference between wells, to prevent degradation of water quality, to prevent waste, and to avoid impairment of a Desired Future Conditions. The District shall use the District's rules to implement the Management Plan.
- (b) The Board will review and readopt or amend the plan at least every fifth year after its last approval by TWDB. If the Board considers a new plan necessary or desirable, based on the District's best available data and groundwater availability, a new plan will be adopted and submitted to TWDB in accordance with TWDB rules. The District will amend its plan to address goals and objectives consistent with achieving the Desired Future Conditions within a reasonable time after the adoption of the Desired Future Conditions by the Groundwater Management Area. The District will update its rules, if necessary, to implement the Desired Future Conditions before the anniversary of the date that TWDB approves the District Management Plan that has been updated to include the adopted Desired Future Conditions.

## **RULE 21 – WASTE AND DEGRADATION OF QUALITY OF GROUNDWATER**

After providing fifteen (15) calendar days' notice to affected parties and an opportunity for a hearing, the Board may adopt orders to prohibit or prevent waste, pollution, or degradation of the quality of groundwater. If the factual basis for the order is disputed, the Board shall direct that an evidentiary hearing be conducted prior to consideration and decision on the entry of such an order. If the Board President or his or her designee determines that an emergency exists requiring the immediate entry of an order to prohibit waste or pollution and protect the public health, safety, and welfare, he or she may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of fifteen (15) calendar days or until a

hearing can be conducted. In such an emergency, the Board President or his or her designee is also authorized, without notice or hearing to pursue a temporary restraining order, injunctive, and other appropriate relief in a court of competent jurisdiction.

## **RULE 22 - GENERAL RULE**

- (a) **COMPUTING TIME:** In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event or default form which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.
- (b) **TIME LIMIT:** Applications, requests, or other papers or documents required or permitted to be filed under these rules or by law must be received for filing at the District's office. The date of receipt and not the date of posting is determinative.
- (c) **PROCEDURES NOT OTHERWISE PROVIDED FOR:** If in connection with any hearing, the Board determines that there are no statutes or other applicable rules resolving particular procedural questions then before the Board, the Board will direct the parties to follow procedures consistent with the purpose of these rules, the District's enabling act, and Chapter 36 of the Texas Water Code.
- (d) **CONTINUANCE:** Any meeting, workshop, or hearing may be continued from time to time and date to date without published notice after the initial notice has been provided, in conformity with the Texas Open Meetings Act.

## **REPEAL OF PRIOR REGULATIONS**

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

## **SAVINGS CLAUSE**

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

remaining portions of such rules irrespective of the fact that any other sentence, section, paragraph, clause, or part thereof may be declared invalid.

## **RULE 23 – WELL VALIDATION**

In order to provide for the validation of existing water wells that were drilled prior to District creation, it shall be the policy of this Board that a certification of validation for a well can be issued only after the location of the well and the wellhead equipment of the well has been determined by field survey by District personnel, and/or designated agents acting for said District.

It is the privilege of this Board to cause to be issued a validation certificate for wells drilled and equipped within the District for which the landowner or his agent has not applied for an Application For Water Well Permit; or for wells not otherwise properly permitted, provided that such do not violate any other rules and regulations of the District; nothing in this resolution is intended to limit the powers of this Board to any other course of action granted within Texas Law, or within its rules and regulations, or within the prerogative of the Board.

Appeals to the General Manager’s well validating decisions are subject to Board review at any of its regularly called meetings, or at special called meetings.

## **RULE 24 – SHOW CAUSE ORDERS AND COMPLAINTS**

The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice provided under this rule, cite any person to appear before it in a public hearing and to show cause why the District should not impose a penalty, enter an enforcement order requiring the person to cease and desist or take some other action, or otherwise suspend, cancel, otherwise restrict or limit his operating authority or permit for failure to comply with the orders of the Board, District’s rules or the relevant statutes of the State, or for failure to abide by the terms and provisions of the permit. The District may afford an opportunity to the alleged violator to cure a violation through coordination and negotiation with the District. The Presiding Officer may employ the District’s hearing procedural rules applicable generally or to permit hearings.

- (a) Written notice of the show cause hearing shall be provided to each person made the subject of the hearing ten (10) calendar days prior to the date of the hearing. Such notice shall include all of the following information:
  - (1) the time, date, and place for the hearing;
  - (2) the basis of each asserted violation;
  - (3) the rule or order that the District believes has been violated or is currently being violated; and
  - (4) a request that the person duly appear and show cause of the reasons an enforcement action should not be pursued.

- This notice shall be provided by certified mail, return receipt requested, hand delivery, first class mail, facsimile, email, FedEx, UPS, or any other type of public or private courier or delivery service. If the District is unable to provide notice to the alleged violator by any of these forms of notice, the District may tape the notice on the door of the alleged violator's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the alleged violator resides or in which the alleged violator's office is located.
- (b) The District may pursue immediate enforcement action against the person cited to appear in any show cause order issued by the District where the person cited fails to appear and show cause of the reasons an enforcement action should not be pursued. Nothing in this rule shall constrain the authority of the District to take action, including emergency actions or any other enforcement action, against a person at any time, regardless of whether the District decides to hold a hearing under this Section.

REMEDIES:

- (1) The Board shall consider the appropriate remedies to pursue against an alleged violator during the show cause hearing, including assessment of a civil penalty, injunctive relief, or assessment of a civil penalty and injunctive relief. In assessing civil penalties, the Board may determine that each day that a violation continues shall be considered a separate violation. The civil penalty for a violation of any District rule is hereby set at the lower of \$10,000.00 per violation or a lesser amount determined after consideration, during the enforcement hearing, of the criteria in subsection (2) of this rule.
- (2) In determining the amount of a civil penalty, the Board of Directors shall consider the following factors:
  - (A) compliance history;
  - (B) efforts to correct the violation and whether the violator makes a good faith effort to cooperate with the District;
  - (C) the penalty amount necessary to ensure future compliance and deter future noncompliance;
  - (D) any enforcement costs related to the violation; and
  - (E) any other matters deemed necessary by the Board.
- (3) The District shall collect all past due fees and civil penalties accrued that the District is entitled to collect under the District's rules. Any person or entity in violation of these rules is subject to all past due fees and civil penalties along with all fees and penalties occurring as a result of any violations that ensue after the District provides written notice of a violation.

Failure to pay required fees will result in a violation of the District's rules and such failure is subject to civil penalties.

- (4) After conclusion of the show cause hearing and decision by the District's Board to enter an enforcement order, the District may commence suit to enforce its order without further action by the District's Board. Any suit shall be filed in a court of competent jurisdiction in Howard or Martin Counties. If the District prevails in a suit brought under this Section, the District may seek and the court shall grant, in the interests of justice and as provided by § 36.066(h) of the Texas Water Code, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court.

## **RULE 25 – APPEAL OF DESIRED FUTURE CONDITIONS**

- (a) Not later than 120 calendar days after the date on which the District adopts a Desired Future Condition under § 36.108(d-4) of the Texas Water Code, a person determined by the District to be an affected person may file a petition appealing the reasonableness of a Desired Future Condition. The petition must include:
  - (1) evidence that the petitioner is an affected person;
  - (2) a request that the District contract with SOAH to conduct a hearing on the petitioner's appeal of the reasonableness of the Desired Future Condition;
  - (3) evidence that the districts did not establish a reasonable Desired Future Condition of the groundwater resources within the relevant Groundwater Management Area.
- (b) Not later than 10 calendar days after receiving a petition described by Subsection (a), the District's Presiding Officer shall determine whether the petition was timely filed and meets the requirements of Rule 28(a) and, if so, shall submit a copy of the petition to the TWDB. If the petition was untimely or did not meet the requirements of Rule 28(a), the District's Presiding Officer shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than 60 calendar days after receiving a petition under Rule 28(a), the District shall:
  - (1) contract with SOAH to conduct the requested hearing; and
  - (2) submit to SOAH a copy of any petitions related to the hearing requested under Rule 28(a) and received by the district.
- (c) A hearing under this rule must be held:
  - (1) at the District office or County Courthouse in Howard or Martin Counties unless the District's Board provides for a different location; and
  - (2) in accordance with Chapter 2001, Texas Government Code, and SOAH's rules.

- Not less than ten (10) calendar days prior to the date of the hearing, notice may be provided by regular mail to landowners who, in the discretion of the General Manager, may be affected by the application.
- (d) Not less than ten (10) calendar days prior to the date of the SOAH hearing under this rule, notice shall be issued by the District and meet the following requirements:
- (1) state the subject matter, time, date and location of the hearing;
  - (2) be posted at a place readily accessible to the public at the District's office;
  - (3) be provided to the County Clerks of Howard and Martin Counties, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the County Courthouse; and
  - (4) be sent to the following individuals and entities by certified mail, return receipt requested; hand delivery; first class mail; facsimile; email; FedEx; UPS; or any other type of public or private courier or delivery service:
    - (i) the petitioner;
    - (ii) any person who has requested notice in writing to the District;
    - (iii) each nonparty district and regional water planning group located within the same Groundwater Management Area as a district named in the petition;
    - (iv) TWDB's Executive Administrator; and
    - (v) TCEQ's Executive Director.
    - If the District is unable to provide notice by any of these forms of notice, the District may tape the notice on the door of the individual's or entity's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the person or entity resides or which the person's or entity's office is located.
- (e) Before a hearing is conducted under this rule, SOAH shall hold a prehearing conference to determine preliminary matters, including:
- (1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
  - (2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and
  - (3) which affected persons shall be named as parties to the hearing.
- (f) The petitioner shall pay the costs associated with the contract for the hearing conducted by SOAH under this rule. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, SOAH may assess costs to one or more of the parties participating in



the hearing and the District shall refund any money exceeding actual hearing costs to the petitioner. SOAH shall consider the following in apportioning costs of the hearing:

- (1) the party who requested the hearing;
  - (2) the party who prevailed in the hearing;
  - (3) the financial ability of the party to pay the costs;
  - (4) the extent to which the party participated in the hearing; and
  - (5) any other factor relevant to a just and reasonable assessment of costs.
- (g) On receipt of the SOAH Administrative Law Judge's findings of fact and conclusions of law in a proposal for decision, which may include a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter and the District's findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the Administrative Law Judge, or may vacate or modify an order issued by the Administrative Law Judge, as provided by Section 2001.058(e), Texas Government Code.
- (h) If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the Administrative Law Judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.
- (i) If the District in its final order finds that a Desired Future Condition is unreasonable, not later than the 60th calendar day after the date of the final order, the District shall coordinate with the districts in the Groundwater Management Area at issue to reconvene in a joint planning meeting for the purpose of revising the Desired Future Condition found to be unreasonable in accordance with the procedures in § 36.108 of the Texas Water Code.

## **RULE 26 – AQUIFER STORAGE AND RECOVERY (ASR)**

- (a) This rule applies to a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use of the injected water (“Aquifer Storage and Recovery Project” or “ASR Project”). As a general matter, TCEQ has exclusive jurisdiction over the regulation and permitting of ASR Projects under TCEQ's Class V permitting program. However, the District has concurrent jurisdiction over an ASR Injection Well that also functions as an ASR Recovery Well. Each ASR Recovery Well that is associated with an ASR Project is 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 TCEQ 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 Well that exceeds the volume authorized by TCEQ to be recovered.

- (b) A project operator may not recover groundwater from an ASR Project in an amount that exceeds the volume authorized by TCEQ to be recovered under the project unless the project operator complies with the applicable requirements of the District as described by this rule.
- (c) The person that has applied for and/or received authorization from TCEQ to undertake an ASR Project (the “Project Operator”) shall:
  - (1) register an ASR Injection Well and ASR Recovery Well associated with the ASR Project if a well is located in the District;
  - (2) submit to the District the monthly report required to be provided to TCEQ under § 27.155 of the Texas Water Code, at the same time the report is submitted to TCEQ; and
  - (3) submit to the District the annual report required to be provided to TCEQ under § 27.156 of the Texas Water Code, at the same time the report is submitted to TCEQ.
- (d) If an ASR Project recovers an amount of groundwater that exceeds the volume authorized by TCEQ 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 (c)(2) of this rule.
- (e) The District may not assess a production fee 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 ASR Project exceeds the volume authorized by TCEQ to be recovered.
- (f) The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an ASR 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.

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