

STARR COUNTY GROUNDWATER CONSERVATION DISTRICT RULES

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STARR COUNTY GROUNDWATER CONSERVATION DISTRICT'S RULES

PREAMBLE

These rules of the Starr County Groundwater Conservation District were most recently amended effective _____ ____, 2020, in accordance with Section 59 of Article XVI of the Texas Constitution; the District's enabling act, Chapter 8803 of the Texas Special District Local Laws Code; Chapter 36 of the Texas Water Code; and other applicable law.

These rules have been adopted for the purpose of simplifying procedure, avoiding delays, saving expense, and facilitating the administration of the groundwater laws of the State of Texas and the local laws and regulations of this District. To the end that these objectives be attained, these rules shall be so construed. These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances, and in no particular case shall these rules be construed as a limitation or restriction upon the exercise of any discretion, where such exists; nor shall they in any event be construed to deprive the District of an exercise of powers, duties, and jurisdiction conferred by law, nor to limit or restrict the amount and character of data or information which may be required for the proper administration of the law.

Throughout the State of Texas, groundwater conservation districts embody local government at its most basic level: local representatives establishing guidelines for the use and conservation of that private property right and public interest in groundwater for the benefit of their constituents and the economy of the District. The District was established to conserve and manage groundwater for the benefit of the citizens of Starr County. To fulfill this duty, the District has adopted these rules to ensure a fair, open, and consistent method of formulating and implementing its policies.

RULE 1 INTRODUCTION, REGULATORY AUTHORITY AND PURPOSE OF RULES

These rules are adopted pursuant to Section 36.101 of the Texas Water Code and the District's enabling act to provide for the conservation, preservation, protection, and recharge of groundwater within Starr County. These rules are adopted under the District's statutory authority to prevent waste of groundwater, protect rights of owners of interests in groundwater, prevent degradation of water quality, and to carry out the powers and duties of Chapter 36 of the Texas Water Code and the District's enabling act. Nothing in these rules or applicable law shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by Section 36.002 of the Texas Water Code, recognizing, however, that Section 36.002 does not prohibit the District from limiting or prohibiting the drilling of a well for failure or inability to comply with minimum well spacing or tract size requirements adopted by the District; affect the ability of the District to regulate groundwater production as authorized under Sections 36.113, 36.116, or 36.122 or otherwise under Chapter 36 of the Texas Water Code, or a special law governing the District; or require that a rule adopted by the District allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner. The District's orders, resolutions, policies, guidelines, and other actions have been enacted and implemented to fulfill these objectives.

The District uses these rules as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District's enabling act. They may not be construed as a

limitation or restriction on the exercise of any discretion nor 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's enabling act.

RULE 2 DEFINITIONS

Unless the context indicates a contrary meaning, the words hereinafter defined shall have the following meanings in the rules, management plan, forms, and other documents of the District and when used in conducting business at the District.

“Rules” or “rules” means the rules of the District compiled in this document and as may be amended and/or repealed from time to time.

“District's enabling act” means the acts of the Texas Legislature codified in Chapter 8803 of the Texas Special District Local Laws Code relating to the creation, administration, powers, duties, operation and financing of the District, as may be amended from time to time.

“District” means the Starr County Groundwater Conservation District.

“Water” for the purposes of these rules is synonymous with groundwater unless the context provides otherwise.

“Groundwater” has the same meaning as defined in Section 36.001 of the Texas Water Code.

“Landowner” means the person who bears ownership of the land surface who may or may not be the “Owner” of groundwater.

“Owner” means any person that has the right to produce groundwater from the land, by deed, contract, lease, easement, or any other estate in the land. The term “Owner”, as used herein, includes any agent or attorney representing the Owner in any matter concerning the District. The Owner is obligated to provide written notice to the District if it desires to receive any notice that would otherwise be provided to the Landowner under these rules.

“Person” means any individual, partnership, firm, state agency, political subdivision, corporation, or other legal entity.

“Board” means the Board of Directors of the District.

“Director” means a member of the Board.

“Presiding Officer” means the Board President or, in the Board President's absence, a Director delegated authority by the Board to preside over District business.

“General Manager” means the General Manager of the District.

“Beneficial use” and “use for a beneficial purpose” are synonymous terms that have the same meaning as defined in Section 36.001 of the Texas Water Code.

“Waste” has the same meaning as defined in Section 36.001 of the Texas Water Code.

“Degradation of Water Quality” means pollution or harmful alteration of the character of groundwater by means of salt water or other deleterious matter admitted from another stratum or strata or from the surface of the ground, or from the operation of a well.

“Acre-foot” means the amount of water necessary to cover one acre of land one foot deep, or 325,851 gallons of water.

“Permitted well” means a well subject to the District’s drilling and/or operating permit requirements.

“Drilling Permit” means a permit for a water well issued or to be issued by the District allowing a water well to be drilled.

“Operating Permit” means a permit issued by the District for a non-exempt water well that allows a designated volume of groundwater to be withdrawn from a water well for a designated period and at a maximum rate with other conditions established by these rules and any action by the Board.

“Export” of groundwater means transferring or transporting groundwater out of the District. The terms “transfer,” “transport,” or “export” of groundwater are used interchangeably within Chapter 36 of the Texas Water Code and these rules.

“Texas Open Meetings Act” means Chapter 551 of the Texas Government Code.

“Texas Public Information Act” means Chapter 552 of the Texas Government Code.

“Water meter” means a water flow-measuring device that can accurately record the amount of groundwater produced during a measured time.

“Well” means an excavation drilled or dug into the ground that may intercept or penetrate a groundwater-bearing stratum or formation.

“Well System” means two or more wells owned, operated, or otherwise under the control of the same person and that are held under the same permit.

“Existing well” means any well in the District that was drilled or properly completed on or before the adoption of the Starr County Groundwater Conversation District management plan, October 10, 2013.

“Monitoring well” means a well installed to measure some groundwater characteristic, usually water levels, and quality, of the groundwater or aquifer.

“SOAH” means State Office of Administrative Hearings.

“TDLR” means Texas Department of Licensing and Regulation.

“TWDB” means Texas Water Development Board.

“TCEQ” means Texas Commission on Environmental Quality.

“RRC” means Railroad Commission of Texas.

“Desired Future Condition” and “DFC” have the same meaning as defined in Section 36.001 of the Texas Water Code.

“Modeled Available Groundwater” has the same meaning as defined in Section 36.001 of the Texas Water Code.

“GPM” means gallons per minute.

“And” and “or” shall be interchangeable depending upon the context.

RULE 3 WELL REGISTRATION AND PERMITS FOR DRILLING,
OPERATING AND EXPORT

3.1 Registration of Wells and Well Completion Information

- A. All water wells, existing and new, exempt and nonexempt, must be registered on a form provided by the District and are required to comply with the District’s registration requirements in these rules. It is a violation of these rules for a well owner, well operator, or water well driller to drill any well without the water well registration form being filed with and approved by the District. This includes the GPS location determined by a representative of the District.
- B. All new wells must be pre-registered by the owner of the groundwater right or well, well operator, or water well driller prior to being drilled. The District staff will review the pre-registration and make a preliminary determination on whether the well meets the exclusions or exemptions provided in Rule 3.2 E. If the preliminary determination is that the well is exempt, the registrant may begin drilling immediately upon receiving approval. After an exempt well is completed and in operation, information required in Subsection C of this rule and any additional well-completion information required by the registration form must be provided to the District within 30 calendar days. If the preliminary determination is that the well is nonexempt, the registrant must secure a drilling permit to drill a well under Rule 3.2 A, an operating permit to operate a well and produce and use groundwater under Rule 3.2 B, and an export permit to export groundwater for use outside the District’s boundaries under Rule 3.2 C.
- C. Requirement of Diller’s Log, Casing, and Pump Data. Complete records shall be kept, and reports thereof made to the District, concerning the drilling, equipping and completion of all wells drilled. Such records shall include an accurate driller’s log, any electric logs that have been made, and any additional data concerning the description of the well, its discharge, and its equipment as may be required by the Board. Such reports shall be filed with the District within 30 calendar days after completion of the well.
- D. Time During Which Drilling Authorization by Permit or Registration Shall Remain Valid. Except as provided in the rules, any drilling authorization by permit or registration granted

shall expire if the work is not completed within 60 calendar days from the date of approval by the Board. If a written request for such extension is made to the District explaining why a proposed project will take more time to complete, the Board or General Manager, may grant such time, as is reasonably necessary to complete such project. A registration form is otherwise informational and will remain as a permanent record at the District.

- E. Transfer of Registration and District's Records of Ownership or Control of Groundwater Well and Groundwater Rights. If ownership or control of any groundwater right or water well covered by a registration occurs, the current and new owner(s) are responsible for coordinating to notify the District in writing. Upon receipt of documentation evidencing current ownership or control, the District's staff will indicate this information in the well registration.

3.2 General Permitting Policies and Procedures

- A. Drilling Permit Requirement. The owner of the groundwater right or well, well operator, or any other person acting on their behalf, must file a completed application for a water well drilling permit. No person shall hereafter begin to drill a well, or perforate an existing well, or increase the size of a well, without having first applied to the District and received a permit to do so, unless the drilling and operation of the well is exempt by law or by these rules. An applicant may commence the drilling of a well when his application has been approved and a permit issued by the District.
- B. Operating Permit Requirement. Within a reasonably prompt period of time after a well is drilled, the well owner or well operator, or any other person acting on their behalf, must file a completed operating permit application and prior to operating the well. The operating permit application must be approved and a permit issued by the District prior to operation of the well and the production and beneficial use of groundwater. The permit holder is responsible for renewing this permit and ensuring that it remains in effect until an operating permit is no longer required under these rules.
- C. Requirement to Request Authority to Export under an Operating Permit. The owner of the groundwater right or well, well operator, or any other person acting on their behalf, must indicate on a completed application for an operating permit whether export of groundwater is intended. No person is authorized to export groundwater outside the District's boundaries without authority from the District pursuant to a permit.
- D. Permit Applications. Each application for a drilling permit and operating permit requires a separate application and must be completed on a District form. The application for a permit must be in writing and sworn. The substantive information required by an applicant for each type of permit is set forth in the Rules Appendix.
- E. Permitting Exemptions. The drilling and operating permit requirements of these rules do not apply to:
 - 1. a well drilled, completed, or equipped such that it is incapable of producing more than 25,000 gallons of groundwater per day for domestic use such as for drinking water, cooking, and washing, provided that the minimum acreage is 1.7 acres;

2. a well used for providing water for livestock or poultry on a tract of land larger than ten (10) acres that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
 3. a well used for irrigating a garden or orchard, if the produce of the garden or orchard is to be consumed by the individual, family or household;
 4. a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by RRC provided that the person holding the RRC permit is responsible for drilling and operating the water well and the water well is located on the same lease of field associated with the drilling rig; this exemption does not apply to the use of groundwater for the purpose of fracturing an oil or gas well or for the use of groundwater in any application during the production of an oil or gas well; groundwater use for fracturing an oil or gas well or groundwater used in any way for the production of an oil or gas well is subject to the permitting rules of the District;
 5. a water well authorized under a permit issued by the RRC under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawal is required for mining activities regardless of any subsequent use of the water;
 6. All wells drilled prior to the adoption of the management plan approved on October 10, 2013, provided that the use of the water does not change (existing wells);
 7. a well used for wildlife management such that it is incapable of producing more than 25,000 gallons of ground-water per day; and
 8. a monitoring well.
- F. Notice of Permit Hearing. Once the District has received an administratively complete application for a drilling, operating and/or export permit, the General Manager or Board will issue written notice indicating a date and time for a hearing on the application in accordance with Rule 8.
- I. Operating Permits. On approval of an application, the District shall issue an Operating Permit to the applicant. The permit holder's right to produce shall be limited to the extent and purposes stated in the permit. Unless specified otherwise by the Board, the permit shall be valid for a period of approximately three years ending December 31st of the third year from which the permit was issued. An applicant requesting a permit term longer than three years must substantiate its reason for the longer term and its need to put groundwater to beneficial use throughout the proposed permit term. Operating permits are site specific, and a permitted groundwater production allowance is restricted to production from the permitted well. A permit shall not be transferable except as provided by these rules.

- J. Effect of Acceptance of Permit. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment of an agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions contained in the permit.
- K. Permit Renewal. The permit holder must indicate its interest in permit renewal and comply with any requirement of the District's General Manager to request permit renewal. The District is not required to renew an operating permit if the permit holder (1) is delinquent in paying any District fee; (2) is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; or (3) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a district permit, order, or rule. If the permit holder is not subject to any of these three circumstances, the District's Board or General Manager will, without a hearing, grant a renewal of the operating permit on the identical terms of the permit or, if requested by the permit holder, with a reduced pumping allocation.
- L. The Board may issue a drilling permit and operating permit at the same hearing. The Board reserves the right to defer a decision on the operating permit until after the well has been drilled and well and relevant data have been provided by the person requesting the operating permit.
- M. Measuring and Reporting Groundwater Withdrawals:
1. Nonexempt wells: Every owner or operator of a nonexempt well is responsible for measuring withdrawals from each well either by a District-approved meter or alternative measuring method. Meters must be selected and installed in accordance with the District General Manager's specifications and approval, at the well owner's cost. Meters are not required to be installed on nonexempt wells that are drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons per day, as long as an alternative measuring method approved by the District is used to record and report groundwater production from this type of well.
 2. Exempt wells: Only wells exempt under Rule 3.2(E)(4) and (5) must measure and report groundwater withdrawals and must do so as follows:
 - a) An entity holding a permit issued by the RRC under Chapter 134, Texas Natural Resources Code, that authorizes the drilling of a water well, shall report monthly to the District:
 - i) the total amount of water withdrawn during the month;
 - ii) the quantity of water necessary for mining activities; and
 - iii) the quantity of water withdrawn for other purposes.
 - b) A report reflecting the total amount of water withdrawn each month from a well exempt under District Rule 3.2(e)(4) must be submitted to the District by the owner or operator. The owner and the operator of such a well may

coordinate to determine the amount of monthly withdrawals and to submit this report. However, both the owner and operator of such a well are responsible for ensuring that the withdrawals are determined and that the report is submitted to the District.

- c) The groundwater production from wells subject to reporting under this Subsection 3.2(M)(2) must be measured by meter or alternative measuring method approved under these rules.
3. Time Period of Measurements and for Reporting: The permit holder is responsible for installing a meter or using a District-approved alternative measuring method to record groundwater on at least a monthly basis. The permit holder must submit a report reflecting the annual withdrawals on a calendar-year basis by any means approved by the General Manager, or more frequently, if requested by the General Manager. Pursuant to Texas Water Code Sections 36.109 and 36.111, the Board or General Manager may deem it useful or otherwise necessary for the District to secure additional groundwater withdrawal and/or use data and may request such data.
4. Metering: A meter shall be read and the meter reading monthly recorded to reflect the actual amount of pumpage throughout each calendar year. The permit holder subject to this reporting requirement shall keep accurate records of the amount of groundwater withdrawn and the purpose of the withdrawal, and such records shall be available for inspection by the District. Where wells are permitted in the aggregate, metering and reporting are required on a well-by-well basis. The District may require a well owner or operator, at the well owner's or operator's expense, to test the accuracy of the meter and submit a certificate of the test results. Costs of meter maintenance shall be borne by the well owner or operator. The District also has the authority to test a meter. If a test reveals that a meter is not registering within an accuracy of 95%-105% of actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or Well System, the well owner or operator must take appropriate steps to remedy the problem, and to retest the meter within 90 (ninety) calendar days from the date the problem is discovered.
5. Alternative measuring method: The District may authorize the use of an alternative measuring method in lieu of a meter if it can be demonstrated by the well owner or operator that the alternative measuring method is capable of accurate measurement of groundwater withdrawal. The owner or operator of a nonexempt well must secure the District General Manager's approval of an alternative measuring method of determining the amount of groundwater withdrawn. The General Manager may authorize the alternative measuring method if the well owner or operator demonstrates that the alternative measuring method can accurately measure the groundwater withdrawn.
6. Violation of Metering, Measuring and Reporting Requirements: False reporting or logging of meter readings, intentionally tampering with or disabling a meter, or

similar actions to avoid accurate reporting of groundwater use and pumpage shall constitute a violation of these rules and shall subject the person performing the action, as well as the well owner, and/or the primary operator who authorizes or allows that action, to such remedies as provided in the District Act and these rules.

7. Recordkeeping Required until Installation of Meter: In the event that a well owner or operator is not measuring withdrawals by District-approved meter or alternative measuring method, the well owner or operator shall be required to keep an accurate log of dates of operation of each well, the duration of such operation, and the purpose and place of use of the water produced until such time as the well owner or operator installs a District-approved meter or secures an alternate measuring method. Such metering log shall be submitted to the District in writing and sworn to within 10 calendar days of the installation of the meter or approval of an alternate measuring method, whichever is earlier. Failure to provide the metering log as required by this rule or the provision of false information therein shall be a violation of these rules and grounds for permit denial or revocation.

3.3 Operating Permit Required

Within 30 calendar days of completion of drilling a new nonexempt well, the owner or operator of the well shall file with the District, on forms provided by the District, an application for a Water Well Operating Permit. The operating permit must be approved by the Board of Directors after public hearing and remain permitted until an operating permit is no longer required for the well/well system.

3.4 Operating Permit Provisions

All permits are granted subject to these rules, orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit, each permit is subject to the following standard permit provisions:

- A. This permit is granted in accordance with the provisions of the rules of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permit holder will comply with the rules of the District.
- B. Only the permit holder and their authorized agents are allowed to operate a nonexempt well. To protect the permit holder from unauthorized use of a well and withdrawal of groundwater by a person other than the permit holder, written notice must be filed with the District with sufficient information to evidence the transfer of ownership or control of a well and/or the authority to withdraw from the well.
- C. Production from nonexempt wells shall be reported in accordance with Rule 3.2(M). Immediate written notice shall be given to the District in the event a withdrawal exceeds or is anticipated to exceed the quantity authorized by the permit. .
- D. The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.

- E. All wells shall be equipped and maintained in accordance with these rules as to drilling, installation of casing, completion, pipe and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.
- F. Production from all nonexempt wells for water sales in or outside of the District must be metered by the owner or operator using a device or method that is within plus or minus 2% of accuracy. Measured or estimated water use shall be reported to the District monthly. Water use may be verified by District.
- G. The well site must be accessible to District representatives for inspection, and the permit holder agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.
- H. The application pursuant to which a permit has been issued is incorporated in such permit, and such permit is granted based on and contingent upon the accuracy of the information supplied in that application. A finding that false information has been supplied is grounds for revocation of the permit.
- I. Violation of this permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawal volume or production rate, is subject to enforcement as provided by the District's rules.

3.5 Change of Ownership or Purpose or Place of Use

- A. A permit holder may informally request transfer of any permit or registration on file with the District, and such transfer may be approved as a ministerial act by the District's General Manager or Board upon filing adequate information supporting the change in ownership.
- B. Any permit holder requesting a change of the purpose or place of use stated in a permit shall apply to the Board for continuation of the permit for the proposed changed use at the same or reduced rate of production. The application for change of use shall be in the same form, and governed by the same standards, as the original permit application. The Board may request any additional relevant information the District considers necessary, to analyze the request for the amendment.

RULE 4 FEES

4.1 Permit Application Fees

A fee is due only for applications for operating and export permits as set forth in the schedule below, and must be received by the District for the application to be declared administratively complete:

Type of application	Well Production Capacity	One-Time Application Fee
Operating Permit	up to 100 GPM	\$100.00
	101-400 GPM	\$400.00
	401-600 GPM	\$700.00
	601+ GPM	\$900.00
Export Permit		\$1,000.00

4.2 Export Fees

The district may impose an export fee or surcharge using one of the following methods:

- A. a fee negotiated between the district and the exporter; or
- B. a rate not to exceed the equivalent of the District's tax rate per hundred dollars of valuation for each thousand gallons of water exported from the district or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation.

RULE 5 WELL CONSTRUCTION, COMPLETION, AND TECHNICAL STANDARDS

5.1 General Responsibility

After authorization to drill a well by permit or registration has been granted, the well, if drilled, must be drilled within 30 feet of the location specified in the permit. All water wells must be located, drilled, completed, and recompleted and water well pumps must be installed in accordance with the regulations of the District, Starr County, TCEQ, TDLR, and any other entity with jurisdiction.

5.2 Reworking and Replacing a Well

- A. An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well status.
- B. A permit must be applied for and the Board will consider approving the permit, if a party wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe and GPM by reworking or re-equipping such well.
- C. A permit must be applied for and granted by the Board if a party wishes to replace an existing permitted well with a replacement well.
- D. A replacement well, in order to be considered such, must be drilled within 30 feet of the existing well and shall not be drilled nearer the property line than 50 feet. The District may allow a greater distance of 30 feet from the existing well if there is good cause, such as providing better safety or providing a greater distance from a potential pollution source. For a well to be considered a replacement well, the well that is replaced must be plugged or capped and not be used. A replacement well must be registered.

RULE 6 WELL SPACING

- A. Spacing and Location of Existing Wells: Wells drilled prior to October 10, 2013 are not subject to spacing requirements of this rule except that these existing wells shall have been drilled in accordance with TDLR rules in effect, if any, on the date such drilling commenced.
- B. Spacing and Location of New Wells: All new exempt and nonexempt wells must comply with the spacing and location requirements set forth in TDLR's regulations with three exceptions. Wells shall not be located within 50 (fifty) feet from a property line or any existing well unless the well complies with TDLR's variance provisions. However, this Rule 6 provides only minimal spacing requirements that are subject to further restriction by the Board after a permit hearing and the Board's consideration of evidence relevant to whether the proposed new well unreasonably affects and interferes with one or more existing wells.

RULE 7 ENFORCEMENT AND VARIANCES

7.1 Notices and Access to Property

Directors and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District's rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing, in person, or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, 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 Director or District agents or employees who are attempting to conduct an investigation under the District's 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 Texas Water Code Chapter 36.

7.2 Conduct of Investigation

Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the well or property.

7.3 Rule Enforcement Initiative

If it appears that a person has violated or is violating any provision of the District's rules, the District may employ any of the following means, or a combination thereof, in providing notice of the violation:

- A. Informal Notice and Coordination: The District's General Manager, agent, or any Director may inform the person of the apparent violation via telephone by informing, or attempting to inform, the appropriate person to explain the apparent violation and the steps necessary to cure the violation. The information received by the District through this informal notice

concerning the violation and the date and time of the telephone call will be documented and will remain in the District's files. The District may afford an opportunity to the alleged violator to cure a violation through coordination and negotiation with the District.

- B. **Written Notice of Violation:** The District may inform the person of the violation through written notice of violation. Each written notice of violation issued herein shall explain the basis of the alleged violation, identify the rule or order that has been violated or is currently being violated, and list specific required actions that must be satisfactorily completed to cure a past or present violation to address each violation raised, and may include the amount of payment of applicable civil penalties.
- C. **Compliance Meeting:** The District may hold a meeting with any person whom the District believes to have violated, or to be violating, a District rule or order to discuss each such violation and the steps necessary to satisfactorily remedy each such violation. The General Manager may conduct a compliance meeting without the Board, unless otherwise determined by the Board or General Manager. The information received in any meeting conducted pursuant to this subsection concerning the violation will be documented, along with the date and time of the meeting, and will be kept on file with the District.
- D. Nothing in this section shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

7.4 Show Cause Hearing

- A. The Board or General Manager may order any person that it believes has violated or is violating any provision of the District's rules a District order to appear before the Board at a public meeting, held in accordance with the Texas Open Meetings Act, and called for such purpose and to show cause of the reasons an enforcement action, including the assessment of civil penalties and initiation of a suit in a court of competent jurisdiction in Starr County, should not be pursued against the person made the subject of the show cause hearing. The Presiding Officer may employ the procedural rules applicable to permit hearings of the District's rules.
- B. No show cause hearing under subsection (A) of this rule may be conducted unless the District serves, on each person made the subject of the show cause hearing, a written notice 10 calendar days prior to the date of the hearing. Such notice shall include all of the following information:
 - 1. the time, date, and place for the hearing;
 - 2. the basis of each asserted violation;
 - 3. the rule or order that the District believes has been violated or is currently being violated; and
 - 4. a request that the person duly appear and show cause of the reasons an enforcement action should not be pursued.

- C. The District may pursue immediate enforcement action against the person cited to appear in any show cause order issued by the District where the person cited fails to appear and show cause of the reasons an enforcement action should not be pursued.
- D. Nothing in this rule shall constrain the authority of the District to take action, including emergency actions or any other enforcement action, against a person at any time, regardless of whether the District decides to hold a hearing under this Section.

7.5 Service of Written Notices of Alleged Violation,
Show Cause Hearing, and Intent to Seal Well

The District shall provide written notice of the alleged violation, show cause hearing, and intent to seal a well by certified mail, return receipt requested, hand delivery, first class mail, facsimile, email, FedEx, UPS, or any other type of public or private courier or delivery service. If the District has been unsuccessful in its attempt to reach the alleged violator by at least one of the methods in this rule above, the District may tape the notice on the door of the alleged violator's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the alleged violator resides or in which the alleged violator's office is located.

7.6 Remedies

- A. The Board shall consider the appropriate remedies to pursue against an alleged violator during the show cause hearing, including assessment of a civil penalty, injunctive relief, or assessment of a civil penalty and injunctive relief. In assessing civil penalties, the Board may determine that each day that a violation continues shall be considered a separate violation. The civil penalty for a violation of any District rule is hereby set at the lower of \$10,000.00 per violation or a lesser amount determined after consideration, during the enforcement hearing, of the criteria in subsection (B) of this rule.
- B. In determining the amount of a civil penalty, the Board of Directors shall consider the following factors:
 - 1. compliance history;
 - 2. efforts to correct the violation and whether the violator makes a good faith effort to cooperate with the District;
 - 3. the penalty amount necessary to ensure future compliance and deter future noncompliance;
 - 4. any enforcement costs related to the violation; and
 - 5. any other matters deemed necessary by the Board.

7.7 Payment of Penalties and Associated Fees and Expenses

The District shall collect all past due fees and civil penalties accrued that the District is entitled to collect under the District's rules. Any person or entity in violation of these rules is subject to payment of all past due fees and civil penalties along with all fees, penalties, and court costs and associated fees of the District's attorneys and experts, which are incurred as a result of any

violations that ensue after the District provides written notice of a violation. Failure to pay required fees will result in a violation of the District's rules and such failure is subject to civil penalties.

7.8 Enforcement in State Court

After conclusion of the show cause hearing and/or a period of time established by the Board for compliance with the Board's enforcement order, the District may commence suit. Any suit shall be filed in a court of competent jurisdiction in Starr County. If the District prevails in a suit brought under this Section, the District may seek and the court shall grant, in the interests of justice and as provided by Subsection 36.066(h), Texas Water Code, in the same action, recovery of attorneys' fees, costs for expert witnesses, and other costs incurred by the District before the court.

7.9 Sealing of Wells

- A. The Board may order a Well Owner or Operator to seal a well that is prohibited from withdrawing groundwater within the District by the District's rules to ensure that a well is not operated in violation of the District's rules. A well may be sealed when:
1. no application has been made for a permit to drill a new water well that is not excluded or exempted;
 2. no application has been made for an operating permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or
 3. the Board has denied, canceled or revoked a drilling permit or an operating permit.
- B. The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District, and other appropriate action may be taken as necessary to preclude operation of the well or to identify 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's rules.

7.10 Capping and Plugging of Wells

- A. Capping: The Board may order a Well Owner or Operator to cap a well to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must 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 must be capped, provided however that the casing is not in a deteriorated condition that would permit co-mingling of water strata, in which case the well must be plugged. The cap must be capable of sustaining a weight of at least four hundred (400) pounds and must be constructed with a water tight seal to prevent entrance of surface pollutants into the well itself, either through the well bore or well casing.

- B. **Plugging:** A deteriorated or abandoned well must be plugged in accordance with the TDLR's rules (Title 16, Chapter 76 of the Texas Administrative Code).
1. It is the responsibility of the landowner to ensure that such a well is plugged to prevent pollution of the underground water and to prevent injury to persons and animals. Registration of the well is required prior to, or in conjunction with, well plugging.
 2. Any person that plugs a well in the District must submit a copy of the plugging report to the District and the TDLR within 30 calendar days of plugging completion.
 3. The Board may order a landowner to plug a well if the landowner does not voluntarily do so in accordance with this rule and the TDLR's regulations.
- C. **Failure to Cap or Plug:** If the landowner fails or refuses to plug or cap the well in compliance with this rule within 30 calendar days after being requested to do so in writing by any representative of the District then, upon Board approval, any person, firm, or corporation employed by the District may go on the land and plug or cap the well safely and securely, pursuant to Section 36.118 of the Texas Water Code. Reasonable expenses incurred by the District in plugging or capping a well constitutes a lien on the land on which the well is located. The District shall perfect the lien by filing in the deed records an affidavit, executed by any person conversant with the facts, stating the following:
1. the existence of the well;
 2. the legal description of the property on which the well is located;
 3. the approximate location of the well on the property;
 4. the failure or refusal of the owner or lessee, after notification, to close the well within 30 calendar days after the notification;
 5. the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
 6. the expense incurred by the District in closing the well

7.11 Notice of Board Action to Require Sealing, Capping or Plugging

- A. No order by the Board to seal, cap or plug a well may be entered unless the District serves on the landowner on whose each property the well is located a written notice 10 calendar days prior to the date of the Board meeting at which the Board will consider action under these rules.
- B. Such notice shall include all of the following information:
1. the time, date, and place for the meeting;
 2. a brief summary of the need for sealing, capping or plugging of one or more wells; and
 3. a request that the person duly appear and show cause of the reasons why the Board should not order that one or more wells should not be sealed, capped or plugged.

7.12 Orders to Prevent Waste or Degradation of Water Quality

After providing 15 calendar days' notice to affected parties and an opportunity for a show cause hearing, the Board may adopt orders to prohibit or prevent Waste or Degradation of Water Quality. If the Board President or his or her designee determines that an emergency exists requiring the immediate entry of an order to prohibit waste or pollution and protect the public health, safety, and welfare, he or she may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of 15 calendar days or until a hearing can be conducted. In such an emergency, the Board President or his or her designee is also authorized, without notice or hearing to pursue a temporary restraining order, injunctive, and other appropriate relief in a court of competent jurisdiction.

RULE 8 PROCEDURAL RULES

8.1 General Procedural Rules

- A. **District Address.** The District's mailing address and physical address of the District's office shall be established by simple motion or resolution of the Board and posted on the District's webpage if the District has a functioning webpage.
- B. **Computing Time.** In computing any period of time prescribed or allowed by these rules, by order of the Presiding Officer or Board, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. The District will observe the schedule of legal holidays established by Starr County, except as modified by the District's Board by simple motion or resolution. If the District's Board modifies Starr County's schedule of legal holidays, the District will make a modified schedule of legal holidays readily available to the public.
- C. **Time Limit.** Applications, requests, or other papers or documents required or permitted to be filed under these rules, or by law, must be filed at the District's office and may be filed by hand delivery, mail, facsimile or any delivery service. The filing must be received at the District's office, within the time limits, if any, for such filing. The date of receipt and not the date of posting is determinative. A facsimile is considered received as of the date on which the telephonic document transfer is complete, except that any transfer completed after 5:00 p.m. Central Standard Time will be deemed complete on the following business day. If a person files a document by facsimile, he or she must file a copy by mail within three calendar days. A document may be filed by electronic mail ("email") only if the Board or Presiding Officer has expressly authorized filing by email for that particular type of document and expressly established the appropriate date and time deadline, email address, and any other appropriate filing instructions.
- D. **Methods of Service and Notice.** Except as otherwise provided for in these rules, any notice or document 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 or registered mail sent to recipient's last known address, by email to the recipient's email address on file with the District if written consent is granted

by the recipient, or by facsimile to the recipient's current facsimile number and shall be accomplished by 5:00 o'clock p.m. (as shown by the clock in the recipient's office) on the date on which it is due. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by facsimile is complete upon transfer, except that any transfer commencing after 5:00 o'clock p.m. (as shown by the clock in the recipient's office) shall be deemed complete the following business day. If service or delivery is by mail, and the recipient has the right to perform some act or is required to perform some act within a prescribed period of time after service, three calendar days will be added to the prescribed period. Where service by other methods has proved unsuccessful, the service shall be complete by such other method as may be approved by the Board. The person or person's attorney shall certify compliance with this rule in writing over signature and on the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of the fact of service.

- E. Use of Forms. The District may furnish forms, instructions and guidance for the preparation of any application, declaration, registration or other document that is required to be filed with the District. If the District furnishes a form, then use of such form is mandatory. Supplements may be attached if there is insufficient space on the form.
- F. Minutes and Records of the District. The District will maintain all records of the District in accordance with its records management policy and the Texas Local Government Records Act in Title 6, Subtitle C of the Texas Local Government Code. All public information of the District is available for public inspection and copying upon written request in accordance with the Texas Public Information Act. Charges for public inspection and copies will be established by the District in accordance with the Texas Public Information Act and rules of the Office of the Attorney General.
- G. Applicability; Procedures Not Otherwise Provided For. This section of the rules applies to all business before the District and all types of hearings conducted by the District to the extent not inconsistent with any other section of these rules that applies to the type of hearing at issue. If, in connection with any hearing, the Board determines that there are no statutes or other applicable rules resolving particular procedural questions then before the Board, the Board will direct the parties to follow procedures consistent with the purpose of these rules, the District's enabling act, and Chapter 36 of the Texas Water Code.
- H. Continuance. Unless provided otherwise in these rules, any meeting, workshop, or hearing may be continued from time to time and date to date without published notice after the initial notice, in conformity with the Texas Open Meetings Act.
- I. Request for Reconsideration. To appeal a decision of the District, including any determinations made by the General Manager or Board, concerning any matter not covered under any other section of these rules, a request for reconsideration must be filed with the District within 20 calendar days of the date of the decision. Such request for reconsideration must be in writing and must state clear and concise grounds for the request. The Board will make a decision on the request for reconsideration within 45 calendar days thereafter. The failure of the Board to grant or deny the request for reconsideration within 45 calendar days of the date of filing shall constitute a denial of the request. A person may not appeal or otherwise challenge any decision of the District in court unless and until it

has exhausted its administrative remedies by first filing a request for reconsideration, which has subsequently been denied.

- J. Meetings. The Board will hold regular meetings at least quarterly and as the Board may establish from time to time. The Board may hold a special meeting if desired by the Board President or General Manager, or upon written request of at least three Directors. All Board meetings will be held according to the Texas Open Meetings Act and other applicable law.
- K. Committees. The Board President 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 President.
- L. Ex Parte Communications. Directors may not communicate, directly or indirectly, about any issue of fact or law in any contested hearing before the Board, with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. This rule does not apply to a Director who abstains from voting on any matter in which ex parte communications have occurred or to communications between the Board and the staff, professional, or consultants of the District if the General Manager is not a party to the contested proceeding.
- M. Conduct and Decorum. In every meeting, workshop and hearing of the Board and District, every member of the public must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may interfere with the orderly conduct of District business. If in the judgment of the Presiding Officer a person is acting in violation of this provision, the Presiding Officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer deems necessary.

8.2 HEARINGS

The District conducts six types of hearings:

- A. Rulemaking hearings are governed by Section 8.3 of the District's rules.
- B. Hearings on the District's management plan are governed by Section 12 of the District's rules.
- C. Permit-related hearings and hearings on applications for well-spacing exceptions are governed by Section 8.5 of the District's rules.
- D. Enforcement hearings are governed by Section 7 of the District's rules.
- E. Hearings on the DFCs, including the appeal process of DFCs, are governed by Section 8.4 of the District's rules.
- F. All other hearings not described in this rule are governed by Rule 8.6.

RULE 8.3 RULEMAKING HEARINGS

- A. A rulemaking hearing involves matters of general applicability that implement, interpret, or prescribe the law or District's policy, or that describe the procedure or practice requirements of the District. The District will update its rules to implement the DFCs before the first anniversary of the date that the TWDB approves the District's management plan that has been updated to reflect the adopted DFCs.
- B. Notice and Scheduling of Hearings
1. For all rulemaking hearings, the notice shall include a brief explanation of the subject matter of the hearing, the time, date, and place of the hearing, location, or Internet site at which a copy of the proposed rules may be reviewed or copied, if the District has a functioning Internet site, and any other information deemed relevant by the General Manager or the Board.
 2. Not less than 20 calendar days prior to the date of the hearing, and subject to the notice requirements of the Texas Open Meetings Act the General Manager shall:
 - a) post notice in a place readily accessible to the public at the District's office;
 - b) provide notice to the County Clerk of Starr County, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the County Courthouse;
 - c) publish notice in one or more newspapers of general circulation in the District;
 - d) provide notice by mail, fax, or email to any person who has requested notice under Subsection (c); and
 - e) make available a copy of all proposed rules at a place accessible to the public during normal business hours, and post an electronic copy on the District's Internet site, if the District has a functioning Internet site.
 3. A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, fax, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District.
 4. Failure to provide notice under Subsection (c) does not invalidate an action taken by the District at a rulemaking hearing.
 5. Any hearing may or may not be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. Any hearing may be continued from time to time and date to date without published notice after the initial published notice in conformity with the Texas Open Meetings Act. The District must conduct at least one hearing prior to adopting amendments to the District's rules.

C. Rulemaking Hearings Procedures

1. **General Procedures:** The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The Presiding Officer will prepare and keep a record of the rulemaking hearing in the form of an audio or video recording or a court reporter transcription at his or her discretion.
2. **Submission of Documents:** Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 8.3 B; provided, however, that the Presiding Officer may grant additional time for the submission of documents.
3. **Oral Presentations:** Any person desiring to offer comment on the subject of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer will establish the order of testimony and may limit the number of times a person may speak, the time for oral presentations, and the time for raising questions. In addition, the Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations. **Conclusion of the Hearing:** At the conclusion of the testimony, and after the receipt of all documents, the Presiding Officer may either close the record, or keep it open to allow the submission of additional information. When adopting, amending, or repealing any rule, the District shall:
 - a) consider all groundwater uses and needs;
 - b) develop rules that are fair and impartial;
 - c) consider the groundwater ownership and rights described by Section 36.002 of the Texas Water Code;
 - d) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater reservoirs or their subdivision, consistent with the objectives of Section 59, Article XVI, Texas Constitution;
 - e) consider the goals developed as part of the District's management plan under Section 36.1071 of the Texas Water Code; and
 - f) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

D. Emergency Rules and Orders

1. **Emergency Rules.** The Board may adopt an emergency rule without prior notice and/or hearing if the Board finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law,

requires adoption of a rule on less than 20 calendar days' notice. The Board shall prepare a written statement of the reasons for this finding. An emergency rule adopted shall be effective for not more than 90 calendar days after its adoption by the Board. The Board may extend the 90-day period for an additional 90 calendar days if notice of a hearing on the final rule is given not later than the 90th calendar day after the date the rules is adopted. An emergency rule adopted without notice and/or a hearing must be adopted at a meeting conducted under Chapter 551, Texas Government Code.

2. Emergency Order Authorizing Temporary Production for Demonstrated Emergency Need

- a) A person can request in writing that the District issue an emergency order authorizing the production of groundwater for a beneficial use without a permit for a temporary period of time during which the person can submit an Operating Permit application. This request must be in writing and include sufficient factual detail of the emergency situation; the quantity of groundwater needed (in gallons or acre feet); the proposed source of the groundwater (identify the aquifer); the specific location of the well from which the groundwater will be produced; and the period of time proposed for the requested emergency authorization. This request must be submitted to the District's office by any means that ensures receipt by the District.
- b) Upon receipt and consideration of the written request for an emergency order under this rule, the District's Board President or General Manager may issue an emergency order partially or fully granting the request. An order issued under this rule will provide a time limit during which it is effective, which may not exceed 75 calendar days.
- c) Upon issuance of an order under this rule, the requestor is not required to hold a permit but must use its best efforts to prepare and submit an Operating Permit application. The beneficiary of the emergency order authorization must submit an Operating Permit application to the District within 20 calendar days of issuance of the emergency order. If an Operating Permit application is timely submitted under this subsection, then it is within the discretion of the District's Board President or General Manager to extend the 75-day timeframe of the emergency order while the application is pending.
- d) If neither the District's Board President nor General Manager issues an order under this rule after reviewing the request, the requestor's remedy is to submit an Operating Permit application.
- e) If an emergency order is issued, the District's Board must be notified of the circumstances and relief granted at the District's next Board meeting.

8.4 PROPOSED DFCs; PUBLIC COMMENT, HEARING, AND BOARD ADOPTION; APPEAL OF DFCs

- A. Public Comment. Upon receipt of proposed DFCs from the Groundwater Management Area's district representatives, a public comment period of 90 calendar days commences,

during which the District will receive written public comments and conduct at least one hearing to allow public comment on the proposed DFCs that are relevant to the District. The District will make available at the District's office a copy of the proposed DFCs and any supporting materials, such as the documentation of factors considered under Subsection 36.108(d) of the Texas Water Code and groundwater availability model run results.

B. Notices of Hearing and Meeting

1. At least 10 calendar days before a hearing or meeting under this rule, the Board must post notice that includes:
 - a) the proposed DFCs and a list of any other agenda items;
 - b) the date, time, and location of the hearing;
 - c) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
 - d) the names of the other districts in the District's groundwater management area; and
 - e) information on how the public may submit comments.
2. Except as provided by Subsection (A) of this rule, the hearing and meeting notice must be provided in the manner prescribed for a rulemaking hearing under these rules and Subsection 36.101(d) of the Texas Water Code.

C. Hearing. The District shall hold a public hearing to accept public comments using procedures prescribed for rulemaking hearings.

D. District's Report on Public Comments and Suggested Revisions. After the public hearing, the District shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed DFCs, and the basis for any suggested revisions.

E. Board Adoption of DFCs. As soon as possible after the District receives the DFCs resolution and explanatory report from the Groundwater Management Area's district representatives pursuant to Subsection 36.108(d-3) of the Texas Water Code, the Board shall adopt the DFCs in the resolution and explanatory report that apply to the District. The Board shall issue notice of its meeting at which it will take action on the DFCs in accordance with the notice provisions of this rule.

F. Appeal of DFCs

1. Not later than 120 calendar days after the date on which the District adopts a DFC under Subsection 36.108(d-4), Texas Water Code, a person determined by the District to be an affected person may file a petition appealing the reasonableness of a DFC. The petition must include:

- a) evidence that the petitioner is an affected person;
 - b) a request that the District contract with SOAH to conduct a hearing on the petitioner's appeal of the reasonableness of the DFC; and
 - c) evidence that the districts did not establish a reasonable DFC of the groundwater resources within the relevant Groundwater Management Area.
2. Not later than 10 calendar days after receiving a petition described by Subsection (A) of this rule, the District's Presiding Officer shall determine whether the petition was timely filed and meets the requirements of Subsection (A) of this rule and, if so, shall submit a copy of the petition to the TWDB. If the petition was untimely or did not meet the requirements of Subsection (A) of this rule, the District's Presiding Officer shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than 60 calendar days after receiving a petition under Subsection (A) of this rule, the District shall:
- a) contract with SOAH to conduct the requested hearing; and
 - b) submit to SOAH a copy of any petitions related to the hearing requested under this rule and received by the District.
3. A hearing under this rule must be held:
- a) at the District's office unless the District's Board takes action to select a different location; and
 - b) in accordance with Chapter 2001, Texas Government Code, and SOAH's rules.
4. Not less than 10 calendar days prior to the date of the SOAH hearing under this rule, notice shall be issued by the District and meet the following requirements:
- a) state the subject matter, time, date, and location of the hearing;
 - b) be posted at a place readily accessible to the public at the District's office;
 - c) be provided to the County Clerk of Starr County, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the County Courthouse; and
 - d) be sent by certified mail, return receipt requested; hand delivery; first class mail; fax; email; FedEx; UPS; or any other type of public or private courier or delivery service to:
 - 1) the petitioner;
 - 2) any person who has requested notice in writing to the District;
 - 3) each nonparty district and regional water planning group located within the same Groundwater Management Area as a district named in the petition;
 - 4) TWDB's Executive Administrator; and
 - 5) TCEQ's Executive Director.

If the District is unable to provide notice by any of these forms of notice, the District may tape the notice on the door of the individual's or entity's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the person or entity resides or in which the person's or entity's office is located.

5. Before a hearing is conducted under this rule, SOAH shall hold a prehearing conference to determine preliminary matters, including:
 - a) whether the petition should be dismissed for failure to state a claim on which relief can be granted;
 - b) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and
 - c) each affected person that shall be named as a party to the hearing.

6. The petitioner shall pay the costs associated with the contract for the hearing conducted by SOAH under this rule. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, SOAH may assess costs to one or more of the parties participating in the hearing and the District shall refund any money exceeding actual hearing costs to the petitioner. SOAH shall consider the following in apportioning costs of the hearing:
 - a) the party who requested the hearing;
 - b) the party who prevailed in the hearing;
 - c) the financial ability of the party to pay the costs;
 - d) the extent to which the party participated in the hearing; and
 - e) any other factor relevant to a just and reasonable assessment of costs.

7. On receipt of the SOAH Administrative Law Judge's findings of fact and conclusions of law in a proposal for decision, which may include a dismissal of a petition, the District shall issue a final order stating the District's decision on the contested matter and the District's findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by the Administrative Law Judge, or may vacate or modify an order issued by the Administrative Law Judge, as provided by Section 2001.058(e), Texas Government Code.

8. If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with the Administrative Law Judge's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.

9. If the District in its final order finds that a DFC is unreasonable, not later than the 60th calendar day after the date of the final order, the District shall coordinate with the districts in the Groundwater Management Area at issue to reconvene in a joint planning meeting for the purpose of revising the DFC found to be unreasonable in accordance with the procedures in Section 36.108, Texas Water Code.
10. The Administrative Law Judge may consolidate hearings requested under this rule that affect two or more districts. The Administrative Law Judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

8.5 PERMIT HEARINGS

- A. Notice of Hearings: Permit Applications, Amendments, and Revocations: The District may hold hearings on original permit applications, applications for permit renewals or amendments and permit revocations or suspensions. Notice of permit hearings will be given in accordance with Chapter 36.401-419 of the Texas Water Code as may be amended.
- B. Authority of Presiding Officer: The Presiding Officer may conduct the hearing in the manner the Presiding Officer deems most appropriate. The Presiding Officer has the authority to:
 1. set hearing dates, other than the initial hearing date for permit matters set in accordance with these rules;
 2. convene the hearing at the time and place specified in the notice for public hearing;
 3. establish the jurisdiction of the District concerning the subject matter under consideration;
 4. rule on motions and on the admissibility of evidence and amendments to pleadings;
 5. designate and align parties and establish the order for presentation of evidence;
 6. administer oaths to all persons presenting testimony;
 7. examine witnesses;
 8. issue subpoenas when required to compel the attendance of witnesses or the production of information;
 9. compel discovery under these rules;
 10. ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 11. conduct public hearings in an orderly manner, in accordance with these rules;
 12. recess or continue any hearing from time to time and place to place;
 13. reopen the record of a hearing for additional evidence, when necessary to make the record more complete;
 14. exercise any other appropriate powers necessary or convenient, to effectively carry out the responsibilities of Presiding Officer; and
 15. require that individuals desiring to participate in a hearing submit a form providing the person's name and contact information and indicating whether the person seeks to provide public comment or participate in the hearing as a party.

- C. Appearance - Representative Capacity: Any interested person may appear in person, or may be represented by legal counsel, a well driller, consultant, or other representative. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation. A person appearing in a representative capacity may be required to prove proper authority.
- D. Continuance: The Presiding Officer may continue hearings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place for the hearing to reconvene are not publicly announced at the hearing by the Presiding Officer before it is recessed, a notice of any further setting of the hearing or other proceeding must be delivered, at a reasonable time, to all parties and any other person the Presiding Officer deems appropriate, but it is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.
- E. Filing of Documents - Time Limit: Applications, motions, exceptions, communications, requests, briefs, or other papers and documents required to be filed under these rules, or by law, must be received in hand at the District's office within the time limit, if any, set by these rules, or by the Presiding Officer for filing. Mailing within the time period is insufficient, if the submissions are not actually received by the District within the time limit. The mailbox rule provided for in the Texas Rules of Civil Procedure and Texas case law does not apply to filing of documents with the District.
- F. Affidavit: Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This Rule does not dispense with the necessity of an affidavit being made by a party, when expressly required by statute.
- G. Broadening the Issues: No person will be allowed to appear in any hearing or other proceeding that, in the opinion of the Presiding Officer, is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
- H. Protesting an Application and Board's Decision to Proceed as Uncontested or Contested Case: If a person desires to protest an application, that person must appear at the initial hearing prepared to articulate their justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and how that justiciable interest would be unreasonably affected by the permit proposed by the application. This potential party must attend the initial, preliminary hearing and be prepared to address and respond to inquiry and any cross-examination regarding their alleged justiciable interest. A justiciable interest does not include persons who have only an interest common to members of the general public. It is recommended but not mandatory that a person desiring to protest an application for a permit or permit amendment file with the District a notice of protest setting forth the protestant's justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and how that justiciable interest would be unreasonably affected by the permit proposed by the application. It is recommended that the notice of

protest be submitted so that it is received by the District at least two business days before the permit hearing. The Board shall deliberate and take official action to determine whether any person has sufficiently demonstrated their justiciable interest and whether that justiciable interest would be unreasonably affected by the permit proposed by the application and, if both thresholds are met, that the hearing contested. The applicant and General Manager are automatic parties to both contested and uncontested hearings.

- I. Uncontested Permit Hearing Procedures: An uncontested permit hearing may be conducted informally when, in the judgment of the Presiding Officer, the conduct of the proceeding under informal procedures will result in a savings of time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, not prejudice the rights of any party, and is not objected to by any party.
1. The Board may take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The Board may issue a written order to:
 - a) grant the application;
 - b) grant the application with special conditions; or
 - c) deny the application.
 2. An applicant may, not later than the 20th day after the date the Board issues an order granting the application, demand a contested case hearing if the order:
 - a) includes special conditions that were not part of the application as finally submitted; or
 - b) grants a maximum amount of groundwater production that is less than the amount requested in the application.
- J. Contested Permit Hearing Procedures before SOAH: If an application is contested, any party to the hearing may request that the District contract with SOAH to conduct further proceedings in the hearing. A request for a SOAH hearing under this rule must be made to the Board at the initial, preliminary hearing and is untimely if submitted after the conclusion of this preliminary hearing.
- a) Location: The Board shall determine whether the SOAH hearing will be held in Travis County or at the District's office or other regular meeting place of the Board, after considering the interests and convenience of the parties, and the expense of a SOAH contract.
 - b) Costs, Deposit: The party requesting that the hearing be conducted by SOAH shall pay all costs associated with the contract for the hearing and shall make a deposit with the District in an amount that is sufficient to pay the estimated SOAH contract amount before the hearing begins. If the total cost for the contract exceeds the amount deposited by the paying party at the conclusion of the hearing, the party that requested the hearing shall pay the remaining amount due to pay the final price

of the contract. If there are unused funds remaining from the deposit at the conclusion of the hearing, the unused funds shall be refunded to the paying party.

- c) Referral: Upon execution of a contract with SOAH and receipt of the deposit from the appropriate party or parties, the District's Presiding Officer shall refer the application to SOAH. The Presiding Officer's referral to SOAH shall be in writing and shall include procedures established by the Presiding Officer under Subsection (4) below; a copy of the permit application, all evidence admitted at the preliminary hearing, the District's rules and other relevant policies and precedents, Management Plan, and the District's enabling act; and guidance and the District's interpretation regarding its regulations, permitting criteria, and other relevant law to be addressed in a Proposal for Decision and Findings of Fact and Conclusions of Law to be prepared by SOAH. The Board and Presiding Officer may not attempt to influence the Finding of Facts or the Administrative Law Judge's application of the law in a contested case except by proper evidence and legal argument. SOAH may certify one or more questions to the District's Board seeking the District Board's guidance on District precedent or the District Board's interpretation of its regulations or other relevant law, in which case the District's Board shall reply to SOAH in writing.
- d) Procedure before SOAH: A hearing conducted by SOAH is governed by SOAH's procedural rules; Subchapters C, D, and F, Chapter 2001, Texas Government Code; and, to the extent, not inconsistent with these provisions, any procedures established by the Presiding Officer under District Rule 8.7(B).
- e) District's Receipt of SOAH's Proposal for Decision and Findings of Fact and Conclusions of Law: The District's Board shall conduct a hearing within 45 days of receipt of SOAH's Proposal for Decision and Findings of Fact and Conclusions of Law, and shall act on the application at this hearing or no later than 60 days after the date that the Board's final hearing on the application is concluded in a manner consistent with Section 2001.058 of the Texas Government Code. At least 10 calendar days prior to this hearing, the Presiding Officer shall provide written notice to the parties of the time and place of the Board's hearing under this subsection by mail and email, for each party with an email address.
- f) The Board may change a finding of fact or conclusion of law made by the Administrative Law Judge, or may vacate or modify an order issued by the Administrative Law Judge, only if the Board determines:
 - a) that the Administrative Law Judge did not properly apply or interpret applicable law, District rules, written policies, or prior administrative decisions;
 - b) that a prior administrative decision on which the Administrative Law Judge relied is incorrect or should be changed; or
 - c) that a technical error in a finding of fact should be changed.

K. Contested Hearing Procedures before the District

- a) The Presiding Officer may take input from the parties on preferred procedures and will decide what procedures to employ for the hearing, including but not limited to:
 - a) whether the Board or a hearing examiner will conduct the hearing;
 - b) alignment of parties;
 - c) formulation and simplification of issues;
 - d) necessity or desirability of amending applications or other pleadings;
 - e) possibility of making admissions or stipulations;
 - f) scheduling discovery;
 - g) identification of and specification of the number of witnesses;
 - h) filing and exchange of prepared testimony and exhibits; and
 - i) procedure at the hearing on the merits of the application.
- b) Recording: A record of the hearing in the form of an audio or video recording or a court reporter transcription shall be kept in a contested hearing. The Presiding Officer shall have the hearing transcribed by a court reporter upon a request by a party to a contested hearing. Court reporter transcription costs may be assessed against the party requesting the transcription or among the parties to the hearing. In assessing reporting and transcription costs, the Presiding Officer must consider the following factors:
 - a) the party who requested the transcript;
 - b) the financial ability of the requesting party to pay the costs;
 - c) the extent to which the requesting party participated in the hearing;
 - d) the relative benefits to the various parties of having a transcript;
 - e) the budgetary constraints of a governmental entity participating in the proceeding; and
 - f) any other factor that is relevant to a just and reasonable assessment of costs. In any proceeding where the assessment of reporting or transcription costs is an issue, the Presiding Officer will provide the parties an opportunity to present evidence and argument on the issue and the Board will decide how to assess these costs.
- c) Discovery: Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Presiding Officer. Unless specifically modified by these rules or by order of the Presiding Officer, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Presiding Officer.
- d) Ex Parte Communications: Neither the Presiding Officer nor the Board may communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with

District staff not directly involved in the hearing in order to utilize the special skills and knowledge of the District in evaluating the evidence and does not apply to proceedings other than a contested permit hearing.

- e) **Compelling Testimony; and Swearing Witnesses:** The Presiding Officer may compel any person to testify who is necessary, helpful, or appropriate to the hearing, and shall administer the oath to witnesses.
- f) **Evidence:** Except as modified by these rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
- g) **Written Testimony:** When a proceeding will be expedited and the interests of the parties not substantially prejudiced, testimony may be received in written form. The written testimony of a witness, in either narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- h) **Oral Argument:** At the discretion of the Presiding Officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Presiding Officer may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, the Board may hear oral argument by the parties.
- i) **Conclusion of the Permit Hearing**
 - a) **Closing the Record:** At the conclusion of the presentation of evidence and any oral argument, the Presiding Officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Presiding Officer.
 - b) **Time for Board Action on Certain Permit Matters:** In the case of hearings before the Board involving original permit applications, or applications for permit renewals or amendments, the Board must act by issuing a written order, within 60 calendar days after the close of the hearing record.
- j) **Hearing by Hearing Examiner:** If a hearing examiner conducts the hearing, a brief written summary of the hearing and recommendation of the action shall be prepared by the hearing examiner and provided to the Board for its consideration and decision. A copy of the hearing examiner's report shall be provided to all parties. The hearing shall be considered to have concluded when the parties have had an

opportunity to present their written or oral comments on the hearing officer's report to the Board and upon the close of the hearing record.

- L. Board Action on Uncontested and Contested Applications: Either on the final hearing date or no later than 60 calendar days after the final hearing date is concluded, the Board must take action on the subject matter of the hearing.
1. In deciding whether or not to issue or amend a Drilling or Operating Permit, and in setting the permitted volume and other terms of a permit, the Board must consider whether:
 - a) the application contains accurate information and conforms to the requirements prescribed by Chapter 36, Texas Water Code;
 - b) the water well(s) complies with spacing and production limitations identified in these rules;
 - c) the proposed use of water does or does not unreasonably affect existing groundwater and surface water resources or existing permit holders;
 - d) the proposed use of water is dedicated to a beneficial use;
 - e) the proposed use of water is consistent with the District Management Plan;
 - f) the applicant agrees to avoid waste and achieve water conservation;
 - g) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure; and
 - h) for those hearings conducted by SOAH, the Board shall consider the Proposal for Decision and Findings of Fact and Conclusions of Law issued by SOAH.
 2. In deciding whether or not to modify a permit, and in setting the modified permitted volume and other terms of a permit, the Board must consider whether the data from monitoring wells within the source aquifer or other evidence reflects:
 - a) an unacceptable level of decline in water quality of the aquifer;
 - b) that modification of the permit is necessary to prevent waste and achieve water conservation;
 - c) that modification of the permit will minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure;
 - d) that modification of the permit will lessen interference between wells;
 - e) that modification of the permit will control and prevent subsidence; and
 - f) that modification of the permit is necessary to avoid impairment of Desired Future Conditions.
 3. The Board shall consider the relevant criteria and observe the relevant restrictions and may exercise the authority set forth in Sections 36.113, 36.1131, and 36.122 of the Texas Water Code. In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve an applicable Desired Future Condition and consider:
 - a) the Modeled Available Groundwater;

- b) TWDB's estimate of the current and projected amount of groundwater produced under exemptions granted by District Rule 11.3 and Section 36.117, Texas Water Code;
 - c) the amount of groundwater authorized under permits previously issued by the District;
 - d) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and
 - e) yearly precipitation and production patterns.
4. The District may not impose any restrictions on the production of groundwater for use outside of the District other than imposed upon production for in-district use, and shall be fair, impartial, and nondiscriminatory.

M. Request for Rehearing and Appeal:

1. An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings of fact and conclusions of law from the Board not later than the 20th calendar day after the date of the decision.
2. On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the party who requested them, and to each designated party, not later than the 35th calendar day after the date the Board receives the request. A party to the contested case hearing may request a rehearing before the Board not later than the 20th calendar day after the date the Board issues the findings and conclusions. A party to a contested hearing must first make a request for written findings and conclusions before a party to the contested case may submit a request for rehearing under this rule.
3. A request for rehearing must be filed in the District's office and must state clear and concise grounds for the request. The person requesting a rehearing must provide copies of the request to all parties to the hearing.
4. If the Board grants a request for rehearing, the Board shall, after proper notice, schedule the rehearing not later than the 45th calendar day after the date the request is granted.
5. The failure of the Board to grant or deny a request for rehearing before the 91st calendar day after the date the request is submitted is a denial of the request.
6. A decision by the Board on a permit or permit amendment application is final:
 - a) if a request for rehearing is not filed on time, on the expiration of the period

- for filing a request for rehearing;
- b) if a request for rehearing is filed on time and the Board denies the request for rehearing, on the date the Board denies the request for rehearing; or
 - c) if a request for rehearing is filed on time and the Board grants the request for rehearing:
 - i) on the final date of the rehearing if the Board does not take further action;
 - ii) if the Board takes further action after rehearing, on the expiration of the period for filing a request for rehearing on the Board's modified decision if a request for rehearing is not timely filed; or
 - iii) if the Board takes further action after rehearing and another request for rehearing on this Board action is timely filed, then Subsections (c)(i) and (iii) of this rule shall govern the finality of the Board's decision.
7. The applicant or party to a contested case hearing must exhaust all administrative remedies with the District prior to seeking judicial relief from a District decision on a permit or permit amendment application. After all administrative remedies are exhausted with the District, an applicant or a party to a contested case hearing must file suit in a court of competent jurisdiction in Starr County to appeal the District's decision on a permit or permit amendment application within 60 calendar days after the date the District's decision is final. An applicant or party to a contested case hearing is prohibited from filing suit to appeal a District's permitting decision if a request for rehearing was not timely filed.

8.6 Hearings on Other Matters

A public hearing may be held on any matter beyond rulemaking, the District's management plan, enforcement, and permitting, within the jurisdiction of the District, if the Board deems a hearing to be in the public interest or necessary to effectively carry out the duties and responsibilities of the District. Not less than 10 calendar days prior to the date of a public hearing under this rule, the Board shall publish notice of the subject matter of the hearing, the time, date, and place of the hearing, in a newspaper of general circulation in the District, in addition to posting the notice in the manner provided by the Texas Open Meetings Act.

RULE 9 PROHIBITION AGAINST WASTE AND DEGRADATION OF WATER QUALITY

- A. Groundwater shall not be produced within, or used within or outside the District in such a manner as to constitute Waste.
- B. Any person producing or using groundwater shall use every possible precaution in accordance with reasonable methods to stop and prevent Waste or Degradation of Water Quality of such water.
- C. The Waste or Degradation of Water Quality of groundwater is a violation of these rules subject to enforcement under these rules.

RULE 10 GROUNDWATER PRODUCTION LIMITATIONS

- A. To fulfill its obligation for conservation and protection of groundwater and minimizing well interference and local unreasonable effects to existing wells, while at the same time protecting property rights in groundwater, the District will make permitting decisions after meaningful consideration of the permitting factors set forth in these rules while employing its authority to manage the aquifers in the District on a long-term basis to achieve the statutorily mandated Desired Future Conditions.
- B. Individual permits shall specify allowable pumping rates and volumes subject to curtailed rates in the event that monitored water levels drop below levels designated in the permit. The maximum allowable drawdown is 10 feet at the permit boundary.
- C. Due to the complexity and variable nature of the aquifers in Starr County, the maximum allowable well and pump size and volume and rate of groundwater production will be based on the evidence presented to the District during the permit hearing. An applicant bears the burden of proof and is responsible for ensuring that evidence is in the record to support an application. Based on the provided information such as location of the well(s) in the District, proposed depth and completion zones, permitted acreage, proximity to adjacent landowners and other landowners potentially affected by the proposed well and proposed pumping rates and volumes, and proximity to natural features such as springs, the Board will determine for each application whether to deny or partially deny it and/or impose special permit conditions. The Board's conditions may include and are not limited to the following:
 - 1. the actions and procedures to be taken by the holder of the drilling and operating permits in the event that pumping causes the water level in an existing registered or permitted well to drop to a level that is unreasonable based upon the circumstances;
 - 2. the actions and procedures to be taken by the holder of the drilling and operating permits in the event that the pumping from the permitted well causes the water to be unusable to the registered or permitted existing well owner;
 - 3. the actions and procedures to be taken by the holder of the drilling and operating permits in the event that pumping causes springs or artesian wells used for beneficial purpose to stop flowing;
 - 4. measures to be taken in cases where the reduction of artesian pressure causes an emergency to arise, which may threaten human or animal health, safety, or welfare;
 - 5. the actions and procedures to be taken in the event that activities associated with drilling or producing from the permitted well contaminates another well owner's water supply.

RULE 11 DROUGHT MANAGEMENT

No rules for drought management are adopted at this time.

RULE 12 DISTRICT MANAGEMENT PLAN

- A. The District's management plan will serve the purposes set forth by Section 36.1071 and other provisions of Chapter 36 of the Texas Water Code
- B. The Board will review and either amend or readopt the management plan at least prior to every fifth year anniversary of TWDB's approval of the amended or readopted management plan.
- C. Notice: The notice of a hearing on any adoption or amendment of the management plan shall include the time, date, and place of the hearing, location or webpage at which a copy of the proposed plan may be reviewed or copied, if the District has a functioning webpage, and any other information deemed relevant by the General Manager or the Board. Not less than 10 calendar days prior to the date of the hearing, and subject to the notice requirements of the Texas Open Meetings Act, the General Manager shall:
 - 1. post notice in a place readily accessible to the public at the District's office;
 - 2. provide notice to the County Clerk of Starr County, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the County Courthouse;
 - 3. make available a copy of the proposed plan at a place accessible to the public during normal business hours, and post an electronic copy on the District's webpage, if the District has a functioning webpage; and
 - 4. issue any additional notice required by TWDB.
- D. Hearing Procedures: The District must conduct at least one hearing prior to adopting the plan or any amendments to the plan. The Presiding Officer will conduct the hearing in the manner the Presiding Officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible.
 - 1. Recording: The Presiding Officer will prepare and keep a record of the hearing in the form of an audio or video recording or a court reporter transcription at his or her discretion.
 - 2. Submission of Documents: Any interested person may submit written statements, protests, or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing; provided, however, the Presiding Officer may grant additional time for the submission of documents.
 - 3. Oral Presentations: Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for

raising questions. In addition, the Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

4. Conclusion of the Hearing: At the conclusion of the hearing, the Board may take action on the subject matter of the hearing, take no action, or postpone action until a future meeting or hearing of the Board. When adopting, amending, or repealing the plan, the District shall:
 - a) use the District's best available data and groundwater availability modeling information provided by the TWDB's Executive Administrator together with any available site-specific information that has been provided by the District to the TWDB's Executive Administrator for review and comment before being used in the plan;
 - b) address the management goals set forth in Section 36.1071, Texas Water Code; and
 - c) use and address objectives consistent with achieving the DFCs as adopted during the joint planning process.
5. Hearing Registration Form: The District may require that a person participating in a hearing on the management plan complete a hearing registration form stating the person's name and contact information.
6. Continuance: The hearing on the management plan may be continued from time to time and date to date without notice after the initial notice, in compliance with the Texas Open Meetings Act.

RULE 13 – AQUIFER STORAGE AND RECOVERY (ASR)

13.1 Applicability of District's Rules to ASR Projects

- A. As a general matter, TCEQ has exclusive jurisdiction over the regulation and permitting of ASR Injection Wells. However, the District has concurrent jurisdiction over an ASR Injection Well that also functions as an ASR Recovery Well when that well pumps groundwater in excess of the volume authorized by TCEQ under an ASR project. The District is entitled to notice of and may seek to participate in an ASR permitting matter pending at TCEQ and, if the District qualifies as a party, in a contested hearing on an ASR application.
- B. A Project Operator shall:
 1. register an ASR Injection Well and ASR Recovery Well associated with the ASR Project if a well is located in the District;
 2. submit to the District the monthly report required to be provided to TCEQ under Section 27.155, Texas Water Code, at the same time the report is submitted to TCEQ; and

3. submit to the District the annual report required to be provided to TCEQ under Section 27.156, Texas Water Code, at the same time the report is submitted to TCEQ.
- C. If an ASR Project recovers an amount of groundwater that exceeds the volume authorized by TCEQ to be recovered under the project, the Project Operator shall report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by these rules.
 - D. Except as provided by these rules, the District may not require a permit for the drilling, equipping, operation, or completion of an ASR Injection Well or an ASR Recovery Well that is authorized by TCEQ.
 - E. Each ASR Recovery Well that is associated with an ASR Project is subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells will exceed the volume authorized by TCEQ to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR Recovery Well that exceeds the volume authorized by TCEQ to be recovered.
 - F. A Project Operator may not recover groundwater from an ASR Project in an amount that exceeds the volume authorized by TCEQ to be recovered under the project unless the Project Operator complies with the applicable requirements of the District as described by this rule.
 - G. The District may not assess a production fee or export fee or surcharge for groundwater recovered from an ASR Recovery Well, except to the extent that the amount of groundwater recovered under the ASR Project exceeds the volume authorized by TCEQ to be recovered.
 - H. The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an ASR Project in the planning for and monitoring of the achievement of a DFC for the aquifer in which the wells associated with the project are located.

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RULES APPENDIX

This appendix is part of the rules and organized for convenient review of permit application requirements. Those requirements include:

- (a) Each application for a Drilling Permit and Operating Permit and permit amendment requires the filing of a separate application. The District may require that a District application form be completed. Each application for a permit shall be in writing and sworn to, and shall include the name, mailing address, phone number, and email address of the applicant and the owner of the land on which the well or Well System is or will be located.
- (b) In addition to the information required of all permit applications, an application for a Drilling Permit or to amend a Drilling Permit must include the following information:
 - (1) if the applicant does not own the well site(s) and proposed well(s), documentation establishing the applicable authority to construct, drill, and complete each well on each proposed well site;
 - (2) the location of each well and the estimated rate at which water will be withdrawn;
 - (3) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;
 - (4) the date the permit is to expire if each well is not drilled or if each existing well is not properly completed to meet all statutory and regulatory requirements for the intended purpose of use;
 - (5) a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the Commission;
 - (6) a location map of all existing wells within a one half (1/2) mile radius of the proposed well or Well System or the existing well or wells to be modified;
 - (7) a map or other document from the County Tax Appraisal District indicating the ownership and location of the subject property;
 - (8) a document indicating the location of each proposed well or each existing well to be modified, the subject property, and adjacent owners' physical and mailing addresses;
 - (9) notice of any application to the Public Utility Commission to obtain or modify a Certificate of Convenience and Necessity to provide water with water obtained pursuant to the requested permit; and
 - (10) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose.
- (c) In addition to the information required of all permit applications, an application for an operating permit or to amend an operating permit must include the following information:
 - (1) if the applicant does not own the well site(s), proposed well(s), and groundwater, documentation establishing the applicable authority to operate each well and produce and beneficially use the groundwater from each well;

- (2) the annual amount of groundwater claimed to be necessary for beneficial use during each year of the proposed permit term with information supporting the annual amount of use requested for each proposed purpose of use;
 - (3) a requirement that the water withdrawn under the permit be put to beneficial use at all times;
 - (4) the location of the use of the water from the well or Well System;
 - (5) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;
 - (6) a declaration that the applicant will comply with the District's rules and all groundwater use permits and plans promulgated pursuant to the District's rules;
 - (7) a declaration that the applicant will comply with the District Management Plan;
 - (8) a drought contingency plan;
 - (9) a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the Commission;
 - (10) the duration the permit is proposed to be in effect, if greater than three years;
 - (11) a written statement addressing each of the applicable permitting criteria in Rules 3.2 and 8.5(L) and substantiating why the applicant believes the Board should consider each of these applicable criteria in a manner favorable to the applicant. and
 - (12) for applications requesting more than 200 acre feet of groundwater per year, a report describing the local hydrogeology, identifying existing users within a one-mile radius, and addressing local groundwater availability, the area of influence from the proposed groundwater withdrawals, and how any unreasonable effects from the proposed pumping ought to be addressed.
- (d) The General Manager or Board may waive one or more of the informational requirements for an application to amend an Operating Permit depending on the nature of the amendment provided that the Board has sufficient, relevant information to consider the application at the hearing.
- (e) In addition to the information required of all permit applications, an application for authorization to export groundwater must describe the following issues and provide documents relevant to these issues:
- (1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
 - (2) the projected effect of the proposed export on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District;
 - (3) how the proposed export is consistent with the approved regional water plan and certified District Management Plan;
 - (4) the name and mailing address of the owner and/or operator of the transportation facility;

- (5) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose outside the District;
- (6) the legal description of the location of the well(s) and transportation facilities;
- (7) a technical description of the transport facilities;
- (8) the permit number of the well or wells used to produce water to be transported; and
- (9) the time schedule for construction and/or operation of the facility.

Authorization to export is not required if the groundwater is to be used on property that straddles the District boundary line.

All in-County permit holders using 95% of the authorized volume of groundwater within the District's boundaries are exempt from the requirement to request authorization to export.

- (f) The applicant must provide the District with the information relevant to the type of application that is required in this rule for the District to declare that the application is administratively complete. If the District provides a written list of application deficiencies, the applicant shall have 60 calendar days to fully respond to the General Manager's satisfaction, after which a deficient application expires. The applicant may request an extension of this 60-day period or a ruling on the administrative completeness of its application by filing a written request with the District. The District will set an applicant's request under this rule on its next regularly scheduled Board meeting agenda, with three calendar days' notice compliant with the Texas Open Meetings Act. The Board will consider and take action on an applicant's request under this rule at this meeting.

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