NECHES AND TRINITY VALLEYS GROUNDWATER CONSERVATION DISTRICT

DISTRICT RULES

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CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

§ 1.001 Definitions of Terms

In the administration of its duties, the Neches and Trinity Valleys Groundwater Conservation District follows the definitions of words, terms and phrases set forth in Chapter 8863 of the Special District Local Laws Code. In addition, the words, terms and phrases used in these rules, when used in any other rule or regulation of the District and not defined therein, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The word "shall" is mandatory. The word "herein" means in these rules. The word "regulations" means the provisions of any applicable resolution, order, rule, regulation, or policy. Unless specified otherwise, references to times are to local (Central) time in Anderson, Cherokee and Henderson Counties.

(1) "Abandoned well" means a well that has not been in use for six consecutive months. A well is considered to be in use when the well is not a deteriorated well and contains the casing, pump and pump column in good condition, or when the well is not a deteriorated well and has been properly capped.

(2) "Acre-foot" means 325,851 gallons of water.

(3) "Affected person" means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and is or may be affected by the application in question. An interest common to members of the general public does not qualify as a personal justiciable interest.

(4) "Agricultural use" means a use or activity involving any of the following:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed, or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture and horticulture, including the cultivation of plants in containers, or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(E) wildlife management under a written wildlife management plan; wildlife management plan means a plan for managing property for wildlife which follows the Texas Comptroller's "Guidelines for Qualification of Agricultural Land and Wildlife Management Use" and includes preventing the waste of water;

(F) raising or keeping equine animals; and

(G) aquaculture, or active farming of fish, crustaceans or mollusks.

(5) "Aquifer" means a geologic formation or group of saturated geologic units that will yield water to a well.

~~(6) "Baseline water allocation per acre factor" means the minimum water allocation per acre~~

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~~factor established by the District for a managed aquifer and guaranteed for all landowners over an aquifer, calculated based on the total annual groundwater availability divided by the total acreage overlying that aquifer within the District.~~

(6) "Aquifer management zone" means a geographic surface area located within the District's boundaries designated by the District based on its hydrogeologic characteristics for different management approaches.

(7) "Beneficial use" means the use of the amount of water that is necessary for a purpose authorized by law when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(8) "Board" means the board of directors of the District.

(9) "Business day" means a weekday, Monday through Friday, ending at 5:00 p.m. District holidays do not count as a business day.

(10) "Casing" means a watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin and to prevent surface contaminant infiltration.

(11) "Certificate of convenience and necessity" or "CCN" means a certificate that gives a retail public utility the exclusive right to provide retail water service to an identified geographic area, referred to as the "certificated service area" or as the "service area."

(12) "Closed loop geothermal well" means a vertical closed system well used to circulate water and other fluids or gases through the earth as a heat source or heat sink.

(13) "Construction permit" or "well construction permit" means a permit issued by the District that authorizes the drilling, equipping, completing, reworking, closing or plugging of any well, or substantially altering the size of a well or well pump, or converting an oil and gas well to a water well.

(14) "Contested case hearing" means a proceeding before the District, or, where applicable, SOAH under §§ 36.416 and 36.4165, Texas Water Code,~~SOAH under § 36.416(b), Texas Water Code,~~ in which the legal rights, duties or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(15) "Contiguous acreage" means a surface acre of land on which a well is located that is the subject of an operating permit and each additional acre of land inside the boundaries of the District for which the permit applicant or holder has a legal right to produce groundwater, provided that the acreage:

(A) overlies the same aquifer from which the well will produce groundwater; and

(B) lies within a common boundary of land under the same ownership or groundwater production rights as the well site, even if described in separate plats or deeds.

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The term also includes acreage on separate tracts that touch on a common property boundary side or corner, as well as tracts that are divided by a road or other long and narrow property interest that is not under the ownership or right to produce of the applicant if a well could not be drilled on such property under the well spacing requirements of these rules or otherwise~~could not be drilled on such property under these rules under the well spacing requirements or otherwise~~. ~~For operating permit applicants that are retail public utilities, contiguous acreage also has the meaning prescribed under § 5.205 regarding the acreage in the utility's service area.~~

(16) "Desired future condition" or "DFC" means the quantitative description for a specific aquifer within the District, adopted in accordance with § 36.108, Texas Water Code.

(17) "Deteriorated well" means a well or borehole that, because of its condition, will or may cause pollution of any water in the state, including any groundwater, or cause a public nuisance.

(18) "District" means the Neches and Trinity Valleys Groundwater Conservation District.

(19) "District Act" means Chapter 8863 of the Special District Local Laws Code.

(20) "District monitoring well network" means the monitoring wells from which the District collects data and includes monitoring wells owned or operated by the TWDB, any other state or federal agency or permittee for which water level data is available to the District, and monitoring wells owned or operated by the District.

~~(20)~~(21) "District Office" means the location of the office of the District, as designated by the board by written resolution. The location of the District Office may be changed from time to time by written resolution of the board.

~~(21)~~(22) "Domestic use" means the use of water at a single-family household to support domestic activities including drinking, washing and sanitation. Domestic use does not include use by a public water system, use for any commercial purpose, use at any commercial establishment, or use at any establishment~~use at any commercial establishment, nor use at any establishment~~ that is not a single-family household. Domestic use 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.

~~(22)~~(23) "Driller's log" means a State of Texas Well Report.

~~(23)~~(24) "Exempt well" means a well exempt under § 5.401 from the requirement to obtain an operating permit.~~any well exempt from the requirement to obtain a permit under these rules.~~

~~(24)~~(25) "gpm" means gallons per minute.~~"GPM" means gallons per minute.~~

~~(25)~~(26) "Groundwater" means water percolating beneath the earth's surface.

~~(26)~~(27) "Groundwater exportation permit" means a permit authorizing a person to export groundwater produced from a well within the District's boundaries pursuant to an authorization issued by the District to a place of use outside of the District's boundaries, except as otherwise provided by the rules.

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(28) "Groundwater management area" or "GMA" means an area delineated and designated by the TWDB as an area most suitable for management of groundwater resources through regional joint groundwater planning. The District is currently wholly located within Groundwater Management Area 11.

~~(27)~~(29) "Groundwater production" or "groundwater withdrawal" means to withdraw, pump, or otherwise obtain groundwater from an underground source.

~~(28)~~(30) "Hearing examiner" means the person appointed by the board or otherwise designated according to law to conduct a contested case hearing or other proceeding.

~~(29)~~(31) "Historic use" or "existing use" means the lawful production and beneficial use of groundwater without waste occurring prior to ~~May 1,~~October 15, 2026, that has not been abandoned, and that forms the basis for reclassification as, or issuance of, a Historic Operating Permit under these rules.

~~(30)~~(32) "Historic Operating Permit" or "HOP" means an operating permit that is based on historic use, including permits issued prior to ~~May 1,~~October 15, 2026, and reclassified pursuant to these rules.

~~(31)~~(33) "Industrial use" means the use of water for or in connection with commercial or industrial activities, including but not limited to, manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt and cement, quarrying, commercial uses of water for tourism, entertainment and motel or hotel lodging, generation of power and other business activities.

~~(32) "Initial water allocation per acre factor" means the starting water allocation per acre rate established by rule for each managed aquifer, subject to adjustment by the District by board order as necessary to achieve the DFC for that aquifer.~~

~~(33)~~(34) "Landowner" means a person who owns the land surface or the right to withdraw groundwater from such land surface.

~~(34)~~(35) "Managed aquifer" means an aquifer within the District for which groundwater production is regulated under these rules ~~and for which desired future conditions have been adopted~~. Managed aquifers include the ~~the following major or minor aquifers as further described by the TWDB:~~ Carrizo-Wilcox, Queen City, and Sparta Aquifers, as further described by the TWDB, and the Trinity River Alluvium Aquifer.~~Sparta and Trinity River Alluvium Aquifers.~~

(36) "Meter" means a water flow measuring device that can measure the instantaneous rate of flow and record the amount of groundwater produced from a well during a measure of time.

~~(35)~~(37) "Modeled available groundwater" ~~or "MAG"~~ means the amount of water that the executive administrator of the TWDB determines may be produced on an average annual basis to achieve a DFC established under § 36.108, Texas Water Code.~~established under § 36.108 of the Texas Water Code.~~

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~~(36) "Meter" means a water flow measuring device that can measure the instantaneous rate of flow and record the amount of groundwater produced from a well during a measure of time.~~

~~(37)~~(38) "Monitoring well" means any well used for the sampling or measurement of any chemical or physical property of subsurface strata or their contained fluids.

~~(38)~~(39) "Municipal use" means the use of water within or outside of a community or municipality and its environs, whether supplied by persons, municipalities, utilities, political subdivisions, or other water purveyors, including the use of treated effluent. The term includes the use of water provided by a public water system for domestic, recreational, industrial, or commercial uses, fire-fighting, sewer and drain flushing, swimming pools, maintenance of public property or for the watering of golf courses, parks and parkways, or other public or recreational spaces.~~parks and parkways, other public or recreational spaces.~~

~~(39)~~(40) "Non-exempt well" means a well that is not an exempt well.~~a well not exempt from the requirement to obtain a permit under these rules.~~

~~(40)~~(41) "Non-historic Operating Permit" or "NOP" means an operating permit issued on or after ~~May 1, 2026, or issued for groundwater production not based on historic use, but rather production limits based on the contiguous acreage of the applicant and other criteria established by the District.~~October 15, 2026.

~~(41)~~(42) "Open loop geothermal well" means a well in which groundwater is withdrawn from an aquifer, passed through a heat pump's heat exchanger and discharged to the same aquifer through a second well.

~~(42)~~(43) "Open Meetings Act" means Chapter 551, Texas Government Code. ~~"Open well" means a well that is not capped or covered as required by Chapter 36, Texas Water Code, Chapter 1901, Texas Occupations Code, TDLR Rules and these rules.~~

~~(43)~~(44) "Open well" means a well that is not capped or covered as required by Chapter 36, Texas Water Code, Chapter 1901, Texas Occupations Code, TDLR Rules and these rules.~~"Open Meetings Act" means Chapter 551, Texas Government Code.~~

~~(44)~~(45) "Operating permit~~Permit~~" means ~~an~~a permit issued by the District based on either historic use or non-historic use that may authorize the operation of or groundwater production from a well. The District requires a separate ~~Well Construction Permit~~well construction permit for construction activities related to drilling or altering a well.

~~(45)~~(46) "Party" means each person admitted as a party in a contested case hearing.

~~(46)~~(47) "Permit" means a document issued by the District after approving an application for a permit.

~~(47)~~(48) Reserved.~~"Permitted well" means a well authorized to operate by a permit issued~~

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~~by the District.~~

(49) "Permittee" means a person holding a permit issued by the District.

~~(48)~~(50) "Person" means an individual, corporation, organization, government, estate, trust, partnership, association or any other legal entity.

~~(49)~~(51) "Pleading" means any document filed by a party in a contested case hearing.

~~(50)~~(52) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 67, Texas Water Code.

~~(51)~~(53) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state, including groundwater, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose, including the alteration of groundwater by saltwater or other deleterious matter admitted from another stratum or from the surface of the ground.

~~(52)~~(54) "Presiding officer" means the president or other board member presiding at any hearing or other proceeding or a hearing examiner conducting any hearing or other proceeding on behalf of the District.

~~(53)~~(55) "Public Information Act" means Chapter 552, Texas Government Code, also referred to as the "Open Records Law."

~~(54)~~(56) "Public Utility Commission" or "PUC" means the Public Utility Commission of Texas.~~"Public water supply" or "public water system" means a "public water system" as defined in TCEQ or PUC rules.~~

~~(55)~~(57) "Public water supply" or "public water system" means a "public water system" as defined in TCEQ or PUC rules.~~"Public Utility Commission" or "PUC" means the Public Utility Commission of Texas.~~

~~(56)~~(58) "Railroad Commission" means the Railroad Commission of Texas.

~~(57)~~(59) "Registration" means the document required to be filed with the District under § 5.501 for a well, whether the well is exempt or authorized under an operating permit~~ that qualifies as an exempt well~~.

~~(58)~~(60) "Remediation well" means any well used to produce contaminated water from subsurface strata pursuant~~contaminated water from a subsurface strata pursuant~~ to a plan approved by the TCEQ or other agency with applicable jurisdiction.

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~~(59)~~(61) "Replacement well" means a well drilled with the purpose of replacing a well.

~~(60)~~(62) "Retail public utility" means a person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling facilities for providing potable water service or sewer service, or both, for compensation.

~~(61)~~(63) Reserved.~~"Reworked well" means a well that has been altered, modified, repaired, or recompleted.~~

~~(62)~~(64) "Rules" means the rules of the District, unless otherwise specified.

~~(63)~~(65) "SOAH" means the State Office of Administrative Hearings.

~~(64)~~(66) "TCEQ" means the Texas Commission on Environmental Quality.

~~(65)~~(67) "TDLR" means the Texas Department of Licensing and Regulation, and "TDLR Rules" means the rules adopted by TDLR under Chapters 1901 and 1902, Texas Occupations Code, including Chapter 76, Title 16, Texas Administrative Code.~~Regulation.~~

~~(66) "Total annual groundwater availability" means the total volume of groundwater that may be produced on an average annual basis from a managed aquifer, as determined by the District under § 5.101 of these rules, consistent with the modeled available groundwater and other factors under § 36.1132, Texas Water Code.~~
(68) Reserved.

~~(67)~~(69) "TWDB" means the Texas Water Development Board.

~~(68)~~(70) "Uncovered well" means an open well.

~~(69)~~(71) "Waste" means any one or more of the following:

(A) the withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

(C) the escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) the pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(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

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is authorized by permit, rule, or order issued by TCEQ under Chapter 26, Texas Water Code;

(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, the meaning assigned by Section 11.205, Texas Water Code.

~~(70) "Water allocation per acre factor" means the rate, expressed in gallons or acre-feet per acre per year, established by the District for a managed aquifer and used to calculate a maximum upper limit on the annual amount of groundwater that may be authorized for production under a Non-historic Operating Permit by multiplying the factor by the number of contiguous acres of land or groundwater rights of the applicant at the well site.~~

~~(71)~~(72) "Well" means any artificial excavation constructed for the purpose of exploring for or producing groundwater.

~~(72)~~(73) "Well operator" means the person who operates a well located on land owned by the well operator or owned by another.

~~(73)~~(74) "Well owner" means the person who owns a well. If ownership of the well has not been established separately from ownership of the land on which the well is, or is proposed to be, located, the owner of the land is presumed to be the well owner. ~~and the land upon which a well is, or is proposed to be, located.~~

~~(74)~~(75) "Well system" means a well or group of wells tied together by pipeline and/or storage facilities, or providing water to a common beneficial use.

~~(75)~~(76) "Withdraw" or "withdrawal" means producing or obtaining groundwater by pumping or another method.

§ 1.002 Purpose of Rules

These rules are adopted to achieve the objectives of Article XVI, § 59, Texas Constitution, the District Act, Chapter 36, Texas Water Code, the District's approved groundwater management plan and other general laws applicable to the District.

§ 1.003 Construction

Construction of words and phrases is governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code. References to a code or statutory provision or section in these rules shall include such code or statutory provision as amended, reordered, or re-codified. These rules shall be read, interpreted and applied in a manner that is consistent with the District Act and, if any definition or provision of these rules conflicts with or is inconsistent with any definition or provision of the District Act, such definition or provision shall be construed~~such definition or rule shall be construed~~ and applied consistent with the District Act, which shall control.

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§ 1.004 Headings and Captions

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

§ 1.005 Methods of Service under the Rules

Except as otherwise expressly provided in these rules, including § 9.002 for documents filed or served under Chapter 9, any notice or documents required by these rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier-receipted delivery, by certified mail sent to the recipient's last known address, or by email and shall be accomplished by 5:00 p.m. on the date on which it is due. Service by mail is complete upon delivery in a post office or other official depository of the United States Postal Service and service by email is complete upon sending.

§ 1.006 Burden of Proof

In all matters regarding applications for permits, exceptions and other matters for which District approval is required, the burden shall be upon the applicant or other persons seeking a permit, exception, or other authority to establish that all conditions, criteria, standards, or prerequisites have been met.

CHAPTER 2. BOARD

§ 2.001 Purpose of the Board

The board was created to determine policy and regulate the withdrawal and use of groundwater withdrawn within the boundaries of the District for conserving, preserving, protecting and recharging the groundwater within the District and to exercise the District's rights, powers and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act and management plan, and Chapter 36, Texas Water Code. The board's responsibilities include, but are not limited to, the adoption and enforcement of its groundwater management plan, rules and orders.

CHAPTER 3. DISTRICT STAFF

§ 3.001 General Manager

The board may employ or contract with a person to serve as general manager of the District and to perform such services as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the District subject only to these rules and the orders of the board. The general manager, with approval of the board, may employ all persons necessary for the proper handling of business and operation of the District, whose salaries will be set by the board. The general manager may delegate any duties~~operation of the District and their salaries will be set by the board.~~ assigned to the general manager to the assistant general manager or another member of District staff. If the position of general manager is vacant, the board may appoint a general manager, an interim general manager, or act to manage the District and perform any function of the general manager identified by these rules to the extent consistent with the law.

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CHAPTER 4. DISTRICT RECORDS

§ 4.001 Minutes and Records of the District

All documents, reports, records and minutes of the District are available for public inspection and copying consistent with the requirements of the Public Information Act. Copying charges may be assessed by the District. A list of charges for copies will be furnished by the District.

§ 4.002 Notice of Change of Ownership, Operation, Address or Phone Number

Applicants, registrants, permittees and other persons with a matter or proceeding before the District shall give written notice to the District of any change of ownership, well operator, mailing address, email, or telephone number within 30 days of such change.

CHAPTER 5. GROUNDWATER PRODUCTION

Subchapter A. General Provisions

§ 5.001 Beneficial Use; Prohibition on Waste

Produced groundwater may only be used for a beneficial purpose. No person may produce or use groundwater in a manner that constitutes waste. Any person producing or using groundwater shall employ all reasonable methods to identify, prevent and stop the waste of water.

§ 5.002 Operation of Well at Higher Than Authorized Rate Prohibited

No person may operate a well at a rate of production higher than the rate authorized by a permit, these rules, or other applicable law.

§ 5.003 Conveyed Water; Pipelines

All persons shall use reasonable diligence to convey water from the wellhead where produced to the place of use in order to prevent evaporation, channel loss by percolation, or waste.

§ 5.004 Permits Subject to Revocation

All permits granted by the District are based upon and contingent upon the accuracy of the information supplied by the applicant. A finding that false information has been supplied is grounds for immediate revocation of the permit.

Subchapter B. Groundwater Production Limitations

§ 5.101 Groundwater ~~Available for~~ Production from the Carrizo-Wilcox, Queen City, Sparta and Trinity River Alluvium Aquifers

(a) The aggregate, average annual volume of groundwater that may be produced from the Carrizo-Wilcox, Queen City, Sparta or Trinity River Alluvium Aquifers from:

(1) exempt wells, other than wells exempt under § 5.401(a)(3), as estimated by the

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TWDB and the District; ~~and~~

(2) wells exempt under § 5.401(a)(3), based on production reported under § 8.004; and

(3~~2~~) non-exempt wells operating under operating permits

shall be no greater than the amount necessary to achieve the DFC for each of the aquifers for which a DFC has been adopted. ~~As soon as practicable, and when appropriate, after considering the MAG and the other factors in Texas Water Code § 36.1132, the District shall calculate and set forth in a board order the total volume of groundwater that may be produced annually on average for each managed aquifer, and until the District establishes this total annual groundwater availability for an aquifer by board order, the~~The District shall monitor actual total production from each of the aquifers to ~~determine if it exceeds the MAG and if so,~~ determine if any actions are required by the District to ensure achievement of the DFC.

(b) The volume of groundwater produced annually from exempt wells, other than wells exempt under § 5.401(a)(3), shall be estimated by the executive administrator of the TWDB in cooperation with the District. The District may establish by board order the estimate of the volume of exempt annual groundwater production allotted for each managed aquifer.

(c) ~~The~~After considering the DFC and the other factors in Texas Water Code § 36.1132, the District may at its discretion calculate and set forth in a board order the estimated volume of groundwater that may be produced annually on average for each managed aquifer. If the board, by order, establishes the total annual groundwater available for a managed aquifer under this subsection, the total average annual volume of groundwater available from ~~each~~the aquifer for actual production under permits for non-exempt wells is calculated by subtracting the estimated exempt well production under Subsection (b) from the total annual groundwater ~~availability under Subsection (a).~~available. The District ~~shall~~may establish this volume available for actual production under permits by board order.

~~(d) The District may authorize production through permits in excess of the volume established under Subsection (c), provided that actual average annual production does not exceed that volume.~~

(d) The board may designate aquifer management zones within aquifers in order to adopt different management approaches within different aquifer management zones, including adopting different indicators for District action with respect to groundwater production.

Subchapter C. Operating Permits

§ 5.201 Operating Permits

(a) The District may issue operating permits to authorize groundwater withdrawals from non-exempt wells in accordance with § 5.101.

(b) Groundwater may not be produced from a non-exempt well from an aquifer subject to production limits under § 5.101 without an operating permit.

(c) The District may issue operating permits based on either historic use or non-historic use,

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and the requirements related to each of these types of operating permits differ.

(d) The maximum quantity of groundwater that may be withdrawn pursuant to any operating permit is subject to change if necessary to ensure that the total volume of groundwater withdrawals permitted is managed on a long-term basis to achieve the desired future condition of the aquifer.

~~(e) The board may, in exceptional circumstances, consider a variance to the production limits set forth in this subchapter in approving an application for an operating permit and grant a variance for a term of up to 3 years, if the applicant submits a request for variance with the application for an operating permit supported by evidence showing that unnecessary hardship would result from the strict application of the production limits, the hardship results from conditions particular to the property, the hardship is not the result of actions taken by the applicant, granting the variance is consistent with the intent of the rules, and substantial justice will be achieved.~~

§ 5.202 Historic Operating Permits and ~~Non-Historic~~Non-historic Operating Permits

(a) In limiting groundwater production under operating permits based on historic use or based on non-historic use under these rules, it is the intent of the District to preserve historic and existing use to the maximum extent practicable consistent with the District's management plan as contemplated under § 36.116(b), Texas Water Code.

(b) As authorized under § 36.113(e), Texas Water Code, these rules impose more restrictive conditions on non-historic use operating permits, and those restrictions shall apply to both applications for operating permits by new non-historic users of groundwater and to applications by historic users~~and by applications by historic users~~ of groundwater to increase the amount of groundwater they are authorized to produce. The District finds that these restrictions bear a reasonable relationship to the District's management plan, and are reasonably necessary to protect historic, existing use to the maximum extent practicable.

(c) For purposes of differentiating whether an operating permit is historic or non-historic, all operating permits that were issued prior to October 15, 2026, are hereby reclassified~~all permits that were issued prior to May 1, 2026, are hereby reclassified~~ as Historic Operating Permits, and those issued on or after that date shall be classified as Non-historic Operating Permits.

~~(d) In general terms, the more restrictive conditions to be imposed on NOPs are that, in addition to the other considerations set forth in these rules regarding how much groundwater production may be authorized by the District in granting or denying a particular permit application, NOPs will be subject to an overall maximum production limit that is based on the amount of acreage of the permit applicant where the well is located, as authorized under § 36.116(a)(2), Texas Water Code. HOPs are not based on the amount of acreage around the well site, but rather are based on setting production limits on wells based on historic use as authorized under § 36.116(a)(2) and (b) and under § 36.113(e), Texas Water Code. Additionally, for NOPs for retail public utilities, these rules limit groundwater production based on acreage, utilizing the acreage of a retail public utility's service area as authorized under § 36.116(c), Texas Water Code.~~

§ 5.203 Historic Operating Permits~~ and Maximum Allowable Production~~

(a) All operating permits issued prior to ~~May 1,~~October 15, 2026, are hereby reclassified~~ for~~

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~~the remainder of their permit length~~ as Historic Operating Permits in the amount of their authorized annual production amount, for their historic purpose of use, on the terms previously approved by the District. A HOP retains its classification as a HOP upon renewal under § 5.214, after a reduction under Subsection (b), and after aggregation under Subsection (c). ~~This reclassification is subject to a determination by the District that groundwater is available for all HOPs under § 5.101 and is subject to adjustment under this subchapter. (b) A permittee with a HOP may at any time file an application to amend the permit to permanently reduce the authorized annual production amount. However, once a reduction is approved by the District, the permittee may not in the future amend the permit to increase the reduced authorized annual production amount.~~

(b) A permittee with a HOP may at any time file an application to amend the permit to permanently reduce the authorized annual production amount. However, once a reduction is approved by the District, the permittee may not in the future amend the permit to increase the reduced authorized annual production amount.

~~(c) Prior to January 1, 2029, the District shall review the permitted authorization of any HOP whose maximum annual groundwater production during the five calendar years from 2021 to 2025 was less than eighty (80) percent of the authorized production amount in the permit, to determine whether the amount authorized unreasonably exceeds the actual demand for the groundwater based on the real and current need for the groundwater, when reasonable intelligence and diligence are used to apply the groundwater to the authorized historic purpose of use.~~

~~(d) If pursuant to the District's review under Subsection (c), the District determines that all or part of the authorized production amount in the permit unreasonably exceeds the actual demand for the groundwater based on the real and current need for the groundwater, when reasonable intelligence and diligence are used to apply the groundwater to the authorized historic purpose of use, then the permit is subject to cancellation by the District, in whole or in part, in accordance with § 5.217. For a public water supply, the review shall consider compliance with regulatory requirements.~~

~~(e) If and to the extent that a HOP permittee sells or leases the land or groundwater rights or acreage that, as of May 1, 2026, was contiguous to a well authorized by the HOP to another person, and that severed acreage is then authorized for production under a NOP, the authorized production amount in the HOP shall be reduced by the District in an amount equal to the number of severed acres multiplied by the then-current water allocation per acre factor described under § 5.204(b).~~

~~(f)~~(c) The owner of multiple wells on the same contiguous acreage and authorized for the same purpose of use whose operating permits were reclassified as HOPs under Subsection (a) may request that the general manager reclassify the multiple HOPs as a single HOP for the wells in aggregate, provided however that the total authorized production for the aggregated wells shall not exceed the sum of the production authorizations for the individual wells and the purpose of use does not change.

§ 5.204 ~~Non-Historic~~Non-historic Operating Permits ~~and Maximum Allowable Production~~

~~(a) The maximum annual production amount that may be authorized under a NOP shall not exceed the lesser of the following:~~

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~~(1) the amount determined by the District under the considerations set forth under § 5.209; or~~

~~(2) the product of the applicable water allocation per acre factor described under Subsection (b), multiplied by the number of contiguous acres of the applicant, then subtracting from that product the amount of annual production authorized under any HOP or NOP of the applicant that is associated with the wells or acreage.~~

~~(b) An initial water allocation per acre factor for each managed aquifer will be established by board order. The District shall also establish by board order a baseline water allocation per acre factor for each managed aquifer, calculated by dividing total annual groundwater availability for that aquifer under § 5.101(a) by the total number of acres of land overlying that aquifer within the District. To achieve the applicable DFC, the District may, by board order issued not later than July 1 of a calendar year, reduce the initial water allocation per acre factor for all existing and new NOPs, to become effective on January 1 of the following calendar year. However, in order to provide all landowners overlying a managed aquifer an opportunity to produce their fair share of groundwater available from that aquifer, the board may not reduce the water allocation per acre factor to an amount lower than the baseline water allocation per acre factor.~~

~~(c) An applicant that lacks sufficient contiguous acreage to obtain the desired production authorization under a NOP may acquire additional contiguous acreage of land or groundwater rights by purchase or lease to support that authorization. For a NOP applicant that also holds a HOP, the District shall not deduct HOP-authorized production from any acreage acquired after May 1, 2026.~~

(a) The District may issue NOPs under these rules in a given aquifer to the extent that there is sufficient groundwater available, considering aquifer conditions and the DFCs.

(b) Beginning with a review completed before January 1, 2029, and every three calendar years thereafter, the District shall review the permitted authorization of any NOP whose maximum annual groundwater production during the three full calendar years preceding the review (or, for a permit issued during that period, the full calendar years after the permit was issued) was less than eighty (80) percent of the authorized production amount in the permit, to determine whether the amount authorized unreasonably exceeds the actual demand for the groundwater based on the real and current need for the groundwater, when reasonable intelligence and diligence are used to apply the groundwater to the authorized purpose of use. A permit that has not been in effect for at least one full calendar year is not subject to review under this subsection. For a public water supply, the review shall consider compliance with regulatory requirements.

(c) If pursuant to the District's review under Subsection (b), the District determines that all or part of the authorized production amount in the permit unreasonably exceeds the actual demand for the groundwater based on the real and current need for the groundwater, when reasonable intelligence and diligence are used to apply the groundwater to the authorized purpose of use, then the permit is subject to cancellation by the District, in whole or in part, in accordance with § 5.217.

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§ 5.205 ~~Non-Historic~~Non-historic Operating Permits for Retail Public Utilities

~~(a) In determining the number of contiguous acres under § 5.204(a)(2) for a NOP applicant that is a retail public utility and consistent with § 36.116(c), Texas Water Code, the District shall consider the total acreage in the service area of the retail public utility that is located within the District and overlying the applicable managed aquifer for the well, excluding all acreage associated with any other HOP or NOP in the service area. The District may also subtract from the product described in § 5.204(a)(2) an estimate of the total groundwater produced annually by exempt wells or acreage associated with another HOP or NOP in the service area.~~

~~(b) In determining total acreage of the service area of a utility under Subsection (a), the following calculations of contiguous acres apply:~~

~~(1) for a utility with a bounded service area CCN, all acreage inside the bounded service area, except as provided under (b)(4) below;~~

~~(2) for a utility with a Facilities +200 Feet or Facilities Only CCN, or that is an investor-owned utility or water supply corporation registered with the PUC as a utility exempt from the requirement to obtain a CCN, the total acreage of each property actually served;~~

~~(3) for a utility that is a political subdivision without a CCN, all acreage within its corporate boundaries plus the acreage of each other property actually served;~~

~~(4) for a political subdivision with a CCN that differs from its corporate boundaries, all acreage within the combined CCN and corporate boundaries plus any other acreage actually served;~~

~~(5) for a utility with a CCN that overlaps the corporate boundaries of another political subdivision, the overlapping acreage will be assigned to the CCN holder unless the CCN holder has otherwise agreed in writing that it may be utilized by the political subdivision;~~

~~(6) in dual-certified areas approved by the PUC, acreage will be allocated per any written agreement between the utilities; absent a written agreement, acreage actually served is assigned to the serving utility, and the remaining acreage is divided equally;~~

~~(7) if a utility owns a well outside of its CCN and corporate boundaries, contiguous acreage for such well is limited to the acreage owned or controlled by the utility at the well site; and~~

~~(8) for a utility with multiple stand-alone public water systems authorized under the same CCN or separate CCNs but not physically interconnected, the acreage of each system shall be considered and authorized separately under this rule.~~

~~(c) A utility that lacks sufficient contiguous acreage to obtain the requested production authorization under a NOP may acquire additional contiguous acreage of land or groundwater rights by purchase, lease, or CCN expansion to support that authorization. For a utility NOP applicant that also holds a HOP, the District shall not deduct HOP-authorized production from any acreage acquired by CCN expansion, or by purchase or lease outside of the CCN, as it existed on May 1, 2026.~~

The District shall consider the service needs and service area of a retail public utility in evaluating the requested production authorization under a NOP.

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§ 5.206 Authorized Uses

As specifically designated in an operating permit, a person may beneficially use groundwater withdrawn from an aquifer for the following purposes of use:

(a) irrigation use;

(b) municipal use, including for public water supply;

(c) industrial use;

(d) agricultural use; or

(e) any other beneficial purpose of use.

§ 5.207 Operating Permit Required

An application for an operating permit must be filed and an operating permit obtained prior to the operation of a well that is not exempt under § 5.401.

§ 5.208 Applications for Non-historic~~Non-Historic~~ Operating Permits

(a) In addition to any other requirements of these rules, including the information specified in § 9.104, all Non-historic Operating Permit applicants must use the application form prescribed by the District and include all relevant information required by these rules. An application for a Non-historic Operating Permit shall contain the following:

(1) Name and address of owner and operator. The full name, physical and mailing addresses, email and telephone number of the owner and operator, as applicable. Documentation establishing the authority to construct and/or operate a well and/or use water on the place of use subject to this application must also be provided.

(2) Source of supply. A statement identifying the aquifer that is the sole source of groundwater from the well.

(3) Rate of withdrawal. The maximum rate of withdrawal, in gallons per minute, which the well is capable of producing from the aquifer, determined using a method approved by the District.

(4) Method of withdrawal. A description of the method used to withdraw groundwater.

(5) Ownership or rights to land. The deed and legal description for the tract(s) of land on which the well is or will be located.

(6) Place of use. The place of use of groundwater to be withdrawn from the well.

(7) Purpose and amount of use. A statement of the nature and purpose of the proposed use of the groundwater and the amount to be used for each purpose, including information to show

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a real and current need for the quantity of water requested and to support a finding that the amount of water requested is economically reasonable, when reasonable intelligence and diligence are used to apply the groundwater to that purpose, and any amount requested to comply with public water supply regulatory requirements.

(8) Term. Indicate the permit term sought.

(9) Well address and location. The physical address of the property upon which the well is located and a legal description of the location of the well, including: the county, section, block and survey, latitude and longitude of the well, based on readings from a global positioning system (GPS)~~global positioning satellite (GPS)~~ accurate to within 10 feet, and the number of feet to the two nearest property lines, or other adequate legal description approved by the District.

(10) Maps. A location map from the county appraisal district indicating the location of the well, the place of use and adjacent owners' physical addresses and mailing addresses and a location map of all existing wells within a half (1/2) mile radius of the well and of all existing wells within the required minimum spacing distances of the proposed well under § 6.101.

(11) Compliance with groundwater management plan. A declaration that the applicant will comply with the District's approved groundwater management plan and with the state and regional water plans.

(12) Compliance with rules. A declaration that the applicant is in compliance with all applicable rules and will comply with the rules.

(13) Waste and conservation. A statement that the applicant agrees to avoid waste and achieve water conservation and a copy of the most recent water loss audit required to be submitted to the TWDB, if applicable to the applicant.

(14) Groundwater quality. A statement that the applicant agrees to use reasonable diligence to protect groundwater quality.

(15) Well closure. A water well closure plan or a statement that the applicant will comply with all District well plugging and capping guidelines and report closure to the District and TDLR.~~plugging and capping guidelines and report closure to TDLR.~~

(16)~~—~~ Hydrogeological study and impacts. Information showing ~~water~~groundwater availability and the projected effect of the proposed pumping~~the projected effect of the proposed pumping~~ on aquifer conditions and depletion and supporting a finding that the proposed production of water will not unreasonably affect existing groundwater ~~or surface water~~ resources, existing holders of permits issued by the District or exempt wells that are registered with the ~~District, or result in pumping within the District exceeding the MAG or impairing achievement of the DFC for the aquifer from which production would be made.~~ District. For applications seeking to withdraw ~~100~~300 acre-feet annually or more, this information shall include~~ at least~~ a hydrogeological study prepared by a Texas licensed professional geoscientist or engineer, based on test wells, conducted~~geoscientist or engineer with test wells, conducted~~ in accordance with all

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technical guidelines issued by the District, which should include modeling ~~1,~~impacts near the well(s) for 1 year using the Theis drawdown equation, and modeling impacts for 10, 30 and 50 ~~year impacts,~~years using ~~at least~~ the ~~Theis equation, as requested~~TWDB groundwater availability model (GAM) approved for GMA 11 or other groundwater model approved by the District. For applications seeking to withdraw 300 acre-feet annually or more, the applicant shall propose a test well to be used for purposes of the hydrogeological study, to be approved by the District, and the hydrogeological study shall include a quantitative assessment of the percentage of drawdown projected to occur within 3 miles of the proposed well location. The hydrogeological study shall follow the guidelines provided by the District. The test well shall be geophysically logged to characterize the geologic unit(s) in the borehole and the aquifer in which the pumping test is performed. The geophysical log shall be submitted to the District within 30 days of well completion.

(17) Water sales contracts. If any of the groundwater will be sold or otherwise provided to another person, a copy of each signed contract or other agreement to sell or provide the groundwater, including any option or letter of intent.

(18)~~(17)~~ Other information. Any other information~~Other Information. Any other information~~ determined to be necessary by the District.

(19)~~(18)~~ The applicant may rely on any information previously submitted to the District as part of an earlier application for a permit that meets any of the requirements of this section.~~meets any of the requirements of this rule.~~

(b) All applicants for a NOP shall include ~~documentation identifying the contiguous acres of land or groundwater rights owned or leased by the applicant for which a permit is sought, along with~~ a record deed, lease, or other real property instrument showing the applicant's ownership or entitlement to produce groundwater from the tract on which the well is or will be located~~acreage and a legal description or survey showing the location of such acreage and that demonstrates that all acres overly the aquifer in which the well will be completed~~. An applicant requesting aggregation under § 5.209(b) shall also include a legal description or survey of the contiguous acreage on which the aggregated wells are or will be located. ~~If the applicant also holds a HOP, the applicant shall also include a map and other information identifying the acreage and location of the applicant's contiguous acreage associated with the HOP as of May 1, 2026.~~

(c) All applicants for a Non-historic Operating Permit for municipal use, including for public water supply, with a total groundwater production volume of more than 100 acre-feet per year, shall also include:

(1) a report prepared by an engineer licensed in the State of Texas that provides, along with the details and methods used to determine, the following:

(A) the applicant's monthly and annual water use on a per meter and per capita basis for the previous 10 years;

(B) the estimated future water needs of the applicant;

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(C) the applicant's billing amounts, rate structure and billing efficiency;

(D) the estimate of water lost through leaks, unmetered connections and any other loss;

(E) the water conservation methods implemented during the previous 5 years and the methods planned for implementation in the next 5 years;

(F) an economic analysis of using surface water or conservation methods to avoid the need for increased groundwater use; and

(G) an economic analysis of using groundwater from other groundwater sources to avoid the need for increased groundwater use from the proposed aquifer;

(2) information documenting the place of use of groundwater withdrawn from each well, including per capita~~withdrawn from each well, including, per capita~~ annual use in the place of use, conservation measures in place at the place of use, a copy of the deed and legal description for the place of use or a copy of the map identifying the boundaries of the applicant's CCN issued by PUC or if no CCN, a map showing the boundaries of the service area for public water supply; ~~and notice of any application to the PUC to obtain or modify a CCN to provide water or wastewater service with water obtained pursuant to the requested permit;~~ for an applicant that is a wholesale water provider, this information must be included for each retail public utility or other customer~~for each retail water utility or other customer~~ to which wholesale water service will be provided;

(3) for political subdivisions and other retail public utilities, a map and other information identifying the ~~amount and~~ location of the utility's retail water service area~~contiguous acreage of the utility's retail water service area as determined under § 5.205~~ where the well is or will be located~~; additionally, for a utility that holds a HOP and is applying for a new or amended NOP, a map and other information identifying the acreage and location of the utility's contiguous acreage as of May 1, 2026~~; and

(4) notice of any application to the PUC to obtain or modify a CCN to provide water or wastewater service with water obtained pursuant to the requested permit.

(d) All applicants for a Non-historic Operating Permit for agricultural, irrigation, recreational, or wildlife use, with a total groundwater production volume of more than 100 acre-feet per year, shall also include a report prepared by an engineer licensed in the State of Texas or the United States Department of Agriculture Natural Resources Conservation Service that includes:

(1) the estimated future water needs of the applicant;

(2) the amount of water used per unit of production (acre-feet per acre of crop, gallons per animal, acre-feet per acre of pond water surface, etc.);

(3) the amount of water lost through evaporation, seepage, or runoff;

(4) the amount of on-site surface water or rainfall usable for meeting proposed demands;

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(5) the amount of groundwater needed during a year with average rainfall and during a year with extreme drought (drought of record);

(6) an estimate of water lost through leaks, unmetered uses and any other loss;

(7) the water conservation methods implemented during the previous 10 years and the methods planned for implementation in the next 10 years;

(8) an economic analysis of using surface water or conservation methods to avoid the need for increased groundwater use; and~~to avoid the need for increased groundwater; and~~

(9) an economic analysis of using groundwater from other groundwater sources to avoid the need for increased groundwater use from the proposed aquifer.

(e) All applicants for a Non-historic Operating Permit for industrial use or another beneficial purpose of use, with a total groundwater production volume of more than 100 acre-feet per year, shall also include:

(1) the applicant's monthly and annual water use for the previous 10 years;

(2) the estimated future water needs of the applicant;

(3) the amount of water used per unit of production and referenced to the typical amount of water used in the industry per unit of production (gallons per pound, gallons per item, gallons per unit processed, etc.);

(4) an estimate of water lost through leaks, unmetered uses and any other loss;

(5) the water conservation methods implemented during the previous 5 years and those methods planned for implementation in the next 5 years;

(6) an economic analysis of using surface water or conservation methods to avoid the need for increased groundwater use; and~~to avoid the need for increased groundwater; and~~

(7) an economic analysis of using groundwater from other groundwater sources to avoid the need for increased groundwater use from the proposed aquifer.

(f) The District shall not process or approve multiple individual operating permit applications that, if approved, will constitute a well system, if the submission of the applications individually has the intent or effect of circumventing permit application requirements that would be required if the wells in the system were submitted under a single operating permit application.

§ 5.209 Basis for Action on Operating Permit Applications

(a) The general manager shall grant applications for a Non-historic Operating Permit of up to 28 acre-feet (approximately 9,125,000 gallons)~~up to 15 acre-feet~~ and the board shall grant applications for a Non-historic Operating Permit of more than 28 acre-feet~~more than 15 acre-feet~~ only to the extent the general manager or board, respectively, finds~~only to the extent the board or~~

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~~general manager, respectively, finds~~ that:

(1) the application is complete and provides all of the information required in § 5.208;

(2) the application complies with the rules;

(3) all applicable fees and deposits have been paid;

(4) the applicant owns the well or has a legal right to produce groundwater from the well;

(5) the applicant owns, or has a legal right to produce, the groundwater for which a permit is sought;~~the applicant owns the water rights for which a permit is sought;~~

(6) the applicant has a legal right to produce groundwater from the ~~well;~~well for the term sought;

(7) the well is, or will be, physically located within the boundaries of the District;

(8) the withdrawals are proposed to be placed to a beneficial use, without waste and the amount of water proposed to be used for each purpose of use is necessary for a real and current need and~~is necessary for a real and current use and~~ is economically reasonable, when reasonable intelligence and diligence are used, for the intended purpose and place of use stated in the application;

(9) the activities of the applicant constituting the purpose of use for which the groundwater will be beneficially used will be managed to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of groundwater from and achieve the conservation of groundwater in and produced from, the aquifer;

(10) the place of use is located within the District's boundaries~~–~~, the groundwater is excluded from exportation permitting under § 5.301(b), or~~or the groundwater is delivered to end users outside of the District's boundaries but pursuant to a HOP and a CCN that is also within the District's boundaries, unless~~ the applicant also has obtained a groundwater exportation permit from the District;

(11) there is sufficient water available from the aquifer within the District under § 5.101 in order to issue the permit;

(12) the proposed production of water will not unreasonably affect existing groundwater or surface water resources, existing holders of permits issued by the District or exempt wells that are registered with the District, including by causing unreasonable interference between wells, or result in impairing achievement of the DFC for the aquifer from which production would be ~~made, considering the estimates under § 5.101;~~made;

(13) the applicant has no existing permits or rights to use water that are underutilized and the applicant has documented and demonstrated a substantial need and reasonable nonspeculative demand for the requested permit in the volume requested;

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(14) the applicant and any predecessor in interest to the applicant are in compliance with any permits from the District and with the rules; and~~any predecessor in interest to the applicant is in compliance with any permits from the District and with the rules;~~

(15) the application is consistent with the District's approved groundwater management plan and its goals of providing the most efficient use of groundwater, controlling and preventing the waste of groundwater and achieving the desired future conditions established for the aquifer from which water is proposed to be produced and with the state and regional water plans.

(b) Aggregation of Withdrawals. The authorized withdrawal amount for a given operating permit may be aggregated with the authorized withdrawal amounts for other operating permits held by the same permittee and within the same aquifer, and shall be aggregated for all wells on the same contiguous acreage if requested by the applicant. Where aggregated, the total authorized withdrawal amount will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production.

(c) If the general manager recommends denial of an application for a Non-historic Operating Permit of up to 28 acre-feet, the application shall be processed in accordance with § 9.208.

(d) The following apply to a permit granted under this section:

(1) for applications seeking to withdraw 300 acre-feet annually or more:

(A) the test well or another well at a location approved by the District will be used as a monitoring well and the applicant will submit quarterly water level data to the District and the District will record an initial water level reading from the well to be used as the baseline for any future reductions associated with water levels; and

(B) based on simulated impacts, the permit may include special conditions requiring groundwater production from the well to be reduced or ceased if the District determines based on the District monitoring well network or other hydrogeologic data that the measured drawdown occurring unreasonably impacts other wells or property;

(2) the permit may require monitoring of groundwater conditions at the location of the well and at the site of neighboring properties to ensure that sufficient groundwater is available to support pumping under the permit and to minimize the impacts of pumping on groundwater resources and other well owners;

(3) the permit may include special conditions requiring groundwater production rates and production from the well to be reduced or ceased if the District determines that such reduction is necessary based on the best available science, including from the District monitoring well network, to avoid unreasonable impacts to existing permittees or impairment of the achievement of the DFC for the aquifer from which production would be made; and

(4) the permit may include special conditions that allow the District to permit additional pumping authorization(s) phased in over a period of time based on the applicant providing verification to the District of the need for additional amounts of groundwater for the requested purposes of use.

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§ 5.210 Contents of Operating Permits

(a) An operating permit issued by the District shall include the following terms and conditions:

(1) the name of the person or entity to whom the permit is issued;

(2) the date the permit is issued;

(3) a legal description of the location of the well, including county,~~location of the well, including, county,~~ section, block and survey and the latitude and longitude for the well based on readings from a global positioning system (GPS)~~global positioning satellite (GPS)~~ accurate to within 10 feet;

(4) the purpose or purposes of use for which the water produced from the well will be used;

(5) the specific location of the place of use of the water produced from the well and, for a permit aggregated under § 5.209(b),~~, including~~ a description of the contiguous acreage on which the aggregated wells are located~~associated with the permit~~;

(6) if the place of use is not within the District's boundaries and the groundwater is not excluded from exportation permitting under § 5.301(b)~~delivered to end users outside of the District's boundaries but pursuant to a HOP and a CCN that is also within the District's boundaries~~, the permittee must obtain a groundwater exportation permit from the District prior to the withdrawal of groundwater under the permit;

(7) the requirements for the conveyance of water produced from the well to the place of use;

(8) the maximum rate of production in gpm and any conditions relative thereto;

(9) the maximum amount of production in acre-feet per annum for each purpose of use and any conditions relative thereto;

(10) a term of up to five years;

(11) a water well closure plan or a declaration that the applicant will comply with well plugging requirements and report closure to the District and the TDLR;

(12) metering and reporting requirements;

(13) a statement that the permit is subject to the Standard Permit Conditions set forth in § 5.211 of these rules;

(14) a statement that the permit is subject to limitations or modifications as may be provided in the rules or other applicable law; and

(15) other terms and conditions as may be required by the board.

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(b) It is recommended that within 30 days of issuance an operating permit be recorded with the clerk of every county in which the well and/or place of use are located and a copy of each permit recorded then be provided to the District and the permittee, which costs would be paid by the permittee.

§ 5.211 Standard Permit Conditions for Operating Permits

All operating permits issued by the District shall be subject to the following additional conditions:

(a) the duty to beneficially use and avoid waste of groundwater;

(b) the duty to conserve water in accordance with applicable law and comply with the District's groundwater management plan, Chapter 11 of these rules, ~~any District water conservation plan~~ and any permittee's plan approved by the District, as applicable;

(c) the duty to file all applicable reports with the District and other appropriate federal, state, or local governments;

(d) the duty to reduce water production or consumption during times of drought in accordance with applicable law and to comply with the District's drought contingency plan, as may be amended from time to time and the permittee's plan approved by the District, as applicable;

(e) the duty to comply with the District's approved groundwater management plan, as may be amended from time to time;

(f) the duty to use diligence to protect groundwater quality;

(g) the duty to comply with the rules;

(h) any permit review, renewal, or extension conditions;

(i) the duty to locate all wells and confirm the actual location with the proposed location in the application or as provided for in the permit, consistent with the well spacing rules, prior to the production from any wells identified in the permit or application;

(j) the continuing right of the District to supervise and manage groundwater withdrawals and protect the aquifer;

(k) the duty to install, equip, operate, maintain and close (cap or plug) all wells in accordance with the rules and other applicable federal, state and local law;

(l) the duty to comply with the rules relating to transfers and amendments of permits;

(m) the duty to pay and be current in the payment of all applicable fees;

(n) the duty not to export groundwater from a well within the District's boundaries to a place of use outside the District's boundaries in violation of the rules without a groundwater exportation permit issued by the District;

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(o) the duty to give notice to the District of any changes in name, address, email, or telephone number of the permittee, or the authorized representative, as applicable, in accordance with these rules;

(p) the duty to comply with all of the terms and conditions of the permit;

(q) the duty to ensure that the well site is accessible to District representatives for inspection and to cooperate fully in any reasonable inspection of the well and well site by District representatives;

(r) the right of the District to enter land under § 36.123, Texas Water Code;

(s) the duty to comply with the metering and reporting requirements set forth in Chapter 8 of these rules;

~~(t) the duty to give notice to the District of any changes in contiguous acreage;~~

(t~~u~~) the duty to comply with any proportional adjustments mandated by these rules; and

(u~~v~~) any other conditions as the board may deem ~~appropriate.~~appropriate, including monitoring wells, phased production, and mitigation.

§ 5.212 Groundwater Withdrawals in Violation of Operating Permit Prohibited

No holder of an operating permit may withdraw or use groundwater in a manner inconsistent with the terms of the permit and any such production is illegal, wasteful per se and a nuisance.

§ 5.213 Transfer of Ownership or Lease of Operating Permit; Notice

Within 30 days after transfer of the ownership of all or part of an operating permit, or all or part of a lease of the right to withdraw groundwater thereunder, the transferee shall file with the District a notice of the transfer of ownership on a form prescribed by the District, accompanied by evidence of the change of ownership. For transfers of ownership, if the notice is complete and the transfer is otherwise in compliance with this subchapter, the general manager shall reflect the new ownership and issue an amended permit to the transferor, transferee, or both, as may be appropriate. For leases, the general manager will update the District's permit records to reflect the lease.

§ 5.214 Operating Permit Transfers and Amendments and Renewals; Applications

(a) An operating permit may only be amended as follows:

(1) for a HOP, a decrease to the total volume of groundwater authorized to be withdrawn in acre-feet per annum, or for a NOP, the total volume of groundwater authorized to be withdrawn in acre-feet per annum;

(2) rate of production in gpm;

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(3) point of withdrawal; or

(4) ownership in accordance with § 5.213.

(b) Any person seeking to amend a permit as provided in Subsection (a)(1)–(3) must~~as provided in Subsection (a)(1)-(4), must~~ first file with the District an application to amend on a form prescribed by the District.

(c) No permit amendment is effective until the amendment has been approved by the general manager or the board, as applicable.

(d) The District shall, without a hearing, renew an operating permit before its expiration if the following conditions are met:~~An operating permit may only be renewed if the following conditions are met:~~

(1) an application to renew is filed with the District prior to the permit's expiration date;

(2) the applicant has timely paid all required fees to the District;

(3) the applicant is not subject to a pending enforcement action for a substantive violation of a District permit, order, or rule;

(4) the applicant has not failed to pay any civil penalty or to comply with an order resulting from a final adjudication of a violation of a permit, order, or rule of the District~~final adjudication of a permit, order, or rule of the District~~; and

(5) the applicant is not requesting any change to the permit conditions that would require an application to amend to be filed under Subsection (b).~~; and~~

~~(6) renewal of the operating permit will not cause production in the District to exceed the maximum allowable production under operating permits set forth in § 5.202.~~

(e) If a permittee, in connection with renewal or otherwise, requests a change that requires an amendment under Subsection (b), the permit as it existed before the amendment process remains in effect until the later of the conclusion of the amendment or renewal process or the final settlement or adjudication of whether the change requires an amendment. If the amendment is denied, the permit as it existed before the amendment process shall be renewed under Subsection (d) without penalty unless Subsection (d)(2), (3), or (4) applies. If renewal is withheld under Subsection (d)(2) or (4), a new application for an operating permit must be filed prior to the expiration of the permit. If renewal is withheld solely~~If the conditions to obtain a renewal in Subsection (d) are not met, a new application for an operating permit must be filed prior to the expiration of the permit~~ because the applicant is subject to a pending enforcement action described by Subsection (d)(3), the permit remains in effect until the final settlement or adjudication of the enforcement matter.

(f) A timely filed application to renew under Subsection (d)(1), or to amend a permit, will automatically extend the term of an operating permit until the later of the expiration of the permit

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or final action on the application.

§ 5.215 Basis for Granting Applications to Amend Operating Permits

The general manager shall grant an application to amend an operating permit if the total authorized amount after the amendment does not exceed 28 acre-feet (approximately 9,125,000 gallons), and the board shall grant any other application to amend an operating permit only to the extent~~applications to amend an operating permit of up to 15 acre-feet and the board shall grant applications to amend an operating permit of more than 15 acre-feet~~ the general manager or board, respectively, finds~~only to the extent the board or general manager, respectively, finds~~ that:

(1) the requirements in § 5.209 and § 5.214, as applicable to the amendment requested, are satisfied for the application~~the same requirements in § 5.209 and § 5.214 are satisfied for the application~~; and

(2) during the term of the permit, the applicant, transferor, or transferee, as may be appropriate, demonstrates a positive compliance history with the permit's terms and conditions and the rules.

§ 5.216 Proportional Adjustment of Operating Permits Based on Desired Future Conditions

(a) In order to achieve the applicable desired future condition for each managed aquifer under § 5.101, the District ~~shall,~~may, to the extent necessary ~~and to the extent groundwater is determined by the District to be available,~~or appropriate, adjust the total volume of groundwater authorized to be produced under operating permits issued under this subchapter.

(b) To the extent the District determines that reductions in authorized production for a managed aquifer are necessary in order to achieve the applicable DFC under § ~~5.101(a),~~5.101, the District shall first implement such reductions with respect to NOPs issued under § ~~5.204 by reducing the applicable water allocation per acre factor for that aquifer established under § 5.204(a).~~5.204.

~~(c) The District shall establish any reduction to the water allocation per acre factor under Subsection (b) by board order, and such reduced water allocation per acre factor shall apply to all existing and new NOPs for the applicable managed aquifer, to the extent groundwater is determined by the District to be available; provided, however, that the water allocation per acre factor for a managed aquifer shall not be reduced below the baseline water allocation per acre factor established by the District for that aquifer under § 5.204(a) in order to provide all landowners overlying a managed aquifer an opportunity to produce their fair share of groundwater availability from that aquifer.~~

~~(d) If, after the reduction of the water allocation per acre factor for NOPs to the baseline water allocation per acre factor under Subsection (c), the District determines that further reductions in authorized groundwater production are necessary to achieve the applicable DFC for a managed aquifer under § 5.101(a), the District shall reduce the maximum annual production amounts authorized under Historic Operating Permits.~~

~~(e)~~ (c) Any ~~reduction~~reductions under ~~Subsection (d)~~this section shall be applied by the District on a proportional, or pro rata, basis to all HOPs and/or NOPs, accordingly, for the applicable managed aquifer based on each permit's authorized annual production amount, as set

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forth in the permit, and shall be implemented by board order, to the extent groundwater is determined by the District to be available.

~~(f)~~(d) The District shall implement any reductions under this section in a manner that, to the extent practicable, results in the total volume of groundwater ~~authorized to be~~actually produced under operating permits for the applicable managed aquifer, when considered together with estimated production from exempt wells under § 5.101(b) and reported production from wells exempt under § 5.401(a)(3), not exceeding the amount ~~not exceeding the total annual groundwater availability~~ necessary to achieve the applicable DFC for that aquifer, ~~under § 5.101(a).~~ considering aquifer conditions. The board shall implement any reductions pursuant to this section by board order issued not later than ~~July 1 of a calendar year~~five months before the reductions are to become ~~effective on January 1 of the following calendar year.~~ effective.

~~(g)~~(e) Nothing in this section shall be construed to limit the authority of the District under Chapter 36, Texas Water Code, or these rules, including § 5.101, to manage the total volume of groundwater authorized to be withdrawn pursuant to permits and exempt withdrawals in order to achieve the applicable DFC for a managed aquifer.

(f) Wells exempt under § 5.401(a)(3) are not subject to reductions under this section. Production from such wells shall be considered with other exempt-well production in determining the reductions necessary under this section.

§ 5.217 Reduction in Amount or Cancellation of Non-historic Operating Permit for Nonuse~~Cancellation of Operating Permit for Non-Use~~

(a) If the conditions of § 5.204(c)~~§ 5.203(d)~~ are met, or all or part of the water authorized to be produced under a NOP~~under an operating permit~~ has not been put to beneficial use for any three consecutive years since the time the permit is issued, then the permit~~since the time a permit is issued, then a permit~~ is subject to cancellation by the District in whole or by a reduction in the annual volume of production authorized by the permit.

(b) If the District determines that any cancellation or reduction is appropriate, the District shall provide a notice of the proposed cancellation or reduction of the permit to the permittee~~notice of proposed cancelled or amended permit to the permittee~~ and provide an opportunity for the permittee to participate in an informal meeting with District staff to provide information to the District with respect to the considerations in § 5.204(b)–(c)~~with respect to the considerations in § 5.203(d)~~ or with any other information relevant to the District's proposed action under this section.

(c) Following the notice and opportunity for an informal meeting under Subsection (b), and prior to any cancellation or reduction, the District shall provide the opportunity for a hearing and give notice to the permittee at least 30 days before the date of the hearing.

(d) The District shall hold a hearing and shall give the permittee an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

(e) At the conclusion of the hearing, the District may cancel the permit in whole or in part to the extent that it finds that the conditions of § 5.204(c) are met, or that:

(1) the water or any portion of the water authorized to be produced under the permit

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has not been put to a beneficial use during any period of at least three consecutive years~~during an at least 3-year period~~; and

(2) the permittee has not used reasonable diligence in applying the water or the unused portion of the water to an authorized beneficial use or is otherwise unjustified in the nonuse.

(f) Before canceling or reducing production authorization under a NOP~~under an operating permit~~, the District shall consider whether the authorized amount is consistent with supplying water for future projected growth in demand under the operating permit based on information in the state water plan or other competent evidence.

(g) A proceeding under this section is separate from the renewal of a permit under § 5.214. A pending proceeding under this section does not affect renewal, and renewal does not terminate a pending proceeding under this section. The permit as it existed before the proceeding remains in effect until the conclusion of the proceeding, and any renewal is subject to the outcome of the proceeding.

(h) Reasons for nonuse. In determining whether to cancel or reduce a permit under this section, the District may consider whether the nonuse of the authorized water resulted from:

(1) water conservation, including measures taken under a water conservation plan or drought contingency plan, improved efficiency, leak repair, or the use of reclaimed or alternative water supplies;

(2) drought, or a curtailment or production limit imposed by the District or another governmental entity; or

(3) a documented plan to use the water to meet reasonably projected future demand, such as a capital improvements plan, a water supply contract, a water supply or conservation plan filed with a state agency, or a projection in the regional water plan or state water plan, if the permittee is making reasonable progress toward putting the water to that use.

§ 5.218 Variance from Well Spacing Required for Compliance with TCEQ Minimum Water System Capacity Requirements

(a) In regulating the production of groundwater, the District considers the service needs and service area of a retail public utility as authorized by § 36.116(c), Texas Water Code. The service needs and service area of a retail public utility are considered under § 5.205 and, for compliance with TCEQ minimum water system capacity requirements, under this section.

(b) Notwithstanding § 6.101(a), the board may grant a retail public utility a variance from the well spacing requirements to the extent necessary to comply with the TCEQ minimum water system capacity requirements, 30 Texas Administrative Code Chapter 290, if the utility demonstrates that:

(1) the requested well capacity is reasonably necessary to comply with those requirements; and

(2) no other reasonably and economically available location within the utility's CCN,

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corporate boundaries, or other retail water service area, and no other reasonably and economically available source of supply, storage, interconnection, groundwater rights, or certificated service area, would allow the utility to satisfy both the TCEQ requirements and these rules.

(c) A variance under this section does not relieve the utility of any other requirement of these rules, including the determinations required under §§ 5.209 and 6.204, and may not authorize production that would impair achievement of the applicable desired future condition. A variance under this section may be limited or conditioned as the board determines appropriate. The burden of proof is on the utility under § 1.006.

§ 5.219 Cancellation of Operating Permits Not Put to Use

(a) An operating permit issued on or after October 15, 2026, is subject to cancellation if no well authorized by the permit has been drilled within 12 months after the permit is originally issued, or no groundwater has been produced under the permit within 12 months after it is originally issued.

(b) An operating permit issued before October 15, 2026, under which no well has been drilled, or no groundwater has ever been produced, is subject to cancellation if drilling or production has not begun by October 15, 2027. An extension granted before October 15, 2026, does not extend this deadline. The District shall undertake a review of all permits subject to this subsection by November 1, 2027.

(c) The general manager may grant one extension of up to 6 months for good cause, on written request filed before the deadline. Renewal or amendment of a permit does not extend a deadline under this section.

(d) Cancellation under this section follows the notice, informal meeting, and hearing procedures in § 5.217(b)–(d) and (g). At the conclusion of the hearing, the District may cancel the permit if it finds that the applicable deadline under Subsection (a) or (b), as extended under Subsection (c), was not met.

Subchapter D. Groundwater Exportation Permits

§ 5.301 Applicability

(a) Except as provided in Subsection (b), this subchapter applies to any person who seeks to export groundwater that is produced from a well within the District's boundaries to a place of use outside the District's boundaries.

(b) This subchapter does not apply to:

(1) ~~a groundwater export arrangement in effect on or before June 11, 2003~~groundwater that is incorporated into a finished, manufactured product, which would not include bottled water, within the District and ~~continuing thereafter, so long as there is no increase in~~then exported for sale outside the District; ~~the annual amount exported after that date;~~

(2) groundwater produced from an area within the portion of a retail public utility's CCN or political subdivision boundaries located inside the District that is ~~incorporated into a~~

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~~finished, manufactured product, which would not include bottled water,~~delivered to end users located anywhere within the same CCN or political subdivision, whether inside or outside of the District; or~~within the District and then exported for sale outside the District; or~~

(3) groundwater transferred through an emergency potable water interconnect between retail public utilities.

~~(3) groundwater that is delivered to end users outside of the District's boundaries pursuant to a HOP and a CCN that is also within the District's boundaries.~~

§ 5.302 Groundwater Exportation Permit Required

(a) Any person seeking to export groundwater to a place of use outside of the District's boundaries is required to hold an operating permit authorizing the withdrawals for which the export is sought or to simultaneously file an application for an operating permit or to transfer or amend an operating permit and to file an application to export groundwater on a form prescribed by the District and obtain a groundwater exportation permit from the District. If an application for an operating permit or to transfer or amend an operating permit is filed to authorize withdrawals for export, the applications will be processed together.

(b) A groundwater exportation permit shall be obtained prior to commencing construction of wells or other facilities utilized to transfer groundwater from the District.

§ 5.303 Applications for Groundwater Exportation Permits

In addition to the information specified in § 9.104, an application for a groundwater exportation permit shall contain information reasonably related to the information to be contained in a groundwater exportation permit under § 5.306~~to be contained in a groundwater exportation permit under § 5.305~~ and the elements to be considered by the board in determining whether to grant or deny the application under § 5.304 and under this section. The application shall be submitted on a District form and shall include the following:

(a) Legal basis of right to withdraw groundwater.~~Legal Basis of Right to Withdraw Groundwater.~~ The applicant shall identify the legal basis under which groundwater will be withdrawn from the well, specifying all existing operating permits and applications for operating permits that will provide the basis for the application, with supporting documentation of ownership of those specified rights.

(b) Place of use. Information documenting the place of use of the groundwater, including, as applicable, a copy of the deed and legal description for the place of use or a copy of the map identifying the boundaries of the applicant's CCN issued by PUC or if no CCN, a map showing the boundaries for service for public water supply and notice of any application to the PUC to obtain or modify a CCN to provide water or wastewater service with water obtained pursuant to the requested permit.

(c) Purpose and amount of use. A statement of the nature and purpose of the proposed use of the groundwater and the amount to be used for each purpose, including information to show a real and current need for the quantity of water requested and to support a finding that the amount of water

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requested is economically reasonable, when reasonable intelligence and diligence are used to apply the groundwater to that purpose.

(d) Term. Indicate the permit term sought.

(e) A groundwater conservation plan and a statement that the applicant agrees to avoid waste and achieve water conservation and a copy of the most recent water loss audit submitted to the TCEQ or the TWDB for the place of use.

(f) Drought contingency plans. A drought contingency plan and a copy of the most recent drought contingency plan submitted to the TCEQ and/or TWDB for the place of use.

(g) Technical report. Information to show how the application will affect: the availability of water in the District and in the proposed place of use during the period for which the water is requested; the projected effect of the proposed export on aquifer conditions, depletion, subsidence, or effects on existing permittees or other groundwater users within the District; and how the proposed export is consistent with the approved regional water plan and District groundwater management plan.

(h) Alternate sources of supply that might be utilized by the applicant and the feasibility and the practicability of utilizing such supplies, including information regarding availability, access to and cost to obtain water from sources other than the aquifer identified by the applicant.

(i) Construction and operation plans for the proposed facility, including, but not limited to a technical description of the facilities to be used for transportation of water.

(j) Water sales contracts. A copy of each signed contract or other agreement to sell or provide the groundwater to any other person, including the user or users and any option or letter of intent, and any contract to purchase the groundwater under § 5.304(h).~~If the water is to be used by someone other than the applicant, a signed contract between the applicant and the user or users.~~

(k) Compliance with groundwater management plan. A declaration that the applicant will comply with the District's approved groundwater management plan and with the state and regional water plans.

(l) Information documenting and explaining any change to the information submitted to the District for related well construction or operating permits.

(m) Compliance with rules. A declaration that the applicant is in compliance with all applicable rules and will comply with the rules.

(n) Other information. Any other information determined to be necessary by the District. The applicant may rely on any information previously submitted to the District as part of an earlier application that meets any of the requirements of this section.

§ 5.304 Basis for Action on Groundwater Exportation Permit Applications

The board shall grant an application for a groundwater exportation permit if the board finds that:

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(a) the application is complete;

(b) the application complies with the rules;

(c) all applicable fees and deposits have been paid;

(d) the water to be exported is proposed to be placed to a beneficial use;

(e) the place of use is identified specifically and located outside the District's boundaries;

(f) the well to be used for the proposed exportation project is identified specifically and located within the District's boundaries;

(g) the applicant is in compliance with any permits the applicant holds from the District and with the rules;

(h) the applicant owns or has legal rights to an operating permit issued by the District to produce the groundwater necessary for the proposed exportation project, or has a contract to purchase the groundwater from a third party who holds such permit or other authorization;

(i) there is insufficient water available in the proposed receiving area to substantially meet the actual or projected demand during the proposed term of the groundwater exportation permit, including consideration of feasible and practicable alternatives to the application;

(j) there is sufficient water available within the District to meet the actual or projected demand during the proposed term of the groundwater exportation permit;

(k) the proposed exportation will not unreasonably affect existing groundwater or surface water resources, existing holders of permits issued by the District or exempt wells that are registered with the District, including by causing unreasonable interference between wells, or result in impairing achievement of the DFC for the aquifer from which production would be made, considering ~~the modeled available groundwater~~ the modeled available groundwater determined by the TWDB, the TWDB's estimate of the current and projected amount of groundwater produced under exemptions granted by these rules, the amount of groundwater authorized under permits previously issued by the District, a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District and yearly precipitation and production patterns;

(l) the proposed exportation is consistent with the applicable regional water plans approved by the TWDB; and

(m) the application is consistent with the District's approved groundwater management plan and its goals of providing the most efficient use of groundwater, controlling and preventing the waste of groundwater and achieving the desired future conditions established for the aquifer from which water is proposed to be produced and with the state and regional water plans.

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§ 5.305 Groundwater Exportation Permit Term; Renewal

(a) The permit term for an exportation permit shall be set by the board, consistent with the following criteria:

(1) the permit term shall be three years, if construction of a conveyance system in the District's boundaries has not been initiated prior to the issuance of the permit; or

(2) the permit term shall be 30 years, if construction of a conveyance system has been initiated in the District's boundaries prior to the issuance of the permit.

(b) The three-year term specified in Subsection (a)(1) shall automatically be extended to 30 years~~extended to thirty years~~ if construction of a conveyance system is begun before the expiration of the three-year period. For the purposes of this section, construction of a conveyance system does not include any existing or previously constructed facilities that were not constructed specifically for use in exporting the groundwater considered under the permittee's groundwater exportation permit application.

(c) The District shall extend a term under Subsection (a)(2) or (b) on or before its expiration in the manner prescribed by § 36.1145, Texas Water Code: (1) to a term that is not shorter than the term of an operating permit for the production of water to be exported that is in effect at the time of the extension; and (2) for each additional term for which that operating permit is renewed under § 36.1145, Texas Water Code, or remains in effect under § 36.1146, Texas Water Code. A permit extended under this subsection continues to be subject to conditions contained in the permit as issued before the extension. Any person seeking the extension of a groundwater exportation permit must file with the District an application to extend~~An exportation permit may be renewed for a term not shorter than the remaining term of the associated operating permit. Any person seeking the renewal of a groundwater exportation permit must file with the District an application to renew~~ on a form prescribed by the District. The application must be filed with the District no later than one year prior to the expiration of the permit term.

§ 5.306 Contents of Groundwater Exportation Permits

A groundwater exportation permit shall include the following terms and conditions:

(a) the name, address, email and telephone number of the permittee;

(b) the operating permit number associated with the groundwater exportation permit;

(c) if the permittee does not own the well from which the production for exportation is made, then the name, address, email and telephone number of the well owner;

(d) if not the permittee, the name, address, email and telephone number of the owner of the land on which the well is located;

(e) the permit term, including dates of issuance, effectiveness and termination;

(f) the purpose or purposes of use for which the water produced from the well is to be used;

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(g) a requirement that the water produced under the permit be put to beneficial use without waste;

(h) the location of the place of use outside the District's boundaries;

(i) the maximum amount of production in acre-feet per annum for each purpose of use that may be exported from the District, which will be limited to the amount that could be produced by the well for in-District use pursuant to the production limitations set forth in these rules and any conditions or restrictions relative thereto;

(j) the metering and reporting requirements; and

(k) other terms and conditions as may be required by the board.

§ 5.307 Standard Permit Conditions for Groundwater Exportation Permits

All groundwater exportation permits shall be issued with and subject to the following additional conditions:

(a) the duty to beneficially use water and avoid waste;

(b) the duty to conserve water in accordance with applicable law and comply with the District's groundwater management plan, Chapter 11 of these rules,~~the District's groundwater conservation plan~~ and the permittee's groundwater conservation plan approved by the District, as applicable;

(c) the duty to file all applicable reports with the District and other appropriate federal, state, or local governments;

(d) the duty to reduce water consumption during times of drought in accordance with applicable law and comply with either the District's drought contingency plan~~drought management plan~~, as may be amended from time to time, or the permittee's plan approved by the District, as appropriate;

(e) the duty to comply with the District's approved groundwater management plan, as may be amended from time to time;

(f) the duty to use all reasonable diligence to protect the groundwater quality;

(g) the duty to comply with these rules;

(h) permit review, renewal, or extension conditions, including periodic review by the District of the amount of water authorized to be exported under an export permit and subsequent limitation of the production amount if warranted, considering the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested, the proposed effect of the proposed export on aquifer~~the proposed effect of the proposed transfer on aquifer~~ conditions, depletion, subsidence, or effects on existing permittees or other groundwater users within the District and the approved regional water plan and approved District groundwater management plan~~approved regional water plan and approved district management plan~~, as long as

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such limitation is no more restrictive than those imposed on other permits in the area;

(i) the continuing right of the District to supervise and manage groundwater withdrawals and protect groundwater;

(j) installation, equipping, operation and maintenance of all meters in accordance with the rules;

(k) the duty to comply with the rules relating to transfers and amendments of permits as may be amended from time to time;

(l) the duty to pay and be current in the payment of all applicable fees;

(m) the duty to record the permit;

(n) the duty to give notice to the District of any changes in name, address, email, or telephone number of the permittee, or the authorized representative, or the landowner, as may be appropriate;

~~(o) the duty to give notice to the District of any changes in contiguous acreage;~~

(o~~p~~) the duty to comply with all of the terms and conditions of the permit;

(p~~q~~) the duty to ensure that the well site is accessible to District representatives for inspection and to cooperate fully in any reasonable inspection of the well and well site by District representatives;

(q~~r~~) the right of the District to enter land under § 36.123, Texas Water Code; and

(r~~s~~) any other conditions as the District may deem appropriate.

§ 5.308 Withdrawals in Violation of Groundwater Exportation Permit Prohibited

No holder of a groundwater exportation permit may export groundwater in a manner inconsistent with the terms of the permit and any production in violation of a groundwater exportation permit is illegal, wasteful per se and a nuisance.

§ 5.309 Transfer of Ownership or Lease; Notice

Within 30 days after transfer of the ownership of all or part of a groundwater exportation permit, or all or part of a lease of the right to export thereunder, the transferee shall file with the District a notice of transfer of ownership on a form prescribed by the District, accompanied by evidence of the change of ownership. For transfers of ownership, if the notice is complete and the transfer is otherwise in compliance with this subchapter, the general manager shall reflect the new ownership and issue an amended permit to the transferor, transferee, or both, as may be appropriate. For leases, the general manager will update the District's permit records to reflect the lease.

§ 5.310 Groundwater Exportation Permit Transfers or Amendments; Applications

(a) A groundwater exportation permit may be amended as follows:

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(1) place of use;

(2) the total volume of groundwater exported in acre-feet per annum;

(3) rate of production in gpm;

(4) point of withdrawal; or

(5) ownership in accordance with § 5.309.

(b) Any person seeking to amend their permit as provided in Subsection (a)(1)–(4) must~~as provided in Subsection (a)(1)-(4), must~~ first file with the District an application to amend on a form prescribed by the District.

(c) No permit amendment is effective until the amendment has been approved by the board.

§ 5.311 Basis for Granting Applications to Amend Groundwater Exportation Permits

The board shall grant an application to amend a groundwater exportation permit if it finds that:

(a) the requirements in § 5.304 are satisfied; and

(b) during the term of the permit, the applicant, transferor, or transferee, as may be appropriate, demonstrates a positive compliance history with the permit's terms and conditions and the rules.

Subchapter E. Wells Exempt from Operating Permits

§ 5.401 Wells Exempt from Operating Permits

(a) The owner and/or operator of any of the following types of wells is exempt from the duty to obtain an operating permit:

(1) a well drilled and operated solely for domestic use or for providing water for livestock, poultry, or wildlife, if the well is drilled, completed, or equipped so that it is incapable of producing ~~no~~ more than: ~~25,000 gallons of groundwater a day and located on a tract of land equal to or greater than 10 acres, or a well that qualified as exempt prior to [date of adoption of these rules], or a well that is drilled and operated solely for domestic use, and is drilled, completed, or equipped so that it is incapable of producing more than 1,500 gallons of groundwater a day, meets the spacing requirements of these rules and there is no public water supply available to the property;~~

(A) 25,000 gallons of groundwater a day and is located on a tract of land equal to or greater than 10 acres; or

(B) 10,000 gallons of groundwater a day, meets the spacing requirements of these rules, and is located on a tract of land smaller than 10 acres;

(2) drilling a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission,

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provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig;

(3) a well that does not produce more than 9,125,000 gallons annually located on a tract of land equal to or greater than 10 acres that is metered, reports production, and, except for a well whose production is used only for domestic, agricultural, or wildlife purposes within the District, pays groundwater production fees on the 9,125,000 gallons annually authorized by its limited production permit as set forth in these rules. The District's approval of the registration of such a well under § 5.501 constitutes a limited production permit authorizing the withdrawal of not more than 9,125,000 gallons annually;

~~(3)~~(4) drilling a well for temporary use of up to 180 days, which the District may extend until the well is complete, solely ~~solely~~ to supply water for a rig that is actively engaged in drilling a well to produce groundwater authorized by a well construction permit from the District; ~~or~~

~~(4)~~(5) drilling a water well authorized under a permit issued by the Railroad Commission under Chapter 134 of the Texas Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water, provided that an entity holding such a permit shall comply with § 8.005;

~~(5)~~(6) a well meeting the requirements of § 36.121 of the Texas Water Code;

~~(6)~~(7) a monitoring well or a remediation well;

~~(7)~~(8) a well drilled into any aquifer not identified in § 5.101 of these rules; ~~a well drilled into any aquifer not identified in § 5.101 of these rules; and~~

~~(8)~~(9) a well that qualified as exempt under the District's rules in effect prior to October 15, 2026, or that was previously registered and determined by the District to be exempt from the requirement for an operating permit under these rules, and that has not been subsequently altered, equipped, or used for a purpose or in a manner that is not exempt; or ~~used for a purpose or in a manner that is not exempt.~~

(10) a well used for dewatering or monitoring in the production of coal or lignite, as provided by § 8863.102, Special District Local Laws Code.

(b) Notwithstanding Subsection (a), the District may require a well to be permitted pursuant to these rules if any of the applicable criteria in § 36.117(d) of the Texas Water Code is satisfied.

(c) All wells qualifying as exempt wells pursuant to Subsection (a) shall be registered with the District in accordance with these rules.

(d) An exempt well will lose its exempt status if the well is subsequently altered, equipped, or used for a purpose or in a manner that is not exempt.

(e) The owner and/or operator of an exempt well must ensure that the well site is accessible to District representatives for inspection and must cooperate fully in any reasonable inspection of the well and well site by District representatives.

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(f) An exemption provided under this section does not apply to a well if the groundwater withdrawn is used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Texas Local Government Code~~required by Chapter 232, Local Government Code~~.

(g) Groundwater withdrawn under an exemption provided in accordance with this section and subsequently transported outside the boundaries of the District is subject to any applicable production and export fees under these rules.

§ 5.402 Loss of Exemption; Notice of Changed Circumstances

The owner and/or operator of a well that is exempt under this subchapter loses the exemption if the nature of the well changes such that the well no longer qualifies for the exemption. Within 30 days of the occurrence of any facts that may cause a well to lose its exemption, the owner and/or operator of the well shall give written notice to the District of the changed circumstances. If the board determines that the changed circumstances have caused the well to lose its exemption, then the board will issue an order declaring the loss of exemption and advising the well owner and/or operator that the well is subject to District regulation, including the duty to obtain a permit, or other regulation, as may be applicable.

§ 5.403 Well Conversions

(a) If the owner and/or operator of a well for which an operating permit has been issued desires to convert the well to one exempt from the duty to obtain an operating permit, the owner and/or operator must claim the exemption by abandoning the operating permit and registering the well as exempt as provided in § 5.501.

(b) If the owner and/or operator of a well exempt from the duty to obtain an operating permit desires to convert the well to one for which an operating permit is required, then the owner and/or operator must apply for and obtain an operating permit.

Subchapter F. Registration of Wells

§ 5.501 Registration of Wells

(a) No person may operate a well within the boundaries of the District without first registering the well with the District using a registration form approved by the District and obtaining written District approval of the registration and agreement that the well qualifies as exempt or will be authorized under an operating permit.

(b) In addition to the information specified in § 9.104, a well registration shall contain the following, as applicable:

(1) the name, address and phone number of the registrant and the owner of the land on which the well is or will be located;

(2) if the registrant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

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(3) a statement of the nature and purpose of the existing or proposed use and the annual amount of water used or to be used for each purpose;

(4) the location of the well and the estimated rate at which water is or will be withdrawn;

(5) the physical address of the property upon which the well is located;

(6) the location where the water from the well will be used;

(7) information relating to the size, source of power and estimated production rate (in gpm) of the pump used or to be used in the well;

(8) the depth or proposed depth of the well and the depth of the casing;

(9) the internal diameter of the well casing;

(10) the approximate date that the well was or will be constructed;

(11) the name, address, email and telephone number of the well driller who constructed or will construct the well and related information;

(12) a copy of any well drilling and completion report, driller's logs, geophysical logs, or well equipping report which pertain to the well;

(13) the size of the tract of land on which the well site is located, including the total number of acres owned by the registrant upon which the well is or will be located;

(14) a legal description of the location of the well, including: the county, section, block and survey and the number of feet to the two nearest public streets or highways; or other adequate legal description approved by the District;

(15) if requested by the District:

(A) a city or county map with the location of the property on which the well is located highlighted and the location of the well pinpointed; and

(B) a map or plat of the property on which the well is located, drawn to scale, not greater than 1000 feet to an inch (1" = 1000') that shows the pinpoint location of the well;

(16) the maximum amount of groundwater that the well is or will be capable of withdrawing per day stated in gallons;

(17) where applicable, a copy of any permit issued by the Railroad Commission relevant to the well; and

(18) any other information deemed necessary by the board in order to determine whether the well qualifies for exempt well status or requires an operating permit.

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(c) The general manager may approve a well registration if the general manager finds that:

(1) the well is eligible to be registered;

(2) the registration is complete;

(3) the registration complies with the rules;

(4) all applicable fees have been paid;

(5) the registration identifies a proposed or an existing well;

(6) the wellhead is or will be physically located within the boundaries of the District;

(7) the production from the well is proposed to be placed to a beneficial use;

(8) the registrant has a legal right to make withdrawals from the well;

(9) for proposed wells, the proposed well location complies with the spacing rules;

(10) the registrant is in compliance with any permits the registrant holds from the District and with the rules;

(11) the well will be installed, equipped, operated, maintained, or closed, as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of and achieve the conservation of groundwater in the aquifer;

(12) the registrant intends to install, equip, operate, maintain and close the well, as appropriate, in accordance with the manufacturer's standards, instructions, or recommendations, as may be applicable; and

(13) the well meets the criteria for exempt well status pursuant to § 5.401 of these rules or will be authorized by an operating permit.

(d) If the general manager makes a preliminary determination that the well is ineligible to be registered and the registrant disagrees with that determination, then the matter shall be referred to the board for its consideration. If the board determines that the well is ineligible to be registered, then the owner and/or operator of the well shall file an application for, as applicable, an operating permit, to transfer an operating permit and/or a well construction permit or cease all withdrawals from the well and close the well as appropriate, under these rules.

Subchapter G. Emergency Authorization to Drill and/or Operate a Well

§ 5.601 Emergency Authorization to Drill and/or Operate a Well

(a) A person may apply for temporary, emergency authorization to drill and/or operate a well without a well construction or operating permit. The emergency authorization may be granted by the general manager~~The emergency authorization may be made by the general manager~~ but must

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be validated at the next board meeting. Before granting the authorization, the following conditions must be met:

(1) An application on a form prescribed by the District and all fees must be submitted to the District;

(2) All persons owning property adjoining the well site must be given written notice of the requested emergency authorization and be provided an opportunity to submit any concerns to the District;

(3) The applicant must have received any required authorization from a federal, state or local agency to drill and/or operate the well;

(4) The applicant must demonstrate to the satisfaction of the District the "emergency," which must present an imminent threat to public health and safety;

(5) The application must not have been previously denied by the District; and

(6) The application must include any other information requested by the District.

(b) Following the granting of any temporary, emergency authorization, the board shall hold a hearing on the application at which it may issue or deny the requested authorization.

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CHAPTER 6. WELL MANAGEMENT

Subchapter A. General Provisions

§ 6.001 Responsibility for Well Management

Well owners and/or operators shall be responsible for the installation, equipping, operation, maintenance and closure of their wells and all costs associated therewith.

§ 6.002 Well Construction and Pump Installation Standards

(a) All wells shall be installed, equipped, operated, maintained and closed in accordance with Chapters 1901 and 1902, Texas Occupations Code and Chapter 76, Title 16, Texas Administrative Code~~Chapter 76, 16 Texas Administrative Code~~, TDLR Rules on water well drillers and water well pump installers. To the extent that any of the applicable requirements cited in this section conflict, the well owner and/or operator, driller and/or pump installer shall comply with the requirement that is more protective of groundwater and the environment.

(b) Any alteration, reworking, re-drilling, re-equipping, or replacement of an existing well or pump must be done~~Any existing well or pump that is altered, reworked, re-drilled, re-equipped, or replaced must be done~~ in accordance with the standards in Subsection (a).

§ 6.003 Re-completions

(a) The landowner, well owner and/or operator shall have the continuing responsibility of ensuring that~~continuing responsibility of insuring that~~ a well does not allow commingling of undesirable water and fresh water or the loss of water through the wellbore to other porous strata.

(b) If a well is allowing the commingling of undesirable water and fresh water or the loss of water and the casing in the well cannot be removed and the well re-completed within the applicable rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

(c) The board may direct the landowner, well owner and/or well operator to take steps to prevent the commingling of undesirable water and fresh water, or the loss of water.

Subchapter B. Well Spacing and Location

§ 6.101 Required Well Spacing and Location; Exceptions to Spacing Requirements

(a) All new wells, other than a well exempt under § 5.401(a)(5) as provided by § 36.117(f), Texas Water Code, must comply with the location requirements~~All wells must comply with the location requirements~~ set forth in TDLR Rules in Chapter 76, Title 16, Texas Administrative Code~~Chapter 76, 16 Texas Administrative Code~~, and must also be spaced not less than:

(1) the greater of 50 feet or one foot per gallon per minute (1 ft/gpm) of the authorized maximum production capacity for the well from the perimeter of the ~~property;~~property on which

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the well is located, provided, however, that for a well owned or operated by a retail public utility and located within a retail water service area, the applicable perimeter is the boundary of the utility's CCN, corporate boundaries, or other retail water service area, as applicable; and

(2) two feet per gallon per minute (2 ft/gpm) of the authorized maximum production capacity for the well from any existing ~~well,~~well completed in the same aquifer, previously approved well site for which drilling has not yet commenced, or any other proposed wells in the same application or other pending applications associated with the owner or operator for any such existing wells or well sites completed in the same managed aquifer in which the new well will be completed. The burden of proof that an existing well is completed in a different managed aquifer than the proposed well is on the owner or operator.

(b) Any person seeking to drill a new well may provide, and the District may consider, site-specific geological or hydrogeological information that supports the use of an alternative minimum horizontal distance between the proposed well and the other well or well site. The District may authorize the use of an alternative minimum horizontal distance between the proposed well and the other well or well site, provided the site-specific geological or hydrogeological information supports a finding by the District that the proposed well location and use will not create any unreasonable impacts.

(c) If a person seeking to drill a new well provides waivers signed by all owners of wells located within the spacing-required circumference of a proposed well, stating that they have no objection to the proposed location of the well, the District may grant a waiver to the spacing requirements for the proposed well location but may limit the production of the well to minimize impacts to existing wells or the aquifer.

(d) A retail public utility may request a variance from the spacing requirements of Subsection (a) as provided under § 5.218.

(e) For a well that is not authorized by an operating permit, including a well exempt under § 5.401, the maximum production capacity used to calculate the spacing required under Subsection (a) is the maximum rated capacity of the pump installed or to be installed in the well, as stated in the well registration.

(f) The District may authorize a well to be located closer to a property line than the distance required under Subsection (a)(1) if the applicant provides a waiver signed by the owner of each adjoining tract within that distance stating that the owner does not object to the proposed location. The District may limit the production of the well to minimize impacts to adjoining property. A waiver under this subsection does not authorize a location that does not comply with TDLR Rules.

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Subchapter C. Notice of Intent to Perform Well Construction Activities and Well Construction Permits

§ 6.201 Well Construction Permits Required; Prohibition on Open Loop Geothermal Wells

(a) Except as provided in § 6.202, the owner and/or operator of a well or proposed well must apply for and obtain from the District a well construction permit ~~and an operating permit~~ before drilling, equipping, completing, closing or plugging any well, ~~or~~ substantially altering the size of a well or well pump, or converting an oil and gas well to a water well, and, unless the well is exempt under § 5.401, must obtain an operating permit before producing groundwater from the well.

(b) Any person seeking to drill, equip, complete, close or plug any well or substantially alter the size of a well or well pump, or convert an oil and gas well to a water well must file with the District an application for a well construction permit on a form prescribed by the District.

(c~~b~~) A well construction permit is not required for well maintenance or repair that does not involve drilling, equipping or completing a well to increase the production capabilities of the well to more than its authorized production rate and that does not involve closing or plugging~~or that does not involve closing or plugging~~ a well.

(d) The drilling and operation of open loop geothermal wells is prohibited.

§ 6.202 Wells Exempt from Well Construction Permits

The owner and/or operator of any of the following types of wells is required to provide notice of intent to perform well construction activities to the District in accordance with § 6.212 but is exempt from the duty to obtain a well construction permit for well drilling activities, but not for well plugging activities:~~for well drilling activities but not from well plugging activities:~~

(1) a well drilled and operated solely for domestic use or for providing water for livestock, poultry, or wildlife, if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day and located on a tract of land equal to or greater than 10 acres, or incapable of producing more than 10,000 gallons of groundwater a day, meets the spacing requirements of these rules, and is located on a tract of land smaller than 10 acres ~~or a well that qualified as exempt prior to [date of adoption of these rules];~~ ~~or~~

(2) a well that does not produce more than 9,125,000 gallons annually located on a tract of land equal to or greater than 10 acres that is metered, reports production, and, except for a well whose production is used only for domestic, agricultural, or wildlife purposes within the District, pays groundwater production fees on the 9,125,000 gallons annually authorized by its limited production permit as set forth in these rules;

~~(2)~~(3) a water well solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or~~and~~ gas well permitted by the Railroad Commission, provided that the person holding the permit is responsible for drilling and operating the

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water well and the water well is located on the same lease or field associated with the drilling rig; ~~or~~

~~(3)~~(4) a well drilled and authorized under a permit issued by the Railroad Commission under Chapter 134, Natural Resources Code, or for production from the well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water, however an entity holding such a permit shall comply with § 8.005;

~~(4)~~(5) a well for temporary use of up to 180 days to supply water for a rig that is actively engaged in drilling a groundwater production well permitted by the District, which exemption may be extended by the District until the well is complete;~~permitted by the District, which exemption may be extended by the District; and~~

(6) a well that qualified as exempt under the District's rules in effect prior to October 15, 2026, or that was previously registered and determined by the District to be exempt from the requirement to obtain a well construction permit under the District's rules, and that has not been subsequently altered, equipped, or used for a purpose or in a manner that is not exempt;~~used for a purpose or in a manner that is not exempt.~~

(7) a well meeting the requirements of § 36.121, Texas Water Code; or

(8) a well used for dewatering or monitoring in the production of coal or lignite.

§ 6.203 Applications for Well Construction Permits

In addition to the information specified in § 9.104, an application for a well construction permit shall contain the following:

(a) Name and address of owner. The full name, address, email and telephone number of the owner of the well or proposed well. If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and/or operate a well for the proposed use.

(b) Name and address of operator. The full name, address, email and telephone number of the operator of the well or proposed well if not operated by the well owner.

(c) Description of proposed activity. A description of the activity for which a well construction permit is being sought (e.g., drilling a well, altering an existing well, installing a larger pump, closing or plugging a well).

(d) Well address. The physical address of the property upon which the well or proposed well is or is proposed to be located.

(e) Well location. A description of the actual or proposed location of the well, including: the county; section, block and survey and the number of feet to the two nearest non-parallel property lines (legal survey lines) and the latitude and longitude for the well based on readings from a global positioning system (GPS)~~global positioning satellite (GPS)~~ accurate to within a horizontal distance of 50 feet.

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(f) Maps. A location map from the county appraisal district indicating the location of the proposed well or the existing well to be modified, the subject property and adjacent owners' physical addresses and mailing addresses and a location map of all existing wells within a half (1/2) mile radius of the proposed well.

(g) Purpose of use. The proposed purpose of use~~Purpose and amount of use. The proposed purpose of use~~ for the water stated in definite terms.

(h) Amount of annual withdrawal. The total amount of groundwater proposed to be withdrawn from the aquifer and beneficially used on an annual basis, stated in number of acre-feet or gallons.

(i) Rate of withdrawal. The maximum rate of withdrawal that the well will be capable of in gallons per minute.

(j) Depth. The proposed depth of the well and proposed depth of cement casing.

(k) Casing. The proposed depth of the cemented casing and cementing methodology.

(l) Depth of strata. The predicted depth to the top of the targeted water-bearing strata.

(m) Pump. The size of the proposed pump and pumping method.

(n) Proposed construction date. The approximate date that well construction operations are proposed to begin.

(o) Identity of well driller. The name, address, email, telephone number and driller's license number of the well driller.

(p) Water source. The applicant shall identify the intended source or sources of water for the well and name of aquifer(s) in which the well is screened.

(q) Legal basis of right to withdraw groundwater. The applicant shall identify the legal basis under which groundwater will be withdrawn from the well (operating permit or exemption to permitting) which the applicant either owns or is seeking to obtain.

(r) Well closure. A water well closure plan if the application is for plugging activities or a statement that the applicant will comply with all District well plugging and capping guidelines and report closure to TDLR and the District, as appropriate.

(s) Closed loop geothermal wells. The applicant shall provide information as to the design of the system provided by a licensed installer.

(t) If the applicant seeks an exception to the spacing requirements of § 6.101, the site-specific geological or hydrogeological information required by § 6.101(b), the signed waivers required by § 6.101(c), or the signed waiver required by § 6.101(f), as applicable.~~If the applicant seeks authorization from the District for an alternative minimum horizontal distance between the proposed well and a registered well owned by someone other than the applicant, or to reduce the minimum horizontal distance below 50 feet between the proposed well and an adjacent property~~

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~~line, then the applicant shall provide proof that the registered well owner(s) or property owner(s) for which the alternative spacing is sought does not oppose the alternative spacing.~~

(u) Any other information as may be required by the District.

§ 6.204 Basis for Action on Well Construction Permit Applications

Following administrative completeness and technical review, the general manager shall grant an application for a well construction permit if the general manager finds that:

(a) the application is complete;

(b) the application complies with the rules;

(c) all applicable fees have been paid;

(d) the applicant owns the well or has documented legal authority to construct and/or operate the well;

(e) the application identifies a proposed or an existing well;

(f) the wellhead is or will be physically located within the boundaries of the District;

(g) the well is designed to produce groundwater from a groundwater source within the District;

(h) the withdrawals are proposed to be placed to a beneficial use;

(i) the applicant has a legal right to make withdrawals from the well;

(j) the well location complies with the spacing rules;

(k) the applicant is in compliance with any permits the applicant holds from the District and with the rules;

(l) the well will be installed, equipped, operated, maintained, or closed, as appropriate, to preserve, protect, prevent the pollution, degradation, or harmful alteration of, control and prevent the waste of, prevent the escape of and achieve the conservation of groundwater;

(m) the applicant intends to install, equip, operate, maintain and close the well, as appropriate, in accordance with the manufacturer's standards, instructions, or recommendations, as may be applicable;

(n) the well is not located on land that was subdivided in violation of Chapter 232, Texas Local Government Code; and

(o) the well will be installed, equipped, operated, maintained, or closed, as appropriate, consistent with applicable local, state and federal law.

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§ 6.205 Hearing on Well Construction Permit Action

An applicant for a well construction permit may request a hearing to appeal the general manager's decision to the board within 14 days of the date of denial of a well construction permit application~~denial of a well construction application~~ but such request is not subject to a contested case hearing.

§ 6.206 Well Construction Permit Does Not Authorize Withdrawals

No water may be withdrawn or produced from a well for which the District has issued only a well construction permit, except for the purposes of drilling or testing the well during the time the well construction permit is valid, as authorized by the well construction permit and the well shall not be placed into operation without the owner or operator of such well first obtaining an operating permit or, for a well exempt under § 5.401, District approval of the well's registration under § 5.501.~~without the owner or operator of such well first obtaining an operating permit.~~

§ 6.207 Well Construction Permit Terms; Extensions; Applications

A well construction permit shall expire and be void and of no force or effect 120 days from the date of issuance of the permit, or upon the expiration of any permit extension by the general manager, which may be granted for good cause, upon application filed prior to the permit's expiration date, for one additional 120-day period.

§ 6.208 Multiple Test Wells Authorized

(a) A well construction permit authorizes the completion of a single well. However, a holder of a well construction permit may, within a radius of 50 yards from the authorized well location specified in a well construction permit, drill multiple test wells in order to identify the best location for the completed well. The coordinates of the location ultimately chosen must be provided to the District and the well construction permit will be modified as necessary to reflect the chosen location. The chosen location must comply with all applicable spacing and location requirements. All test wells must, within 60 days after the location of the completed well is chosen, be completely plugged in compliance with applicable well plugging ~~standards.~~standards, except as provided under Subsection (b).

(b) A test well that is intended to be used as a production well must meet all applicable well spacing requirements and be capped after testing unless and until it is authorized to withdraw groundwater by an operating permit or an approved registration under § 5.501. If neither an operating permit nor a registration is approved for production from the well, the test well must be plugged within 60 days of a final decision on the application. The District may also allow a test well to be converted into a monitoring well.

§ 6.209 Contents of Well Construction Permits

Well construction permits shall contain the following:

(a) name, address, email and telephone number of the permittee;

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(b) name, address, email and telephone number of an authorized representative, if any, of the permittee;

(c) permit term;

(d) purpose of use of the well;

(e) maximum rate of withdrawal in gallons per minute;

(f) legal description of the location of the well, including county,~~location of the well, including, county,~~ section, block and survey and the latitude and longitude for the well based on readings from a global positioning system (GPS)~~global positioning satellite (GPS)~~ accurate to within 50 feet;

(g) identification of the legal authority to produce groundwater from the well (operating permit or exemption under § 5.401);

(h) the groundwater source;

(i) size of the pump, pumping rate and pumping method;

(j) meter specifications, if any;

(k) borehole diameter; external and internal diameter of casing; total depth of casing; depth of grout; total well depth; screen, perforation and filter pack intervals; and other well installation specifications, as appropriate;

(l) any conservation-oriented methods of drilling prescribed by the District;

(m) all applicable reporting requirements;

(n) installation and completion schedule;

(o) a requirement that the permittee must file all applicable reports with the District prior to the production of water from the well, except for such production necessary to drill and test the well;

(p) a requirement that the permittee use reasonable diligence to protect groundwater quality and that all well plugging laws will be followed at the time of well closure;

(q) a copy of the approved water well closure plan, if any, or a requirement that the permittee will comply with well plugging law and report closure to TDLR and the District;

(r) for closed loop geothermal wells, a requirement that construction will comply with TDLR Rules; and

(s) any other appropriate conditions as determined by the District.

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§ 6.210 Standard Well Construction Permit Conditions

All well construction permits shall be issued with and subject to the following additional conditions:

(a) the duty to properly close (cap or plug) all wells in accordance with applicable law and comply with either the District's well closure plan, if any, as may be amended from time to time, or the permittee's plan~~as may be amended from time to time and the permittee's plan~~ approved by the District, as appropriate, including the duty to file a State of Texas Plugging Report with TDLR and the District within 30 days of plugging~~State of Texas Well Report with TDLR and the District within 30 days of plugging~~ the well;

(b) the duty to file all applicable reports with the District and other appropriate federal, state, or local governments;

(c) the duty to use diligence to protect the groundwater quality of the aquifer;

(d) the duty to comply with the rules;

(e) permit review and extension conditions;~~permit review, or extension conditions;~~

(f) the duty to locate all wells and confirm the actual location with the proposed location in the application or as provided for in the permit, consistent with the well spacing rules, prior to the production from any wells identified in the permit or application;

(g) the continuing right of the District to supervise and manage groundwater withdrawals and the depletion of the aquifer;

(h) installation, equipping, operation, maintenance and closure of all wells in accordance with the rules and other applicable federal, state and local law;

(i) installation, equipping, operation and maintenance of all meters in accordance with the rules;

(j) the duty to pay and be current in the payment of all applicable fees;

(k) the duty to give notice to the District of any changes in name, address, email, or telephone number of the permittee, or the authorized representative, the landowner, well owner, or well operator, as may be appropriate;

(l) the duty to comply with all of the terms and conditions of the permit;

(m) the duty to ensure that the well site is accessible to District representatives for inspection and to cooperate fully in any reasonable inspection of the well and well site by District representatives;

(n) the right of the District to enter land under § 36.123, Texas Water Code; and

(o) any other conditions as the District may deem appropriate.

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§ 6.211 Notice of Condition Affecting Groundwater Quality; Corrective Action

If at any time a well owner or operator has reason to believe that a well condition may exist that may cause the pollution, degradation, or harmful alteration of the character of the groundwater in an aquifer, then the owner and/or operator shall, within forty-eight (48) hours of learning of the fact(s), notify the District in writing of the well condition. The District may conduct an investigation and contact any appropriate state agency, and, if facts warrant, direct the owner and/or operator of the well, at the owner's or operator's cost~~at the owner's or operator cost~~, to evaluate and test the well conditions and take appropriate corrective action, including replacement, to bring the well into proper working condition in conformance with this chapter.

§ 6.212 Notice of Intent to Perform Well Construction Activities~~Notice of Commencement of Well Installation~~

No later than three business days prior to commencement of any activities to drill, equip, or complete any well or substantially alter the size of a well or well pump, or convert an oil and gas well to a water well, the well owner or the well owner's driller shall give notice~~the permittee shall give notice~~ to the District of the intent to commence, so that a representative of the District may attend and observe the activities, at the District's discretion.

§ 6.213 Replacement of Wells

(a) A well owner or operator may rework, re-equip, re-drill or replace an existing permitted or registered well by filing an application to amend such permit or registration and providing such information as may be required by the general manager, without notice and hearing under the following conditions:

(1) The replacement well must be drilled within 50 feet of the original permitted or registered location;

(2) The replacement well shall comply with the minimum spacing requirements set out in Subchapter B of Chapter 6 of these rules if such a location is available within the 50-foot radius~~within the 50-feet radius~~ of the original permitted or registered well;

(3) The replacement well or pump shall not be changed to a larger size or capacity so as to increase the rate of production authorized in such permit;

(4) The replacement well will be completed and screened at an equal or greater depth than the well being replaced; and

(5) If a replacement well is drilled, the well owner or operator shall cease production from the existing permitted or registered well and ensure that the replaced well is, within 90 days:

(A) plugged;

(B) capped; or

(C) re-equipped to meet the requirements of these rules.

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(b) Immediately upon commencing operation of the replacement well, the well owner will cease all production from the well being replaced and, unless the replaced well is capped or re-equipped as provided in Subsection (a)(5), will plug the well being replaced in accordance with Chapter 6, Subchapter E of these rules within the time provided in Subsection (a)(5).

§ 6.214 Transfer of Well Construction Permit Prohibited

No person may transfer the ownership of a well construction permit issued by the District.

§ 6.215 Unlicensed or Unregistered Well Drillers or Pump Installers Prohibited; Exemptions

(a) Except as otherwise provided in Subsection (b) of this section, no person may drill or construct a water well unless the person first holds a well driller's license issued by TDLR under Chapter 1901, Texas Occupations Code and Chapter 76, Title 16, Texas Administrative Code~~Chapter 76, 16 Texas Administrative Code~~.

(b) The requirement to hold a well driller's license pursuant to Subsection (a) of this section does not apply to any person who drills environmental hand auger soil borings no more than ten (10) feet in depth.

(c) Except as otherwise provided in Subsection (d) of this section, no person may install or repair a water well pump unless the person first holds a pump installer's license issued by TDLR under Chapter 1902, Texas Occupations Code and Chapter 76, Title 16, Texas Administrative Code~~Chapter 76, 16 Texas Administrative Code~~.

(d) The requirement to hold a pump installer's license issued by TDLR pursuant to Subsection (c) of this section does not apply to a person who installs or repairs water well pumps and equipment on his or her own property, or on property that he or she has leased or rented~~on property that he has leased or rented~~, for his or her own use.

(e) Except as otherwise provided in Subsection (f) of this section, no person may plug a well unless the person first holds a well driller's license issued by TDLR under Chapter 1901, Texas Occupations Code and Chapter 76, Title 16, Texas Administrative Code~~Chapter 76, 16 Texas Administrative Code~~.

(f) The requirement to hold a well driller~~installer~~'s license issued by TDLR pursuant to Subsection (e) of this section does not apply to a person who plugs a well that he or she owns.

(g) Regardless of whether a license is required, all persons engaging in well drilling, pump installation or repair or well plugging must comply with the applicable standards set forth in TDLR Rules and these rules. In the event that a specific provision in these rules conflicts with a specific provision in TDLR Rules, the more stringent provision will govern.

§ 6.216 Confirmation and Posting of Well Construction Permits and Registrations

Any well driller shall, before undertaking any drilling, equipping, completing, closing or plugging of any well, substantially altering the size of a well or well pump, or converting an oil and gas well to a water well, confirm with the District that any required well construction permit or other permit

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or registration has been issued for the well and is in effect. In addition, at all times during well construction operations, the driller shall post a copy of any permit or registration for the well at a location at the well site that can be easily seen by visitors to the well site.

§ 6.217 Well Records, Reports and Logs

The driller of any well within the District, regardless of whether the well qualifies or does not qualify as an exempt well, shall keep and maintain for at least three years an accurate State of Texas Well Report and State of Texas Plugging Report, as applicable, for each such well. The driller shall file a copy of each State of Texas Well Report, a report detailing the drilling, equipping and completing of the well and, if performed, any electric or geophysical log, pump test results, water quality sampling results and well video surveys with the District within 60 days after the date the well is completed. The report shall include copies of all information about the well submitted to any agency of the State of Texas. Within 30 days after capping or plugging any well, the well driller shall submit a copy of the State of Texas Plugging Report to the District.

Subchapter D. Capping of Wells

§ 6.301 Capping Requirements

(a) Every owner or operator of any land upon which is located any open or uncovered well shall be required to cap or close the well with a covering capable of preventing the entrance of surface pollutants into the well and of sustaining a weight of at least four hundred (400) pounds, which must not be easily removed, except when said well is in actual use by the owner or operator thereof.

(b) In addition, every owner or operator of any land upon which is located a flowing artesian water well shall be required to cap or close the well with a covering capable of preventing any flow and preventing waste~~capable of preventing any flow and prevent waste~~, except when the well is in actual use by the owner or operator thereof and all withdrawals are applied to beneficial use.

(c) If the owner or operator fails or refuses to close or cap the well in compliance with this section, the District, or its employees or agents, may go on the land and close or cap the well safely and securely. Reasonable expenses incurred by the District in closing or capping a well constitute a lien on the land on which the well is located. The lien arises and attaches upon recordation of an affidavit in the deed records of the county where the well is located, 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, after notification, to close the well within 10 days after the notification;

(5) the closing of the well by the District, or by an authorized agent, representative, or

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employee of the District; and

(6) the expense incurred by the District in closing the well.

Subchapter E. Plugging of Abandoned or Deteriorated Wells

§ 6.401 Responsibility

It is the responsibility of the well owner and/or operator to plug or have plugged any well that is deteriorated or abandoned, in accordance with Chapter 1901, Texas Occupations Code and Chapter 76, Title 16, Texas Administrative Code~~Title 16, Chapter 76, Texas Administrative Code~~.

§ 6.402 Report on Plugging of Wells

The person that plugs a well shall, within thirty (30) days after plugging is complete, submit a copy of the plugging report on a form furnished by TDLR to the District.

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CHAPTER 7. FEES

§ 7.001 Registration Fees

(a) Except as provided by § 7.009, for exempt wells completed so as, in the opinion of the District,~~For exempt wells completed so as, in the opinion of the District,~~ to be capable of producing water from any of the aquifers, the District shall assess a non-refundable fee per well to file a well registration with the District per the approved fee schedule in effect at the time of registration.

(b) The applicable registration fee must accompany the registration form and be paid at the time of filing. If the registrant fails to pay the fee at the time of filing, the District may refuse to accept the registration for filing and/or commence any other action to enforce payment as authorized by law.

§ 7.002 Application Fees

(a) The District shall, in an amount set by the board, assess a non-refundable application fee. The application fee shall be assessed for the purpose of compensating the District for the administrative functions associated with the following applications:

(1) a new, renewal, or amended operating permit application;

(2) a new, renewal, or amended groundwater exportation permit application;

(3) a well construction permit application; and~~a well construction application; and~~

(4) any other application before the District.

(b) All required fees must accompany the application form and be paid at the time of filing. If the applicant fails to pay the fee at the time of filing, the District may refuse to accept the application for filing, or otherwise cease processing the application.

(c) If an application fee is determined by the District to be insufficient to cover the anticipated costs of processing the application, the District shall require the applicant to post additional funds in an amount determined to be sufficient to cover anticipated costs. The costs for which the District may require the posting of additional funds include, but are not limited to, the cost for public notices, legal fees, expert fees, hearing facility rental fees and other expenses. If the applicant fails to pay the additional amounts, then the District may suspend processing the application and may return the application. As application processing costs are incurred by the District, at the District's discretion, the District may incur costs itself and seek reimbursement from the additional deposited funds, or may expend deposited funds directly to pay for additional application processing costs. The applicant shall be provided periodic accountings of billings against the deposit. If the additional deposit is determined by the District to be insufficient to cover the application processing costs, then the applicant may be required to pay additional fee deposits. Any unexpended and unobligated fee deposits will be promptly returned to the applicant after final action on the application.~~returned to the applicant after the board issues a final order disposing of the application.~~

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~~(d) Except for withdrawals of groundwater made from a well exempt from operating permit requirements as defined under § 5.401 and in accordance with this chapter, all persons making withdrawals of groundwater from a well within the boundaries of the District are required to pay to the District the groundwater production fees as assessed pursuant to this section. Each well owner and/or operator shall complete a groundwater use report as required by § 8.004 and return the completed report, along with payment of the applicable groundwater production fees, to the District by no later than January 30th for the previous year's withdrawals. The amount due becomes delinquent if payment in full is not received by the District by February 15th following the year for which the fees are due.~~

§ 7.003 Groundwater Production Fees

(a) The District shall assess groundwater production fees as set forth in this chapter.

(b) Except for withdrawals of groundwater made from a well exempt from operating permit requirements as defined under § 5.401, other than a well exempt under § 5.401(a)(3), and withdrawals from a well whose production is used only for domestic, agricultural, or wildlife purposes within the District~~for agricultural use~~, groundwater production fees shall be assessed by the District against each permittee based on the maximum authorized withdrawal amount in their permit and against the owner and/or operator of a well exempt under § 5.401(a)(3) based on the 9,125,000 gallons annually authorized by its limited production permit, payable on the schedule set forth in Subsection (d).

(c) Annually, the groundwater production fee rate for the fiscal year shall be established by resolution of the board, subject to the limits in § 8863.151(c), Special District Local Laws Code. In setting the fee rate, the board shall consider its annual budget, operating revenue requirements, and other sources of revenue for the fiscal year.

(d) Beginning January 1, 2027, each permittee, and the owner and/or operator of each well exempt under § 5.401(a)(3), shall pay an annual production fee based on the maximum annual amount of groundwater authorized under the permit (or, for a well exempt under § 5.401(a)(3), the 9,125,000 gallons authorized by its limited production permit) as of January 1. Such fee shall be due on or before January 31 of each calendar year, unless otherwise specified by ~~Board~~board order. The ~~Board~~board may authorize payment in quarterly installments for the annual authorized amount as of January 1 with such installment payments due on the last days of January, April, July, and October. Groundwater production fees for a new permit, for a permit amendment that increases the authorized amount, or for a well that becomes exempt under § 5.401(a)(3) during the calendar year are due at the time of permit or permit amendment issuance or registration, prorated for the number of months remaining in the calendar year.~~Groundwater production fee payments for increases in production authorized during the year or for new permits are due at the time of permit or permit amendment issuance.~~

(e) Transition of payment obligations. To facilitate the transition from arrears-based groundwater production fees based on actual production to production fees paid in advance based on the total permitted production authorization:

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(1) production fees for groundwater produced during calendar year 2026 shall remain due and payable in arrears quarterly based on the amount actually produced, as follows: fees for production from January 1 through June 30, 2026 remain payable as billed under the District rules in effect before October 15, 2026; fees for production from July 1 through September 30, 2026 shall be due on or before October 31, 2026; and fees for production from October 1 through December 31, 2026 shall be due on or before January 31, 2027, together with the groundwater use report required by § 8.004. The fourth-quarter 2026 payment is in addition to, and due on the same date as, the first annual production fee payment due January 31, 2027 under Subsection (d); ~~and shall be due within thirty (30) days of the last day of September and December 2026 along with the quarterly as provided in Subsection (c);~~

(2) the District may, by board order, authorize payment of 2026 production fees in installments extending into calendar year 2027; and

(3) nothing in this section shall be construed to require payment~~nothing in this rule shall be construed to require payment~~ of production fees based on permitted authorization for any period prior to January 1, 2027.

(f) Payments for groundwater production fees~~groundwater use fees~~ not received in full by the District by the date due, but not more than 30 days late, are subject to a late payment penalty of the greater of $50 or ten (10) percent of the fees due. After 30 days of delinquency, the late payment penalty becomes the greater of $100 or fifty (50) percent of the fees due, and continuing to produce groundwater while delinquent constitutes a major violation of these rules.

§ 7.004 Limitation on Amount of Assessments

The District may not assess a total amount of fees that is more than is reasonably necessary for the annual operating revenue requirements for the administration of the District as reflected in its adopted annual fiscal year budget.

§ 7.005 Enforcement for Nonpayment

If the District determines that a fee is delinquent, enforcement for nonpayment may be as follows:

(1) by suspending the processing of any application that the person owing the fee, or his successor in interest, may have pending before the District; or

(2) by commencing any action to enforce payment and collection of the delinquent fee as may be authorized by law.

§ 7.006 Prohibitions

No person may withdraw groundwater from a well, other than a well described by § 7.009, within the boundaries of the District if the person~~No person may withdraw groundwater from within the boundaries of the District if the person~~, or his predecessor in interest, is delinquent in the payment of any fee that is due and payable to the District.

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§ 7.007 Unauthorized Withdrawals

Any person who withdraws groundwater without legal authority shall pay to the District the groundwater production fees in force and effect for the period of time during which the unauthorized withdrawals were made. The District shall assess groundwater production fees~~assess aquifer management fees~~ based on the amount of groundwater the District reasonably estimates was actually withdrawn.

§ 7.008 Groundwater Export Fees

(a) Unless not required to obtain a groundwater exportation permit, the District shall assess, and all persons exporting groundwater produced from a well within the District's boundaries to a place of use outside of the District's boundaries shall pay, a groundwater export fee on the metered volume of groundwater produced for export. The groundwater export fee will be in addition to any production fees assessed by the District. The District shall calculate a groundwater export fee after a hearing to be assessed on all groundwater produced for export as follows:

(1) water actually exported from the District's boundaries to a place of use outside the District's boundaries;

(2) operational water that is lost in the operation and maintenance of the export project and not actually exported from the District's boundaries; and

(3) reject water processed in order to produce water of a suitable quality for export and not actually exported from the District's boundaries.

(b) In addition to the production fee, the groundwater export fee for water transported out of the District shall be:

(1) a fee negotiated between the District and the exporter; or

(2) 20 cents for each thousand gallons,

which shall be increased by three percent each calendar year, beginning in 2024.

(c) The District will bill and collect the groundwater export fee. The monthly groundwater exportation report shall constitute the groundwater export fee invoice. At the end of each month, the holder of a groundwater exportation permit shall complete a groundwater exportation report, using the District's form, reporting the total amount of groundwater exported during the immediately preceding month and return the completed form, along with payment of the applicable groundwater export fees, to the District by no later than the 15th day after the end of the month for which the fees are assessed. The amount due becomes delinquent if payment in full is not received by the District by the 30th day after the end of the month for which the fees were assessed.

(d) No person may export groundwater outside the District's boundaries if the owner and/or operator of the well from which the exported groundwater is produced is delinquent in the payment of any fee that is due and payable to the District.

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(e) Any person who, without any legal authority, exports groundwater outside the District's boundaries shall pay to the District the export fee then in force and effect for the period of time during which the unauthorized exports were made.

(f) Any person who exports groundwater outside the District's boundaries without metering in accordance with Chapter 8 of these rules shall pay to the District the export fee then in force and effect based on the maximum amount of water the person is authorized to export under a groundwater exportation permit.

§ 7.009 Wells Exempt from Fees

Except as provided by § 5.401(g) and § 8863.151(d), Special District Local Laws Code, the District may not assess a fee of any type on (1) a well whose production is used only for domestic, agricultural, or wildlife purposes within the District, as provided by § 8863.151(e), Special District Local Laws Code; or (2) a well described by § 36.117(b), Texas Water Code, including a well used for dewatering and monitoring in the production of coal and lignite, as provided by § 8863.102, Special District Local Laws Code. A well described by § 5.401(a)(3) holds a limited production permit and is subject to fees under this chapter, except as provided by Subdivision (1).

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CHAPTER 8. METERS AND REPORTING

§ 8.001 Meters Required

(a) Duty to install: Except for a well that qualified as exempt prior to October 15, 2026, and continues~~exempt prior to [date of adoption of these rules],~~ to qualify for an exemption under § 5.401 other than § 5.401(a)(3), the owner and/or operator of a non-exempt well or a well exempt under § 5.401(a)(3) shall equip the well with a meter meeting the specifications of these rules and shall operate and maintain the meter to measure the instantaneous flow rate and cumulative amount of groundwater withdrawn from the well. No groundwater shall be withdrawn from a non-exempt well or a well exempt under § 5.401(a)(3) unless the well is equipped with a measuring method complying with these rules.

(b) Approved meters: Meters must be appropriately sized for the well, mechanically driven, digital, totalizing water meters. The digital totalizer must not be resettable by the well owner or operator~~the permittee~~ and must be capable of a maximum reading greater than the maximum expected pumping during a permit term or, for a well not authorized by an operating permit, a five-year period. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for cold-water meters.

~~(d)~~(c) Installation and maintenance: Meters must be installed, operated, maintained and repaired according to the manufacturer's published specifications and shall ensure accuracy of not greater than plus or minus five percent. If no specifications are published, for meters installed on or after October 15, 2026,~~for meters installed after [the date of rules adoption],~~ there must be a minimum length of five pipe diameters of straight pipe upstream of the meter and one pipe diameter of straight pipe downstream of the meter. These lengths of straight pipe must contain no check valves, tees, gate valves, back-flow preventers, blow-off valves, or any other fixture other than those flanges or welds necessary to connect straight pipe to the meter. The pipe must be completely full of water throughout the area of the meter. All installed meters must measure only groundwater.

~~(e)~~(d) Bypasses: All bypasses must be metered. A bypass is any pipe of any size connected to the discharge pipe between the well and the meter.

~~(f)~~(e) Meter accuracy to be tested: The District may require the well owner or operator~~permittee~~, at the well owner's or operator's~~permittee's~~ expense, to test the accuracy of the meter and submit a certificate of the test results. The certificate must be on a form provided by the District. The District may further require that the test be performed by a third party qualified to perform meter tests. Certification tests will be required no more than once every three years for the same meter and installation. If the test results indicate an accuracy outside the range of 95%–105% of the actual flow~~an accuracy outside the 95% - 105% of the actual flow~~, then appropriate steps must be undertaken by the well owner or operator~~permittee~~ to repair or replace the meter within 90 calendar days from the date of the test. The District, at its own expense, may undertake further random tests and other investigations for the purpose of verifying meter readings. If the District's tests or investigations reveal that a meter is not registering within an accuracy of 95%–105% of actual flow~~within an accuracy of 95% - 105% of actual flow~~, is not appropriately sized for the well, or is

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not properly recording the total flow of groundwater withdrawn from the well, or well system, the well owner or operator~~permittee~~ must reimburse the District for the costs of those tests and investigations and the well owner or operator~~permittee~~ must take appropriate steps to remedy the problem within 90 calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement accuracy is impaired, the District may require the well owner or operator~~permittee~~, at the well owner's or operator's~~permittee's~~ expense, to take appropriate steps to remedy any problem and to retest the meter within 90 calendar days from the date the problem is discovered and reported to the well owner or operator~~permittee~~.

§ 8.002 Alternative Measuring Methods

(a) The owner and/or operator of a non-exempt well or a well exempt under § 5.401(a)(3)~~Any non-exempt well owner and/or operator~~ shall register with the District any alternative measuring method~~alternative measurement(s) method~~ it seeks to use on the well.

(b) Any alternative measuring method~~alternative measurement(s) method~~ registered in accordance with Subsection (a) of this section shall be inspected by the District for compliance with the requirements of these rules. No groundwater shall be withdrawn from a non-exempt well or a well exempt under § 5.401(a)(3) for which an alternative measuring method is sought unless the District first approves the requested method.

§ 8.003 Removal and Disabling of Meters

(a) A meter may not be removed or otherwise disabled unless the well owner or operator gives the District prior notice, in writing, of the intent to remove or disable the meter. Except in cases of routine maintenance, such notice must be approved in writing by the District before the meter is removed or disabled.

(b) A meter may be removed or otherwise disabled only by~~removed or otherwise disabled, only by~~ the well owner or operator or his or her authorized representative.

(c) During a period that a meter is removed or otherwise disabled, groundwater may not be withdrawn from the well, unless required for maintenance or the District has approved an alternative measuring method.

(d) If at any time a well owner or operator has reason to believe that a condition, of any kind whatsoever, may exist that affects the accuracy of a meter or an approved alternative measuring method, then the well owner and/or operator shall, within seven days of learning of the fact(s), notify the District that the accuracy of the meter or alternative measuring method may be in question. Such notification shall be in writing.

(e) The District may conduct an investigation and, if facts warrant, direct the well owner and/or operator, at the well owner and/or operator's cost, to evaluate and test the accuracy of the meter or alternative measuring method and take appropriate corrective action, including replacement, to restore the accuracy and proper working condition of the meter or alternative measuring method in conformance with the requirements of these rules.

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§ 8.004 Meter Reading and Groundwater Use Reporting

The well owner and/or operator must read the meter associated with the well and record the meter readings and the actual amount of withdrawals in a log at least monthly. The logs containing the recordings shall be available for inspection by the District during reasonable business hours. ~~Before January 30th of each year, each~~The owner and/or operator of each non-exempt well and the owner ~~non-exempt well owner and/or operator~~ and/or operator of a well exempt under § 5.401(a)(3) must submit to the District an annual groundwater use report on or before January 31 of each year, and on or before April 30, July 31, and October 31 a quarterly groundwater use report, on a form provided by the District. The report shall provide the following: (1) name of the well owner and/or operator; (2) the well number; (3) the total amount of groundwater produced by the well or well~~aggregate~~ system during the immediately preceding calendar year (January 1 through December ~~31);~~31) or quarterly period; (4) the total amount of groundwater produced by the well or well~~aggregate~~ system during each separate month of the immediately preceding calendar ~~year;~~year or quarterly period; (5) the purpose for which the groundwater was used; (6) if applicable, the amount of groundwater losses from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks in the year reported on; and (7)~~line leaks in the year reported on, and (7)~~ any other information requested by the District as indicated on the report form.

§ 8.005 Monthly Reporting for Certain Railroad Commission Permittees

An entity holding a permit issued by the Railroad Commission under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well, shall report monthly to the District:

(1) the total amount of water withdrawn during the month;

(2) the quantity of water necessary for mining activities; and

(3) the quantity of water withdrawn for other purposes.

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CHAPTER 9. PROCEDURES BEFORE THE DISTRICT

Subchapter A. General

§ 9.001 Applicability

This chapter applies to the processing of all applications or registrations filed with the District and to the adoption of rules and groundwater management plans by the District.

§ 9.002 Service of Documents

(a) Except as otherwise provided in these rules, all documents filed, served, or delivered under this chapter or these rules must be served~~under this chapter or these rules, must be served~~ as follows:

(1) by delivering a copy to the person to be served, or the person's duly authorized agent or attorney of record, either in person or by agent or by carrier-receipted delivery or by United States mail, to the person's last known address; or

(2) by email to the recipient's email address.

(b) Service by mail shall be complete upon deposit of the document, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by email is complete upon transfer and shall be accomplished by 5:00 p.m. (as shown by the clock of the local time of the recipient) of the date on which it is due. Any transfer after such time shall be deemed served on the following day. Service by email must be followed by serving the original document in person, by mail or by carrier-receipted delivery within three days. Where service by the methods listed in Subsection (a) has proved unsuccessful, the service shall be complete upon publication of notice in a newspaper.

(c) A document served under this rule must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The person or the person's attorney of record shall certify compliance with this rule in writing by signature on the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of service.

(d) Nothing herein shall preclude any person from offering proof that the notice or instrument was not received and the District may extend the time for taking the action required of such person~~the action required of such party~~ or grant such other relief as it deems just. The provisions herein relating to the method of service of notice are in addition to all other methods of service prescribed by these rules.

(e) In contested case hearings, copies of all documents filed with the presiding officer shall be served on all parties no later than the day of filing.

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Subchapter B. Requirements for Applications and Registrations

§ 9.101 Purpose

The purpose of this subchapter is to provide for the procedures to be followed for applications and registrations that may be filed with the District.

§ 9.102 Applicability

This subchapter applies to any application or registration filed with the District.

§ 9.103 Proper Applicant, Registrant, or Filer

If a well or a proposed well or property or interest has one owner or operator, that owner or operator shall file the application, registration, or notice of transfer of ownership required to be filed with the District. If there is more than one owner or operator, a joint application, registration, or notice of transfer of ownership shall be filed by those owners or operators. In such an instance, the owners or operators shall select one among them to act for and represent the others in filing the application, registration, or notice of transfer of ownership. Written documentation of such a selection satisfactory to the District shall be filed with the application, registration or notice of transfer of ownership.

§ 9.104 Contents of and Requirements for All Applications, Registrations and Notices of Transfer of Ownership

All applications, registrations and notices of transfer of ownership filed with the District shall be typewritten or printed legibly in ink and shall include:

(a) The full name, physical and mailing addresses, email and telephone number of the applicant, registrant, or transferee. If the applicant, registrant, or transferee is a partnership, the name of the partnership shall be followed by the words "a partnership." If the applicant, registrant, or transferee is acting as trustee for another, the trustee's name shall be followed by the word "trustee." If one other than the named applicant, registrant, or transferee executes the application, registration, or notice of transfer of ownership, the person executing the application, registration, or notice of transfer of ownership shall provide their name, position, physical address, mailing address, email and telephone number.

(b) Signature of Applicant, Registrant, or Transferee. The application, registration, or notice of transfer of ownership shall be signed as follows:

(1) If the applicant, registrant, or transferee is an individual, the application, registration, or notice of transfer of ownership shall be signed by the applicant, registrant, transferee, or a duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant, registrant, or transferee. If the applicant, registrant, or transferee is an individual doing business under an assumed name, the applicant, registrant, or transferee shall attach to the application, registration, or notice of transfer of ownership an assumed name certificate filed with the county clerk of the county in which the principal place of business is located or with the Secretary of State.

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(2) Joint applications, registrations and notices of transfer of ownership. A joint application, registration, or notice of transfer of ownership shall be signed by each applicant, registrant, or transferee, or each applicant's, registrant's, or transferee's duly authorized agent with written evidence of such agency submitted with the application, registration, or notice of transfer of ownership. If a well or proposed well is owned by two spouses, each person shall sign the application or registration. Joint applicants or registrants shall select one among them to act for and represent the others in pursuing the application, registration, or notice of transfer of ownership with the District with written evidence of such representation to be submitted with the application, registration, or notice of transfer of ownership.

(3) If the application, registration, or notice of transfer of ownership is by a partnership, the name of the partnership shall be followed by an indication of whether it is a general partnership, a limited partnership or a limited liability partnership, as applicable and the application, registration, or notice of transfer of ownership shall be signed by one of the general partners or another entity authorized to sign on behalf of the partnership. If the applicant, registrant, or transferee is a partnership doing business under an assumed name, the applicant, registrant, or transferee shall attach to the application, registration, or notice of transfer of ownership an assumed name certificate filed with the county clerk of the county in which the principal place of business is located or with the Secretary of State.

(4) If the applicant, registrant, or transferee is an estate or guardianship, the application, registration, or notice of transfer of ownership shall be signed by the duly appointed guardian or representative of the estate and a current copy of the letters testamentary issued or order appointing guardian by the court shall be attached to the application, registration, or notice of transfer of ownership.

(5) If the applicant, registrant, or transferee is a corporation, public district, county, municipality or other corporate entity, the application, registration, or notice of transfer of ownership shall be signed by a duly authorized official. Written evidence specifying the authority of the official to take such action shall be submitted along with the application, registration, or notice of transfer of ownership, including in the form of bylaws, charters, or resolutions. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(6) If the applicant, registrant, or transferee is acting as trustee for another, the name of the trust shall be provided and the applicant, registrant, or transferee shall sign as trustee and in the application, registration, or notice of transfer of ownership shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary.

(c) Attestation. Each applicant, registrant, or transferee shall subscribe and swear or affirm under oath that the facts set out in the application, registration, or notice of transfer of ownership are accurate before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the application, registration or notice of transfer of ownership.

Subchapter C. Application and Registration Processing by the District

§ 9.201 Purpose

The purpose of this subchapter is to provide the procedures to be followed in the processing of

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applications and registrations filed with the District.

§ 9.202 Applicability

This subchapter applies to the processing of all applications or registrations filed with the District.

§ 9.203 Initial Action on Applications and Registrations

All applications and registrations received by the District shall be stamped or marked "received" with the date of receipt clearly indicated.

§ 9.204 Review for Administrative Completeness

(a) The general manager will conduct an initial review of each application or registration for administrative completeness and advise the applicant of the results of the review.

(b) In reviewing an application or registration for administrative completeness, the general manager will assess whether the application or registration contains the necessary information in legible form to allow:

(1) the District staff to conduct a technical review, if appropriate; and

(2) the District to take or recommend action on the application or registration, as appropriate.

(c) Upon the general manager determining that an application or registration is administratively complete, the District will notify the applicant or registrant by mail or email.

§ 9.205 Return of Applications and Registrations Deemed Not Administratively Complete

(a) If the District determines that an application or registration is not administratively complete, the District will notify the applicant or registrant of any such deficiencies by written correspondence. Illegible applications or registrations will be returned to the filer.

(b) The applicant or registrant may submit any additional necessary information in response to written correspondence sent by the District pursuant to Subsection (a) of this section, within 30 days of receipt of the written correspondence noting the deficiencies.

(c) If the additional necessary information is not forthcoming within 30 days of the date of receipt of the written correspondence noting the deficiencies, the District will return the incomplete application or registration to the applicant or registrant.

§ 9.206 Technical Review

(a) After an application is determined by the District to be administratively complete, District staff will commence a technical review of applications as necessary and appropriate.

(b) The applicant shall be notified in writing of any additional material necessary for a complete technical review. If the applicant provides the information within 30 days of the date it

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is requested, District staff will complete the technical review of the application. If the necessary additional information is not received by the District within 30 days of the date the information is requested and the information is considered essential by the District, the District may return the application to the applicant. Decisions to return an application to the applicant during the technical review will be made on a case-by-case basis.

(c) The general manager or his or her designee is entitled to enter public or private property at any reasonable time and upon reasonable notice for the purpose of inspecting, investigating or verifying conditions or information submitted in connection with an application.

§ 9.207 General Manager's Proposed Action on Applications and Technical Summary

(a) Following completion of technical review, the general manager will determine whether to recommend granting or denying the application and will prepare a written statement summarizing the recommendation and the reasons for that recommendation. If the general manager recommends full or partial granting of a permit or permit amendment application, the general manager shall also prepare a draft ~~permit.~~permit or permits. The general manager's recommendation and any draft permits are subject to change by the general manager or board during the course of the proceedings on the application. The statement and any proposed permit shall be available for public review and inspection.

(b) In conjunction with ~~the~~any proposed permit or denial, the general manager will prepare a technical summary that will include the following, as appropriate:

(1) the applicant's name and address;

(2) a summary of the application;

(3) the location of each point of withdrawal and the rate of withdrawal for each point of withdrawal;

(4) the reasons and technical basis for the recommended action;

(5) if applicable, a summary of ~~the~~any proposed permit;

(6) the proposed purpose(s) of use and the amount of recommended withdrawals annually for the proposed purpose(s) of use;

(7) notice that the general manager may modify his or her recommendation, or seek additional information from the applicant, in the course of the District's proceeding on the application;

(8) as may be authorized by this chapter, a statement that the applicant, or other affected persons may file a request for a contested case hearing on the application on or before the deadline set forth in § ~~9.304;~~9.303; and

(9) any other information that the general manager determines to be appropriate.

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(c) The general manager will provide the applicant with a copy of the general manager's statement, any proposed permit (or denial) and the technical summary.

§ 9.208 Action by Board on Applications Where There is No Right to a Contested Case Hearing

(a) Applicability. This section applies to all applications to be considered by the board, other than applications for groundwater exportation permits for more than 1,000 acre-feet per year or operating permits for more than 1,000 acre-feet per year, except that this section applies to an application remanded under § 9.326 or for which no timely request for a contested case hearing is filed.

(b) Scheduling the board meeting. Following technical review and the referral of the proposed action to the board, the general manager will schedule the presentation of the application and ~~the~~any proposed permit, approval, authorization or denial to the board. The board may reschedule the presentation of the application and ~~the~~any proposed permit, approval, authorization or denial.

(c) Notice of board meeting. At least ten days prior to the board meeting, the District will notify the applicant of the date of the board meeting referred to above. In addition, the District will provide public notice that the application and ~~the~~any permit, approval, authorization or denial will be considered by the board by including an item on the board's agenda pursuant to the Open Meetings Act. Except to the extent that such items contain information excepted from public disclosure under the Public Information Act, copies of the application and ~~the~~any proposed permit, approval, authorization or denial will be made available to the public for inspection and copying at the offices of the District during the District's designated business hours and may be provided by email.

(d) Consolidation or Severance of Matters. Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

(e) Oral Presentation before the board. The applicant and the general manager or his or her designee may make an oral presentation at the board meeting at which the application and ~~the~~any proposed permit, approval, authorization or denial are presented to the board. Oral presentations before the board will be limited to 15 minutes each, excluding time for answering questions, unless the ~~chair~~presiding officer establishes other limitations. Before the board meeting, the ~~chair~~presiding officer may allot time for oral presentations. Oral presentations and responses to questions will be directed to the board.

(f~~g~~) Public Comment. In addition, public comment on the application and ~~the~~any proposed permit, approval, authorization or denial will be accepted.

(g~~h~~) Upon consideration of the application and ~~the~~any proposed permit, approval, authorization or denial at its meeting, the board may issue an order granting or denying an application in whole or in part, dismissing proceedings, amending or modifying a proposed permit, or taking any other appropriate action.

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§ 9.209 Notice of Permit Hearing Where There is a Right to a Contested Case Hearing

(a) Applicability. This section applies only to applications for groundwater exportation permits for more than 1,000 acre-feet per year or operating permits for more than 1,000 acre-feet per year.

(b) A notice of hearing on an application for a permit shall be prepared by the District. At a minimum, the notice shall state the following information:

(1) the name and address of the applicant;

(2) the name or names of the owner or owners of the well, if different from the applicant;

(3) the name or names of the operator or operators of the land or well, if different from the applicant;

(4) the date the application was filed and the number assigned to it;

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

(6) the address or approximate location of the well or proposed well;

(7) a brief explanation of ~~the~~any permit or permit amendment sought, including any requested amount of groundwater, the purpose of the proposed use and the amount of groundwater for each requested purpose of use, and any change in use;

(8) a summary of the action on the application recommended by the general manager pursuant to § 9.207 of these rules;

(9) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(10) a brief description of the technical summary;

(11) a statement that a copy of the proposed action, technical summary and application are available for inspection by the public at the offices of the District;

(12) a statement that the application will be presented to the board for action at the hearing unless a request for a contested case hearing is submitted at least five business days prior to the date of the hearing pursuant to § ~~9.304;~~9.303;

(13) a statement that the applicant or another affected person may request a contested case hearing on the application by filing a request with the District, at least five business days before the date of the hearing, in accordance with § ~~9.304;~~9.303; and

(14) any other information the board or general manager considers relevant and appropriate.

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(c) The District shall, not less than 20 days before the date of the hearing:

(1) post the notice in a place readily accessible to the public at the District Office;

(2) provide the notice for posting at the Cherokee, Henderson and Anderson County courthouses to the county clerks;~~courthouses to the county clerk;~~

(3) provide the notice:

(A) by regular mail to the applicant; and

(B) by regular mail or email to any person who has requested notice under Subsection (d) below.

(d) Any person may request to receive written notice of permit hearings by submitting a request to the District in writing. The request must identify with as much specificity as possible the types of permit hearings for which written notice is requested. The request remains valid for the remainder of the calendar year in which the request is received by the District, after which time a new request must be submitted. An affidavit of an officer or employee of the District establishing attempted service by first class mail or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure by the District to provide written notice to a person under this subsection does not invalidate any action taken by the ~~Board.~~board.

(e) The applicant, at the applicant's expense, shall provide the notification by first class mail to the owner of any land contiguous to the land identified by the applicant in the application, or to the extent not already provided, to an owner of an operating water well within half (1/2) mile of the proposed well, not less than ten (10) days before the hearing. The applicant shall provide the District with proof of service including a list of names and addresses of the landowners and/or well owners that were notified.

Subchapter D. Contested Case Hearing Procedures

§ 9.301 Applicability

This subchapter applies to matters subject to a contested case hearing under § 9.209 for which a timely request for contested case hearing is pending before the District and the request has not been withdrawn.

§ 9.302 Persons Entitled to Request a Contested Case Hearing

The following persons may request a contested case hearing on the general manager's recommendation on an application subject to this subchapter:

(a) the applicant, if the applicant desires to contest the general manager's recommendation; and

(b) any other affected person.

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§ 9.303 Timing, Form and Contents of Requests for Contested Case Hearing

(a) A request for a contested case hearing may only be made for applications for groundwater exportation permits for more than 1,000 acre-feet per year or operating permits for more than 1,000 acre-feet per year.

(b) A request for a contested case hearing must be in writing and be filed by United States mail or hand delivery to the District by no later than five business days before the date of the hearing specified in the notice made pursuant to § 9.209, or by an applicant for an application for which a request for contested case hearing may be made, for which no other request for a contested case hearing was granted, not later than 20 days after the date the board issues an order granting the application if the order either included special conditions that were not part of the application as finally submitted and the general manager's recommendation on the application or granted a maximum amount of groundwater production that was less than the amount requested in the application.

(c) A hearing request must include the following:

(1) the name, address, email and daytime telephone number of the person filing the request. If the request is made by a corporation, partnership, other business entity, or group or association, the request must identify the entity and one person by name, physical and mailing address, email and daytime telephone number who shall be responsible for receiving all documents on behalf of the entity;

(2) the grounds for a contested case hearing~~set forth the grounds for a contested case hearing~~ and the basis for the contention that the person will be injured and has a personal justiciable interest in the matter;

(3) a request for a contested case hearing;

(4) whether or not the requestor is seeking a hearing to be conducted by SOAH;

(5) any other information requested in the notice of hearing; and

(6) the person filing the request shall subscribe and swear or affirm under oath that the facts set out in the request are true and correct before any person entitled to administer oaths who shall also sign his or her name and affix his or her seal of office to the request.

(d) When a request for a contested case hearing is filed by a person other than the applicant, a copy of that request must be served on the applicant at or before the time that the request is filed with the District. The request shall include a certificate indicating the date and manner of service and the name and address of all persons served.

(e) If a person is requesting a contested case hearing on more than one application, a separate request must be filed in connection with each application.

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§ 9.304 Processing of Hearing Requests

(a) Except as provided in Subsection (ed), the general manager shall schedule any timely filed contested case hearing request for board consideration at a preliminary hearing. At least three business days prior to the board hearing, the general manager shall provide notice to the applicant and other persons making a timely hearing request of the hearing. The board may receive relevant oral testimony or documentary evidence at the board hearing during which the contested case hearing request is evaluated.

(b) The hearing request will be the initial matter considered at the hearing on the permit application.

(c) Persons may submit a written response to the hearing request. Responses shall be filed with the District, the applicant and any persons filing a hearing request in connection with that matter. The response should address the question of whether the person requesting the contested case hearing has a personal justiciable interest related to the application at issue.

(d) The board shall evaluate the hearing request and any written responses thereto at the scheduled board hearing and shall determine that any person requesting the hearing:

(1) does not have a personal justiciable interest related to the application, or has not raised a justiciable issue related to the application, and denydoes not have a personal justiciable interest related to the application and deny the hearing request and not admit the person as a party to the hearing; or

(2) has a personal justiciable interest related to the application and has raised a justiciable issue related to the application, referhas a personal justiciable interest relating to the application, refer the application to a contested case hearing and admit the person as a party to the hearing.

(e) The board may delegate to a presiding officer the processing of requests for contested case hearing. The presiding officer may conduct the preliminary hearing and make a recommendation, but the board shall determine standing and whether a justiciable issue has been raised under Subsection (d).The board may delegate to a presiding officer the processing of requests for contested case hearing.

(f) The determination of whether a hearing request should be granted is not itself a contested case hearing.

§ 9.305 General Hearing Procedures in Contested Cases

(a) The procedures provided in this subchapter apply to contested case hearings. If the board refers a contested case hearing to SOAH, then the hearing shall be conducted as provided by §§ 36.416(b) and (c) and 36.4165, Texas Water Code, Subchapters C, D and F, Chapter 2001, Government Code and the applicable rules of practice and procedure of SOAH (Title 1, Chapter 155, Texas Administrative Code) governing any contested case hearing of the District conducted by SOAH, as supplemented by this subchapter.

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(b) At the board's determination, a contested case hearing of the District must be conducted by one of the following, except that the board shall refer the hearing to SOAH if the applicant or a party requests a hearing conducted by SOAH under § 9.303(c)(4) or by written request filed with the District not later than the 14th day before the date the evidentiary hearing is scheduled to begin, and the requesting party shall pay the costs as provided by § 36.416(c), Texas Water Code:

(1) a quorum of the board;

(2) an individual to whom the board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or

(3) a SOAH administrative law judge, if a contested case hearing is to be conducted by SOAH, or a delegation is made at the board's discretion.

(c) Except as provided by Subsection (d), the board president or a hearing examiner shall serve as the presiding officer at the hearing.~~the board chair, or another board member designated by the board chair, or a hearings examiner shall serve as the presiding officer at the hearing.~~

(d) If the hearing is conducted by a quorum of the board and the board president~~chair~~ is not present, the directors conducting the hearing may select another director to serve as the presiding officer.

(e) Authority of presiding officer: The presiding officer may conduct the hearing in the manner the presiding officer deems most appropriate for the particular proceeding. The presiding officer has the authority to:

(1) convene the hearing at the time and place specified in the notice for public hearing;

(2) set hearing dates;

(3) designate the parties;

(4) determine how to apportion costs related to a contract for the services of a presiding officer and the preparation of the official hearing record between the applicant and any other parties;~~determine how to apportion between the applicant and any protestants' costs related to a contract for the services of a presiding officer and the preparation of the official hearing record;~~

(5) establish the order for presentation of evidence;

(6) administer oaths to all persons presenting testimony;

(7) examine persons presenting testimony or comments;

(8) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;

(9) prescribe reasonable time limits for testimony and the presentation of evidence;

(10) exercise the procedural rules of the District;

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(11) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;

(12) require the taking of depositions and compel other forms of discovery under these rules;

(13) reopen the record of a hearing for additional evidence when necessary to make the record more complete;

(14) establish the jurisdiction of the District concerning the subject matter under consideration;

(15) rule on motions and on the admissibility of evidence and amendments to pleadings;

(16) conduct public hearings in an orderly manner in accordance with these rules;

(17) recess any hearing from time to time and place to place; and

(18) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of the presiding officer.

(f) Alignment of Parties in a Contested Case Hearing; Number of Representatives Heard: Parties in a contested case hearing may be aligned according to the nature of the hearing and their relationship to it. The presiding officer may require the participants of an aligned class to select one or more persons to represent them in the hearing or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.

(g) Appearance by Applicant or Movant: The applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to so appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the presiding officer deems it necessary in order to fully develop the record.

(h) Recording; reporting: Contested case hearings will be recorded by audio or video recording or, at the discretion of the presiding officer, may be recorded by a certified court reporter transcription. The District does not prepare transcripts of hearings or other proceedings recorded on District equipment for the public, but the District will arrange access to any recording. On the request of a party to a contested case hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party. If a proceeding other than a contested case hearing is recorded by a reporter and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original of any transcript will be filed with the District and placed in the papers

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of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.

(i) Continuance: The presiding officer may continue hearings in a contested case hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice under § 9.209. If the presiding officer continues a contested case hearing without announcing at the hearing the time, date and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to all parties, and may also provide notice by email. A continuance may not exceed the time limit for issuance of a final decision under § 36.4165, Texas Water Code.~~notice of the continued hearing by regular mail or email to all parties.~~

(j) Costs for hearing examiner. The persons other than the general manager that are admitted as parties to a contested case shall pay all costs associated with the hearing examiner and shall deposit with the District an amount determined by the general manager to be sufficient to pay those estimated costs not later than 30 days following the admission of the party to the contested case.

§ 9.306 Conduct and Decorum

Every person participating in or observing a contested case hearing, or other associated proceeding, must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants or observers. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If, in the judgment of the presiding officer, a person is acting in violation of this provision, the presiding officer shall first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the presiding officer may exclude that person from the proceeding for such time and under such conditions as the presiding officer deems necessary.

§ 9.307 Hearing Registration Forms

Each individual attending who provides comments or testimony in a contested case hearing shall submit a hearing registration form providing the following information: name, address, email, telephone number, who the person represents, if the person is not there in the person's individual capacity, whether the person plans to testify or provide comments and any other information relevant to the hearing.

§ 9.308 Opportunity for Hearing and Participation~~; Notice of Hearing~~

In a contested case, each party is entitled to an opportunity:

(a) for hearing; and

(b) to respond and to present evidence and argument on each issue involved in the case.

§ 9.309 Pre-Hearing Conferences

(a) The presiding officer may hold one or more pre-hearing conferences at which the presiding

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officer may consider any matter which may expedite the hearing or otherwise facilitate the hearing process.

(b) Matters Considered. Matters which may be considered at a pre-hearing conference include, but are not limited to:

(1) the withdrawal of a request for a contested case hearing;~~the withdrawal of a protest;~~

(2) the designation of parties;

(3) the formulation and simplification of issues;

(4) the necessity or desirability of amending applications or other pleadings;

(5) the possibility of making admissions or stipulations;

(6) the scheduling of discovery;

(7) the identification of and specification of the number of witnesses;

(8) the filing and exchange of prepared testimony and exhibits; and

(9) the procedure at the hearing.

(c) Conference Action. Action taken at a pre-hearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.

§ 9.310 Designation of Parties

The following persons shall be designated as parties in a contested case hearing:

(a) the general manager of the District is a party in all contested case hearings;

(b) the applicant is a party in a contested case hearing on its application; and

(c) any person who timely requested a contested case hearing pursuant to §§ 9.302 and 9.303~~§ 9.302~~ and who has been determined by the board to have~~determined by~~ a personal justiciable interest related to the application under § 9.304(d)~~the presiding officer to be a person entitled to a contested case hearing under the standard set forth in § 9.303~~.

§ 9.311 Informal Disposition of Contested Case Hearing

An informal disposition may be made of a contested case hearing by:

(a) stipulation;

(b) agreed settlement;

(c) consent order; or

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(d) default.

§ 9.312 Hearing Conducted by Hearings Examiner

(a) This section applies only to contested case hearings presided over by a hearings examiner.

(b) A hearings examiner who conducts a contested case hearing shall consider applicable rules or policies in conducting the hearing.

(c) The District shall provide the hearings examiner with the rules or policies applicable to the matter under consideration in the hearing.

(d) The District may not attempt to influence the findings of fact or the hearings examiner's application of law in a contested case hearing except by proper evidence and legal argument.

(e) The District may change a finding of fact or conclusion of law made by the hearings examiner, or may vacate or modify an order issued by the hearings examiner, only if the District determines:

(1) that the hearings examiner did not properly apply or interpret applicable law, rules or policies provided under Subsection (c), or prior administrative decisions;

(2) that a prior administrative decision on which the hearings examiner relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed and the District shall state in writing the specific reason and legal basis for a change made under this subsection.

§ 9.313 Certified Questions

(a) At any time during a contested case hearing presided over by a hearings examiner or SOAH, on a motion by a party or on the hearings examiner's or administrative law judge's own motion, a question may be certified to the District.

(b) Issues regarding District policy, jurisdiction or the imposition of any sanction by the hearings examiner or SOAH that would substantially impair a party's ability to present its case are among the types of issues appropriate for certification. Policy questions for certification purposes include, but are not limited to:

(1) the District's interpretation of its rules and applicable statutes;

(2) which rules or statutes are applicable to a proceeding; or

(3) whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(c) If a question is certified, the hearings examiner or administrative law judge shall submit the certified issue to the general manager. The general manager will place the certified issue on the agenda of the earliest possible meeting of the board, in compliance with the Open Meetings

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Act and other applicable law. The general manager will give the hearings examiner or administrative law judge and parties notice of the meeting at which the certified question will be considered. The parties to the proceeding may file with the District briefs on the certified question. Briefs shall be filed with the District, with a copy served on the parties and the hearing examiner or administrative law judge.Briefs shall be filed with the parties with a copy served on the hearings examiner or administrative law judge. The general manager will provide copies of the certified question and any briefs to the board. The hearing examiner or administrative law judge may abate the hearingThe hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner or administrative law judge determines that no party will be substantially harmed.

(d) The District will issue a written decision on the certified issue within 30 days following the meeting at which the certified issue is considered. A decision on a certified issue is not subject to a request for written findings and conclusions, a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

§ 9.314 Service of Documents filed in a Contested Case Hearing

(a) Service of all Documents Required. For any document filed with the District or the presiding officerthe judge in a contested case hearing, the person filing that document must serve a copy on all parties to the contested case including the general manager at or before the time that the document is filedthe time that the request is filed.

(b) Certificate of Service. A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The District may permit a document to be filed without a certificate of service but will require the certificate to be filed promptly thereafter.

§ 9.315 Privilege

In a contested case hearing, the District shall give effect to the rules of privilege recognized by law.

§ 9.316 Objections to Evidence

An objection to an evidentiary offer in a contested case hearingevidentiary offer in a contested hearing may be made and shall be noted in the record.

§ 9.317 Burden of Proof

The burden of proof is on the applicant to establish, by a preponderance of the evidence, that the applicantby a preponderance of the evidence that the applicant is entitled to have the application granted.

§ 9.318 Assessing Costs

Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may make a recommendation to the board regarding the assessment of the costs incurred

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by the District for the hearing, including the District's expenditures for attorney's fees and technical experts and any reporting and transcription costs to one or more of the parties. If the hearing is conducted by the board, a hearing report with recommendations need not be filed and the board may directly assess the District's hearing costs and reporting and transcription costs to one or more of the parties. The presiding officer must consider the following factors in assessing the District's hearing costs and the reporting and transcription costs:

(a) whether costs were incurred based on evidence presented to the District only after the contested case hearing was requested;

(b) the financial ability of the party to pay the costs;

(c) the extent to which the party participated in the hearing;

(d) the relative benefits to the various parties of having the costs incurred by the District;

(e) the budgetary constraints of a governmental entity participating in the proceeding; and

(f) any other factor that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of the District's hearing costs and reporting or transcription costs is an issue, the presiding officer must provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs must be included in the ~~hearing~~ presiding officer's proposal for decision~~presiding officer's report to the board~~.

§ 9.319 Rights of Designated Parties

Subject to the direction and orders of the presiding officer, parties have the right to conduct discovery; present a direct case; cross-examine witnesses; make oral and written arguments; obtain copies of all documents filed in the proceeding; receive copies of all notices issued by the District concerning the proceeding; and otherwise fully participate in the proceeding.

§ 9.320 Persons Not Designated Parties

At the discretion of the presiding officer, a person not designated as a party to a proceeding may submit a comment or statement, orally or in writing. Comments or statements submitted by non-parties~~non- parties~~ may be included in the record, but may not be considered by the presiding officer.

§ 9.321 Ex Parte Communications

Except as otherwise provided below, the presiding officer or a member of the board assigned to render a decision or to make findings of fact or conclusions of law on a contested permit application may not communicate, directly or indirectly, about any issue of fact or law during the pendency of the contested case with any representative of the District or other designated party to the contested case, except on notice and opportunity for all parties to participate. This rule does not apply to a board member who abstains from voting on any matter in which he or she engaged

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in ex parte communications. A member of the board may communicate ex parte with other members of the board consistent with the requirements of other law, such as the Open Meetings Act. A member of the board or the presiding officer may communicate ex parte with a District employee who has not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the District employee in evaluating the evidence.

§ 9.322 Evidence

The presiding officer shall admit evidence that is relevant to an issue at the hearing. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The Texas Rules of Evidence may be referred to in order to determine the admissibility and introduction of evidence in contested case hearings. However, evidence not admissible under the Texas Rules of Evidence may be admitted if the evidence is:

(a) necessary to ascertain facts not reasonably susceptible of proof under those rules;

(b) not precluded by statute; and

(c) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

In addition, evidence may be stipulated to by agreement of all parties.

§ 9.323 Written Testimony

(a) When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially thereby, the presiding officer may allow testimony in a contested case hearing to be received in written form.

(b) The written testimony of a witness, either in narrative or question and answer form, must be sworn to by the witness and may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness must be available, in person, by phone, or by other reasonable means, for clarifying questions and cross-examination and the prepared testimony will be subject to objection. On the motion of a party, the presiding officer may exclude written testimony if the person who submits the testimony is unavailable for cross-examination by phone, a deposition before the hearing, or other reasonable means.

§ 9.324 Requirements for Exhibits

(a) Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.

(b) Abstracts of Documents. When documents are numerous, the presiding officer may receive in evidence only those which are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

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(c) Introduction and Copies of Exhibits. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the presiding officer and to each of the parties, unless the presiding officer rules otherwise.

(d) Excluding Exhibits. In the event an exhibit has been identified, objected to and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.

§ 9.325 Official Notice; District Evaluation of Evidence

(a) In connection with a contested case hearing, the presiding officer may take official notice of:

(1) all facts that are judicially cognizable; and

(2) generally recognized facts within the area of the District's specialized knowledge.

(b) Each party shall be notified, either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information.

(c) Each party is entitled to be given an opportunity to object to material that is officially noticed.

§ 9.326 Agreement of Parties; Remand to Board

(a) No agreement between parties or their representatives affecting any pending matter shall be considered by the presiding officer unless it is in writing, signed and filed as part of the record, or unless it is announced at the pre-hearing conference~~announced at the prehearing conference~~ or the hearing and entered of record.

(b) An agreed disposition of a contested case may be made by stipulation, settlement, consent order, or the withdrawal of all requests for a contested case hearing so that no facts or issues remain controverted. Upon settlement of a matter, the presiding officer shall remand the matter to the board. If the person requesting the contested case hearing defaults, then the presiding officer may also deem the request for a contested case hearing to have been withdrawn by the person and remand the case to the board. Applications remanded under this section shall be considered to be uncontested and shall be considered under § 9.208. The presiding officer shall summarize the evidence, including findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing. Any stipulations, settlements, consent orders, withdrawals of requests for contested case hearing, orders, findings of default, presiding officer summary of the proceedings and other relevant documents shall be presented to the board for its consideration.

§ 9.327 Discovery

Discovery may be conducted upon such terms and conditions and at such times and places, as

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directed by the presiding officer. Unless specifically modified by this subchapter or by order of the presiding officer, discovery shall be governed by and subject to the limitations set forth in the Texas Rules~~set forth in, the Texas Rules~~ of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer.

§ 9.328 Documents in District Files

Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.

§ 9.329 Oral Argument

At the discretion of the presiding officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The presiding officer may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the board for final decision, further oral arguments may be heard by the board if the board did not preside over the hearing.

§ 9.330 Closing the Record

At the conclusion of the presentation of evidence and any oral argument, the presiding officer may close the record or, if the board has not taken final action on the application, keep it open and allow the submission of additional testimony by a person who testified at the hearing, or exhibits, briefs, or proposed findings and conclusions from one or more of the parties. Any supplementation of the record must be filed not later than the 10th day after the date of the final hearing. A person who files additional written material with the presiding officer under this section must also provide the material, not later than the 10th day after the date of the hearing, to each party to a contested case hearing. A person who receives additional written material under this section may file a response to the material with the presiding officer not later than the 10th day after the date the material was received. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer.

§ 9.331 Proposal for Decision before the Board

(a) Except as provided by Subsection (b), the presiding officer shall submit a proposal for decision to the District within the time required by § 36.410, Texas Water Code,~~No later than 30 days following the conclusion of the contested case hearing at SOAH, the presiding officer shall submit a proposal for decision to the District~~ and serve a copy on the applicant and each designated party to the contested case. A proposal for decision shall include a summary of the subject matter of the hearing, a summary of the evidence received and, for informational purposes only, any ~~or~~ public comments received and the presiding officer's recommendations for board action on the subject matter of the hearing. The presiding officer, when submitting the proposal for decision, shall notify the parties of the deadlines for the filing of exceptions and replies.

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(b) If the hearing was conducted by a quorum of the board and if the presiding officer prepared a record of the hearing, the presiding officer shall determine whether to prepare and submit a proposal for decision to the board under this rule.

§ 9.332 Exceptions to the Proposal for Decision

Prior to board action, within 15 days of the issuance of a proposal for decision, ~~by the presiding officer at SOAH,~~ any party in a contested case may file written exceptions to the proposal for decision. Any reply to the exceptions shall be filed within 15 days. Within 30 days of the deadline for filing written exceptions, the presiding officer may reopen~~the hearing examiner may reopen~~ the record for the purpose of developing additional evidence, or may deny the exceptions and submit the proposal for decision and exceptions to the board. The board may, at any time and in any case, remand the matter to the presiding officer~~remand the matter to the hearing examiner~~ for further proceedings.

§ 9.333 Scheduling a Meeting of the Board

(a) After receiving the proposal for decision or proposed order, the general manager shall schedule the presentation of the proposal for decision or proposed order to the board. The general manager shall provide at least 10 days' prior notice to the parties of the date of the board meeting at which the proposal for decision or proposed order will be presented and considered.

(b) Consistent with notices required by law, the board may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The board may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

§ 9.334 Oral Presentation before the Board

(a) Any party to the contested case hearing may make an oral presentation at the board meeting in which the proposal for decision in that case is presented to the board.

(b) Any party to the contested case hearing may make an oral presentation at the board meeting in which the proposed order in that case is considered by the board.

(c) Oral presentations before the board shall be limited to 15 minutes each, excluding time for answering questions, unless the ~~chair~~presiding officer establishes other limitations. Before the board meeting, the ~~chair~~presiding officer may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the board.

§ 9.335 Reopening the Record

The board, on the motion of any party to a contested case or on its own motion, may order the presiding officer to reopen the record for further proceedings on specific issues in dispute. The

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order shall include instructions as to the subject matter of further proceedings and the presiding officer's duties in preparing supplemental materials or revised proposals based upon those proceedings for the board's adoption.

§ 9.336 Decision

(a) No later than 60 days following the final hearing at which the board considers the proposal for decision~~completion of a contested case hearing at SOAH or no later than 30 days following the completion of any other contested case hearing~~, the board shall render its decision. The decision must be in writing. If a timely written request is filed in accordance with § 9.338, then the board's decision shall include findings of fact and conclusions of law separately stated regarding the decision of the board. The board shall provide certified copies of the findings and conclusions to the person who requested them and to ~~each person who provided comments or~~ each designated party, not later than the 35th day after the date the board received the request.

(b) The board may change a finding of fact or conclusion of law made by the presiding officer, or may vacate or modify an order issued by the presiding officer, only if the board determines:

(1) that the presiding officer did not properly apply or interpret applicable law, these rules, written policies provided to the presiding officer by the District, or prior administrative decisions;~~:~~

(2) that a prior administrative decision on which the presiding officer relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

§ 9.337 Notification of Decisions and Orders

(a) The District shall notify all parties in a contested case either personally or by certified mail, return-receipt requested, of any decision.

(b) The District shall send a copy of the decision in a contested case by first-class mail or email to attorneys of record and shall keep an appropriate record of the mailing. If a party is not represented by an attorney, the District shall send a copy of the decision by first-class mail or email to the party and shall keep an appropriate record of the mailing.

§ 9.338 Request for Findings and Conclusions; Motion for Rehearing

(a) Filing motion. Only a party to the contested case or an applicant in an uncontested hearing may file a request for written findings and conclusions or a motion for rehearing.

(b) Unless the board's decision includes findings of fact and conclusions of law, a request for written findings and conclusions shall be filed with the District within 20 days~~A request for written findings and conclusions shall be filed with the District within 20 days~~ of the date of the board's decision.

(c) ~~A motion for rehearing~~ A motion for rehearing shall be filed within the time provided by

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Subsection (d).~~may also be filed with the District within 20 days of the date of the board's decision.~~

(d) A motion for rehearing shall be filed no later than the 20th day after the date the board issues its written findings and conclusions, whether issued as part of its decision or in response to a request under Subsection (b).~~If a timely request for written findings and conclusions is filed, a motion for rehearing shall be filed no later than the 20th day after the date the board issues its written findings and conclusions.~~

(e) Failure to timely file a request for written findings and conclusions or motion for rehearing shall result in the board not considering the request or motion.

(f) On or before the date of filing of a request for written findings and conclusions or motion for rehearing, the party filing the request or motion shall mail or deliver a true and correct copy of the request or motion to all parties with certificate of service furnished~~with certification of service furnished~~ to the District.

(g) A request for written findings and conclusions or motion for rehearing shall contain:

(1) the name and representative capacity of the person filing the request or motion;

(2) the style and official docket number assigned by the District;

(3) the date of the decision; and

(4) for motions for rehearing, the grounds for the motion, including a concise statement of each allegation of error.

(h) Consolidation of motions for rehearing. The board shall hear motions filed by multiple parties together and no more than one set of motions may be considered with respect to a particular matter.

(i) On receipt of a timely filed request for written findings and conclusions, the board shall make written findings and conclusions regarding a decision of the board. The board shall provide certified copies of its written findings and conclusions to each party to the contested case proceeding not later than the 35th day after the request was filed with the District.

(j) Only a party to the contested case proceeding may reply to a request for written findings and conclusions or a motion for rehearing. A reply must be filed with the District within 20 days after the date the request for written findings and conclusions or motion for rehearing is filed.

(k) A timely filed motion for rehearing will be scheduled for consideration during a board meeting. If any party has timely filed a request for written findings and conclusions, the motion shall not be scheduled for consideration by the board prior to the board's issuance of its written findings and conclusions.

(l) Upon the request of a board member, a motion for rehearing shall be scheduled for consideration during a board meeting. Unless the board rules on the motion for rehearing, the

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failure of the board to grant or deny a motion for rehearing~~grant or deny a request for rehearing~~ before the 91st day after the date the request is submitted constitutes a denial of the motion by operation of law~~constitutes a denial of the request by operation of law~~.

(m) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision is nullified. The board may reopen the hearing to the extent it deems necessary. If the board grants a motion for rehearing, the board shall schedule the rehearing not later than the 45th day after the date the motion is granted. In a matter referred to SOAH, the board shall render its decision not later than 90 days after~~Thereafter, the board shall render its decision not later than 90 days after~~ the date of the decision that was the subject of the motion for rehearing.

§ 9.339 Decision Final

(a) In a matter referred to SOAH, the board shall render its decision not later than the 180th day after the date the District receives the final proposal for decision, unless all parties agree to an extension. If the board has not adopted the findings of fact and conclusions of law as proposed by the administrative law judge or issued revised findings of fact and conclusions of law by the 181st day after the date the administrative law judge issued the final proposal for decision, the proposal for decision is adopted as a final order on that day, is final and immediately appealable, and is not subject to a request for findings and conclusions or a motion for rehearing.~~If the board fails to render a decision within 180 days of the issuance of a final proposal for decision by the administrative law judge in matters referred to SOAH, the administrative law judge's proposal for decision is final and appealable 180 days from issuance.~~

(b) Except as provided in Subsection (a), in the absence of a timely filed motion for rehearing in accordance with § 9.338, a decision of the board is final on the expiration of the period for filing a motion for rehearing under § 9.338(d) or, if the decision does not include findings and conclusions and no timely request for them is filed, on the expiration of the period for filing that request under § 9.338(b).~~in the absence of a timely filed request for written findings and conclusions or motion for rehearing in accordance with § 9.338, a decision of the board is final on the expiration of the period for filing a motion as provided for in § 9.338.~~

(c) Except as provided in Subsections (a) and (b), if a party files a timely motion for rehearing, a decision of the board is final as follows:~~if a party files a timely request for written findings and conclusions or motion for rehearing, a decision of the board is final on the later of the following dates:~~

~~(1) if no request for written findings and conclusions is filed and the motion for rehearing is denied, the date the board denies the motion for rehearing, including a denial by operation of law if the motion is not denied within 90 days of the date the motion was filed;~~

~~(2) if no request for written findings and conclusions is filed and the motion for rehearing is granted, the date the board issues its written decision after the rehearing;~~

~~(3) if no motion for rehearing is filed but a request for written findings and conclusions is filed, the date the board issues its written findings and conclusions;~~

(1)~~(4)~~ if the motion for rehearing is denied,~~if a request for written findings and~~

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~~conclusions is filed and a party thereafter timely files a motion for rehearing and the motion for rehearing is denied,~~ the date the board denies the motion, including a denial by operation of law if the motion is not granted or denied before the 91st day after the date the motion was filed; or~~including a denial by operation of law if the motion is not denied within 90 days of the date the motion was filed;~~

(2)~~(5)~~ if the motion for rehearing is granted,~~if a request for written findings and conclusions is filed and a party thereafter timely files a motion for rehearing as provided in § 9.338(d) and the motion for rehearing is granted,~~ the date the board issues its written decision after the rehearing.~~;~~

~~(6) if a motion for rehearing is filed and a party thereafter timely files a request for written findings and conclusions as provided in § 9.338(b) and the motion for rehearing is subsequently denied after the board issues its written findings and conclusions, the date the board denies the motion, including a denial by operation of law if the motion is not denied within 90 days of the date the motion was filed; or~~

~~(7) if a motion for rehearing is filed and a party thereafter timely files a request for written findings and conclusions as provided in § 9.338(b) and the motion for rehearing is subsequently granted after the board issues its written findings and conclusions, the date the board issues its written decision after the rehearing.~~

§ 9.340 Appeal of Final Decision

(a) Not later than the 60th day after the date on which the decision of the board becomes final, a party to a contested case hearing or an applicant in an uncontested hearing may appeal the District's decision by filing suit under § 36.251, Texas Water Code. Regardless of whether or not a motion for rehearing is timely filed, a suit may not be filed against the District under § 36.251 if a request for written findings and conclusions was required under § 9.338(b) and was not timely filed.~~if a request for written findings and conclusions was not timely filed as provided in § 9.338(b).~~ An applicant or a party to a contested case hearing may not file suit against the District under § 36.251 if a request for rehearing was not filed on time. The requirements of this subsection relating to a request for findings and conclusions or a motion for rehearing do not apply to a proposal for decision adopted as a final order under § 9.339(a).~~if a request for rehearing was not filed on time.~~

(b) The record. The record in a contested case shall include the following:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings on them;

(5) summaries of the results of any conferences held before or during the hearing;

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(6) proposed findings, exceptions and briefs;

(7) any decision, opinion or report issued by the presiding officer;

(8) pre-filed testimony;

(9) all memoranda or data submitted to or considered by the presiding officer; and

(10) the final order and all interlocutory orders.

§ 9.341 Costs of Record on Appeal

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

Subchapter E. Procedures for Adoption of Rules and Groundwater Management Plan

§ 9.401 Petition for Rulemaking

(a) A person with a real property interest in groundwater in the District may file a petition with the District to request the adoption of a rule or to request a change to an existing rule.

(b) Petitions must be submitted in writing to the District Office~~Petitions must be submitted in writing to the District office~~ and must comply with the following requirements:

(1) each rule requested must be submitted by separate petition;

(2) each petition must be signed and must state the name and address of each person signing the petition;

(3) each petition must include:

(A) a brief description of the petitioner's real property interest in groundwater in the District;

(B) a brief explanation of the proposed rule;

(C) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any; and

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(c) The general manager of the District may reject any petition for failure to comply with the requirements of Subsection (b) of this section and shall provide notice to the petitioner of the

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reasons for the rejection.

(d) Within 90 days after submission of a petition that complies with this section, the board shall either:

(1) deny the petition, stating its reasons for denial in the minutes of the board meeting or in a letter providing a written explanation to the petitioner; or

(2) initiate rulemaking proceedings as provided by § 36.101, Texas Water Code.~~as provided by Section 36.101, Water Code.~~

(e) The petitioner shall reimburse the District for any costs incurred by the District to provide notice of a rulemaking hearing under § 9.402~~Subchapter 9.401~~.

§ 9.402 Rulemaking and Groundwater Management Plan Hearing Procedures

(a) The District shall adopt rules and its groundwater management plan following the notice and hearing procedures set forth in this subchapter.

(b) Not later than the 20th day before the date of a rulemaking or groundwater management plan hearing, the general manager shall provide notice of the public hearing as follows:

(1) post a notice in a place readily accessible to the public at the District Office;

(2) provide a copy of the notice to the Cherokee, Henderson and Anderson County Clerks,~~Cherokee, Henderson and Anderson County Clerk,~~ to be posted at the county courthouses;

(3) publish the notice in one or more newspapers of general circulation in the District;

(4) provide the notice by mail or email to any person who has requested the notice pursuant to Subsection (g); and

(5) make available a copy of the proposed rules or groundwater management plan at a place accessible to the public during normal business hours and on the District's website.

(c) The notice shall include the following information:

(1) the time, date and location of the rulemaking or groundwater management plan hearing;

(2) a brief explanation of the subject of the rulemaking or groundwater management plan hearing; and

(3) the procedures for submitting oral or written comments and the location and website at which a copy of the proposed rules or groundwater management plan may be reviewed or copied.

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(d) The board president, another board member designated by the board, or a hearing examiner appointed by the board shall serve as the presiding officer at the public hearing. ~~The general manager may designate a person to be the presiding officer to conduct the public hearing.~~ The presiding officer shall conduct a rulemaking or groundwater management plan hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule or groundwater management plan as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments. The District shall allow at least 20 days for submission of written public comments on a proposed rule or groundwater management plan before adopting the proposed rule or plan.

(e) Any person participating in a rulemaking hearing must submit to the District a registration form indicating the person's name, address and who the person represents, if the person or entity represented is not in attendance.

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

(g) A person may submit to the District a written request for notice of a rulemaking or groundwater management plan 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 or groundwater management plan 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 or email to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(h) The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about a contemplated rule or groundwater management plan provision and may appoint an advisory committee of experts, interested persons, or public representatives to advise the District about a contemplated rule or groundwater management plan provision.

(i) Oral Presentations. Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer may establish the order of testimony and may limit the number of times a person may speak, the time period for oral presentations and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

(j) Adoption of Proposed Rules or Groundwater Management Plan. After the conclusion of the hearing and the time period for submission of written comments, the board shall consider all timely written comments and shall, in the order adopting the rule or plan, state the District's responses to the written comments.

(k) A proposed rule becomes final and effective on the day it is adopted by the board, unless otherwise specified by the board.

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§ 9.403 Emergency Rulemaking

(a) The District 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 findings under Subdivision (1)~~Subsection (a)~~.

(b) Except as provided by Subsection (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 the Open Meetings Act.

§ 9.404 Notice of Proposed Desired Future Conditions for Managed Aquifers

(a) Not later than the 10th day before the date of a public hearing on the groundwater management area's adoption of any proposed DFC or a board meeting to adopt any DFC declared by the TWDB to be administratively complete, the general manager shall provide notice of the hearing or meeting as follows:

(1) post a notice in a place readily accessible to the public at the District Office;

(2) provide a copy of the notice to the Cherokee, Henderson and Anderson County Clerks, to be posted at the county courthouses;

(3) publish the notice in one or more newspapers of general circulation in the District; and

(4) make available a copy of the DFCs at a place accessible to the public during normal business hours and on the District's website.

(b) The notice shall include the following information:

(1) the DFCs and a list of any other agenda items;

(2) the date, time, and location of the hearing or meeting;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the names of the other districts in the District's groundwater management area; and

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(5) information on how the public may submit comments and the location and website at which a copy of the DFCs may be reviewed or copied.

CHAPTER 10. WATER QUALITY

§ 10.001 Prohibition on Pollution of Groundwater

A person or entity may not pollute or contribute to the pollution of groundwater in the District and, as applicable, must follow~~in the District and as applicable, must follow~~ all federal, state and local environmental statutes, requirements and regulations.

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CHAPTER 11. GROUNDWATER CONSERVATION PLANS

§ 11.001 Duty to Conserve

All permittees shall implement all reasonable measures to conserve the use of groundwater withdrawn from the managed aquifers and be conservative in water use consistent with this chapter. This duty is in effect on a year-round basis.

§ 11.002 Duty to Implement Groundwater Conservation Plans

(a) If required by board order, each permittee shall implement and maintain a groundwater conservation plan.

(b) A permittee required to prepare or submit a groundwater conservation plan under 30 Texas Administrative Code Chapter 288, Subchapter A shall submit a copy of that required water conservation plan to the District.

(c) Any amendment, update, or revision to a water conservation plan required under state law or these rules shall be submitted to the District not later than the 30th day after the amendment, update, or revision is adopted or approved.~~not later than the 30th day after the plan is adopted, approved, or revised.~~

(d) A groundwater conservation plan required under this section shall be implemented on a year-round basis and shall be consistent with:

(1) the District groundwater management plan;

(2) the District's drought contingency plan; and

(3) these rules.

(e) The District may accept equivalent water conservation plans and related status reports prepared for other public entities in furtherance of compliance under this ~~sub~~chapter.

§ 11.003 Contents of Groundwater Conservation Plan

~~(a)~~ Groundwater conservation plans shall be submitted on a form prescribed by the District and shall include, in addition to the information specified in § 9.104, the following:

(1) name of permittee~~name of applicant~~ and permit number;

(2) name, address and telephone number of the permittee;

(3) name, address and telephone number of the contact person;

(4) name, address and telephone number of the person preparing the plan;

(5) type of water use;

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(6) brief description of water use;

(7) for municipal and industrial permittees, a prohibition of landscape watering or irrigation during periods of peak water loss due to evapotranspiration (typically between 10:00 a.m. and 8:00 p.m.)~~(typically between the hours following 10:00 a.m. until 8:00 p.m.)~~, unless performed with a hand-held or soaker hose;

(8) for municipal permittees, the following must also be submitted in the plan:

(A) types of accounts (residential, commercial, industrial, etc.) and number of customers in each and water use by volume and by percent for each type of account;

(B) total number of connections;

(C) estimated per capita water usage (gallons per person per day);

(D) water conservation enforcement measures; and

(E) programs and implementation schedules to accomplish applicable water conservation best management practices~~applicable BMPs~~;

(9) for industrial users, the following must also be submitted in the plan:

(A) information on the types (processes) of water use; and

(B) use by volume and by percent for each type of use (for landscaping uses provide the volume of water used per square foot);

(10) for irrigation users, the following must also be submitted in the plan:

(A) a map or plat to scale indicating the number of irrigated acres per farm;

(B) current irrigation methods;

(C) the organization of the farm to reflect the different irrigation methods and different irrigation practices utilized;

(D) a description of the irrigation system showing that surge flow irrigation systems are utilized, or other irrigation systems that achieve 60% or greater application efficiency. If other irrigation systems are used, the applicant must provide results of efficiency evaluations confirming that the systems achieve 60% or greater application efficiency; and

(E) a statement and documentary evidence that all efficiency evaluations have been conducted no more than five years prior to the date the plan is submitted;~~no more than five years prior to the date the plan is submitted.~~

(11) any other information as may be required by the District.

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§ 11.004 Basis for Action on Groundwater Conservation Plan

~~(a)~~ The general manager shall approve a plan if the plan meets the following:

(1) the plan complies with these rules;

(2) the permittee is in compliance with any permits the permittee holds from the District and with these rules;~~permits the applicant holds from the District and with the rules;~~

(3) the plan demonstrates the permittee is using or will use reasonable measures to be conservative in water use; and

(4) the plan, if implemented, will promote the maximization and efficient beneficial use of groundwater from the managed aquifers.

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CHAPTER 12. DROUGHT CONTINGENCY PLANS

§ 12.001 Drought Declaration Authority

(a) The general manager may declare the existence of drought conditions and implement drought stages when the criteria in this chapter are met.

(b) The board may ratify, modify, or rescind a drought declaration at a duly posted meeting.

(c) Drought declarations and stage changes shall be posted on the District's website and provided to permittees.

§ 12.002 Drought Triggers

(a) Drought stages shall be triggered based on drought severity indices, including but not limited to the Palmer Drought Severity Index (PDSI) or other drought indices adopted by the board by resolution.

(b) The general manager shall report current drought severity index conditions at each regular board meeting during declared drought conditions.

§ 12.003 Drought Stages

(a) The District may implement multiple drought stages, including:

(1) Stage 1 – Conservation

(2) Stage 2 – Alarm

(3) Stage 3 – Critical

(4) Stage 4 – Emergency

(b) The board may establish, by resolution, production curtailment percentages and use restrictions applicable to each drought stagte.

(c) During Stage 2 (Alarm), Stage 3 (Critical), or Stage 4 (Emergency) conditions, groundwater withdrawn for a non-exempt use may not be used to fill or refill ponds.

(d) Drought stages remain in effect until formally rescinded by the general manager or board.

§ 12.004 Compliance with Drought Contingency Plans

(a) Each municipality or public water supply entity required to prepare a drought contingency plan under 30 Texas Administrative Code Chapter 288, Subchapter B, or each permittee required to prepare or submit a drought contingency plan under any other provision of these rules, shall implement and maintain a drought contingency plan.

(b) A permittee subject to ~~Subchapter~~Subsection (a) shall submit a copy of the drought

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contingency plan to the District.

(c) Any amendments to a drought contingency plan required under state law or these rules shall be submitted to the District not later than the 30th day after the amendment is adopted or approved.~~not later than the 30th day after the plan is adopted or approved.~~

(d) During declared drought conditions, applicable permittees shall implement and comply with their approved drought contingency plans.

§ 12.005 Reporting During Drought

~~(a)~~ During declared drought conditions:

(1) permittees may be required by the board to submit monthly production reports; and

(2) additional reporting requirements may be imposed by the board to ensure compliance with drought response measures.

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CHAPTER 13. INVESTIGATIONS AND ENFORCEMENT

§ 13.001 Inspections and Investigations

(a) Any District employee, agent or representative may enter any public or private property within the boundaries of the District at any reasonable time for the purpose of inspecting or investigating conditions relating to the quality or quantity of groundwater or compliance with the District Act~~or in regard to the compliance with the District Act~~, Chapter 36 of the Texas Water Code, or any rule, permit, or order of the District. Such persons acting under this authority who enter private property shall, prior to entry, give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the property, as determined by information contained in an application, registration, permit, or other information on file with the District, if any.

(b) District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, shall notify any occupant or management of their presence, and shall exhibit proper credentials.

§ 13.002~~3~~ Judicial Civil Enforcement

(a) The District may enforce its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant, in the same action, civil penalties, recovery for attorney's fees, costs for expert witnesses and other costs incurred by the District before the court.

(c) Civil penalties for breach of any rule of the District shall be not less than $100 per day per violation and not more than $25,000 per day per violation. The board may adopt by rule a schedule of civil penalties that classifies violations, including major violations, and sets penalty amounts within the range provided by this subsection.

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

§ 13.003~~4~~ Enforcement Action by the General Manager

If the general manager determines that a person, or his or her predecessor in interest, is in violation of these rules, the terms or conditions of a permit, or TDLR Rules the District is authorized to enforce, he or she may suspend the processing of any application ~~or~~for any authorization that the person has pending before the District.

§ 13.004~~5~~ Enforcement Action by the Board

If the board determines that a person, or his or her predecessor in interest, violated, is violating, or

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is threatening to violate these rules, the terms or conditions of a permit, or TDLR Rules the District is authorized to enforce, it may, after providing a 10-day written notice to the person and an opportunity for the person to appear and be heard at a meeting of the board:

(a) suspend the processing of any application ~~or~~for any authorization that the person has pending before the District, until the violation is remedied;

(b) suspend any permit or authorization issued by the District, which is held by that person, until the violation is remedied;

(c) commence any action authorized by law to address the violation, including filing a civil suit in state district court seeking an injunction, a mandatory injunction, civil penalties and attorney's fees and other costs associated with bringing a suit; or

(d) enter into, or authorize the general manager to enter into, a settlement agreement with the person.

§ 13.00~~5~~6 Enforcement Related to Annual Groundwater Production Limitations

(a) If the holder of an operating permit exceeds the annual authorized withdrawal amount in the permit, the District shall notify the holder and meet with the holder to determine the reason for the overage. The District may conduct a site visit under § 13.001 to verify the reason.~~If the board determines that the holder of an operating permit has exceeded the annual authorized withdrawal amount in the permit, the board may suspend taking enforcement action for a period of time in order to determine whether the holder of the permit has average annual withdrawals over a three-year period in excess of the permit's annual authorized withdrawal amount.~~

(b) If the District finds that the overage resulted from line breaks, leaks, or other circumstances beyond the holder's reasonable control that the holder has corrected or is diligently correcting, the District may resolve the matter by a compliance plan without further enforcement action.~~If the board determines that the holder of an operating permit has annual withdrawals over a three-year period in excess of the permit's annual authorized withdrawal amount, the general manager and the board may commence any enforcement action authorized by these rules and other law to enforce the terms of the permit.~~

(c) Otherwise, the District may commence any enforcement action authorized by these rules and other law to enforce the terms of the permit.

(d) Whether or not enforcement action is taken, the permit holder shall pay groundwater production fees on the amount of groundwater produced in excess of the annual authorized withdrawal amount, in addition to the groundwater production fees due on the authorized amount under § 7.003.

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