

HILL COUNTRY UNDERGROUND
WATER CONSERVATION DISTRICT

DISTRICT RULES

AMENDED: DECEMBER 3, 2013

HILL COUNTRY UNDERGROUND WATER CONSERVATION DISTRICT

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HILL COUNTRY UNDERGROUND WATER CONSERVATION DISTRICT
DISTRICT RULES

**RULES OF THE HILL COUNTRY UNDERGROUND
WATER CONSERVATION DISTRICT**

These Rules become effective upon adoption by the District Board of Directors.

CHAPTER 36 REFERENCES: All references herein citing sections of the Texas Water Code Chapter 36 as authority shall be shown as sections or subsections of said Code, i.e. (36.113) shall reference Section 36.113 of the Texas Water Code.

OTHER STATUTORY AND REGULATORY REFERENCES: All references to Texas statutes and the Texas Administrative Code shall be to those statutes and regulations as amended.

RULE 1. DEFINITIONS AND CONCEPTS

RULE 1.1 **DEFINITIONS.** The definitions that follow are presented in alphabetical order. The order of appearance does not imply or mean to assign priority or relative importance.

“**Abandoned Well**” shall mean a well that has not been used for six consecutive months. A well is considered to be in use in the following cases: (A) a non-deteriorated well that contains the casing, pump, and pump column in good condition; or (B) a non-deteriorated well that has been capped.

“**Agricultural**” shall mean any of the following activities:

- (A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (B) the practice of aqua culture, floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
- (C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
- (D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in Federal CRIP program or normal crop or livestock rotation procedure;
- (E) wildlife management; and
- (F) raising or keeping equine animals.

“**Agricultural Use**” shall mean using water for any use or activity involving agriculture.

“**Annular Space**” shall mean the space between the well casing and the borehole wall.

“**Applicant**” shall mean a person applying for a permit or permit amendment who is the owner of the land on which the well or proposed well(s) are located.

“**Aquifer**” shall mean a formation or group of saturated geologic units capable of storing and yielding water in usable quantities.

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

“Artesian Pressure” shall mean the pressure in a confined aquifer created by the overlying and underlying confining units.

“Beneficial Use or Beneficial Purpose” shall mean groundwater use for:

- (A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, fish and wildlife, or pleasure purposes;
- (B) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
- (C) any other purpose that is useful and beneficial to the users that is of economic use and does not commit waste as defined in this rule.

“Bentonite” shall mean a sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellets form that is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space.

“Board” shall mean the Board of Directors of the Hill Country Underground Water Conservation District.

“Buffer Zone” shall mean a transition zone between a designated High Historical Groundwater Use Area or a Critical Groundwater Depletion Area and adjacent areas that are not in a High Historical Groundwater Use Area or a Critical Groundwater Depletion Area.

“Casing” shall mean a tubular watertight structure installed in the excavated or drilled hole to maintain the well openings.

“Cement” shall mean a neat Portland or construction cement mixture of not more than seven (7) gallons of water per ninety-four (94) pound sack of dry cement, or cement slurry that contains cement along with bentonite, gypsum or other additives.

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“Conservation” shall mean 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 use of water.

“Contiguous” shall mean property within a continuous perimeter boundary situated within the District. Contiguous may also apply to properties that are divided by a road or highway if the properties border one another.

“Critical Groundwater Depletion Area” (CGDA) shall mean an area in the District where pumpage has caused a drawdown of the water table or a reduction of artesian pressure to an extent that aquifer mining is occurring.

“Desired future condition” means a quantitative description, adopted in accordance with Section 36.108, Water Code, of the desired condition of the groundwater resources in a management area at one or more specified future times as adopted by Groundwater Management Area 7.

“Deteriorated Well” shall mean a well, the condition of which will cause, or is likely to cause, pollution of any groundwater in the District.

“District” shall mean the Hill Country Underground Water Conservation District.

“District Act” shall mean Chapter 8834, Special District Local Laws Code.

“Domestic Use” shall mean use of groundwater by an individual or a household to support essential domestic activity. Such essential domestic activity includes water for uses inside the home; for irrigation of lawns, flower beds, shrubs, trees shading the home, or a family garden or orchard with manual sprinklers and garden hoses for watering of domestic animals; for protection of foundations; and for recreation specifically only for swimming pools. Essential domestic activity does not include:

- (A) water used to support activities for which consideration is given or for which the product of the activity is sold;
- (B) the irrigation of lawns or other landscaped areas of greater than ½ acre by sprinkler or other system, whether above ground or below ground, permanent or temporary (other than hand-held hose or single sprinkler attached to a garden hose).
- (C) pond, lake, tank, reservoir, or other confinement that has a capacity greater than 50,000 gallons;
- (D) non-closed system geothermal heating/cooling systems.

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“Enforcement Action” shall mean an action taken by the District to enforce District Rules or any other law within its authority.

“Enforcement Hearing” shall mean a hearing held on an enforcement action that is noticed and conducted according to the procedures of Rule 12.4.

“Groundwater” shall mean water percolating below the surface of the earth.

“Hazardous substances” shall mean any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 CFR Part 302, as amended.

“Hazardous wastes” shall mean any “solid waste,” as that term is defined by 30 Texas Administrative Code 335.1, identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

“Hearings Officer” shall mean any person appointed by the Board to conduct a hearing.

“High Historical Groundwater Use Area” (HHGUA) shall mean those areas of the District in which historical groundwater use is such that additional production will have adverse effect on historical users.

“Historical Users” shall mean well owners to whom permits have been issued by the District and owners of registered wells.

“Irrigation System, Installer, and Irrigator” shall mean that as defined in 30 Texas Administrative Code, Section 344.1.

“Landscape Irrigation” shall mean systems or devices used to deliver water to lawns and shrubbery at private residences and at commercial establishments for ornamental purposes solely.

“Landowner” shall mean, without limitation, any person having legal title to the real property on which a water well or proposed water well is located or is to be located.

“Lot” shall mean any single contiguous parcel of land covered by deed.

“Modeled Available Groundwater” shall mean the amount of water that may be produced on an average annual basis to achieve the adopted desired future condition.

“Municipal” shall mean all those wells used to provide water to the public that are identified and defined by the Texas Commission on Environmental Quality.

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“Open or Uncovered Wells” shall mean an excavation at least ten feet in depth dug for the purpose of producing underground water and is not covered or capped as required by the Texas Water Code.

“Open Meetings Act” shall mean Chapter 551, Government Code.

“Public Information Act” shall mean Chapter 552, Government Code.

“Other Aquifer Penetration” shall mean any penetration of an aquifer within the District including oil and gas test wells; mineral test wells (stratigraphic or core holes or geophysical shot holes); or any other penetrations that fall in the oversight of the TCEQ or Texas Railroad Commission.

“Party in a Contested Hearing” shall mean an applicant or other persons who have a justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District’s regulatory authority and that may be affected by a permit or permit amendment. Said party shall not include persons who have an interest common to members of the public.

“PCBs or polychlorinated biphenyls” shall mean compounds subject to Title 40, Code of Federal Regulations (CFR), Part 761, as amended.

“Person” shall mean any individual, partnership, firm, governmental agency, political subdivision, corporation, or other legal entity.

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

“Presiding Officer” shall mean the Chairman, Vice Chairman, Secretary, or other Board member presiding at any hearing or other proceeding, or an Hearings Officer.

“Radioactive wastes” shall mean any waste that contains radioactive material in concentrations that exceed those listed in 10 Code of Federal Regulations (CFR) Part 20, Appendix B, Table II, Column 2, as amended.

“Respondent” shall mean the individual who receives a notice of violation under Rule 12.4.

“Retail Public Utility” shall mean any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency

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operating, maintaining, or controlling in this state facilities for providing potable water service or service, or both, for compensation.

“Rules” shall mean the rules of the District compiled in this document and as may be supplemented or amended from time to time.

“Rulemaking Hearing” shall mean a Board meeting noticed and conducted according to Rule 12.1 at which the Board considers changes to District Rules, Management Plan, High Historical Groundwater Use Areas, or Critical Groundwater Depletion Areas and during which the public has an opportunity to comment on such changes.

“Service Area” shall mean:

- (A) that area only to which water is being applied within the contiguous area in which the well is located;
- (B) the total acreage within the corporate boundary of a municipality in the case of a municipal water utility;
- (C) except for those lots defined in a platted subdivision that will be added to the existing service of the servicing Retail Public Utility, the number of connections of a Retail Public Utility outside municipal corporate boundaries based on 1/2 acre per connection; or
- (D) In contiguous areas of unknown service area, service area will be defined based on the contiguous area on which the well is located.

In each case the Service Area may be reduced for each lot or property that has an operating or operable well and any acreage associated with that well.

“Toxic pollutants” shall mean any pollutants subject to regulation under 40 Code of Federal Regulations (CFR), Chapter I, Part 129, as defined in 40 CFR 129.4, as amended.

“Transport” shall mean the transport of water out of the District.

“Transfer” shall mean moving water from one well location(s) in the District to another non contiguous location(s) in the District.

“Waste” (§ 36.001(8)) shall mean any one or more of the following:

- (A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into

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- the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
- (B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
 - (C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
 - (D) 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;
 - (E) other than allowed by these rules 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;
 - (F) groundwater pumped for irrigation or landscape irrigation that escapes as irrigation tail water onto land other than that of the owner of the well unless written permission has been granted by the occupant of the land receiving the discharge;
 - (G) for water produced from an artesian well, waste has the meaning assigned by Section 11.205, Water Code;
 - (H) the supply of groundwater to any surface reservoir with a capacity greater than 50,000 gallons except as provided in District Rules;
 - (I) groundwater pumped for industrial use or application in excess of that quantity, if any, recognized by the industry according to its Standard Industrial Code (SIC) classification as being the maximum amount of water necessary to efficiently meet the demands for the particular use or application to which the groundwater is being made;
 - (J) groundwater used for heating or cooling that is allowed to drain onto the land surface as tail water and is not re-circulated back to the aquifer (a non-closed system).

RULE 1.2 PURPOSE OF RULES. These rules are adopted to achieve the provisions of the District Act and accomplish its purposes.

RULE 1.3 USE AND EFFECT OF RULES. The District uses these rules as guides in the

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exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They may not be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law, nor be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act.

RULE 1.4 ACTIONS ON RULES.

- A. All changes to the District's Rules will be made after notice and hearing by using the procedure required by Rule 12.1. Such changes include repeal or amendment of existing Rules and the adoption of new Rules.
- B. The Board may adopt an emergency Rule without prior notice or hearing, or with an abbreviated notice and hearing, according to Rule 12.2 (36.1001).

RULE 1.5 HEADINGS AND CAPTIONS. The section and other headings and captions contained in these rules are for reference purposes only. They do not affect the meaning or interpretation of these rules in any way.

RULE 1.6 CONSTRUCTION. A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the Water Code. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Government Code.

RULE 1.7 METHODS OF SERVICE UNDER THESE RULES. Except as otherwise expressly provided in these rules, any notice or documents required by these rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number or digitally signed email. Service by mail is complete upon transfer deposit in a post office or other official depository in the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. Central Standard Time will be deemed complete on the following business day. Where service by one or more methods has been attempted and failed, the service is complete upon notice publication in a generally circulated newspaper in Gillespie County.

RULE 1.8 SEVERABILITY. If any one or more of the provisions contained in these rules are 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 provisions of these rules, and these rules shall be construed as if such invalid, illegal or unenforceable rules or provision had never been contained in these rules.

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RULE 2. BOARD

- RULE 2.1 PURPOSE OF BOARD.** The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District; for conserving, preserving, protecting and recharging the groundwater within the District; and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.
- RULE 2.2 BOARD STRUCTURE, OFFICERS.** The Board consists of the members elected and qualified as required by the District Act. On each odd numbered year at its regular May meeting (if there is no May meeting, at its next regular meeting), the Board shall elect one of its members to serve as Chairman; one to serve as Vice Chairman; and one to serve as Secretary/Treasurer. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these rules.
- RULE 2.3 MEETINGS.** The Board will hold a regular meeting once each month and as the Board may establish from time to time by resolution. At the request of the Chairman, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held according to the Texas Open Meetings Law.
- RULE 2.4 COMMITTEES.** The Chairman may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees. Committee members serve at the pleasure of the Chairman.

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RULE 3. DISTRICT STAFF

RULE 3.1 **GENERAL MANAGER.** The Board may employ a person to manage the District, and title this person general manager. The general manager shall have only those powers, duties, or responsibilities in performing District functions as determined by the Board. The general manager, with approval of the Board, may employ all persons necessary for the proper handling of business and operation of the District and their salaries shall be set by the Board.

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RULE 4. DISTRICT

- RULE 4.1 MINUTES AND RECORDS OF THE DISTRICT.** All documents, reports, records, and minutes of the District are available for public inspection and copying to the extent required by the Public Information Act. Upon written application of any person, the District will furnish copies of its public records. A copying charge shall be established pursuant to the Public Information Act. A list of the charges for copies will be furnished by the District.
- RULE 4.2 CERTIFIED COPIES.** Requests for certified copies must be in writing. A certification charge and copying charge may be assessed, pursuant to policies established by the Board of Directors.
- RULE 4.3 DISTRICT MANAGEMENT PLAN.** The District Management Plan specifies the acts, procedures, performances and avoidance necessary to prevent waste and the decline of the water table, and forms the basis of the District rules in regards to permitting decisions and other requirements imposed by the Board. The Board will review the plan at least every fifth year. The Board's action on the Plan, either to renew it or to amend or replace it, will occur after notice and hearing by using the procedure required by Rule 12.1. A plan, once adopted, remains in effect until the adoption of a new plan. The District Management Plan will be prepared in accordance with Section. 36.1071.

RULE 5. WELL PERMITTING

RULE 5.1 PERMIT REQUIRED TO DRILL OR OPERATE A WELL. No person may begin to drill or alter a well, or operate a well without having first received a permit from the District, unless an exemption under Rule 5.2 applies. All wells used for municipal, commercial, and irrigation, inclusive of wells used in landscape irrigation on greater than ½ acre and attached to an irrigation system; require permits prior to drilling or operation. Wells attached to irrigation systems used to irrigate landscape on ½ acre or less service area are exempt from obtaining a permit provided xeriscape and native vegetation from the local area and ground covers and turfs that require minimal water requirements are used in at least 75% of the area irrigated. Irrigation installers shall first ensure that a permit has been obtained from the District prior to system installation. Irrigation installers shall supply a schematic of the irrigation system to the District with the installer’s seal stamped to the schematic. This is required for all irrigation systems inclusive of those on ½ acre or less which qualifies for not requiring a permit.

Wells drilled pursuant to an exemption under Rule 5.2 are required to register under **Rule 6, Well Registration**. For purposes of these rules, alteration of a well, changes in permitted use, or loss of exemption shall require a new permit.

A permit issued by the District is based solely on the authority derived from the District’s Enabling Legislation, District Rules, and Chapter 36 of the Texas Water Code. No other legal right to produce groundwater may be construed from a District-issued permit.

In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:

- (1) the modeled available groundwater determined by the executive administrator;
- (2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;
- (3) the amount of groundwater authorized under permits previously issued by the district;
- (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
- (5) yearly precipitation and production patterns.

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- A.** Application for a well drilling and production permit shall be made to the District on forms promulgated by the District for all wells drilled and completed unless an exemption from permitting under Rule 5.2 applies. The information on the forms must be provided and if permit is granted, then the required information provided will become part of the permit. The District shall issue the following types of permits:

 - (1) Drilling Permits/Operating Permits and
 - (2) Transportation Permits.
- B.** When approved by the District Board a Drilling Permit/Operating Permit shall authorize the drilling of the well and shall specify the location of the well, the annual maximum production allowed from the well, the maximum rate of withdrawal from the well, ownership of the well, and the permitted purpose of use and place of use of water from well. When approved by the District Board an Operating Permit shall authorize production from a well or aggregate well system, and shall specify the location of the well, the annual maximum production allowed from the well(s), the maximum rate of withdrawal from the well(s), and the permitted purpose of use and place of use of water from well(s).
- C.** The District may impose more restrictive permit conditions (Section 36.113(e)) in a designated High Historical Groundwater Use Area (HHGUA) on new permit applications and permit amendment applications to increase use by historic users.
- D.** The District may impose more restrictive permit conditions on existing permits and new permit applications in designated Critical Groundwater Depletion Area (CGDA).

RULE 5.2 EXEMPTIONS; EXCEPTIONS; LIMITATIONS. The following exemptions, exceptions and limitations apply to permitting of wells:

- A.** The District does not require a permit for drilling or producing from a well used solely:

 - (1) for domestic use or for providing water for livestock or poultry;
 - (2) located on a tract of land larger than 10 acres; and
 - (3) that is either drilled, completed or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day (36.117(b)(1)).
- B.** The District may not require a permit for drilling a well for a rig that is

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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 in accordance with 36.117(b)(2), except that permits may be required by the District for water wells drilled for hydrocarbon production under conditions defined in 36.117(d)(1) and (2). Drilling or exploration operations for an oil and gas well does not include hydraulic fracturing operations or secondary recovery operations. The District may not require a permit for drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.

- C.** In addition to the exceptions required by law in Texas Water Code, Section 36.117 and by Rules 5.2(A) and (B), the District by these rules also exempts from requiring a permit for drilling or producing from a well on lot sizes ten (10) acres or less insofar as there shall be only one well per lot used to supply groundwater to no more than four households for Domestic Use only. Wells exempted by the provisions of this sub-section C are required to register the well under Rule 6 and are subject to the regulations of Rule 9.
- D.** Domestic exemption in Rule 5.2C is extended to certain commercial operations in which water is used only in the lavatories and kitchen utilized by the owner(s) and employees of the business and not used in the business operation. Outdoor water usage is also granted as defined in “Domestic Use” in Rule 1.1.
- E.** A well to supply water for a subdivision of land for which plat approval is required by Chapter 232, Local Government Code, is not exempted under Subsections A and C above.
- F.** Nothing in the exemptions of Rule 5.2(A), (C) and (D) above can be construed to allow waste of groundwater (See Waste Definition Rule 1.1) (36.0001(8)). The supply of groundwater to a surface reservoir (stock tank, lake, or other confinement) that has a capacity greater than 50,000 gallons is considered waste. This exclusion is not applicable to commercial irrigators who use a surface catchment for temporary daily storage of groundwater prior to irrigation use. For livestock or wildlife management purposes any request for a permit to supply groundwater to a surface reservoir for greater than 50,000 gallons surface storage would be based on the total contiguous acreage and the carrying capacity of the acreage for the livestock or wildlife management watered.

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- G.** At any time the production of a well exempted by Rule 5.2 is used for purposes other than those stated in Rule 5.2 the well is no longer exempted and continued use is a violation of District Rules subject to injunction and civil penalties
- H.** The District requires water wells exempted under this Rule 5.2 to be registered (Rule 6) with the District before drilling. Water wells exempted under this Rule shall 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 or harmful alteration from any source of the water in any groundwater reservoir.

RULE 5.3 WELL PERMIT APPLICATION AND FEES.

- A.** The permit application provided for herein must be filed with the District on the form or forms promulgated by the District, contain all requested information, be sworn to, and such permit must be obtained from the District prior to the drilling of a water well and production of water. Permit applications for landscape irrigation systems may be required to be accompanied by an affidavit certifying compliance with 30 Texas Administrative Code Chapter 344, Landscape Irrigators. Completed irrigation systems may be subject to District inspections.
- B.** All permit applications shall include a description of methods used in the system to:
 - (1) Prevent contamination of the groundwater supply, including as a minimum a backflow preventor on wells used for irrigation,
 - (2) Achieve water conservation, and for landscape irrigation systems the devices used thereto, including as a minimum either a soil moisture sensor, relative humidity sensor or a rain sensor, and
 - (3) Measure the amount of water used by the system.
- C.** An application fee and deposit shall accompany the permit application. The deposit will be refunded to the applicant when all required well information is supplied to the District. The application fee is to cover the cost of processing the application and is nonrefundable. Upon completion of the well, District personnel shall have access to property at a reasonable time to inspect the well and complete the inventorying of the well.
- D.** The District will determine whether the application, maps, and other materials comply with the requirements of this rule. The District may require amendment of the application, maps, or other materials to achieve

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necessary compliance.

- E.** Applicant shall prepare for District approval a water conservation plan and a drought management plan. Applicant's State approved water conservation plan and drought management plan will be accepted by the District. An applicant for a permit, or an applicant requesting to amend or renew a permit, shall submit a water conservation plan and a drought management plan to the District as part of the application for review. The District will provide checklist for applicants use in preparing a water conservation plan and drought management plan.

RULE 5.4 PERMIT APPLICATIONS PROCEDURE; TERM, RENEWAL, AND AMENDMENT.

- A.** This Rule 5.4 and Texas Water Code Section 36.114 are applicable to all well permit applications and applications for amendment.
- B.** The Board will consider each well permit application and application for amendment by using the procedures required by this Rule 5.4. The General Manager will determine whether the application contains the data required by the District's rules and make a determination as to whether the application is administratively complete. An administratively complete application requires information set forth in the application instructions, Rule 5.3, and Texas Water Code Sections 36.113 and 36.1131. If the application is determined to be incomplete, the applicant will be notified and the application will be provided the opportunity to submit the necessary information. Other than applications to produce two acre-feet of groundwater or less per year, the General Manager will schedule administratively complete applications for a public hearing, and shall publish notice of the public hearing in accordance with these rules. For applications to produce two acre-feet of groundwater or less per year, the General Manager shall publish notice of the application, and if no protests are filed by the end of the 10th day after the notice was published the General Manager may issue the permit without further action by the Board. If a protest is filed against the application, the General Manager shall schedule the application for consideration by the Board and notify the applicant and any protestants of the date, time and place of the Board meeting.
- C.** Within sixty days of the date that an administratively complete application is filed with the District, the General Manager shall give notice of a public hearing, which may occur in conjunction with the meeting at which the Board will consider the application.
- D.** Conditions of a well permit application that may be considered by the Board when determining need for a contested case hearing are: potential

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impact on the District Management Plan, potential adverse effects on adjoining permittees or registered well owners, or other factors deemed appropriate by the Board.

- E.** All District hearings are open to the public; however only those persons defined in this subsection shall have a right to be a party in any hearing in which an application is contested.
- F.** In evaluating an application, the District will consider whether (36.113(d)):
 - (1) the proposed use of water unreasonably affects existing groundwater and surface water resources or historic users;
 - (2) the proposed use of water is dedicated to beneficial use;
 - (3) the proposed use of water is consistent with the District Management Plan;
 - (4) the applicant has agreed to avoid waste and achieve water conservation;
 - (5) the applicant has agreed that reasonable diligence shall be used to protect groundwater quality and that the applicant shall follow well plugging guidelines at the time of well closure; and
 - (6) the well will meet District well spacing and production limits.
- G.** If no request for a contested hearing under Rule 12 is received by the District, the effective date of the permit action will be 10 days after the application is approved. If a request for a contested hearing under Rule 12 is received, then the provisions of Rule 12.3 control the effective date.
- H.** If the Board comes into possession of information not previously available to the Board and which would have been of material significance in the Board's original decision, the Board may cancel, change conditions, or let stand the permit.
- I.** On approval of an application, the District will issue a permit to the applicant. The permitted right to produce shall be limited to the extent of and for stated purpose(s) in the permit and shall be valid for a period of five (5) years unless otherwise designated if the permitted well is in a HHGUA or CGDA. The permit may be renewed at the end of the period unless the District determines that the permit owner is not in compliance with the permit conditions or District Rules. In event of such noncompliance, the District will notify the permit owner of the conditions

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preventing renewal of the permit and allow the owner an opportunity to correct any noncompliance. If the owner does not effect compliance with the permit conditions or the District Rules, after notice and an enforcement hearing conducted according to the procedure required by Rule 12.4, the Board may cancel the permit.

- J.** The application/permit process will be deemed completed upon the completion and equipping of the well and the filing of the required information and copy of the drillers log with the District.
- K.** A permit issued pursuant to an application to drill a well is valid for a period of six months. Upon written request by permittees permits may be extended by the Board upon reasonable cause for an additional six months after which time the well is not drilled the permit is cancelled and a new application process may be initiated.
- L.** Permits may be transferred to another person through change of ownership of the well provided all permit conditions remain unchanged and in compliance with District rules and the District is notified of the change in ownership. A change in purpose of or use by the new well owner invalidates the permit and requires a new permit application.
- M.** Permits issued under these Rules are subject, after notice and an enforcement hearing conducted according to the procedure required by Rule 12.4, to amendment or revocation by the District for waste, deviation from the purposes and terms of the permit, or availability of other sources of water not available at the time of permit issuance.
- N.** Permit amendments are required for any change in well size, depth, or an increase in production.

RULE 5.5 REPORTING AND MONITORING.

- A. Reporting.** A permittee shall file with the District annual reports describing the amount of water produced and used for the permitted purpose. Such reports shall be filed on the appropriate form or forms provided by the District within thirty (30) days of December 31. The District may require geophysical logs be run on the well. All drillers logs, geophysical logs, pump test data, water level data, water quality data or any other data pertinent to the well shall be filed in the District office in Fredericksburg, Texas within sixty (60) days after completion of the well or project. Failure to provide production or well reports may invoke Rule 11.3.
- B. Monitoring.** The Board may require monitoring devices on permitted wells that will be available for District inspection during business hours.

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An hour meter may be considered as a production monitoring device, if the well output (gpm) can be measured accurately.

RULE 5.6 WELL SPACING AND PRODUCTION REGULATION (§ 36.116).

A. Classification.

- (1) Domestic and Livestock Wells. New water wells intended for domestic and livestock use shall be placed on a tract of land seventy-five feet (75 ft.) from property lines and public roadways. Platted and recorded subdivisions in existence prior to May 1, 1990 are exempted from the seventy-five feet (75 ft.) setback requirement for new water wells intended for domestic and livestock use so long as the tract in the subdivision has not been replatted. On any new division of property, new property lines shall also be seventy-five feet (75 ft.) from any existing wells. It should be noted that where public roadways are involved as a property boundary line it is permissible to use the centerline of a public roadway to calculate the distance required for the setback of a tract border along a roadway.

A variance from the District shall be obtained for a request to decrease the specified setback distance on new water wells intended for domestic and livestock use. An affidavit shall be obtained from the affected adjoining landowner(s), signed by both parties and recorded with the County Clerk's office citing the encroachment and that all parties are agreeable to the encroachment. A fee set by the Board will be assessed to cover administrative charges. In those cases where an adjoining landowner will not agree to the setback encroachment and will not sign the affidavit, the District will allow an encroachment up to the State's required minimum setback established for new wells.

Existing domestic and livestock wells drilled prior to May 1, 1990, that require alterations (i.e. deepening) are not required to obtain an affidavit from the District if the well is within seventy-five feet (75 ft) from property lines. The deepened well, however must obtain a new registration from the District.

- (2) Permitted Wells. All water wells intended for permitted use, new or existing, shall satisfy the setback and spacing requirements outlined in Rule 5.6B. Exception is those wells granted historic (grandfathered) status. It should be noted that where public roadways are involved as a property boundary line it is permissible to use the centerline of a public roadway to calculate the distance required for the setback of a tract border along a roadway. Permitted wells that cannot satisfy the setback and spacing

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requirements of Rule 5.6B, an affidavit shall be obtained from the affected adjoining landowner(s), signed by both parties and recorded with the County Clerk’s office citing the encroachment and that all parties are agreeable to the encroachment. A fee set by the Board will be assessed to cover administrative charges. In those cases where the adjoining landowner(s) will not agree to the encroachment(s), the well can only be used for domestic and livestock use, and a new well shall be drilled which will satisfy the setback and spacing requirements of Rule 5.6B.

All water wells shall meet the State’s requirement for location from any concentrated source of pollution, such as existing or proposed livestock or poultry yards and septic system absorption fields. Such horizontal distance may be decreased, provided the total depth of pressurized cement slurry in the annular space is increased by twice the horizontal reduction, or to the top of the water bearing strata, but in no case shall such distance be less than 50 feet (16 Texas Administrative Code, Section 76.1000(a)(1)).

- B.** In addition to the requirements of 5.6A(2), the following well spacing shall be required on permitted wells, with the exception of wells permitted for landscape irrigation.

ACTUAL PUMPING CAPACITY OF	MINIMUM DISTANCE FROM EXISTING PERMITTED WELLS AND BETWEEN PROPOSED PERMITTED WELLS	DISTANCE FROM PROPERTY LINE
Less than 17.36 gpm	150 feet	100 feet
17.36-200 gpm	300 feet	100 feet
200-400 gpm	750 feet	200 feet
400-800 gpm	1200 feet	400 feet
>800 gpm	1500 feet	400 feet

- C.** If in the case of development of multiple wells by a single landowner on the same parcel of property and for geological reasons it is desired to cluster wells, the District may consider and may approve such a request provided the spacing requirements are achieved as follows:

- (1) In the case of wells of capacity 400-800 gpm the distance from the property line shall be 500 feet to the nearest well of the cluster;
- (2) In the case of wells of capacity >800 gpm the distance from the property line shall be 600 feet to the nearest well of the cluster;
- (3) Nothing in (1) or (2) above precludes the well owner from obtaining from adjoining landowners a waiver of the property line distances;

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- (4) The total property upon which the clustered wells are to be located shall be contiguous and owned by the permittee, and the same in square or rectangular configuration as if the wells were not clustered and were located on a grid accommodating both the spacing between wells and the property line distances, e.g., a 2 well field of > 800 gpm/well would require an area of 42.2 acres (800 ft. by 2300 ft.) and a 4 well field of > 800 gpm/well would require an area of 121.44 acres (2300 ft. by 2300 ft.);
- (5) In cases where an existing permitted well is located on adjoining property the minimum distance from this well to the nearest well of the cluster shall be maintained as cited in the above table.

D. Production limits for permitted wells are based on service area. Maximum allowable production rates shall be based on the size of tracts in accordance with the following table:

CONTIGUOUS TRACT SIZE OF 10 ACRES OR LESS	
WITH SERVICE AREA	ALLOWED PRODUCTION RATE
>1/2 acres	0.5 acre foot/acre/year

CONTIGUOUS TRACT SIZE AREA OF GREATER THAN 10 ACRES	
WITH SERVICE AREA	ALLOWED PRODUCTION RATE
> 10 acres	1acre foot/acre/year

Production rates as defined above and the total contiguous service area upon which water will be applied shall determine the actual production limits, e.g. a five acre service area on a fifteen acre tract shall be allowed a production of 5 acre feet/year. Production rate limits may be lowered by the Board in HHGUA or CGDA where depletion is a factor and is reasonably necessary to protect existing use (36.116(a)(2)(A)(B)(C)(D)(E)). Final production limits will be determined on a case-by-case basis by the Board. The applicant or permittee may be required to drill test wells and conduct pump tests. A certified engineer or geoscientist maybe required to oversee the test and provide a certified report of the finding. The Board after reviewing the report will decide production limits.

In determining production rates for wells located on tracts not contiguous

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with the destination service area, all sources of water allocated to the destination service area will be considered and the permitted production rate based on the total of all sources as if all sources were subject to District production rules, e.g., a destination service area of 200 acres with existing allocations of current 150 acre feet per year would be permitted a production rate of 50 acre feet per year based on a 1 acre foot per acre per year allowed production rate. Permitted production rates for transport or transfer of water may be lowered by the Board in HHGUA or CGDA declarations at the source as above. Further, at permit renewal, production rates will be redetermined by considering first all other water allocations to the service area at the time of renewal.

RULE 5.7 PROHIBITED AQUIFER PENETRATIONS. There shall be no excavation or drilling of a well(s), or use of an excavation or a well(s) for the purpose of temporarily or permanently disposing of the following materials or substances, as defined in District Rules, within the District:

- (1) Radioactive wastes
- (2) Toxic pollutants
- (3) Hazardous substances
- (4) Hazardous wastes
- (5) Polychlorinated biphenyls(PCBs)
- (6) Soils, fluids or other materials or substance contaminated with any of the above.

RULE 6. WELL REGISTRATION

RULE 6.1 STANDARD REGISTRATION PROVISION.

- A. All wells exempt from permitting under Rule 5.2 shall be registered with the District.
- B. All wells so registered shall be equipped and maintained so as to conform to the standards outlined in Rule 8 as well as the Texas Water Well Drillers and Pump Installers Rules, 16 Texas Administrative Code Chapter 76.
- C. Application for registration of any existing well shall be filed with the District on a form(s) promulgated by the District.
- D. Transport or transfer of water from a registered well nullifies the registered well exemption of Rule 5.2

RULE 6.2 WELL REGISTRATION DEPOSIT, INVENTORY, AND FEE. If the penetration is a new water well, the completely filled out application shall be accompanied by an inspection and inventory charge and by a deposit that will be refunded upon the filing with the District a copy of the driller's log and completion and equipping report including type and size of the pump. Upon completion of the well, District personnel shall have access to the property at a reasonable time to inspect the well and complete the inventorying of the well.

RULE 6.3 RECORDS AND REPORTS REQUIRED. In addition to the information provided in the registration application, accurate driller's logs and records of equipping and completion of the wells, including any electric logs made, pump test data, any water level data, water quality data, or any data pertinent to the well, shall be filed in the District office in Fredericksburg, Texas, within sixty (60) days after completion of the well or project. Failure to do so may invoke Rule 11.3.

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RULE 7. WASTE

RULE 7.1 WASTE. Prohibition against waste or wasteful use of groundwater.

- A.** Groundwater shall not be produced within, or used within or without the District, in such a manner as to constitute waste as defined by Rule 1.1.
- B.** Any well owner producing or using groundwater shall use every possible precaution, in accordance with the latest approved methods, to stop and prevent waste of such water.
- C.** Groundwater pumped for industrial or commercial use or application shall be considered waste if the quantity is in excess of the quantity, if any, recognized by the industry according to its Standard Industrial Code (SIC) classification to be the maximum amount of water necessary to efficiently meet the demands for the particular use or application in question.
- D.** In event of a conflict between “Beneficial Use” or “Beneficial Purposes” and “Waste”, “Beneficial Use” or “Beneficial Purposes” shall be subordinate to “Waste”.

RULE 8. WELL CONSTRUCTION AND COMPLETION
STANDARDS AND PERSONS AUTHORIZED TO
DRILL WELLS AND INSTALL PUMPS

RULE 8.1 WELL CONSTRUCTION AND COMPLETION STANDARDS. Monitor wells are exempt from this rule; however, their construction shall follow state guidelines.

- A.** The diameter of the drilled hole shall be a minimum of three inches (3") larger than the outside diameter of the casing to be used down to a depth of fifty feet (50') or to the top of the first potable water bearing strata above fifty feet (50').
- B.** Either steel pipe or polyvinyl chloride (PVC) casing may be used. PVC casing shall meet minimum specifications as defined by the Department of Licensing and Regulations Water Well Drillers and Pump Installers in 16 Texas Administrative Code Chapter 76.
- C.** The borehole casing annulus shall be filled with cement slurry or bentonite from ground level to a depth of not less than fifty feet (50') below the land surface or to the top of the first potable water bearing strata above fifty feet (50'). In those cases where the well is cemented above fifty feet (50'), in order to prohibit comingling of shallow water with water from deeper strata, the well shall not be drilled or completed in water bearing strata below fifty feet (50'). All wells shall satisfy all State water well completion and annular space sealing requirements. All existing wells drilled prior to adoption of the rules on December 1, 1992, do not have to meet the above fifty feet (50') casing annulus sealing requirement if the well needs to be deepened.
- D.** The casing shall extend at least eighteen inches (18") above land surface at a site not generally subject to flooding; provided however, that if a well must be placed in a flood prone area, it shall be completed with a water tight sanitary well seal and steel casing extending a minimum of thirty six inches (36") above known flood levels.
- E.** All wells completed with plastic 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 should 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 on foot

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- (1') above the top of the slab.
- (2) Steel and PVC Sleeve - The steel sleeve shall be a minimum of 3/16" in thickness 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 casing shall extend a minimum of one foot (1') above the original ground surface, and the steel 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 slurry or bentonite to a depth of not less than fifty feet (50') below land surface, or to the top of the first potable water bearing strata above fifty feet (50'). All wells completed with pitless adapters shall satisfy all State water well completion and annular space sealing requirements that pertain to pitless adapters.
- F.** Wells completed with steel casing shall meet all specifications set forth by the Water Well Driller and Pump Installers Rules, 16 Texas Administrative Code Chapter 76, and need to be completed at the surface with the annular space filled with cement slurry or bentonite as described in Rule 8.1C.
- G.** All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.
- H.** All wells shall be equipped with a water tight sanitary well seal with an inspection port, or some other means that allows for free access to the water table for the purpose of water level measurement and 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 water tight sanitary well seal, the completion shall be done in a manner that shall prevent any pollutants (waste, insects, chemicals, etc.) from entering the well.

RULE 8.2 PERSONS AUTHORIZED TO DRILL WELLS AND INSTALL PUMPS.

- A.** Only persons who are licensed water well drillers, in good standing with

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the Department of Licensing and Regulation Texas Water Well Drillers Board and whose licenses are verified with the District are allowed to commercially drill water wells within the District. License verification with the District shall be on forms provided by the District and be in accordance with and contain information called for in the form of verification. Landowners may personally drill water wells on their own property provided those wells are completed according to State and District completion requirements and the wells meet all other requirements of these rules.

- B.** Commercial Pump Installers are required to show licensed verification with the District. 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.

**RULE 9. HIGH HISTORICAL GROUNDWATER USE AREA AND
CRITICAL GROUNDWATER DEPLETION AREA**

RULE 9.1 STATUTORY AUTHORITY.

- A. The District may regulate the production of wells in order to minimize the drawdown of the water table or the reduction of artesian pressure. The District has the authority to establish different spacing and production rules for different geographic areas within the District, based on hydrogeological conditions. (36.116)
- B. This Rule 9 implements the requirement in the District's comprehensive management plan, adopted as required by Texas Water Code, that calls for regulating production of groundwater from wells if the District determines that (i) groundwater within the District or a part of the District (or a reservoir or subdivision of a reservoir) is experiencing a drawdown of the water table or the reduction of artesian pressure and (ii) the regulation of production of water from wells within the District or that part of the District, shall minimize, as far as practicable, the drawdown of the water table or the reduction of artesian pressure.
- C. The District may impose more restrictive permit conditions on new permit applications and applications for increased use by historic users if the limitations are reasonably necessary to protect existing use (36.113(e)(3)). The District may also eliminate the exemptions granted in Rule 5.2 (C) and (D) of these Rules.

RULE 9.2 HIGH HISTORICAL GROUNDWATER USE AREA.

Permits for new wells or amendments to permits for increased production from existing wells may be subject to increased spacing, restricted production, or denial if the well is located in a High Historical Groundwater Use Area (HHGUA). The District can declare a HHGUA and Buffer Zones only after notice and hearing conducted according to the procedure required by Rule 12.1 Such a designation will be based on current production levels, well density, and aquifer conditions as determined by the District's aquifer monitoring program. These criteria are as follows:

- A. **Criteria for designation of HHGUA.** The District may designate a HHGUA based on any of the following.
 - (1) Water level decline over time;
 - (2) Production levels;

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- (3) Degree of increase in number of permitted wells
- (4) Cone of depression development and size.

B. Criteria for boundary placement of HHGUA. The District may determine the boundary of HHGUA based on any of the following.

- (1) Rectangular or square in shape to enable N-S, E-W parallel to be determined using latitude and longitude coordinates as determined from global positioning systems (GPS);
- (2) Well defined recognized natural or manmade landmarks such as rivers or streams or county or state roads and highways; or
- (3) Circular or non-square or rectangular boundaries could be used and also based on GPS measurements.

C. Designation of High Historical Groundwater Use Buffer Zones. The purpose of such HHGUA Buffer Zones is to put into place a transition between a HHGUA and adjacent non-HHGUA.

D. Permit term and renewal, regulation of production and well setback requirements in a HHGUA. On new permitted wells and requests for increased production on existing permitted wells in a HHGUA, the District will require the following:

- (1) More stringent production limits will be placed on new or increased production permitted wells in HHGUA than on new permitted wells outside of a HHGUA.
- (2) The well spacing requirements of Rule 5.6(A)(2) and (B) are doubled in a HHGUA for new permitted wells
- (3) Metering of either flow or pumped time shall be required for new or increased production permitted well production in a HHGUA.
- (4) New well or increased production permits in a HHGUA may be valid for two (2) years. Before the permit is renewed for an additional 2-year period, the permit will be reviewed by the District and new production limits may be established based on aquifer conditions.
- (5) Existing permitted wells within a HHGUA that require replacement due to deterioration may be replaced without permit change provided intended use and production remain the same. In addition the replaced well shall be plugged.

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- E. Well spacing and setback requirements in a HHGUA Buffer Zone shall be the same as for new permitted wells in a HHGUA.

RULE 9.3 CRITICAL GROUNDWATER DEPLETION AREA.

- A. **Identification of a Critical Groundwater Depletion Area (CGDA).**

The District periodically reviews the water level data obtained from its various water level monitoring programs across the District. If evidence of drawdown of the water table or reduction of artesian pressure in an area of an aquifer indicates an aquifer mining situation, that is, a non-sustainable yield, or in consideration of such local climate indicators such as the Palmer Hydrological Drought Severity Index published by the National Oceanic and Atmospheric Administration (NOAA), the Board may declare the area a Critical Groundwater Depletion Area (CGDA). Prior to establishing a CGDA Category Two the District will invite comment from and exchange aquifer condition data with well owners within the proposed CGDA. Following the foregoing collaboration study and notice made, a hearing will be held using the procedure required by Rule 12.1 prior to declaration of a CGDA. For a CGDA Category One, the Board may forego a Public Hearing as authorized in Rule 12.2 (Adoption of Emergency Rules), and proceed into declaring all or a portion of the District as a CGDA Category One as outlined in the District Drought Management Plan Section N. A CGDA will be classified into one of two categories:

 - (1) A Category One classification will be assigned to an area experiencing critical depletion due to climatic events where the ability of the aquifer to provide sustainable yields at normal usage rates is seriously impaired. The duration and severity of the climatic conditions will determine the extent and period of the conservation actions taken by the District. Upon return of normal climatic conditions and adequate recharge to bring the aquifer back to sustainable normal usage, the District will cancel the CGDA.
 - (2) A Category Two classification will be assigned to an area experiencing critical depletion due to increased pumpage that has caused or will shortly cause the aquifer to fall below sustainable yield on a permanent basis, not primarily caused by but possibly exacerbated by short-term climatic conditions. Conservation actions taken by the District will remain in effect until such time the aquifer shows long-term reversal of the non-sustaining condition. Such reversal can conceivably be brought about through permanent pumpage reduction, use of alternative water sources, or changes in well owner's use of water.
- B. **Procedures Following Establishment of a CGDA.** Once a CGDA is

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declared and delineated, the area will be given a unique name or number for identification purposes and all well owners in the area will be notified. Notification of all Board decisions related to a CGDA will be made to all well owners within the CGDA by published notice. When the Board declares and delineates a CGDA, the Board will take action, including any combination of the following:

- (1) Deny all applications for drilling within the CGDA and cancel the District's defined exemptions of Rule 5.2(C).
- (2) Set production limits on Permitted Wells located within the CGDA to an assigned volume of water as may be determined from the historical production data obtained from District records. The allowed volume will be an amount that will halt the decline of the aquifer sustainable yield, and may allow continued but reduced pumpage. The approved conservation/drought management plans will be considered in determining the production limits. The Board will review the production allocation on a quarterly basis and make appropriate adjustments as permitted or dictated by aquifer conditions.
- (3) Require all Permitted Wells within the CGDA to be equipped with a District approved meter or measuring device. The expense of the device shall be borne by the well owner.
- (4) Require increased spacing for all new permits within the CGDA.
- (5) Establish recommended production limits on all exempted wells within the CGDA to reasonably correspond to retail water utility conservation/drought management plans used within the District.

Owners of Permitted Wells within the CGDA shall provide the District with reports of the amount of water produced from each well under permit in the CGDA on forms provided by the District and on a schedule determined by the Board. If the Board has not required metering devices on wells, production volume reports shall be provided by accurate estimates such as recording duration of pumping and the well output capacity (gpm).

Owners of Permitted Wells within the CGDA may request a temporary change in water allocation through petition to the Board. Decision on such requests will be made consistent with prudent aquifer management, the effect on other well owners in the CGDA, and the degree of necessity for the request.

**RULE 10. TRANSPORTATION OF GROUNDWATER
OUT OF THE DISTRICT**

RULE 10.1 PURPOSE. The District being within a State designated priority groundwater management area (Hill Country Priority Groundwater Management Area) with limited groundwater resources available for present and future demands, and by the authority granted it under Section 36.122 of the Texas Water Code, these rules are adopted and require that an application shall be made and a transport permit be obtained to transfer groundwater out of the District. Transport applications shall be on forms provided by the District and contain all required information before application is considered. All water wells used for the transfer of water out of the District must be permitted wells. Rule 10 applies only to a transfer of water that is permitted after September 1, 1997 (36.122(n)).

RULE 10.2 METHOD OF TRANSPORTATION. A permit is required to transport groundwater outside the boundaries of the District via pipeline or canal. Other de minimus amounts may be transported by fire truck, water truck or temporary hoses. De minimus transfers of groundwater out of the District by a Retail Public Utility meeting the following requirements shall be exempt from the requirement for a Transportation Permit and Fee:

- (1) 95% of the total monthly water volume of the Retail Public Utility must be supplied within the District's Boundaries.
- (2) The monthly volume of water transported out of the District may not exceed 5% of the Retail Public Utility's corresponding monthly demand.

RULE 10.3 FEES. The District may impose a reasonable fee for processing an application for a transport permit to transfer water out of the District, not to exceed the application fee for a well permit under Rule 5.

RULE 10.4 APPLICATION PROCEDURES. All applications to obtain permits to transfer groundwater out of the District (transport permits) will be considered and processed under the same procedures as applications for well permits under Rule 5 and shall contain the following:

- (1) The name and address of the applicant,
- (2) The legal description of the exact location(s) of the well(s) from which water to be transported is to be produced and the well(s) permit number,
- (3) The name and address of the well owner(s) from whose well the transported water is to be produced,
- (4) The time schedule for construction or operation of the facility,

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- (5) A complete construction and operations plan that shall include, but not limited to, information as to a technical description of the facilities to be used for transportation of water,
- (6) The use of the water to be transported,
- (7) The volume of water to be transported annually,
- (8) Scientific evidence showing that the proposed operation will not cause pollution as defined in Rule 1 or waste as defined in Rules 1 and 7,
- (9) Provide information showing the effect of the proposed transportation on the quantity and quality of water available within the District,
- (10) Provide information showing the projected effect on the proposed transfer on aquifer conditions, depletions, subsidence, or effects on existing permit holders or other groundwater users within the District,
- (11) Provide information that the proposed transfer conforms to the goals and objectives in the approved District Management Plan and the Regional Water Plan,
- (12) A water conservation plan and a drought management plan,
- (13) Additional information that may be required by the Board.

RULE 10.5 HEARING. The District may conduct a hearing on an application for a transport permit.

RULE 10.6 PERMIT APPROVAL/DENIAL.

- (1) As required by state law, the District may not impose more restrictive permit conditions on transporters than the District imposes on existing in-district users including determination of service area, except as provided in Rule 5.1 (36.122(c)). In reviewing a proposed transfer of groundwater out of the District, the Board will consider:
 - (a) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested (36.122(f)(1)),
 - (b) the projected effect of the proposed transfer on aquifer conditions, depletion, with special concern for the possibility of aquifer mining and the subsequent implementation of the Critical Groundwater Depletion Area, subsidence, or effects on existing permit holders

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or other groundwater users within the District (36.122(f)(2)) that may be in a designated High Historical Groundwater Use Area ,

(c) the approved Regional Water Plan and certified District Management Plan (36.122(f)(3)),

(2) As required by state law, the District may not deny a transport permit based on the fact that the applicant seeks to transfer groundwater outside of the District but may limit a transport permit if conditions in 36.122(f) warrant the limitation, but may not impose more restrictive permit conditions on transporters than on permits for in-district use of groundwater.

RULE 10.7 TRANSPORT FEE (§36.122(E)(1)(2)). The District may impose a reasonable fee or surcharge for an transport fee using one of the following methods:

(1) A fee negotiated between the district and the transporter,

(2) A rate not to exceed the amount authorized through Chapter 36.122(e).

RULE 10.8 PERMIT TO TRANSPORT GROUNDWATER OUT OF THE DISTRICT. If a permit is granted to an applicant, the permit may specify the following (36.122):

(1) The amount of water that may be transferred out of the District; and the period for which the water may be transferred (36.122 (h).

(2) A transport permit will be issued for an initial term of at least 3 years if construction of a conveyance system has not been initiated prior to the issuance of the permit (36.122(i)(1)); or at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit (36.122 (j)(2)).

(3) If during the initial term of a transport permit, construction of a conveyance system is begun, the transport permit will automatically be extended to the full 30-year term.

(4) Notwithstanding the permit term, the District shall renew a transport permit every five years, using the standards in Rule 5.4(H). In its determination of renewal of a transport permit, the District shall consider relevant and current data for the conservation of groundwater resources and will consider the permit in the same manner it would consider a permit under Rule 5. The District may limit the amount of water authorized by the transport permit if warranted by the standards in Rule 5.4(H).

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- (5) The District may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997 (36.122(m)).
- (6) In applying Rule 10, the District will be fair, impartial, and nondiscriminatory (36.122(q)).

RULE 10.9 MONITORING AND REPORTING.

- (1) All permitted transportation facilities shall be equipped with flow monitoring devices approved by the District and shall be available at all reasonable times for inspection by District personnel,
- (2) The operation of a permitted transportation facility shall be required to keep records and provide monthly production reports to the District, which show daily production rates.

RULE 11. INVESTIGATIONS AND ENFORCEMENT

RULE 11.1 NOTICE AND ACCESS TO PROPERTY. (36.123) Board Members and District representatives and employees are entitled to access to all property within the District to carry out technical and other routine investigations (i.e. photographing, sampling, monitoring and testing) necessary to the implementation of the District Rules. Prior to entering upon the property for the purpose of conducting an investigation, the person seeking access will give notice in writing or in person or by telephone to the well owner or operator, agent, or employee of the well owner or operator, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District representative or employees who are attempting to conduct an investigation under District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in the Texas Water Code Chapter 36.102.

RULE 11.2 INVESTIGATION OF POSSIBLE VIOLATION(S) (§36.123).

- A.** When the District’s Board of Directors has been informed of a possible violation of a District Rule, the District Manager will send a letter notifying the well owner about the potential violation and arranging to meet with the well owner to investigate the potential violation.
- B.** Investigations or inspections that require entrance upon property will be conducted at reasonable times, and will be consistent with the establishment’s reasonable rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations shall identify themselves and present credentials upon request of the landowner.
- C.** Following the investigation, the District Manager shall report to the Board of Directors the findings of the investigation. If the Board determines that no violation has occurred, the District will notify the well owner by letter of the Board’s finding that no violation has occurred.
- D.** If the Board of Directors determines from the investigation that a violation has occurred, the District will notify the landowner by certified mail that the landowner is in violation and outline the action the landowner shall take to come into compliance with District Rules.
- E.** When the landowner notifies the District that compliance has been met, an investigation by the District Manager will be made and reported to the Board. The Board shall determine if compliance has been met by the

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landowner. If so, the District will notify the landowner by letter that compliance with District Rules has been met.

RULE 11.3 RULE ENFORCEMENT. If the Board determines that compliance has not been met, then the Board may chose from the following actions to ensure compliance with District Rules:

- A.** Begin the enforcement hearing process under Rule 12.4 for permit revocation, involuntary amendment or suspension.
- B.** Enforce these rules by injunction, mandatory injunction or other appropriate remedy in a court of competent jurisdiction.
- C.** Assess reasonable civil penalties for breach of any District Rule as authorized in Chapter 36 of the Texas Water Code. A penalty under this Rule is in addition to any other penalty provided by law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the District's principal office or meeting place is located. If the District prevails in any suit to enforce its Rules, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other cost incurred by the District before the court. The amount of the attorney's fee shall be fixed by the court.
- D.** After a notice and an enforcement hearing conducted according to the procedure required by Rule 12.4, order a non-compliant well to be sealed under District Rule 11.4.
- E.** Continue to work with the landowner until compliance is met and may mandate the monitoring of groundwater use by requiring the metering of the well or any other monitoring methods and provide regular production reports as determined by the Board.
- F.** Any combination of the above actions or other reasonable means as determined by the Board to ensure compliance.
- G.** Comprise and Settlement Guidelines, See Appendix B for an outline of Minor and Major rule violations.

RULE 11.4 SEALING, CAPPING AND PLUGGING WELLS.

- A. SEALING OF WELLS.** After notice and an enforcement hearing conducted according to the procedure required by Rule 12.4, the District may seal wells to ensure that a well is not operated in violation of the District Rules. A well may be sealed when:

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- (1) no permit has been obtained to drill a new water well that requires a permit under Rule 5;
- (2) no application form has been filed for a permit to withdraw groundwater; or
- (3) the Board has denied, cancelled or revoked a drilling permit or an operating permit.

The well may be sealed by physical means and tagged to indicate that the well has been sealed by the District. Other appropriate action may be taken as necessary to preclude operation of the well or to detect unauthorized operation of the well.

Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a well that has been sealed constitutes a violation of these rules and subjects the person performing that action, as well as any well owner or primary operator who authorizes or allows that action, to such penalties as provided by the District Rules.

- B. CAPPING WELLS.** After notice and an enforcement hearing conducted according to the procedure required by Rule 12.4, the District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well shall remain capped until such time as the conditions that led to the capping requirement are eliminated. If well pump equipment is removed from a well and the well will be re-equipped at a later date, the well shall be capped, provided however that the casing is not in a deteriorated condition that would permit commingling of water strata in which case the well shall be plugged. The cap shall be capable of sustaining a weight of at least four hundred (400) pounds.
- C. PLUGGING WELLS.** A deteriorated well, abandoned well, or open and uncovered well shall be plugged in accordance with the Well Driller and Pump Installers Rules, 16 Texas Administrative Code Chapter 76. It is the responsibility of the landowner to see that such a well is plugged to prevent pollution of the underground water and to prevent injury to persons.
- D. PLUGGING REPORT.** Not later than the 30th day after a well is plugged, the person plugging the well shall submit a plugging report to the District on a form provided by the District.

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RULE 12. HEARINGS

This Rule 12 sets forth circumstances and procedures for holding formal hearings on the specific topics stated. Nothing in this Rule 12 will preclude the District Board from including as a standard Board meeting agenda item an allotted time for public comment and said agenda item for public comment will not be considered a hearing as defined by this Rule 12.

RULE 12.1 RULE MAKING HEARING.

- A.** Once the District has developed a proposal involving changes to District Rules, changes to the District Management Plan, designation of a High Historical Groundwater Use Area (HHGUA) and Buffer Zone, or Designation of a Critical Groundwater Depletion Area (CGDA), 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 will be considered the hearing on the proposal and fulfills the requirement, if any, for a hearing.
- B.** The General Manager shall provide notice of all rulemaking hearings in accordance with the Open Meetings Act.
- C.** In addition to the notice required by the Open Meetings Act, not later than the 20th 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 Gillespie County;
 - (3) Publish notice in one or more newspapers of general circulation in Gillespie County; and
 - (4) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 12.1.F. Failure to provide notice under this Rule 12.1.C(4) does not invalidate an action taken by the District at a hearing under Rule 12.1.
- D.** Notice of the hearing on the proposal required by Rule 12.1.C. will include:
 - (1) A brief explanation of the subject of the hearing, including a statement that the District's Board of Directors will consider proposed changes to the District's Rules, Management Plan,

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HHGUA, or CGDA at the Board meeting, which will serve as the hearing on the matter.

- (2) The time, date, and location of the hearing.
 - (3) The agenda of the hearing.
 - (4) A statement that the proposal is available to be reviewed or copied at the District Office and on the District's website 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.
- E.** Copies of the proposal will be available during normal business hours at the District and posted on the District's website.
- F.** A person may submit to the District a written request for notice of a hearing under this Rule 12.1. A request is effective for the remainder of the calendar year in which the request is received by the District.
- G.** Anyone interested in the proposal may submit written comments about the proposal to the District at least 5 business days prior to the scheduled hearing at which the proposal will be considered by the Board.
- H.** Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.
- I.** The District will make and keep in its files an audio recording of the hearing, written minutes of the hearing, and any written comments of the hearing.
- J.** The Board will issue a written order or resolution reflecting its decision and the proposal that the Board approves will be an attachment to that written order or resolution.
- K.** The effective date of the written order will be the date on which the Chairman of the District signs the order or resolution. The order or resolution will include a statement that the proposal becomes effective and final on that date. Any suit authorized by Section 36.251, Texas Water Code, will run from that effective date, and any action not challenged through such a suit shall be presumed valid as of the third anniversary of that date in accordance with Section 36.124, Texas Water Code.

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- L.** If in the course of the deliberation during the hearing, the Board decides to substantially change the proposal, the Board will “continue” or postpone the matter until a future Board meeting. Prior to consideration of the substantially changed proposal, the District will provide a notice and opportunity for comment and hold a hearing on the substantially changed proposal. It is solely within the discretion of the Board what constitutes a substantial change to a proposal under this Rule.

RULE 12.2 ADOPTION OF EMERGENCY RULES.

- A.** The District may adopt an emergency rule without following the notice and hearing provisions of Rule 12.1, if the Board:
 - (1) Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days’ notice; and
 - (2) Prepares a written statement of the reasons for its finding under Rule 12.2.A(1).
- B.** An emergency rule under this Rule 12.2 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.
- C.** Except as provided by Rule 12.2.D., a rule adopted under this Rule may not be effective for longer than 90 days.
- D.** If notice of a hearing under Rule 12.1 is given before the emergency rule expires under Rule 12.2.C., the emergency rule is effective for an additional 90 days.

RULE 12.3 HEARINGS ON PERMITS AND PERMIT AMENDMENTS.

- A.** The following applications are subject to a hearing:
 - (1) any application for which a protest has been filed;
 - (2) any application to drill and operate a well to withdraw more than two acre feet of groundwater per year;
 - (3) any application or application amendment that will result in the withdrawal of greater than two acre feet from a single well or in aggregate with other wells on the same permit; and
 - (4) any application for a transport permit.

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- B.** In accordance with Rule 5.4E, the Board may hold a public hearing on one or more applications. A public hearing may be held as part of a scheduled Board meeting at the regular Board meeting location unless the Board provides for the hearing to be held at a different location or referred to a hearing examiner.
- C.** Notice (Sec. 36.404)
- (1) If the Board schedules a public hearing on a permit or permit amendment, the District will give notice of the public hearing as provided by this section.
 - (2) The notice must include:
 - (a) The name of the applicant;
 - (b) The address or approximate location of the well or proposed well;
 - (c) 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;
 - (d) The time, date, and location of the hearing;
 - (e) A statement that the District will accept written comments on the application and give the deadline for submitting written comments;
 - (f) A statement that oral public comment on the application will be taken at the public hearing; and
 - (g) Any other information the Board considers relevant and appropriate.
 - (3) Not later than the 10th day before the date of a hearing, the District will:
 - (a) Post notice in a place readily accessible to the public at the District office;
 - (b) Provide notice to the county clerk; and
 - (c) Provide notice by:

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- (d) Regular mail to the applicant;
 - (e) Regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (4);
 - (f) Regular mail to any other person entitled to receive notice under District Rules; and
 - (g) Other notification deemed appropriate by the Board.
- (4) A person may request notice from the District of a public hearing on any 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 public hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

D. Public Hearing Registration (36.405)

The District may require each person who participates in a public hearing to submit a hearing registration form stating:

- (1) the person's name;
- (2) the person's address; and
- (3) whom the person represents, if the person is not there in the person's individual capacity.

E. Public Hearing Procedures (36.406)

- (1) The public hearing may be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a hearing Examiner to preside at and conduct the public hearing on the permit or permit amendment. If the public hearing is conducted by a quorum of the Board, the President will preside. If the President is not present, the Board will select one of the Directors present to preside. Notice of all public hearings conducted by a quorum of the Board will be made in accordance with the Open Meetings Act.

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- (2) The presiding officer may:
 - (a) Convene the hearing at the time and place specified in the notice;
 - (b) Set any necessary additional hearing dates or continue the public hearing from day to day;
 - (c) Administer oaths to all persons presenting testimony; and
 - (d) Examine persons presenting testimony.

F. Recording. (36.408)

The presiding officer shall prepare and keep a record of each hearing in the form of meeting minutes except in a contested hearing an audio recording shall also be made. On the request of a party to a contested hearing, 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 or have paid by others in a timely manner costs assessed against that party.

G. Report. (36.410)

If the Board has appointed a hearing examiner to be the presiding officer at the public hearing, the hearing examiner shall submit a report to the Board not later than the 30th day after the date the public hearing is concluded. The report must include:

- (1) A summary of the subject matter of the hearing; and
- (2) A summary of the evidence or comments received.

A copy of the report shall be provided to the applicant, made a part of the record for the application, and made available to the public or any person who requests a copy.

H. Any permittee or registered well owner may file a formal protest against the proposed action. If no protest is filed by the end of the public hearing, or at the end of any continued public hearing, the Board shall refer the matter to a contested case hearing. Following the public hearing, the Board may:

- 1) issue the permit;

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- 2) issue the permit with conditions;
- 3) deny the application; or
- 4) send the application to a contested case hearing.

If the Board votes to issue the permit with conditions, the applicant may reject the permit by filing a request for a contested case hearing within 10 days after notice of the Board action is sent to the applicant.

RULE 12.4 HEARINGS ON ENFORCEMENT ACTIONS.

- A.** Once the District has determined that a person has violated any rule under the District's jurisdiction and that the Board is considering taking some action against the person, the District will decide at which Board meeting the enforcement action will be considered. The Board meeting at which the enforcement action is considered under this Rule will be considered the enforcement hearing on the matter and fulfills the requirement.
- B.** The General Manager shall post notice in accordance with the Open Meetings Act.
- C.** Notice of the enforcement hearing will be mailed to the respondent by certified mail, return receipt requested, at least ten days prior to the scheduled hearing date. This notice serves as the notice of violation.
- D.** Anyone attending the enforcement hearing may make oral comments at the time designated for comments.
- 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.
- F.** The Board, at its sole discretion, may appoint a Hearings Officer or committee of the Board to conduct the enforcement hearing (Hearing Body). Any hearing conducted by a Hearing Body, will be conducted in the same manner as provided in this Rule 12.4. At the close of the enforcement hearing, the Presiding Officer will make a written recommendation to the Board. The recommendation will become part of the record. The Board is not required to approve the recommendation of the Hearing Body.
- G.** The Board will issue a written order reflecting its decision and actions. Actions may include the sealing of the well(s), cancellation of permit(s), civil penalties or injunctions.

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- H.** The effective date of the written order will be the date on which the Chairman of the District signs the order or resolution. The order or resolution will include a statement that the order or resolution becomes effective and final on that date. Any suit authorized by Section 36.251, Texas Water Code, will run from that effective date.

RULE 12.5 CONTESTED CASE HEARING PROCEDURES.

A. Applicability.

Contested case hearings may be requested in connection with the following applications:

- (1) drilling permits/operating permits;
- (2) transport permits; and
- (3) amendment to any existing permit.

B. Contesting an Application.

- (1) The Board will process a protest against an application by first determining if the protestant is entitled to a contested case hearing. Persons have a personal justiciable interest in and are entitled to a contested case hearing on applicable applications if that person owns a registered or permitted well that may be adversely impacted if the protested application is granted.
- (2) Applicants or potential protestants choosing not to file a request for a contested case hearing, waive any right to a contested case hearing upon the expiration of the filing deadline.

C. Requests for Contested Case Hearing.

- (1) A request for a contested case hearing or a protest against an application must be in writing and be filed before the end of the public hearing on that application for which notice was properly provided.
- (2) A contested case hearing request must substantially comply with the following:
 - (a) give the name, address, daytime telephone number, and fax number, of the person filing the request. If the request is made by a corporation, partnership, or other business entity, the request must identify the entity and one person

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by name who shall be responsible for receiving all official communications and documents for the entity;

- (b) state the basis upon which the person is entitled to a contested case hearing;
 - (c) state the issues the requestor or protestant wishes to contest;
 - (d) state whether the person requesting the contested case hearing is the applicant for that permit or an applicant for or holder of another groundwater withdrawal permit.
 - (e) request a contested case hearing;
 - (f) provide any other information requested in the notice of proposed action and technical summary; and
 - (g) be verified by an affidavit.
- (3) Where a request for a contested case hearing is filed by a person other than the applicant, a copy of that request must be served on the applicant at or before the time the request is filed. The request shall include a certificate indicating the date and manner of service and the name and address of all persons served.
- (4) If a person is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

D. Processing of Hearing Requests.

- (1) After a hearing request is timely filed the District staff will schedule a preliminary hearing to consider the request.
- (2) At least 20 days prior to the preliminary hearing the District staff will provide notice to the applicant, general manager and any persons who timely filed a hearing request.
- (3) Affected persons may submit a written response to the hearing request no later than 10 days before a Board meeting at which the Board will evaluate that request. Responses must be filed with the District and served on the general manager, the applicant and any other persons who timely filed a hearing request in connection with that matter.

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- (4) The person requesting a hearing may submit a written reply to a response no later than 5 days before the scheduled Board meeting at which the Board will evaluate the hearing request. All replies shall be filed with the District and served on the same day on the general manager, the applicant, and any other person who timely filed a hearing request.
- (5) The Board may refer the hearing request to SOAH instead of scheduling the hearing before the Board. Following the hearing, SOAH will provide a proposal for decision to the Board of Directors for action by the Board.

E. Action by Board.

- (1) The determination of whether a hearing request should be granted is not a contested case hearing.
- (2) The Board will evaluate the hearing request at a scheduled Board meeting and may determine that the person requesting the hearing:
 - (a) does not have a personal justiciable interest related to the application and deny the hearing request; or
 - (b) has a personal justiciable interest relating to the application and schedule the application to a contested case hearing.
- (3) If the Board grants the request for a contested case hearing, the Board shall assign a Hearings examiner or delegate the matter to SOAH. The Hearings examiner shall:
 - (a) schedule a preliminary hearing;
 - (b) at least 21 days after the preliminary hearing, schedule an evidentiary hearing; and
 - (c) following the evidentiary hearing, prepare a proposal for decision including proposed findings of fact and conclusions of law, and transmit that proposal to the Board.
- (4) The Board shall schedule a final hearing where it will consider the evidence and testimony presented during the evidentiary hearing and the hearings examiner's proposal for decision.
- (5) Following the final hearing, the Board may:
 - (a) grant the application;

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- (b) grant the application with conditions; or
- (c) deny the application.

F. Delegation to SOAH.

- (1) By order, the Board may delegate to SOAH the authority to conduct hearings designated by the Board.
- (2) If the Board refers a contested case hearing to SOAH, then the applicable rules of practice and procedure of SOAH (1 Tex. Admin. Code Ch. 155) govern any contested case hearing of the District, as supplemented by this subchapter.
- (3) If the Board refers a contested case hearing to SOAH, the administrative law judge who conducts the contested case hearing shall serve as the hearings examiner and consider applicable District rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.
- (4) If the Board refers a contested case hearing to SOAH, the District may not attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.
- (5) If requested by the applicant or other party to a contested case, a district shall contract with the State Office of Administrative Hearings to conduct the hearing. The party must file such a request not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by SOAH. The party requesting the hearing before the SOAH shall pay all costs associated with the contract for the hearing and shall, before the hearing begins, deposit with the district an amount sufficient to pay the contract amount. At the conclusion of the hearing, the district shall refund any excess money to the paying party.

G. Conducting a Contested Case Hearing by SOAH.

- (1) When an application is referred to contested case hearing by the Board, the District will file all applicable documents to have the matter referred to SOAH.

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- (2) In referring the case to contested case hearing, the District will:
 - (a) notify the administrative law judge of the applicable burden of proof for the applicant to establish all of the prima facie elements;
 - (b) identify for the administrative law judge any additional issues that have been raised in the request(s) for contested case hearing; and
 - (c) provide the administrative law judge with a written statement of applicable rules and policies of the District.

H. Service of Documents.

- (1) For any document filed with the District or the hearings examiner in a contested case, the person filing that document must serve a copy on all parties at or before the time that the request is filed.
- (2) A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The District may authorize a document to be filed without a certificate of service but will require the certificate be served within three days thereafter.

I. Continuances.

- (1) The Board may continue a hearing related to a contested case under the jurisdiction of the Board from time to time and from place to place.
- (2) The notice of the hearing must indicate the times and places at which the hearing may be continued.
- (3) If a hearing is not concluded on the day it begins, the Board shall, to the extent possible, proceed with the hearing on each subsequent working day until the hearing is concluded.

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J. Designation of Parties.

The following are parties in all contested cases:

- (1) the general manager;
- (2) the applicant; and
- (3) a person who is granted a contested case hearing by Board action.

K. Discovery.

Discovery in contested case proceedings will be governed by Chapter 2001, Subchapter D, Tex. Gov't Code and Title 1, Section 155.31, Tex. Admin. Code, as supplemented by this subchapter. Depositions in a contested case shall be governed by Tex. Gov't Code §§ 2001.096-2001.102.

L. Expenses of Witness or Deponent.

A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of a proceeding under this chapter is entitled to receive compensation or reimbursement in accordance with the provisions of Section 2001.103, Government Code.

M. Evidentiary Matters.

- (1) Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.
- (2) The rules of privilege recognized by law shall be given effect.
- (3) An objection to an evidentiary offer may be made and shall be noted in the record.
- (4) Evidence may be received in writing if:
 - (a) it will expedite the hearing; and
 - (b) the interests of the parties will not be substantially prejudiced.

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- (5) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.
- (6) A party may conduct cross-examination required for a full and true disclosure of the facts.
- (7) Witnesses may be sworn and their testimony taken under oath.
- (8) Official notice may be taken of:
 - (a) all facts that are judicially cognizable; and
 - (b) generally recognized facts within the area of the District's specialized knowledge. Each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledge of District staff may be used in evaluating the evidence.

N. Depositions and Subpoenas.

- (1) On its own motion, or on the written request of a party, and on deposit of an amount that will reasonably ensure payment of the estimated total amount, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested matter pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case will be in writing and directed to the Board.
- (2) A party requesting the issuance of a commission requiring deposition or a subpoena will file an original of the request with the District. District staff will arrange for the request to be presented to the Board at its next meeting.
- (3) In the case of a deposition, the Board will issue a commission addressed to the officer authorized by statute to take a deposition, requiring that the deposition of a witness be taken. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers or other objects that may be necessary and proper for the purpose of the proceeding.

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Additionally, the commission will require the officer to whom it is addressed to examine the witness before the officer on the date and at the place named in the commission; and take answers under oath to questions asked the witness by a party to the proceeding, the District, or an attorney for a party or the District. The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.

- (4) In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the District will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers or other objects that may be necessary or proper for the purpose of the proceeding.

O. Ex Parte Communications.

- (1) For applications for which there is a right to a contested case hearing, a member of the Board may not, at any time after the application has been filed and before the Board has taken final action, communicate, directly or indirectly, about any issue of fact or law with any representative of the District or other designated party to the application, except on notice and opportunity for all parties to participate.
- (2) Subsection (1) does not apply if:
 - (a) the Board member abstains from voting on a matter in which he or she engaged in ex parte communications;
 - (b) the communications are by and between members of the Board consistent with the Texas Open Meetings Act;
 - (c) the communications are with District staff who have not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the staff in evaluating the evidence; or
 - (d) the communications are with legal counsel representing the Board of Directors.

P. Remand to Board.

- (1) A hearings examiner may remand an application to the Board as follows:

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- (a) all timely hearing requests have been withdrawn;
 - (b) all parties to a contested case reach a settlement so that no facts or issues remain controverted; or
 - (c) the party or parties requesting the hearing defaults.
- (2) After remand, the application will be uncontested, and the applicant will either be deemed to have agreed to the action proposed by the general manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration. District staff will set the application for consideration at a Board meeting.

Q. Informal Dispositions and Alternative Dispute Resolution.

- (1) An informal disposition of a contested case may be made by:
- (a) stipulation;
 - (b) agreed settlement;
 - (c) consent order; or
 - (d) default.
- (2) The hearings examiner may require the parties enter into mediation or other alternative dispute resolution process. The hearings examiner may also determine how the costs of the alternative dispute procedure shall be apportioned among the parties, appoint an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

R. Certified Questions.

- (1) At any time during a contested case proceeding, on a motion by a party or on the hearings examiner's own motion, the hearings examiner may certify a question to the Board.
- (2) Issues regarding District policy, jurisdiction, or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are appropriate for certification. Policy questions for certification purposes include, but are not limited to:

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- (a) the District's interpretation of its rules and applicable statutes;
 - (b) the portion of the Act, the District rules, or other statutes that are applicable to a proceeding; and
 - (c) whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
- (3) If a question is certified, the hearings examiner shall submit the certified issue to the District. District staff will place the certified issue on the agenda of a meeting of the Board. The District will give the hearings examiner and parties 30 day notice of the meeting at which the certified question will be considered. Within ten days after the certified question is filed with the District, parties to the proceeding may file briefs. Within ten days of the filing of such briefs, parties may file responses. Briefs and responses shall be filed with the District with copies served on the hearings examiner. The District will provide copies of the certified questions and any briefs and responses to the Board. The hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.
- (4) The Board will take action and issue a written decision on the certified issue and provide copies to the parties and the hearings examiner. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

S. Scheduling of a Meeting of the Board.

- (1) After receiving the proposal for decision or other disposition from the hearings examiner, District staff shall schedule the presentation of the proposal to the Board. The District shall provide 10 day notice to the parties of the date of the final hearing before the Board at which the proposal will be presented and considered. The Board may reschedule the presentation of the proposal. The District will send notice of the rescheduled meeting date to the parties no later than 10 days before the rescheduled meeting.
- (2) Any party to the contested case hearing may make an oral presentation at the Board meeting in which the proposal for decision in that case is presented to the Board.

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- (3) On the written request of a party to a contested case, the oral proceedings before the Board at which the proposal for decision is presented and oral presentations are made, may be transcribed by a court reporter. A party that desires a transcript of the proceedings shall bear the cost, or the costs will be equally divided between all parties requesting a transcript. If the District desires a transcript it will bear the costs.

T. Reopening the Record.

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

U. Decision.

- (1) The decision, if adverse to any party, must be in writing or stated in the record and will include findings of fact and conclusions of law separately stated.
- (2) Findings of fact may be based only on the evidence and on matters that are officially noticed. If set forth in statutory language, findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (3) If a party submits proposed findings of fact, the decision will include a ruling on each proposed finding.
- (4) If a contested case is presided over by a majority of the Board, then the Board's decision shall be rendered not later than the 60th day after the date on which the hearing is finally closed. If the Board refers a contested case to SOAH, then the Board's decision will be rendered no more than 120 days after the date that the proposal for decision is presented at a final hearing, unless the Board determines that there is good cause for extending the deadline.

V. Notification of Decisions.

- (1) District staff will notify all parties in a contested case of any decision or order.
- (2) District staff will send a copy of the decision in a contested case to attorneys of record, or the parties.

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- (3) A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the notice is mailed.

W. Motion for Rehearing.

- (1) For any matter considered during a contested case hearing, only a party to the contested case proceeding may file a motion for rehearing. The motion shall be filed with the District by no later than the 20th day after the date of the Board's decision. On or before the date of filing of a motion for rehearing, the party filing the motion shall mail or deliver a copy of the motion to all parties with certification of service furnished to the District. The motion shall contain:
 - (a) the name and representative capacity of the person filing the motion;
 - (b) the style and official docket number assigned by the hearings examiner;
 - (c) the date of the decision or order; and
 - (d) the grounds for the motion, including a concise statement of each allegation of error.
- (2) Only a party to the contested case proceeding may reply to a motion for rehearing. A reply must be filed with the District within 20 days after the date the motion for rehearing is filed.
- (3) The motion for rehearing will be scheduled for consideration during a Board meeting. A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The Board may reopen the hearing to the extent it deems necessary. If the Board grants a motion for rehearing, District staff shall schedule the rehearing not later than the 45th day after the date the motion is granted. Thereafter, the Board shall render a decision or order.
- (4) The failure of the Board to grant or deny a motion for rehearing before the 91st day after the date the motion is submitted constitutes a denial of the motion by operation of law.

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X. Decision Final and Appealable.

In the absence of a timely motion for rehearing, a decision or order of the Board is final on the expiration of the period for filing a motion for rehearing. If a party files a timely motion for rehearing, a decision or order of the Board is final and appealable on the date:

- (1) the Board denies the motion for rehearing, including a denial by operation of law; or
- (2) the Board renders a written decision after rehearing.

Y. Appeal of Final Decision.

- (1) Not later than the 60th day after the date on which the decision became final and appealable, parties affected by the final decision of the Board in a contested case may file suit under Section 36.251, Texas Water Code, to appeal the decision. A party may not file suit if a motion for rehearing was not timely filed.
- (2) The record in a contested case hearing shall include the following:
 - (a) all pleadings, motions and intermediate rulings;
 - (b) evidence received or considered;
 - (c) a statement of matters officially noticed;
 - (d) questions and offers of proof, objections and rulings on them;
 - (e) summaries of the results of any conferences held before or during the hearing;
 - (f) proposed findings, exceptions and briefs;
 - (g) any decision, opinion or report issued by the hearings examiner;
 - (h) pre-filed testimony;
 - (i) all memoranda or data submitted to or considered by the hearings examiner; and
 - (j) the final order and all interlocutory orders.

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Z. Costs of Record on Appeal.

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

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APPENDIX A
RULE REVISION/AMENDMENT DATES

Adopted 1 st Rules – January 12, 1989	
Amended/Adopted – May 1, 1990	75' Setback Requirement
Amended/Adopted – December 1, 1992	Well Completion
Amended/Adopted – September 6, 1994	Waste
Amended/Adopted – November 9, 1999	General
Amended/Adopted – March 19, 2002	General
Amended/Adopted – June 11, 2002	Rule 5.6(A) - Clarification of 75' setback requirement
Amended/Adopted – September 10, 2002	Rule 5.1(C)(5); 5.2(C); Statutory Authority Section 9 A,B,C & D; Rule 9.1; 9.2(A); 9.2(A)(2); 9.2(B)(1)(4)(6) - Modify exemptions pertaining to domestic wells within high historical use and critical groundwater depletions areas
Amended/Adopted – December 16, 2003	Addition of buffer zones around High Historical Groundwater Use Areas in Rule 9.2C and 9.2E, modification of the hearing process in Rule 12. Hearings and general administrative changes.
Amended/Adopted – October 5, 2004	Definitions: Adding Retail Public Utility –Amending – Applicant, Contiguous, Owner and Service Area; Modifications to Rule 5. Well Permitting; and General Administrative Changes
Amended/Adopted – May 9, 2006	Definitions – adding new and deleting old terms - Modifications to Rule 5.4 Permit Applications Procedure; Term Renewal, and Amendment – Modifications to Rule 12.Hearings – General administrative changes
Amended/Adopted – July 8, 2008	Modifications Rule 5.1, 5.2(C), 5.2(D), 5.4(B),(C),(D),(E),(F),(G),(L),(N) , Rule 5.6(A), Rule 6.1, Rule 8.1(C), Rule 11.3 and General

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	Administrative Changes
Amended/Adopted – December 3, 2013	Multiple rules were amended to implement legislative changes effective September 1, 2011, including changes to the definitions, contested case hearing process, considerations for permit applications, exemptions, and grammar changes throughout.

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APPENDIX B
COMPROMISE AND SETTLEMENT GUIDELINES

These are the guidelines the District will follow after the Hearings on Enforcement Actions (Rule 12.4), the following procedures will be implemented.

Compromise and Settlement Worksheet: Each compromise and settlement worksheet prepared for presentation to the board shall include the following information.

- The name of the permittee
- The type of violation and the facts underlying the violation (including whether it is a repeat occurrence), and
- The penalty as provided by Section 36.102(b) of the Texas Water Code.

The fines listed below will be in addition to any other fees owed to the District.

MINOR VIOLATIONS

The following acts shall constitute minor violations:

- Failure to file a registration form on an exempt well.
- Failure to submit required paperwork and reports as required by District Rules.
- Refusing to allow District employees access to wells.
- Failure to prevent waste.
- Failure to comply with capping rules.

MAJOR VIOLATIONS

The following acts shall constitute major violations:

- Failure to obtain a permit (Including: failure to permit an existing well, failure to obtain a permit prior to drilling, or failure to obtain a permit prior to installing a landscape irrigation system).
- Failure to abide by permit requirements (i.e. production limits).
- Failure to comply with well spacing and well density rules.
- Failure to complete well according to District Rules or State standards.
- Failure of drillers, pump installers, and irrigation installers to have all necessary State certification(s) and to be complainant with all District Rules.
- Failure to install the proper check valves to prevent contamination from chemical injection, chemigation, and foreign substance systems.
- Failure to meter a well if required.
- Failure to comply with plugging rules.
- Removal of the seal of a prohibited well sealed by Court Order.
- Tampering with or bypassing a well production monitoring device (i.e. meter).
- Failure to come into compliance after second occurrence on a minor violation.

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- Pumping groundwater into surface impoundments in excess of 50,000 gallons.

CALCULATIONS

Minor Violation

- First occurrence: Up to \$50.00 per day
- Second occurrence: Up to \$100.00 per day
- Third occurrence: Major violation

Major Violation

- First Occurrence: Up to \$250.00 per day
- Second Occurrence: Up to \$500.00 per day
- Third Occurrence: Civil Suit for injunction with penalties up to \$10,000.00 per day

After the Hearings on Enforcement Actions (Rule 12.4), the following procedures will be implemented.

On the first occurrence of any violation, the violator shall be notified and allowed a specified time to become compliant. The first occurrence per diem starts on the date of the violation notice and continues through the specified time, but will be waived if the violator becomes compliant in the time specified in the violation notice. After the first occurrence time period has expired and the violator has not become compliant, then a second occurrence will be assessed and the violator notified. A new time period will be given for compliance along with a new second occurrence per diem that will be in addition to the first occurrence per diem assessed and accrued. If during the second occurrence the violator has become compliant, the second occurrence per diem will be waived; however the first occurrence per diem may or may not be waived by the Board. A third occurrence will be assessed and the violator notified if the violator has not become compliant after the second occurrence time period has expired. A new third occurrence per diem will be assessed with the first and second occurrence per diems remaining. If during the third occurrence the violator becomes compliant then the third occurrence per diem will be waived, however the first and second occurrence per diem may or may not be waived by the Board.

A repeat violation of the same nature occurring anytime after the initial violation has been rectified will automatically be categorized as a second occurrence.

OTHER MAJOR VIOLATIONS

Violations for Projects without Proper Permits.

- An aquifer storage and recovery project: Up to \$10,000.00 per day
- Transportation of water from District: Up to \$10,000.00 per day

Sealed Well Violations.

- Unsealing a well sealed by Court Order: Up to \$5,000.00 per day