

# ***RULES AND REGULATIONS***

OF THE

***IRION COUNTY***

***WATER CONSERVATION DISTRICT***

Adopted Sept. 09, 2019

## **PREAMBLE**

The purpose of this District is to conserve, preserve, and protect groundwater supplies, to protect and enhance recharge, to prevent waste and pollution, and to effect the efficient, beneficial and wise use of groundwater resources, by monitoring the quality and quantity, for the benefit of the citizens and economy of the District. To carry out this purpose, these rules and regulations are passed, adopted and will be enforced to minimize as far as practicable the drawdown of the water table, depletion of the groundwater reservoirs and aquifers, interference between wells, reduction of artesian pressure, and waste, pollution, or harmful alteration of the character of the groundwater. These Rules apply to all groundwater aquifers and water-bearing formations located within the District's jurisdictional boundaries however, at its discretion, the District may consider undesirable or brackish water differently than fresh water. The District also strives to maintain groundwater ownership and rights of the owners of the land and their lessees as provided in the Texas Water Code §36.002.

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## SECTION 1. DEFINITIONS AND GENERAL PROVISIONS

### SUBSECTION 1. DEFINITIONS

#### RULE 1.101 DEFINITIONS OF TERMS

The District follows the definitions of terms set forth in Texas Water Code Chapter 36 and other definitions as set forth herein. Unless the context hereof indicates a contrary meaning, the words hereinafter defined shall have the following meaning in these rules:

- (1) **“Abandoned Well”** shall mean a water well that is not in use. A water well is considered to be in use in the following cases:
  - (a) a non-deteriorated well which contains the casing, pump, and pump column in good condition;
  - (b) a non-deteriorated well which has been capped;
  - (c) the water from the well has been put to an authorized beneficial use, as defined by the Water Code;
  - (d) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or,
  - (e) the landowner is participating in the Conservation Reserve Program authorized by Sections 1231-1236, Food Security Act of 1985 (16 U.S.C. Sections 3831-3836), or other similar governmental program.
- (2) **“Acre-foot”** or **“ac/ft”** shall mean the amount of water necessary to cover one acre of land to a depth of one foot, approximately 325,851 gallons.
- (3) **“Act”** or **“District Act”** shall mean the District’s enabling legislation, S.B. 206 of the 69<sup>th</sup> Texas Legislature, as amended by Acts of the 81<sup>st</sup> Legislature (2009), H.B. 1923, as amended by Acts of the 82<sup>st</sup> Legislature (2011), SB 1147, codified as Chapter 8845, Texas Special District Local Law Code.
- (4) **“Administratively Complete”** shall mean an application containing all the required information described in *Rule 3.204*.
- (5) **“Agent”** shall mean the person authorized to act on behalf of the landowner with respect to obtaining permits and registering wells.
- (6) **“Aggregate Pumping”** shall mean the amount of water pumped from two or more registered wells in a water system that is permitted under a single permit for a total pumpage volume of all wells in the aggregate system.

- (7) **“Aggregate System”** shall mean a well system comprised of two or more wells that are owned and operated by the same permittee and serve the same subdivision, facility, or area served by a Certificate of Convenience and Necessity (CCN) issued by the Texas Commission on Environmental Quality (TCEQ).
- (8) **“Applicant”** shall mean the owner of the land on which the well(s) or proposed well(s) are located, unless the landowner authorizes another person to act on his/her behalf with respect to transactions involving the Irion County Water Conservation District.
- (9) **“Aquifer”** shall mean a geologic formation with water in sufficient quantities to make the production of water from this formation feasible for beneficial use.
- (10) **“Area of Hydrologic Impact”** shall mean, as projected on the land surface, the aerial extent of the migration of a subsurface water-bearing reservoir having ascertainable boundaries.
- (11) **“Available Groundwater”** shall mean the allocation provided by the Texas Water Development Board based on the desired future condition adopted by Groundwater Management Area 7 for the district.
- (12) **“Beneficial Use”** or **“Beneficial Purpose”** shall mean the use of water in a nonwasteful manner for one or more beneficial purposes as defined in Texas Water Code Section 36.001, including but not limited to:
- (a) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes;
  - (b) exploring for, producing, handling, or treating oil, gas, Sulphur, or other minerals;
- or
- (c) any other purpose that is useful and beneficial to the user that does not constitute waste.
- (13) **“Bentonite”** shall mean a sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which may be mixed with potable water and used to provide a seal in the annular space between the well casing and borehole wall or used in the plugging of wells.
- (14) **“Best Available Science”** shall mean conclusions that are logically and reasonable derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.
- (15) **“Board”** shall mean the Board of Directors of the Irion County Water Conservation District, as prescribed in the District Act.



- (16) **“Capping”** shall mean equipping a well with a securely affixed, removable device that will prevent the entrance of surface pollutants into the well.
- (17) **“Casing”** shall mean a tubular watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine ground waters to their zones of origin and prevent the entrance of surface pollutants.
- (18) **“Cement”** shall mean a neat Portland or construction cement mixture of not more than seven (7) gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum, or other additives.
- (19) **“Commingling”** shall mean the mixing, mingling, blending or combining through the borehole, casing, annulus or the filter pack of waters that differ in chemical quality, which causes quality degradation of any aquifer or zone.
- (20) **“Completion”** shall mean sealing off access of injurious water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods in accordance with Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code Chapter 76, as amended.
- (21) **“Conservation”** shall mean:
- (a) the development of water resources and the management of depletion of these resources as it relates to the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions; and,
  - (b) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
- (22) **“Desired Future Condition”** shall mean a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.
- (23) **“Deteriorated Well”** shall mean a water well, the condition of which will cause, or is likely to cause, the potential for property damage, personal injury, contamination or risk to health and safety of any water, surface or groundwater, in the District.
- (24) **“Director”** shall mean a member of the Board of the Irion County Water Conservation District.
- (25) **“Discharge”** shall mean the amount of water that leaves an aquifer by natural or artificial means.
- (26) **“District”** shall mean the Irion County Water Conservation District.

- (27) **“District Office”** shall mean the office of the District, as established by the Board, to which applications, reports, and other papers are required to be filed with or sent.
- (28) **“Domestic Well”** shall mean a well producing water exclusively used by an individual or a household for: drinking, washing, or culinary purposes; irrigation of lawns, a family garden or orchard; and watering domestic animals.  
(a) a domestic well does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold.  
(b) a domestic well does not include use by more than a single family household nor for a public water system.
- (29) **“Driller’s Log”** shall mean a “Well Log”.
- (30) **“Drought”** shall mean:  
(a) a long period of below normal rainfall resulting in a depletion in aquifer levels that has persisted for a period of a year or more following establishment of baseline water levels in the District; or  
(b) a determination of drought conditions by an agency of the State or Federal Government.
- (31) **“Executive Administrator”** shall mean the executive administrator of the Texas Water Development Board.
- (32) **“Exempt Well”** shall mean any well for which the District does not require a permit. An exempt well shall be exempt from permitting requirements, but shall not be exempt from preregistration, registration requirements or spacing rules.
- (33) **“Existing Well”** shall mean a well which was drilled before the date these Rules are adopted, 09/09/2019, and which is not abandoned or sealed, or a well which was not completed on said date but for which a registration was on file with the District on such date.
- (34) **“Groundwater”** shall mean water percolating below the surface of the earth within the District, but does not include oil and gas waste generated by oil and gas production.
- (35) **“Groundwater Availability Model”** shall mean a regional groundwater flow model approved by the executive administrator.
- (36) **“Groundwater Reservoir”** shall mean a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.
- (37) **“GPM”** or **“gpm”** shall mean gallons per minute and is a measurement of the yield or production capabilities of an individual well or pump unit.

- (38) **“Household”** shall mean a structure that is either built on or brought to a site, for use as a residence for a single family. A household includes all detached buildings located on the residential property and routinely used **only** by members of the single family.
- (39) **“Hydrogeological Report”** shall mean a report, by a Texas licensed geoscientist or a Texas licensed engineer, that identifies the availability of groundwater in a particular area and formation, addresses the issues of quantity and quality of that water and the impacts of pumping that water on the surrounding environment including impacts to nearby or adjacent wells. The report also will include field data from aquifer testing and geologic samples.
- (40) **“Inflow”** shall mean the amount of water that flows into an aquifer from another formation.
- (41) **“Injurious Water”** shall mean water that is harmful to vegetation, land or other water.
- (42) **“Installer”** shall mean an individual who installs or repairs pumps and equipment for hire or compensation and holds a current pump installers license with the Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code, Chapter 76.
- (43) **“Landowner”** shall mean the person who bears ownership of the land surface.
- (44) **“Licensed Water Well Driller”** shall mean any person who holds a license issued by the State of Texas pursuant to the provisions of the Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code, Chapter 76 or its successors.
- (45) **“Managed Aquifer Recharge”** shall mean a process of storing water through injection wells or other means into a suitable aquifer for later recovery or retrieval or for environmental benefits.
- (46) **“Modeled Available Groundwater”** shall mean the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Water Code, Section 36.108.
- (47) **“Monitoring Well”** shall mean a well installed to measure some property of the groundwater or aquifer which it penetrates that does not produce groundwater for the purpose of water supply.
- (48) **“New Well”** shall mean a well for which a notice of intention to drill or a permit is required pursuant to these Rules.
- (49) **“Non-Exempt Well”** shall mean any well not exempt under these rules or Texas Water Code, §36.117. Non-exempt wells require a permit.

- (50) **“Notice of Intent to Drill”** shall mean the preregistration form that must be submitted to the District by the landowner or his agent prior to the drilling of any water well, exempt, non-exempt or for any purpose including oil and gas production.
- (51) **“Oil and Gas Waste”** shall mean materials to be disposed of or reclaimed which have been generated in connection with activities associated with the exploration, development, and production of oil or gas, geothermal resources and, in connection with activities associated with the solution mining of brine. The term includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material and waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants.
- (52) **“Open Meetings Act”** shall mean Chapter 551, Texas Government Code.
- (53) **“Open”** or **“Uncovered Well”** shall mean any artificial excavation drilled or dug for the purpose of producing water from the underground reservoir, not capped or covered as required by these rules.
- (54) **“Owner”** or **“Operator”** shall mean and include any person, firm, partnership, corporation, municipality, county, state or other political subdivision that has the right to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.
- (55) **“Permit”** shall mean a permit issued by the District for a properly spaced non-exempt well, allowing groundwater to be withdrawn from a water well for a designated period.
- (56) **“Permitted Well”** shall mean any artificial excavation drilled or dug for the purpose of producing groundwater that:
- (a) is not exempt under Texas Water Code §36.117 or Rule 3.202;
  - (b) is properly registered with the District; and
  - (c) has been issued a permit by the District.
- (57) **“Person”** shall mean and include any individual, partnership, firm, corporation, entity, municipal corporation, unincorporated area, government, or governmental subdivision or agency, business, trust, estate, trust, or any other legal entity or association.
- (58) **“Plugging”** shall mean an absolute sealing of the well bore.
- (59) **“Pollution”** shall mean the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the District that renders the water harmful, detrimental or injurious to humans, animal life, vegetation, property or to public

health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

- (60) **“Preregistration”** or **“Preregistration Application”** shall mean the completion and submission of a Notice of Intent to Drill form prior to the drilling of any well and production of water.
- (61) **“Production”** shall mean water withdrawn from the ground, measured at the well head and reported as gallons per minute (gpm) or acre feet (ac/ft).
- (62) **“Public Information Act”** shall mean Chapter 552, Texas Government Code.
- (63) **“Recharge”** shall mean the amount of water that infiltrates to the water table of an aquifer.
- (64) **“Recharge Facility”** shall mean any system for recharge, injection, storage, pressure maintenance, cycling or recycling of water, which includes one or more wells, spreading dams, or percolation basins, or any other surface or subsurface system engineered and designed for the purpose of recharging water into a groundwater reservoir.
- (65) **“Regional Water Plan”** shall mean the plan adopted or amended by a regional water planning group pursuant to the Texas Water Code §16.053 and Title 31, Texas Administrative Code, Chapter 357, as amended.
- (66) **“Registered Well”** shall mean and includes any artificial excavation to produce or that is capable of producing water for any purpose that has been properly recorded with the District.
- (67) **“Subdivision of a Groundwater Reservoir”** shall mean a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.
- (68) **“Total Aquifer Storage”** shall mean the total calculated volume of groundwater that an aquifer is capable of producing. It is not an indicator of total recoverable groundwater.
- (69) **“Transport”** shall mean pumping, transferring, exporting or moving water a distance greater than a quarter (1/4) mile from the originating well without regard to the manner the water is transferred or moved, including but not limited to discharges into water courses. Any landowner whose property is divided by a District boundary will be exempt from out of District transport considerations so long as the water use remains within their contiguously owned acreage. The terms “transfer” or “export” of groundwater are used interchangeably within Chapter 36, Texas Water Code and these Rules.

- (70) **“Transportation Facility”** shall mean any system for transporting water, which may include a pipeline, channel, ditch, watercourse or other natural or artificial facilities, or any combination of such facilities, pertaining to any or all water which is produced from a well or wells located or to be located within the District, any or all of which is used or intended for use a distance greater than a quarter (1/4) mile from the originating well.
- (71) **“State Well Report”** shall mean a “Well Log”.
- (72) **“Undesirable Water”** shall mean water that is injurious to vegetation, to land or to fresh water, or water that can cause pollution.
- (73) **“Waste”** shall mean any one or more of the following:
- (a) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
  - (b) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
  - (c) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
  - (d) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
  - (e) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;
  - (f) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or
  - (g) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Water Code.
- (74) **“Water”** shall mean groundwater.
- (75) **“Water Station”** shall mean a well(s), or location, from which water is sold for a use that is not connected with the property where the well(s) is located. It is a non-exempt well requiring a permit.
- (76) **“Well”** or **“Water Well”** shall mean and include any artificial excavation constructed for the purpose of exploring for or producing groundwater.

- (77) **“Well Location”** shall mean the location of an existing or proposed water well on an application duly filed until such application is granted or denied, or the location of a well on a valid permit
- (78) **“Well log”** shall mean a **“Drillers Log”** or **“State Well Report”** and is a log, accurately kept, on forms prescribed by the Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code, Chapter 76, or any successor regulatory agency with jurisdiction therefor, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the Texas Department of Licensing and Regulation or of this Board.
- (79) **“Well Owner”** or **“Well Operator”** shall mean the person who owns the groundwater where a well is located or is to be located or the person who operates the well.
- (80) **“Well Registration”** shall mean District recording of exempt well information e.g. owner-address, location, type, use, log, yield, quality and any additional information the District may feel pertinent.
- (81) **“Well Status”** means either new, operational or capped.
- (82) **“Well System”** means a well or group of wells tied to the same distribution system.
- (83) **“Withdrawal”** means extracting groundwater by pumping or any other method.

## **SUBSECTION 2. GENERAL PROVISIONS**

### **RULE 1.201 USE AND EFFECT OF RULES**

(a) The District uses these Rules as guides in the exercise of the powers conferred to it by Texas Water Code Chapter 36 and in the accomplishment of the purposes of the Act. They shall not be construed as a limitation or restriction on the exercise of any discretion, where it exists; nor shall they be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law; nor shall they 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 Act.

(b) Except as otherwise specified, these rules are effective on the date of adoption by the Board of Directors. References to the Act, Texas Water Code Chapter 36, Title 16 Texas Administrative Code Chapter 76, Title 30 Texas Administrative Code Chapter 285 and Title 31 Texas Administrative Code Chapter 357 include subsequent revisions and are effective upon the effective date of these Rules or upon the effective date of subsequent amendments to these Codes.

### **RULE 1.202 AMENDING OF RULES**

The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time.

### **RULE 1.203 HEADINGS AND CAPTIONS**

The section and other headings and captions contained in these Rules are for reference purposes only and shall not affect in any way the meaning or interpretation of these Rules.

### **RULE 1.204 SEVERABILITY**

If any one or more of the provisions contained in these Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other Rules or provisions thereof, and these Rules shall be construed as if such invalid, illegal, or unenforceable rule or provision had never been contained in these Rules.

### **RULE 1.205 COMPUTING TIME**

In computing any period of time prescribed or allowed by these Rules, by order of the Board, or by any applicable statute, the day of the act, event, or default 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 is a Saturday, Sunday, or legal holiday on which the District is closed, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, or a legal holiday on which the District is closed. Legal holidays are the same as adopted by the Irion County Commissioners Court.

### **RULE 1.206 METHODS OF FILING AND SERVICE UNDER THE RULES**

(a) Documents shall be filed at the District Office either by hand delivery, mail, fax, email, or other district approved method(s). The document shall be considered filed as of the date received by the District for a hand delivery and for other district approved method(s); as of the date reflected by the official United States Postal Service postmark if mailed; and for fax or email as of the date on which the correspondence is complete, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day.

(b) Except as otherwise expressly provided elsewhere 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 courier, receipted delivery, by certified mail sent to the recipient's last known address, by email or by fax to the recipient's current fax number. Service by mail is complete upon deposit in any depository of the United States Postal Service. Service by fax or email is complete upon transfer, except that any transfer occurring after 5:00 p.m. in the recipient's time zone



shall be deemed to be completed the following business day. If service is by mail, and the recipient has the right, or is required, to do some act within a prescribed period of time after service, three days will be added to the prescribed period from the date of deposit in the post office. Where service by other methods has proved impossible, the service is complete upon publication of notice in a newspaper with general circulation in the District.

(c) The District's mailing address is: P.O. Box 10, Mertzon, TX 76941.

#### **RULE 1.207 MEETINGS**

The Board will hold a regular meeting each month on a day the Board may establish from time to time by resolution. At the request of the Chairman, or by written request of at least two Board Members, the Board may hold special meetings. All Board meetings will be held in accordance with the Texas Open Meetings Act.

#### **RULE 1.208 MINUTES AND RECORDS OF THE DISTRICT**

All official documents, reports, records and minutes of the District will be available for public inspection and copying in accordance with the Texas Public Information Act. Upon written application of any person and completion of the Records Request Form, the District will furnish copies of its public records. Persons who are furnished copies may be assessed copying and other charges, pursuant to policies established by the Manager. A list of charges for the copies will be furnished by the District.

#### **RULE 1.209 DISTRICT OFFICE**

The District's office is located in the Irion County Courthouse Annex, 208 N Park View, Mertzon, TX. The District's contact information is as follows:

- (a) mailing address: P.O. Box 10, Mertzon, TX 76941;
- (b) office telephone: (325) 835-2015;
- (c) fax: (325) 835-2366;
- (d) cell: (325) 650-2635;
- (e) email: [icwcd@verizon.net](mailto:icwcd@verizon.net); and,
- (f) website: <http://www.irionwcd.org>.

#### **RULE 1.210 REGULATORY COMPLIANCE**

All well owners, operators/lessees, and water well drillers shall comply with all applicable rules and regulations. Where District Rules and regulations are more stringent than those of other governmental entities, the District Rules and regulations shall prevail.

## **SUBSECTION 3. RULEMAKING PROCEDURES**

### **RULE 1.301 APPLICABILITY**

Rulemaking hearings shall be conducted in the manner the Board deems most suitable to obtain all relevant information and testimony on proposed rules as conveniently, inexpensively, and expeditiously as possible without prejudicing the rights of any person. This section applies to rulemaking by the District but does not apply to internal personnel rules or practices, bylaws, statements regarding internal management or organization, or other statements not of general applicability.

### **RULE 1.302 RULEMAKING**

The District may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. In adopting a 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;
- (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 from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution; and,
- (e) consider the goals developed as part of the District's management plan.

### **RULE 1.303 NOTICE**

(a) Not later than the 20th day before the date of a rulemaking hearing, the General Manager or Board shall:

- (1) post notice in a place readily accessible to the public at the District office;
- (2) provide notice to the County Clerk of each county in the District;
- (3) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located;

(4) provide notice by mail, fax, or electronic mail to any person who has requested notice under *1.304 (d)*; and,

(5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on a generally accessible Internet site.

**(b)** The notice provided must include:

(1) the time, date, and location of the rulemaking hearing;

(2) a brief explanation of the subject of the rulemaking hearing; and,

(3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

#### **RULE 1.304 CONDUCT OF RULEMAKING PROCEEDING**

**(a)** The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing within any deadline established by the District. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.

**(b)** The District requires each person who participates in a rulemaking hearing to submit a hearing registration form stating:

(1) the person's name;

(2) the person's address; and,

(3) whom the person represents, if the person is not at the hearing in the person's individual capacity.

**(c)** The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

**(d)** 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, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(e) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the District about contemplated rules.

(f) Failure to provide notice under *1.303 (a)(4)* does not invalidate an action taken by the District at a rulemaking hearing.

(g) A person who participates in a rulemaking hearing and who is affected by the rule adopted by the Board may administratively appeal a rulemaking decision of the Board by requesting a rehearing before the Board not later than the 20th day after the date of the Board's decision. A request for rehearing must be written, filed in the District office, and must state the grounds for the request. If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45<sup>th</sup> day after the date the request is granted. The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request. A decision by the Board on a rulemaking is final:

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

(h) Except as provided below, a person who participates in a rulemaking hearing and who is affected by the rule adopted by the Board may file a suit against the District under Section 36.251, Texas Water Code, to appeal a rulemaking decision not later than the 60th day after the date on which the decision becomes final.

(i) A person who participates in a rulemaking hearing and who is affected by the rule adopted by the Board may not file suit against the District under Section 36.251, Texas Water Code, if a request for rehearing was not filed on time.

## **RULE 1.305 EMERGENCY RULES**

(a) The Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board:

- (1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than

20 days' notice; and

(2) prepares a written statement of the reasons for its finding under *1.305 (a)1*.

(b) Except as provided by *1.305 (c)*, a rule adopted under this section may not be effective for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

## **SECTION 2. WASTE AND POLLUTION**

### **RULE 2.101 PROHIBITION OF WASTE**

(a) Groundwater shall not be produced within, or used within or without the District, in such a manner or under such conditions as to constitute waste.

(b) Any person producing or using groundwater shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of such water regardless of whether the groundwater is used inside or outside the District.

(c) All groundwater that is to be transported a distance greater than one-quarter (1/4) mile from the originating well shall be transported in such a manner as to prevent waste caused by evaporation and percolation and promote conservation by preventing unnecessary loss of groundwater, such as by pipeline or storage tank, or by permit issued by the TCEQ.

### **RULE 2.102 PROHIBITION OF POLLUTION**

No person shall pollute or harmfully alter the character of a groundwater reservoir, or surface water, within the District by means of any waste water, oil and gas waste, injurious water, commingling or other deleterious matter admitted from some other stratum or strata or from the surface of the ground.

## **SECTION 3. WELL REGISTRATION AND PERMITS**

### **SUBSECTION 1. WELL REGISTRATION**

### **RULE 3.101 REGISTRATION REQUIRED**

Well registration is required for all existing and future wells, whether exempt or non-exempt, within the District and shall be filed in the District Office on a form(s) and in the manner required by the District.

### **RULE 3.102 PREREGISTRATION FOR ALL NEW WELLS**

(a) An, administratively complete, preregistration application (Notice of Intent to Drill), furnished by the District, shall be filed with the District at least five (5) business days **prior** to drilling of any new well, exempt or non-exempt.

(b) Preregistration shall include but is not limited to the following information:

- (1) name, address, and phone number of well owner;
- (2) name and phone number of the driller;
- (3) proposed well size
- (4) well location - including the county, section, block, survey number, abstract number, and longitude and latitude;
- (5) if the well is previously existing, what proposed well work will be completed; and,
- (6) proposed well use;

(c) The preregistration application shall be signed by the landowner or his duly appointed agent, including a partner, operator/lessee, driller, or any other person who has the authority to construct the well and/or operate the well for the proposed use.

(d) The preregistration application may be submitted either by hand delivery, mail, fax, or e-mail.

### **RULE 3.103 PRELIMINARY DETERMINATION OF EXEMPT STATUS**

(a) The District staff will review the preregistration application filed and make a preliminary determination as to whether the well meets drilling and operating permit exclusions and exemptions provided in these Rules and Texas Water Code §36.117. If the preliminary determination is that the well is exempt from the requirements for an operating permit, the applicant may begin drilling immediately upon receiving notification of the determination.

(b) After the exempt status has been determined, the well, if drilled, must be drilled within 30 feet from the location given on the preregistration application and in compliance with all applicable District rules. The District shall have the right to confirm reported distances and inspect the wells or well locations.

(c) If the District determines the well is not exempt, the applicant will proceed in accordance with *Section 3. Well Registration and Permits, Subsection 2. Permits* and apply for, and be granted, a permit **prior to** producing any groundwater from the well.

### **RULE 3.104 COLLECTION OF ADDITIONAL WELL REGISTRATION INFORMATION**

(a) The District will collect additional registration information for all exempt wells within the District. The owner, or operator/lessee, of an exempt well shall cooperate with the District in its efforts to collect registration information on all such wells.

(b) Registration information collected by the District shall include, but not limited to, the following information commonly found on well logs in sufficient detail to be acceptable to the District:

- (1) name, address, and phone number of the landowner, name, address, and phone number of the operator/lessee and/or groundwater owner if different than the surface landowner;
- (2) location of the well - including the county, city block and lot, section, block, survey number, abstract number, longitude and latitude, acreage or lot size, and the distance in feet to the nearest non-parallel property lines;
- (3) well use or proposed use;
- (4) well status (operational or capped);
- (5) driller and date drilled;
- (6) total well depth;
- (7) static water level;
- (8) well construction (casing type, depth and size);
- (9) surface completion;
- (10) pump type and size; and,
- (11) production (gallons per minute capacity of the pump and anticipated annual usage).

(c) The District's office is located in the Irion County Courthouse Annex, 208 N Park View, Mertzon, TX. The District's contact information: mailing address: P.O. Box 10, Mertzon, TX 76941, Office: (325) 835-2015, Fax (325) 835-2366, Cell: (325) 835-2635 and email: [icwcd@verizon.net](mailto:icwcd@verizon.net).

### **RULE 3.105 RE-REGISTRATION**

(a) If the owner, or operator/lessee, of a registered well plans to change the use of the water, increase the production rate of the water, or to substantially alter the size of the well or well pump in a manner that does not require a permit, the owner shall notify the District at least five (5) business days **prior** to the start of alterations.

(b) If the alterations would require the well to be permitted, the owner, or operator/lessee, shall apply for a permit in compliance with *Section 3. Well Registration and Permits, Subsection 2. Permits* prior to implementing the alteration.

(c) If only the ownership of a registered exempt well changes the new owner shall notify the District and re-register the well within sixty (60) days.

### **RULE 3.106 VIOLATION OF DISTRICT RULES**

(a) It is a violation of the District Rules for a well owner, operator/lessee, or water well driller to drill any well until a preregistration application (Notice of Intent to Drill) has been filed with the District and approved.

(b) It is a violation of the District rules for a well owner, operator/lessee to produce groundwater from a non-exempt well that has not been issued a permit.

## **SUBSECTION 2. PERMITS**

### **RULE 3.201 PERMIT REQUIRED**

(a) A permit from the District is required prior to drilling, equipping, completing, operating, producing or exporting groundwater from any non-exempt well within the District.

(b) The owner, or operator/lessee, of a well to be drilled or altered after the effective date of this rule shall file a permit application in the District Office.

(c) A permit amendment is required for a permitted well when ownership changes prior to producing groundwater from the well.

### **RULE 3.202 EXEMPTIONS FROM PERMITTING**

(a) The following wells do not require a permit from the District:

(1) any well for which the District is prohibited from requiring a permit according to Section 36.117, Texas Water Code; and

(2) any well used solely for providing water for domestic or livestock use on a tract of land that is 10 acres or less, and is incapable of producing more than 25,000 gallons per day.

(b) Unless otherwise provided by Section 36.117, Texas Water Code, all exempt wells shall comply with the District's requirements for registration, preregistration, spacing, submittal of well logs, required reports, and any applicable construction standards.



### **RULE 3.203 ISSUANCE OF PERMITS**

(a) The Board shall issue or cause to be issued a permit(s) for a well that is properly spaced and otherwise in compliance with any applicable production limits, upon proper application executed and filed by the owner or his/her agent with the District and accompanied by the required deposits or fees and containing the matters specified below.

(b) All applications shall be in writing, on forms provided by the District and contain the information called for in the application form and shall be prepared in accordance with all instructions which may have been issued by the Board with respect to the filing of an application. An application shall be considered properly filed when completed, signed, sworn to, and tendered to the District. Otherwise, the application will not be considered.

(c) Rules for filing of applications:

(1) If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent. The agent shall present satisfactory evidence of his authority to represent the applicant.

(2) If the application is by a partnership, the applicant shall be designated by the firm name followed by the words "a Partnership" and the application shall be signed by at least one of the general partners who is duly authorized to bind all of the partners.

(3) In the case of a corporation, special district, county or municipality, or political subdivision of the State, the application shall be signed by a duly authorized official. A copy of the resolution or other authorization to make the application may be required by the officer or agent receiving the application.

(4) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.

(d) Applications shall include the required information set forth in this Section.

### **RULE 3.204 PERMIT APPLICATION REQUIREMENTS**

(a) A separate application is required for each well.

(b) In addition to compliance with District spacing rules, *Section 5*, permit application(s) shall include the following information in sufficient detail to be acceptable to the District:

(1) name and address of the well owner, name and address of the operator/lessee if different than the surface owner, and name and address of the owner of the groundwater if different than the surface owner of the land upon which the well is located or to be located;

(2) location or proposed location of the well - including the county, city block and lot, section, block, survey number, abstract number, longitude and latitude, acreage or lot

- size, and the distance in feet to the nearest non-parallel property lines;
- (3) Proposed well use and location of use (on-site, in District, or export);
  - (4) Plat or map showing the location (distance in feet) of all wells located within one (1) mile radius of the existing or proposed well, and the names, addresses, and phone numbers of the owners and operator/lessee;
  - (5) if proposed location of use is greater than one quarter (1/4) mile from the well, a detailed statement of the nature and purpose(s) of the proposed use(s), location(s) of proposed use(s), transportation facility(s) and the amount of groundwater to be used for each purpose;
  - (6) estimated annual pumpage volume for the well; an explanation of any anticipated growth in total water demand and associated pumpage needs; and any alternative water sources being used by the applicant;
  - (7) for a proposed aggregate system, a description of the system and the estimated annual pumpage for the system;
  - (8) a detailed statement of the existing production rate(s), if applicable;
  - (9) type of application - new well, rework, re-drill, replacement, or other;
  - (10) total contiguous acreage owned where well is located or is to be drilled;
  - (11) a statement of the proposed drill date, well depth, static and drawdown level, well completion construction and pump type and size;
  - (12) a statement by the applicant that the water withdrawn under the permit will be put to a beneficial, non-wasteful use at all times and that the applicant will comply with all District Rules, orders, and permit provisions;
  - (13) a water well closure plan or a declaration that the applicant will comply with well plugging and capping guidelines set forth in these Rules and will report well closures to the District;
  - (14) a water conservation plan, if the applicant is required by law to have a water conservation plan; and,
  - (15) a drought contingency plan, if the applicant is required by law to have a drought contingency plan.

(c) Permit applications or amendments requesting greater than 4 acre feet of water per continuous acreage owned or served will require additional information. This 4 acre feet per

continuous acre owned or served metric is solely used for triggering the provision of additional scientific data and is not intended to be considered an indicator of the amount of water to be authorized or permitted. The District does not approve permits solely based on continuous acreage owned or served. These permit applications or amendments shall include the following additional information:

- (1) a hydrogeological report describing the projected effect of the proposed withdrawal of groundwater on aquifer conditions, depletion, subsidence, spring flow and existing permit holders or exempt wells within the District and other pertinent information deemed necessary for the evaluation of the application by the Board. The hydrogeological report must address the impacts of the proposed initial pumping rate, any scheduled incremental increases, and the impacts of the well's ultimate planned use. The hydrogeological report shall be prepared by a qualified person who is properly licensed by the State of Texas to prepare such report. Applicants may not rely solely on reports previously filed with or prepared by the District. Failure to submit a hydrogeological report as required by the District, shall be grounds for denial of the permit. The Board shall make the final determination of whether a hydrogeological report meets the requirements of this subsection;
- (2) identification of any other possible sources which could be used for the stated purposes, including but not limited to, treated water, reuse water and return flows, together with the quality and quantity of such alternate sources;
- (3) a description of how the proposed groundwater withdrawal is addressed in any approved regional water plan(s);
- (4) an analysis explaining how the groundwater production proposed in the application will impact the desired future conditions applicable to the District; and,
- (5) a detailed description of the transportation facilities to be used for the conveyance of the water and a schedule for construction and/or operation of the facility.

(d) The District shall issue an operating permit for each non-exempt well in the District that was in existence prior to the effective date of these rules.

### **RULE 3.205 PERMIT EVALUATION**

In determining whether to issue a permit, and in setting the terms of the permit, the Board will consider the purposes of the District Act, and other relevant factors, including but not limited to:

- (a) whether the application conforms to the requirements of this section and any applicable spacing requirements, density restrictions, or production limits;
- (b) whether the proposed use of water is for non-wasteful beneficial use;

(c) whether the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(d) whether the proposed use is consistent with the certified district management plan and approved regional water plan;

(e) whether the applicant has agreed to avoid waste and practice conservation;

(f) whether the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow plugging guidelines at the time of well closure;

(g) the effect of granting the permit on drawdown of the water table, reduction in artesian pressure, or spring flow; and,

(h) the quality, quantity, and availability of alternative water supplies.

### **RULE 3.206 TIME AND DISTANCE LIMITS OF A PERMIT**

(a) Any permit granted hereunder shall be valid if the work permitted is completed within **six (6)** months from the date the permit was granted. It shall thereafter be void. Provided, however, that the District, for good cause, may extend the life of such permit up to an additional **six (6)** months if an application for such extension is made to the District during the first **six (6)** month period.

(b) After a permit has been approved, the well, if drilled, must be drilled within 30 feet from the location given on the application and in compliance with all District rules. The District shall have the right to confirm reported distances and inspect the wells or well locations.

### **RULE 3.207 TERMS AND CONDITIONS OF PERMITS**

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 issued shall be subject to the following terms and conditions:

(a) After a permit has been approved, the well, if drilled, must be drilled within 30 feet from the location given on the application and in compliance with all District rules. The District shall have the right to confirm reported distances and inspect the wells or well locations.

(b) All permits are effective for a term of five (5) years with potential availability for renewal.

(c) All permittees shall maintain records of the actual amount of production and amount of production for each use. The annual production and use reporting period shall begin on January 1 of each calendar year. These reports shall be filed in the District Office by January 15 of each calendar year.

(d) A permittee who produces groundwater for use outside the district shall maintain records of the actual amount of production, amount for each use, and amount exported from the District. The

annual production and use reporting period shall begin on January 1 of each calendar year. These reports shall be filed in the District Office by January 15 of each calendar year.

(e) A permit confers no vested rights in the holder.

(f) A permit grants a right to the well owner, or operator/lessee, to produce water in the amount, and in accordance with the terms of the permit until there is a change, or proposed change, in any of the following:

- (1) ownership of well
- (2) amount of water used
- (3) use of water
- (4) location of use of water

Upon the occurrence, or proposed occurrence of any of these events, a new application(s) for the appropriate permit(s) must be filed with the District, within **ninety (90) days**, to be acted upon, in the same manner, and in accordance with the same procedures as set forth in this Section for new wells. A change in ownership of a well requires a permit amendment as outlined in *Rule 3.208*.

(g) All permits issued under these Rules are conditional, and may be revoked or suspended and/or its terms may be modified or amended pursuant to District Rules. The District shall provide reasonable notice and opportunity for hearing before revoking, suspending, modifying or amending a permit.

(h) All groundwater that is to be transported a distance greater than one-quarter(1/4) mile from the well shall be transported by a pipeline, storage tank, pursuant to a TCEQ issued permit, or other water conservation device to prevent waste caused by evaporation and percolation and promote conservation by preventing unnecessary loss of groundwater.

### **RULE 3.208 PERMIT AMENDMENTS**

(a) It is a violation of these Rules for a permittee to violate any term, provision, or restriction contained in a permit issued by the District. A permittee must apply for and receive an amendment to their permit prior to changing any term, provision, or restriction in the permit.

(1) minor amendments include a request to:

- i.** change the name or address of the well owner without any change in use or location of use; or
- ii.** decrease the maximum authorized withdrawal.

(2) all other amendments are major amendments.

(b) Minor amendments may be granted by the Board without notice, hearing, or further action by the Board.

(c) Major amendments shall be subject to all the requirements and procedures applicable to issuance of a new permit for a new well.

(d) An application for permit amendment shall be made on the same form as an original permit application. The form is supplied by the District and must be accompanied by any applicable application processing fee established by the Board. No application processing fee will be required from permittees requesting a decrease in maximum authorized withdrawal.

(e) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under *Rule 3.209* without penalty.

(f) An amendment to change the name of a well owner must be submitted within **sixty (60) days** of the transfer of ownership.

### **RULE 3.209 PERMIT RENEWAL**

(a) Well owners or operators shall make application to renew permits required under these Rules at least three (3) months prior to the expiration of the permit term on a form provided by the District. The well owner or operator/lessee shall indicate on the renewal application form whether any changes to the well, well operations, purpose of use, or special conditions have occurred.

(b) Except as provided by Subsection (c), a district shall without a hearing renew or approve an application to renew an operating permit before the date on which the permit expires, provided that:

- (1) the application is submitted in a timely manner and accompanied by any required fees in accordance with district rules; and
- (2) the permit holder is not requesting a change related to the renewal that would require a permit amendment under district rules.

(c) A district is not required to renew a permit under this section if the applicant:

- (1) is delinquent in paying a fee required by the district;
- (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.

(d) If the well owner or operator/lessee seeks to change any of the permit terms or conditions in the renewal application, the application will be considered a new permit application subject to this Subsection unless changes only include a request to:

- (1) change the address of the well owner without any change in use or location of use; or,
- (2) decrease the maximum authorized withdrawal.

(e) The District shall notify the permittee that the permit term is expiring.

(f) Notwithstanding subsection (b) of this section, the District may, after notice and opportunity for hearing, initiate an amendment to a permit in connection with permit renewal or otherwise to address local aquifer conditions under the permit that have resulted in the drawdown of the water table or the reduction of artesian pressure, have increased interference between wells, or are necessary to control or prevent subsidence.

#### **RULE 3.210 PERMIT REVOCATION**

(a) A permit is not a vested right of the holder.

(b) After notice and an opportunity for hearing, a permit may be revoked, suspended, terminated, canceled, modified, or amended in whole or in part for cause, including but not limited to:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining the permit by misrepresentation or failure to disclose relevant facts; or
- (3) failure to comply with any applicable Rules, regulations, fee schedule, special provisions, requirements, or orders of the District.

(c) The permittee shall furnish to the District upon request, and within a reasonable time, any information to determine whether cause exists for revoking, suspending, terminating, canceling, modifying, or amending a permit.

### **SECTION 4. PROCEDURES FOR HEARING**

#### **RULE 4.101 OPPORTUNITY FOR HEARING**

If an application before the District is contested, the Board will hold a hearing on the application. If an uncontested application before the District is reduced, denied, or the board includes special conditions not part of the application without a hearing, the person will be entitled to a hearing before the Board if a request for hearing is timely made. A written request to the Board for such a hearing, stating the pertinent facts, must be filed with the Board within twenty (20) days of the Board action reducing or denying the permit, or including special conditions not included in the application of the permit. If such motion is in order and is duly filed, the Board shall give notice to the applicant and all proper and necessary parties of the time and place of such hearing, and shall proceed to conduct such a hearing.

## **RULE 4.102 NOTICE AND SCHEDULING OF HEARINGS**

**(a) Staff Recommendation:** Once submitted the District staff will perform a technical review of the application, certify the spacing of the proposed well with regard to all District spacing rules, and prepare a staff recommendation to the Board. Once an application for a permit has been declared administratively complete by the General Manager it will be presented to the board complete with recommendation. The staff recommendation will include a summary of the facts related to the application and staff recommendations for Board action on the application.

**(b) Scheduling of Hearing:** If the General Manager determines that the permit application is contested because the application is not in compliance with all District rules, the applicant otherwise disagrees with District staff's recommended permit, or the application is protested by a third party, the General Manager or Board will schedule the application for a hearing at a regular or special meeting of the Board. If the General Manager determines before the preliminary hearing that the permit application is uncontested and is in compliance with all District rules, then the permit may be approved by the General Manager, and the drilling operation may proceed without a full Board hearing. The Board may schedule hearings for additional dates, times, and places if the hearing is to be presided over by a hearings examiner. The General Manager or Board may schedule more than one application for consideration at a hearing. Well registrations do not require a hearing or Board action.

**(c) Notice of Hearing:** The General Manager shall give notice of all hearings involving permit applications in the following manner:

- (1) Notice of the date, time, and location of the hearing shall be sent to the applicant in writing at least ten (10) days before the date of the hearing by certified mail, return receipt requested, and other person(s) requesting notification, by regular mail, fax, or electronic mail. The notice to the applicant shall include the staff recommendation on the application.
- (2) A copy of the notice shall be posted at the District office and at the county courthouse in the place where notices are usually posted. The date of posting may not be less than ten (10) days before the date of the hearing.

**(d) Contents of Notice:** The notice shall include:

- (1) the name of the applicant;
- (2) the location of the well or proposed well;
- (3) a brief explanation of the permit or permit amendment, including requested



production, purpose of use or change of use;

(4) the date, time, and location of the hearing; and,

(5) any other information the General Manager or Board deems relevant or appropriate.

**(e) Protest and request for Contested Case Hearing:**

(1) In the event any person should desire to protest or oppose any pending application, the person wishing to protest must file by United States mail, facsimile, e-mail, or hand delivery to the General Manager, Board, or hearing officer, a written notice of protest or opposition, providing the basis for such protest and opposition as described in Paragraph (2) below, and request a contested case hearing at least two business days before the of the hearing.

(2) Protest Requirements. Protests and request for contested case hearings shall be submitted in writing with a duplicate copy to the opposing party or parties and shall comply in substance with the following requirements:

**i.** Each protest shall show the name and address of the protestant.

**ii.** The protestant shall identify any injury that will result from the proposed action or matter to be considered by the Board.

**iii.** If the protest is based upon claim of interference with some present right of protestant, it shall include a statement of the basis of protestant's claim of right.

**iv.** Protestant shall call attention to any amendment of the application or adjustment which, if made would result in withdrawal of the protest.

**v.** Protestant shall demonstrate a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to members of the public that is within the District's regulatory authority and affected by a permit or permit amendment application.

**vi.** If a contested case hearing is desired, the party desiring the hearing must include a statement, "I/we request a contested case hearing."

**vii.** If a party requesting a contested case hearing desires for the hearing to be referred to and conducted by the State Office of Administrative Hearings (SOAH), then the hearing request must include a statement "I/we request that the SOAH conduct the contested case hearing." A party requesting a hearing before SOAH

shall pay all costs associated with the contract for a SOAH hearing in accordance with Texas Water Code section 36.416.

(3) The District shall limit participation in a hearing on a contested application to the General Manager, applicant, and only persons who 1) have timely requested a hearing in subparagraph (1) above, and 2) who must have a personal justiciable interest as defined by subparagraph (2)(E) above.

#### **RULE 4.103 HEARING PROCEDURES AND CONDUCT**

**(a) General Provisions:** Hearings on permit applications will be conducted by a quorum of the Board, an individual to whom the Board has delegated the responsibility to preside as a hearings examiner, or by (SOAH) as prescribed under Texas Water Code section 36.416. The Board President, or another Board Member designated by the Board, a SOAH Administrative Law Judge, or, the hearings examiner shall serve as the presiding officer for the hearing.

**(b) Preliminary Hearing:** The initial hearing conducted by the Board under *Rule 4.102(b)* is a preliminary hearing. At a preliminary hearing, the Presiding Officer shall determine whether any person requesting a contested case hearing has standing to make the request, whether a personal justiciable issue related to the application has been raised, and a party's right to participate in a hearing. The Presiding Officer shall limit participation in a hearing to only persons who satisfy Rule 4.102(e). If it is determined before the preliminary hearing that the application is uncontested or at the preliminary hearing that no person who requested a contested case hearing had standing or that no personal justiciable issues were raised, the Board may treat the matter as uncontested.

**(c) Hearing Registration:** The District may require each person who attends a hearing to submit a hearing registration form stating the person's name, address, whom the person represents, and whether the person wishes to testify.

**(d) Conduct of Hearings:** Hearings will be conducted in the manner the presiding officer deems most suitable to conveniently, inexpensively, and expeditiously provide a reasonable opportunity for interested persons to submit relevant data, views, or arguments, in writing or orally. In addition, the presiding officer may:

- (1) convene the hearing at the time and place specified in the notice;
- (2) set any necessary additional hearing dates;
- (3) establish the order for presentation of evidence;
- (4) administer oaths to all persons presenting testimony;
- (5) examine persons presenting testimony;

- (6) limit testimony or the presentation of evidence to persons who, in the presiding officer's determination, are affected by the subject matter of the hearing and is within the District's regulatory authority to address;
- (7) allow testimony to be submitted in writing and may require that written testimony be sworn to;
- (8) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party; and
- (9) prescribe reasonable time limits for testimony and the presentation of evidence.

**(e) Continuance:** The presiding officer may continue a hearing from time to time and from place to place without providing notice under *Rule 4.101* by announcing at the hearing the time, date, and location of the continued hearing.

**(f) Recording:** The District shall prepare and keep a record of each hearing in the form of either minutes or audio or video recording or court reporter transcription or the report described by Subsection (f) of this section. If a hearing is transcribed at the request of a party to the hearing, the presiding officer may assess the costs associated with producing the transcript to one or more parties. If a hearing involved a contested application, then the District shall keep a record of the hearing in the form of audio or video recording or a court reporter transcription.

**(g) Report;** The presiding officer shall submit a report to the board no later than thirty (30) days after the date a hearing is concluded, unless the hearing was conducted by a quorum of the board. If the hearing was conducted by a quorum of the board, the presiding officer shall determine at the presiding officer's discretion whether to prepare and submit a report to the board under this section. The report must include:

- (1) a summary of the subject matter of the hearing;
- (2) a summary of the evidence or public comments received; and
- (3) the presiding officer's recommendations for board action on the subject matter of the hearing.

**(h) SOAH Hearings.** If requested by an applicant or other party to a contested case, the District shall contract with SOAH to conduct a hearing. A person opposing an application who requests a contested hearing under Rule 4.102(e) must include in a timely hearing request the statement "I/we request that the State Office of Administrative Hearings conduct the hearing" in order for the hearing to be referred to and conducted by SOAH.

- (1) An applicant desiring that the District refer a contested case to SOAH must make a written request for the SOAH referral at the same time that applicant requests a hearing or, when a hearing has been requested by a person other than the applicant, and the applicant desires for

the District to contract with SOAH to conduct the contested case, the applicant must request a SOAH hearing in writing within no later than 5 business days after the determination that the District will grant a hearing.

(2) A party requesting a hearing before SOAH shall pay all costs associated with the contract for a SOAH hearing and shall deposit with the District an amount determined by the District to pay the contract amount before the hearing begins. A party's SOAH hearing request will be deemed withdrawn if the party fails to provide the required deposit within 5 days of the District's request for the deposit. At the conclusion of the hearing, the District shall refund any excess money to the paying party.

(3) If the District contracts with SOAH to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.

(4) An administrative law judge who conducts a contest case hearing shall consider applicable district rules or policies in conducting the hearing, but the district deciding the case may not supervise the administrative law judge. The District shall provide the SOAH administrative law judge with a written statement of applicable rules and policies. The district may not attempt to influence the findings of fact or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

#### **RULE 4.104 FINAL ORDERS OF THE BOARD**

After the record is closed and a permitting matter is submitted to the Board, the Board may take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought, grant the action sought in whole or part, or take any other appropriate action within sixty (60) days after the date of the final hearing.

#### **RULE 4.105 REQUEST FOR FINDINGS AND CONCLUSIONS OR REHEARING**

(a) A decision of the Board made under this Rule may be appealed by requesting written findings and conclusions of the Board no later than twenty (20) days after the Board's decision. Upon receipt of a timely written request, the Board shall provide certified copies of the findings and conclusions to the requestor and each designated party not later than thirty-five (35) days after receipt of the request.

(b) A party to a contested hearing may request a rehearing not later than twenty (20) days after the Board issues its findings and conclusions. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is

mandatory with respect to any decision or action of the Board before an appeal may be brought. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing.

(c) If the rehearing request is granted by the Board, the date of the rehearing will be within forty five (45) days thereafter unless otherwise agreed to by all parties to the proceeding. The failure of the Board to grant or deny a request for rehearing within ninety (90) days of the date of submission will be deemed to be a denial of the request. The Board's decision is final if no request for rehearing is made within the specified time, upon the Board's denial of the request for rehearing, or upon the Board's rendering of a decision after rehearing.

## **SECTION 5. WELL SPACING AND PRODUCTION LIMITS**

### **SUBSECTION 1. WELL SPACING AND WELL DENSITY**

#### **RULE 5.101 DRILLING WELLS AT UNAPPROVED LOCATIONS PROHIBITED**

It is a violation of these Rules for a well owner, operator/lessee, or water well driller to drill a new well that does not comply with the spacing and location requirements of this subsection.

#### **RULE 5.102 MINIMUM SPACING OF ALL WELLS**

(a). All new wells, both exempt and non-exempt, must comply with the spacing and location requirements established by the Texas Department of Licensing and Regulation as set forth under Title 16, Texas Administrative Code, Chapter 76, Water Well Drillers and Pump Installers Rules, and must comply with the requirements of the Texas Commission on Environmental Quality as set forth under Title 30, Texas Administrative Code, Chapter 285, On-Site Sewage Facilities.

(b) In **NO** case may an exempt well be drilled closer than **ten (10) feet** to any property line as per the metes and bounds in accordance with Rule 7.301.

#### **RULE 5.103 ADDITIONAL SPACING REQUIREMENTS FOR NON-EXEMPT WELLS**

(a) No non-exempt wells shall be drilled closer than three hundred thirty (330) feet to any property line as per the metes and bounds, and six hundred sixty (660) feet to any existing or proposed exempt or non-exempt well completed in the Edwards/Trinity (Plateau) or Lipan Aquifers.

(b) No non-exempt wells shall be drilled closer than six hundred sixty (660) feet to any property line, as per the metes and bounds, and one thousand three hundred twenty (1320) feet to any existing exempt or non-exempt well completed in the Dockum Aquifer (aka: Santa Rosa).

(c) If the property line is adjacent to a TXDOT easement or owned right of way the District may consider the center of the highway as the property line.

#### **RULE 5.104 WELL DENSITY FOR NON-EXEMPT WELLS**

No more than a cumulative total of four (4) non-exempt wells, whether drilled prior to or subsequent to the enactment of this rule, shall be permitted to be screened and producing from the same aquifer per survey section. This rule will not be construed to require the closing, capping, or plugging of any existing well.

#### **RULE 5.105 EXEMPTION TO WELL SPACING**

(a) If an applicant presents waivers signed by adjoining landowner(s) and non-exempt well owners within the area affected by the application stating that they have no objections to the proposed location of a new well site, the Board may determine that the spacing requirements of *Rule 5.102* and *5.103* will not apply to the new well location.

(b) A well used solely for domestic and livestock use will be exempted from the spacing requirements of *Rule 5.102* and *5.103* if the tract of land owned is too small to achieve the necessary spacing, provided the well is equipped so that it is not capable of producing more than 25,000 gallons of groundwater per day.

(c) If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements of *Rule 5.102* and *5.103*, the Board may monitor production of the well and may limit the production if deemed reasonable or necessary to ensure that no injury is done to adjoining landowners or well owners.

### **SUBSECTION 2. PRODUCTION LIMITS**

#### **RULE 5.201 BASIS FOR PRODUCTION LIMITATIONS**

(a) The District recognizes the importance of maintaining groundwater availability for residents and spring flow. Therefore, the District follows the principle which limits groundwater availability to effective recharge or safe yield to maintain dependable and sufficient groundwater supplies for future generations. This limitation of groundwater availability is included in the District's Management Plan, DFC explanatory reports and the Region F Regional Water Plan.

(b) Production shall be limited, as set forth in *Rule 5.202*, and to the extent necessary to ensure that the groundwater is put to a beneficial, non-wasteful use. However, in order to accomplish the purposes of Texas Water Code Chapter 36 and achieve the stated purposes and goals of the District, including managing the sustainability of the aquifers and preventing significant, sustained water-level declines within the aquifers, and achieving the adopted Desired Future Conditions, the Board reserves the right to amend this section in the future to establish any production limits necessary on new or existing permits. All permits are issued subject to any future production limits adopted by the District.

#### **RULE 5.202 PRODUCTION LIMITS**

Pending collection of additional hydrogeologic and other scientific data, production is not limited, except to the extent necessary to ensure that the groundwater is put to a beneficial, non-wasteful use. However, in order to accomplish the purposes of Texas Water Code Chapter 36, and achieve the stated purposes and goals of the District, including managing the sustainability of the aquifers, preventing significant, sustained water-level declines within the aquifers to achieve the adopted DFC and to maintain spring flow, the Board reserves the right to amend this section in the future to establish any production limits necessary on new or existing permits. All permits are issued subject to any future production limits adopted by the District.

#### **RULE 5.203 MODIFYING OR AMENDING MAXIMUM PRODUCTION**

(a) If the District determines that significant, sustained water-level declines are occurring within a certain geographic area of the District, the Board reserves the right to modify or amend existing permits within the area by limiting production in order to re-establish reasonably sustainable water levels in the area. The District shall provide reasonable notice and opportunity for a hearing before modifying or amending a permit.

(b) The District reserves the right to adopt production limits on new and existing wells across the entire geographic extent of the District or within a particular geographic area as necessary for achieving the District's adopted Desired Future Conditions.

### **SECTION 6. DEPOSITS AND FEES**

#### **RULE 6.101 DEPOSITS**

(a) The Board may establish by resolution a schedule of deposits.

(b) Each application for a permit to drill or operate a non-exempt well shall be accompanied by a deposit in the amount determined by the Board by resolution, order, or rule. The deposit shall be returned to the applicant by the District if:

- (1) the application is denied;
  - (2) if the application is granted, upon receipt of all drillers' well reports and plugging reports for all wells drilled under the permit along with the completed registration form including the pump HP pump discharge size, and pump yield (GPM) for the completed well; or
  - (3) if the permit location is abandoned without having been drilled, upon return and surrender of the permit marked "**Abandoned**" by the applicant.
- (c) All deposits shall become the property of the District if the appropriate registration form, drillers' well report and/or plugging reports, or abandoned permit is not returned to the District within **six (6) months** from the approval date of the permit. Refund checks shall be void if not cashed within 90 days of issue and the deposit shall become the property of the District.

#### **RULE 6.102 ADMINISTRATIVE FEES**

The Board may establish by resolution a schedule of administrative fees, such as fees for processing of applications and for services provided outside the District. The Board will attempt to set fees at an amount that does not unreasonably exceed the cost to the District of performing the function for which the fees are charged.

#### **RULE 6.103 WATER EXPORT FEE**

As authorized by Texas Water Code §36.122 , as amended, entities transporting water outside of the boundaries of the District are subject to a water export fee using one of the following methods:

- (a) a fee negotiated between the District and the transporter; or
- (b) a rate not to exceed 2.5 cents per thousand gallons of water transported out of the District; or the equivalent of District's tax rate per \$100 valuation, per thousand gallons of water, whichever is greater.

### **SECTION 7. DRILLING, COMPLETING, CAPPING, AND PLUGGING**

#### **SUBSECTION 1. WELL DRILLERS AND PUMP INSTALLERS**

##### **RULE 7.101 PERSONS AUTHORIZED TO DRILL WELLS AND INSTALL PUMPS**

(a) Only persons who are licensed water well drillers and/or licensed commercial pump installers, in good standing with the Department of Licensing and Regulation, Texas Water Well Drillers Board, Title 16 Texas Administrative Code, Chapter 76, as amended, *or persons exempt* under



Title 16 Texas Administrative Code §76.30, as amended, are allowed to either drill water wells or perform work on pumps or irrigation systems within the District.

(b) Individual landowners who are not required to be licensed may drill water wells on their property provided that:

- (1) the wells are completed according to State and District completion requirements;
- (2) well reports are completed and submitted to the District within sixty (60) days of completion of the well; and,
- (3) well registration forms are properly completed and filed with the District.

#### **RULE 7.102 RESPONSIBILITY TO COVER OR CAP NEWLY DRILLED WELL**

(a) It shall be the responsibility of the driller of a newly drilled well to place a cover or cap over the boring or casing that is not easily removable, if the well is to be left unattended without a pump installed. It shall be the responsibility of the pump installer to place a cap over the casing that is not easily removable if the well is to be left unattended with the pump removed in accordance with Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.72, as amended.

(b) Any licensed person who knowingly violates this rule, the State statutes, or the Water Well Drillers and Pump Installers rules, may be subject to an administrative penalty, reprimand, or suspension or revocation of their license by the Texas Commission of Licensing and Regulation or any subsequent agency with jurisdiction thereof.

#### **RULE 7.103 RESPONSIBILITY TO SUBMIT WELL REPORT AND PREREGISTRATION APPLICATION**

(a) It shall be the responsibility of the well driller to submit a copy of the completed Well Report to the District within 60 days of completion or cessation of drilling, deepening, or otherwise altering an exempt or non-exempt well in accordance with Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.70, as amended.

(b) It shall also be the responsibility of the well driller to submit, or ensure that the landowner/lessee has submitted, a preregistration application (Notice of Intent to Drill) for approval prior to drilling any well in the District in compliance with *Rule 3.102 Preregistration for all New Wells*.

(c) Any licensed person who violates this rule is subject to enforcement of these rules as stated in *Section 10 Enforcement*.

## **SUBSECTION 2. CAPPING AND PLUGGING OF WELLS**

### **RULE 7.201 OPEN WELLS TO BE PLUGGED OR CAPPED**

(a) The District may require the owner or operator/lessee of any land within the District upon which is located any open or uncovered well to plug or cap the same as set forth below and in accordance with Texas Water Code §36.118(a) and Title 16 Texas Administrative Code § 76.72, as amended, except when the well is in actual use.

(b) A non-deteriorated well which contains casing in good condition and is beneficial to the owner or operator/lessee shall be closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of not less than four hundred (400) pounds and constructed in such a way that the covering cannot be easily removed by hand.

(c) Officers, agents and employees of the District are authorized to serve or cause to be served notice upon any owner or operator/lessee of a well in violation of this rule, thereby requesting such owner and/or operator/lessee to close or cap such well with a covering in compliance herewith.

### **RULE 7.202 PLUGGING OF ABANDONED OR DETERIORATED WELLS**

(a) It is the responsibility of the owner or operator/lessee of land to plug or have plugged a well that is deteriorated or abandoned in accordance with Title 16 Texas Administrative Code, Water Well Drillers and Water Well Pump Installers §76.72, as amended.

(b) A well that does not penetrate any undesirable water zone(s) and is deteriorated or abandoned shall be plugged in accordance with the following specifications:

- (1) all removable casing shall be removed from the well;
- (2) any existing surface completion shall be removed;
- (3) the entire well shall be pressure filled via a tremie pipe with cement from the bottom up to the surface;
- (4) in lieu of the procedure in (b)(3) of this section, the well shall be pressure filled via a tremie tube with clean bentonite grout of a minimum 9.1 pounds per gallon weight followed by a cement plug extending from the land surface to a depth of not less than two (2) feet, or if the well to be plugged has one hundred 100 feet or less of standing water the entire well may be filled with a solid column of 3/8 inch or larger granular sodium bentonite hydrated at frequent intervals while strictly adhering to the manufacturers' recommended rate and method of application. If a bentonite grout is used, the entire well from not less than two (2) feet below land surface may be filled with the bentonite grout. The top two (2) feet above any bentonite grout or granular sodium bentonite shall be filled with cement as an atmospheric barrier.

(c) A well that does penetrate any undesirable water zone(s) and is deteriorated or abandoned shall be plugged as in (b) above with the following additional specification:

(1) Undesirable water or constituents shall be isolated from the fresh water zone(s) with cement plugs and the remainder of the wellbore filled with neat cement or clean bentonite grout of a minimum 9.1 pounds per gallon weight followed by a cement plug extending from land surface to a depth of not less than two (2) feet.

(d) Officers, agents and employees of the District are authorized to serve or cause to be served notice upon any owner or operator of a well in violation of this rule, thereby requesting such owner and/or operator/lessee to plug such well permanently with a covering in compliance herewith.

### **RULE 7.203 FAILURE TO COMPLY WITH CAPPING OR PLUGGING RULES**

(a) In the event any owner or operator/lessee fails or refuses to comply with the request to either close, cap or plug a well(s) within thirty (30) days, a written notice shall be delivered to the owner or operator/lessee of said well(s) either by certified mail or by priority mail with confirmation of delivery requesting compliance with the rule within ten (10) days of receipt of the written notice.

(b) If, after the ten (10) day period, an inspection of the well or wells reveals that the owner or operator/lessee has not complied with the request or refuses to close, cap or plug a well, any employee, person, firm, or corporation employed by the District may go upon said land, as authorized by Texas Water Code §36.118(c), as amended, and close, cap or plug said well safely and securely, in accordance with this section and Title 16 Texas Administrative Code, Water Well Drillers and Water Well Pump Installers §76.72, as amended.

### **RULE 7.204 LIEN FOR RECOVERY OF EXPENSES INCURRED BY THE DISTRICT**

(a) Reasonable expenses incurred by the District in closing, capping, or plugging a well pursuant to Texas Water Code §36.118 (d) and (e), as amended, constitute a lien on the land on which the well is located.

(b) The District shall perfect the lien by filing in the Irion County Official Public 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 operator/lessee, after notification, to close, cap or plug the well within ten (10) days after the notification;
- (5) the closing, capping or plugging 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, capping or plugging the well.

### **SUBSECTION 3. STANDARDS AND RESPONSIBILITIES**

#### **RULE 7.301 WELL DRILLING, COMPLETION, CAPPING AND PLUGGING**

**(a) Location and Standards of Completion for Wells.** New wells shall be located (spaced) and completed in accordance with the provisions of *Section 5 Well Spacing and Production Limits* of these rules and the Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.100, Locations and Standards of Completion for Wells, as amended.

**(b) Responsibilities of the Well Driller and Owner/Operator/Lessee.** All well drillers, landowners, or operator/lessees drilling their own wells, and persons having a well drilled, deepened, or altered shall adhere to the provisions of these Rules and Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.72, Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging, as amended.

**(c) Reporting Undesirable Water or Constituents.** All well drillers, landowners, or operator/lessees drilling their own wells shall adhere to the provisions of these Rules and Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.71 Responsibilities of the Licensee-Reporting Undesirable Water or Constituents, as amended.

**(d) Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.** If a water well driller, landowner or operator/lessee drilling his/her own well, knowingly encounters undesirable water or constituents and the well is not plugged or made into a completed monitoring well, the driller, landowner or operator/lessee shall complete the well in accordance with Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.101, Technical Requirements-Standards of Completion for Water Wells Encountering Undesirable Water or Constituents, as amended.

**(e) Standards for Wells Producing Undesirable Water or Constituents.** Wells completed to produce undesirable water shall be completed in accordance with these Rules and Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.102, Technical Requirements-Standards for Wells Producing Undesirable Water or Constituents, as amended.

**(f) Re-completions.** The landowner or operator/lessee shall have the continuing responsibility of insuring the integrity of the well in accordance with these Rules and Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.103, Technical Requirements-Re-completions, as amended.

**(g) Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.** Wells must be capped and plugged in accordance with these

Rules and Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.104, Technical Requirements-Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones, as amended.

**(h) Standards for Water Wells (drilled before June 1, 1983).** Wells drilled prior to June 1, 1983, unless abandoned, shall be grandfathered without further modification unless the well is found to be a threat to public health and safety or to water quality as described in the provisions of the Texas Department of Licensing and Regulation, Title 16, Texas Administrative Code §76.105, Technical Requirements-Standards for Water Wells (drilled before June 1, 1983), as amended. Wells found to be a threat to public health and safety or water quality shall be modified in accordance with completion, capping, or plugging standards as provided for in these Rules and Department of Licensing and Regulation, Title 16 Texas Administrative Code Chapter 76, as amended.

## **SECTION 8. CONSERVATION AND DROUGHT**

### **SUBSECTION 1. WATER CONSERVATION**

#### **RULE 8.101 CONSERVATION POLICY**

**(a)** The District may implement conservation policies through various programs initiatives and incentives including but not limited to public education, technical assistance, special programs, through grants and loans from support by various local, state, and federal programs, industries, foundations, non-profits, public and private individuals, corporations, partnerships, and other interest groups that will further the District's goals of cost-effective water conservation, pollution prevention, and waste prevention.

**(b)** Each permittee and operator of an exempt well shall endeavor to utilize practices, techniques, and technologies to reduce the consumption of water, reduce loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that sufficient water is available for future use.

#### **RULE 8.102 WATER CONSERVATION PLANS**

Each permittee who is required to prepare, adopt, and implement a water conservation plan by another agency or political subdivision of the State of Texas shall submit a copy of that plan to the District for the District's files in order to assist the District in monitoring the success of water conservation efforts within the District.

## **SUBSECTION 2. DROUGHT**

### **RULE 8.201 DROUGHT CONDITION**

The District shall monitor drought and its specific stages according to the Palmer Drought Severity Index as published by the Texas Water Development Board or similar agency. The index ranges from 4 (Extremely Wet) to -4 (Extreme Drought) and takes into account hydrologic factors such as recent precipitation, evaporation, and soil moisture. When the index indicates that the District will experience severe drought conditions, the District will notify all public water suppliers within the District.

### **RULE 8.202 DROUGHT MANAGEMENT PLANS**

Each permittee who is required by another agency or political subdivision of the State of Texas to maintain a drought management plan shall submit a copy of the plan to the District for the District's files in order to assist the District in monitoring the success of drought management efforts within the District.

## **SECTION 9. MANAGED AQUIFER RECHARGE FACILITIES**

### **SUBSECTION 1. MANAGED AQUIFER RECHARGE RECOVERY PROJECTS**

#### **RULE 9.101 REGISTRATION REQUIRED**

(a) No injection or recovery well may be drilled in any applicable aquifer for the purpose of injecting or recovering stored surface water or groundwater without first registering the well with the District.

(b) The managed aquifer recharge project recovery wells are subject to the permitting, spacing, and production requirements of this District if the amount of groundwater recovered from the wells exceeds the volume authorized by the commission to be recovered under the project. The requirements of this District apply only to the portion of the volume of groundwater recovered that exceeds the volume authorized by the commission to be recovered.

(1) A project operator may not recover groundwater in an amount that exceeds the volume authorized by the commission to be recovered under the project unless the project operator has obtained a permit from the District in accordance with these Rules.

(2) The permit application will be processed in accordance with these Rules.

(3) Any production fees, transportation or export fees, or surcharges of this District for groundwater recovered from a managed aquifer recharge recovery well will apply only to the amount of groundwater recovered that exceeds the volume authorized by the commission to be recovered under the project.

#### **RULE 9.102 PERMIT APPLICATION REQUIREMENTS**

(a) Permit application(s) shall include information required under *Rule 3.204*.

(b) Additional information requirements shall include:

(1) a map or plat showing the injection facility and/or the recovery facility and the aquifer in which the water will be stored; and

(2) a map or plat showing the location of all water wells completed to the same aquifer within a five-mile radius of the proposed injection site.

#### **SUBSECTION 2. RECHARGE FACILITIES**

##### **RULE 9.201 REGISTRATION REQUIRED**

No recharge facility may be installed and/or operated without first registering with the District. After registration, it will be determined by the Board or General Manager if the project is subject to further permitting.

##### **RULE 9.202 PERMIT APPLICATION REQUIREMENTS**

Permit application(s) shall include the following information:

(a) the name and address of the applicant;

(b) the name and address of the fee owner(s) of the land upon which the recharged facility will be located;

(c) the legal description of the exact proposed location of the recharge facility;

(d) the time schedule for construction and/or operation of the facility;

(e) the names and addresses of the property owners within one-half (1/2) mile of the proposed recharge facility location, and the location of any wells on those properties;

(f) a complete construction and operations plan that will include, but is not limited to, information

as to:

- (1) a technical description of the facility to be used for recharge;
  - (2) the source of the water to be recharged;
  - (3) the quality of the water to be recharged;
  - (4) the volume of water to be recharged;
  - (5) the rate at which the water will be recharged; and
  - (6) the formation into which water will be recharged;
- (g) scientific evidence showing that the proposed operation will not:
- (1) endanger the structural characteristics of the formation receiving the recharged water;  
and,
  - (2) cause pollution; or
  - (3) cause waste.

#### **RULE 9.203 PERMIT CONDITIONS**

(a) The Board shall consider the following permit conditions

- (1) whether the introduction of water into the aquifer will alter the physical, chemical, or biological quality of native groundwater to a degree that would render the groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property, or require treatment prior to beneficial use;
- (3) the location and depth of the aquifer; and,
- (4) the ability of the permittee to determine the compatibility of the recharge water with the resident water and monitor the impact on the aquifer.

(b) The Board may include any permit conditions necessary to ensure the safety, quality, and quantity of groundwater available for withdrawal by other well owners.

(c) Violation of any permit condition may result in cancellation of the permit, civil penalties, or both.



## **SECTION 10. ENFORCEMENT**

### **RULE 10.101 NOTICE AND ACCESS TO INSPECT AND TEST WELLS**

(a) Pursuant to Texas Water Code §36.123, as amended, the District's officers, employees, agents, or representatives shall have the right at all reasonable times to enter upon property on which a well or wells may be located within the boundaries of the District, to:

- (1) inspect and test such well or wells;
- (2) make any other reasonable and necessary inspections and tests that may be required or necessary for the enforcement of the Rules of the District.

(b) Prior to entering upon property the District shall notify the landowner/lessee in writing or by telephone. Notice is not required if prior permission has been granted to enter without notice.

### **RULE 10.102 ENFORCEMENT PROVISIONS**

(a) Pursuant to Texas Water Code §36.102, as amended, the Board may enforce Texas Water Code Chapter 36, as amended, and these Rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction and seek reasonable civil penalties for violation of any rule of the District.

(b) The penalties shall not exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation.

(c) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the District's principal office or meeting place is located.

(d) If the District prevails in any suit to enforce its rules, the district may seek and the court shall grant, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court. The amount of the attorney's fees shall be fixed by the court.