

**RULES AND REGULATIONS**

**OF THE**

**MENARD COUNTY UNDERGROUND**

**WATER DISTRICT**

*Adopted 08/28/2024*

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## SECTION 1: ADOPTION AND PURPOSE OF RULES

### 1.01 PUBLISHING DATE

The Rules of the Menard County Underground Water District are hereby published as of the 14th day of April 2015. These Rules are adopted and ratified pursuant to Section 59 of Article XVI of the Texas Constitution, and with Acts of the Special District Local Laws Code Ch. 8861(hereinafter the “District Act”) and Chapters 35 , 36, and 49 of the Texas Water Code, as the Rules of the Menard County Underground Water District. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended. These Rules were amended and re-adopted after a public hearing on October 11, 2023 to include changes made during the 88<sup>th</sup> legislative session.

### 1.02 PURPOSE OF RULES.

*Texas Water Code Sec. 36.0015*

The rules, regulations, and modes of procedure set forth hereunder are and have been adopted for the purpose of conserving, preserving, protecting and recharging the groundwater in the District and are adopted under the District’s statutory authority to prevent waste and protect rights of owners of interests in groundwater.

### 1.03 PETITION FOR ADOPTION OR MODIFICATION OF RULES

*Texas Water Code Sec. 36.1025*

1. A person with a real property interest in groundwater in the District may file a petition with the District to request the adoption or modification of a rule.
2. Petitions must be submitted in writing to the General Manager at the District office and must comply with the following requirements:
  - a. each rule requested must be submitted by separate petition;
  - b. each petition must be signed and state the name and address of each person signing the petition;
  - c. each petition must include:
    - i. a brief written description and a drawing showing the location of the petitioner’s real property interest in groundwater in the District;
    - ii. a brief explanation of the proposed rule;
    - iii. the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;
    - iv. an allegation of injury or inequity that could result from the failure to adopt the proposed rule.
3. The General Manager 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 reason for the rejection.
4. Within 90 days after the date the District receives the petition that complies with this section, the Board shall either 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 initiate rulemaking proceedings as provided by Section 36.101, Water Code.

5. There is no private cause of action for a decision to accept or deny the petition.

#### 1.04 SEVERABILITY.

If any provision of any Rule or its application to any person or circumstance is held invalid, illegal, or unenforceable, the invalidity does not affect other provisions or applications of the Rule which can be given effect without the invalid provision or application, and to this end, the provisions of the Rule are severable.

#### 1.05 HEADING AND CAPTIONS.

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

## SECTION 2: DEFINITIONS

### 2.01 TERMS

In the administration of its duties the Menard County Underground Water District defines terms as set forth in Chapter 36 of the Texas Water Code. Unless the context indicates a contrary meaning, the specific terms hereinafter defined shall have the following meaning in these Rules:

1. "Abandoned Well" means a well that has not been used for six consecutive months. A well is not considered to be abandoned in the following cases:
  - a. it is a non-deteriorated well which contains the casing, pump, and pump column in good condition; or
  - b. it is a non-deteriorated well which has been capped.
2. "Acre-foot" is the amount of water necessary to cover one acre of land to a depth of one foot, approximately 325,851 gallons.
3. "Agent" means the person authorized to act on behalf of the landowner with respect to transactions involving the Menard County Underground Water District.
4. "Agriculture" means any of the following activities:
  - a. Cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
  - b. The practice of 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; and
  - f. Raising or keeping equine animals.
5. "Agricultural use" means any use or activity involving agriculture, including irrigation.

6. "Applicant" means the owner of the land on which the well(s) or proposed well(s) are located, unless the landowner authorizes another person to act on his/her behalf with respect to transactions involving the District.
7. "Authorized Well Site" means:
  - a. The location of a proposed well on an application duly filed with the District until such application is denied; or
  - b. The location of a proposed well on a valid permit. (An authorized well site is not a permit to drill); or
  - c. A well which produces in excess of 25,000 gallons of water per day and which was in existence at the time the District was created or at the time the area was annexed into the District and is not considered to be an abandoned well or deteriorated well; or
  - d. A well drilled after the District was created or after the area was annexed into the District that has a properly completed Well Registration on file in the District office and such well has not been "abandoned" by the well owner.
8. "Beneficial Use" means
  - a. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
  - b. exploring for, producing, handling, or treating oil, gas, sulfur or other minerals;
  - c. any other purposed that is useful and beneficial to the user
9. "Bentonite" means a sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which may be mixed with potable water and used to provide a seal in the annular space between the well casing and borehole wall or used in the plugging of wells.
10. "Board" means the Board of Directors of the Menard County Underground Water District, consisting of five (5) duly elected members.
11. "Capped Well" means a well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.
12. "Casing" means a tubular watertight structure installed in the excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, and, along with cementing and/or bentonite grouting, to confine groundwater to its zone of origin and prevent surface contaminant infiltration. Casing diameter is the inside diameter of a well casing.
13. "Cement" means a neat Portland construction cement mixture of not more than seven (7) gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum, or other additives. All manufacturer's recommendations regarding water content for the mix must be strictly adhered to.
14. "Completion" means sealing off the access of undesirable water to the well bore by proper casing and/or cementing procedures and adherence to State standards for completion.
15. "Deteriorated Well" means a well, the condition of which will cause, or is likely to cause, pollution of groundwater.
16. "District" means the Menard County Underground Water District, with its principal office in Menard, Texas.



17. "Domestic Well" means a well that will produce water to be used exclusively to supply the needs of a single household for drinking, washing, cooking, landscape watering, family gardening and watering of domestic animals, for which no monetary consideration is given or received. A domestic well does not include use by more than a single family household nor for a public water system.
18. "Exempt Well" means any well for which the District is prohibited from requiring a permit under Texas Water Code § 36.117, except wells required by the District to have a permit under Section 8861.102 of the Act. For all purposes herein, an exempt well shall be exempt from permitting requirements, but shall comply with the registration requirements set forth hereunder in Section 8.
19. "Groundwater" means water percolating below the earth's surface within the District but does not include water produced with oil in the production of gas and oil.
20. "Installer" means an individual who installs or repairs pumps and equipment for hire or compensation.
21. "Monitoring well" is a well used to measure some property of the groundwater aquifer it penetrates.
22. "Open or Uncovered Well" means any artificial excavation drilled or dug for the purpose of producing groundwater and that is not capped or covered as required by the Texas Water Code.
23. "Open meeting law" is defined by Chapter 551, Texas Government Code.
24. "Operating permit" the permit issued by the district pursuant to Section 9 hereunder for a water well which is not an exempt well, allowing groundwater to be withdrawn from a well in a designated amount for a designated purpose for a designated time within the District boundaries.
25. "Operator" means and includes any person, firm, partnership, or corporation or other legal entity that has the right to produce water from the land either by ownership, contract, lease, easement, or any other estate in the land.
26. "Permitted Well" means any artificial excavation drilled or dug for the purpose of producing groundwater that:
  - a. is not exempt as defined by Section 36.117 the Water Code;
  - b. required by the District to have a permit under Section 8861.102 of the Act is in compliance with the District's permitting requirements.
27. "Person" means any individual, partnership, firm, state governmental agency, political subdivision, corporation or other legal entity.
28. "Plugging" means an absolute sealing of the well bore.
29. "Pollution" is the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the District that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
30. "Power of Attorney" means a form signed by an owner of land granting authority to another person to act on his/her behalf with respect to transactions involving the District.
31. "Presiding Officer" means the President, Vice-President, Secretary, or other Board Member presiding at any hearing or other proceeding.

32. "Public records law" is defined by Chapter 552, Government Code.
33. "Pump installation" means the procedures employed in the placement, and preparation for operation, of equipment and materials used to obtain water from a well, including construction involved in establishing seals and safeguards as necessary to protect the water from contamination. The term includes repairs to an existing pump.
34. "Production" means all water withdrawn from the ground, measured at the well head.
35. "Registration" means the completion of an Exempt Well Registration Form prior to the drilling and production of water.
36. "Registered Well" means and includes any artificial excavation to produce or that is producing water for any purpose that has been properly recorded with the District.
37. "Rules" are the rules of the District compiled herein, as may be amended or supplemented from time to time.
38. "State Well Report" shall mean a "Well Report"
39. "Transport Permit" shall mean pumping, transferring, exporting or moving from the originating well out of the District boundaries, without regard to the manner the water is transferred or moved, including but not limited to discharges into water courses. Any landowner whose property is divided by a District boundary will be exempt from out of District transport considerations so long as the water use remains within their contiguously owned acreage. The terms "transfer" or "export" of groundwater are used interchangeably within Chapter 36, Texas Water Code and these Rules.
40. "Transportation facility" is any system for transporting water, which may include a pipeline, channel, ditch, watercourse or other natural or artificial facilities, or any combination of such facilities, pertaining to any or all water which is produced from a well or wells located or to be located within the District, any or all of which is used or intended for use a distance greater than a quarter (1/4) mile from the originating well, or any distance outside the boundaries of the District.
41. "Undesirable Water" means water that is injurious to human health, to vegetation, to land, or to fresh water, or water that can cause pollution.
42. "Waste" means any one or more of the following:
  - a. Withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or livestock raising purposes;
  - b. The flowing or producing of wells from a groundwater reservoir if the water produced is not used for 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 permitting groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the Texas Natural Resource Conservation Commission under chapter 26; or

- f. Groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or
  - g. for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205 of the Texas Water Code.
43. "Water" or "Underground Water" means groundwater.
  44. "Well" or "Water Well" means and includes any artificial excavation constructed for the purpose of exploring for or producing or withdrawing groundwater
  45. "Well operator" means a person who operates a well or water distribution system supplied by a well.
  46. "Well Report" means a record made at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of any water bearing strata, depth, size and character of casing installed, together with any other data or information required by the State or this Board and recorded on forms prescribed either by the State regulatory agency with jurisdiction thereof or by this Board.
  47. "Well system" means a group of wells connected or tied together by a pipeline and/or storage facilities.
  48. "Withdraw" means the act of extracting groundwater from beneath the land surface by pumping or some other method.

## SECTION 3: GENERAL MANAGER

### 3.01 AUTHORITY OF MANAGER

The general manager employed or contracted with by the District of the District shall have full authority to manage and operate the affairs of the District subject only to the orders of the board.

### 3.02 DIRECTOR MAY BE MANAGER

A director may be employed as general manager of the District. The compensation of a general manager who also serves as a director shall be established by the other directors.

## SECTION 4: GENERAL PROCEDURAL PROVISIONS

### 4.01 COMPUTING TIME

In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

### 4.02 METHODS OF SERVICE UNDER THE RULES.

1. Except as otherwise expressly provide elsewhere in these Rules, any notice or document required by these Rules to be served or delivered may be delivered to the recipient, or the

recipient's authorized representative, in person, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by email.

2. Service by mail is complete upon deposit in any depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. in the recipient's time zone shall be deemed to be completed the following business day.
3. If service is by mail, and the recipient has the right, or is required, to do some act within a prescribed period after service, three days will be added to the prescribed period from the date of deposit in the post office. Where service by other methods has proved impossible, the service is complete upon publication of notice in a newspaper with general circulation in the District.

#### 4.03 MINUTES AND RECORDS OF THE DISTRICT

All official documents, reports, records and minutes of the District will be available for public inspection and copying in accordance with the Texas Open Records Act. Upon written application of any person, the District will furnish copies of its public records. Persons who are furnished copies may be assessed a copying charge, pursuant to policies established by the General Manager.

### SECTION 5: ENFORCEMENT OF RULES

#### 5.01 SHOW CAUSE ORDERS AND COMPLAINTS

The Board, either on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite any person operating within the District to appear before it in a public hearing and require him or her to show cause why his or her operating authority or permit should not be suspended, canceled, or otherwise restricted and limited, for failure to comply with the Rules, orders or regulations of the Board or the relevant statutes of the State, or for failure to abide by the terms and provisions of the permit or operating authority itself. The matter of evidence and all other matters of procedure at any such hearing will be conducted in accordance with these rules of procedure and practice.

#### 5.02 INSTITUTION OF SUIT.

If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Rules, the District may institute and conduct a suit for enforcement of these rules pursuant to provisions of Chapter 36.102 of the Texas Water Code, as amended.

1. The District may enforce these rules by injunction, mandatory injunction, or other appropriate remedy in court;
2. The Board may recover reasonable civil penalties pursuant to such suit, not to exceed \$5,000 per day per violation, and each day of a continuous violation constitutes a separate violation.
3. Penalty under this rule is in addition to penalties which may be imposed pursuant to any other law of the State; and

4. If the District prevails in any suit to enforce its rules the District may seek and the Court shall grant, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the Court.

## SECTION 6: WASTE

*Texas Water Code Sec. 36.001(8)*

### 6.01 PROHIBITION OF WASTE

1. Groundwater, whether from a permitted or non-permitted well, shall not be produced within, or used within or without the District, in such a manner or under such conditions as to constitute waste as defined in Section 2.01.41 hereof.
2. After April 15, 2015, the District shall not issue new permits for furrow irrigation.
3. Any person producing or using groundwater shall use every reasonable precaution, in accordance with reasonable methods, to stop and prevent waste of such water. No person shall pollute or harmfully alter the character of the groundwater reservoir of the District by means of salt water or other deleterious substance admitted from some other stratum or strata or from the surface of the ground

## SECTION 7: CAPPING OR SEALING OF WELLS

*Texas Water Code Sec. 36.118*

### 7.01 OPEN OR UNCOVERED WELLS.

1. The District may require the owner or operator/lessee of any land within the District upon which is located any open or uncovered well to plug or cap the same as set forth below and in accordance with Texas Water Code §36.118(a) and Title 16 Texas Administrative Code §76.72, as amended, except when the well is in actual use.
2. A non-deteriorated well which contains casing in good condition and is beneficial to the owner or operator/lessee shall be closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of not less than four hundred (400) pounds and constructed in such a way that the covering cannot be easily removed by hand.
3. Officers, agents and employees of the District are authorized to serve or cause to be served 39 notice upon any owner or operator/lessee of a well in violation of this rule, thereby requesting such owner and/or operator/lessee to close or cap such well with a covering in compliance herewith.

## SECTION 8: WELL REGISTRATION

### 8.01 WELL REGISTRATION

*Texas Water Code Sec. 36.111*

1. Well Registration is required for all existing and future wells, whether exempt or non-exempt in the District and shall be filed with the District on a form and in the manner required by the District.
2. Prior to the drilling of any new well, a completed application for the drilling of a well (Well Registration Form) must be filed with the District on its prescribed forms.
3. Registration forms for new wells (Well Registration Form) shall include the following information:
  - a. name and address of the well owner;
  - b. location or proposed location of the well, including the county, legal description, longitude and latitude, acreage or lot size, and the number of feet to the nearest property lines;
  - c. distance in feet to nearest well;
  - d. well use or proposed use;
  - e. location of use or proposed use;
4. In addition to the above information, the following information shall be included, to the extent known for an existing well:
  - a. date drilled;
  - b. well depth;
  - c. casing type and size
  - d. pump HP; and
  - e. gallons per minute (GPM) being produced.
  - f. additional data may be required by the Board.
5. The registration forms shall be signed by the owner of the land or his duly appointed agent, including a partner, operator, driller, or any other person who has the authority to construct the well and/or operate the well for the proposed use.
6. In order to provide for the registration of existing water wells that are subject to the rules and regulations of the District, it shall be the policy of this Board that District personnel and/or designated agents acting for the District may register wells drilled and equipped within the District which the land owner or his/her agent has not registered; provided that such wells were not drilled, equipped, and operated (pumped) in such a manner as to violate any rules and regulations of the District.

#### 8.04 PRELIMINARY DETERMINATION OF EXEMPT STATUS.

The District staff will review the registration application filed and make a preliminary determination as to whether the well meets drilling and operating permit exclusions and exemptions provided in these Rules and Section 36.117 of the Texas Water Code. The District staff must inform the applicant of their determination within ten (10) business days. If the preliminary determination is that the well is exempt from the requirements for an operating permit, the applicant may begin drilling immediately upon receiving notification of the determination.

If the District determines the well is not exempt, the applicant will proceed in accordance with Section 9 below.

## 8.05 VIOLATION OF DISTRICT RULES.

It is a violation of the District Rules for a well owner, well operator, or water well driller to drill any well until a well registration form has been filed with the District and approved.

## SECTION 9: PERMITS

*Texas Water Code Sec. 36.113*

### 9.01 DRILLING PERMIT REQUIRED FOR NON-EXEMPT WELLS.

1. No person shall hereafter begin to drill a new well, or re-work, or re-drill an existing well or increase the size or make other modifications to wells without having first applied to the District and been issued a permit to do so, unless the well after drilling or after other modifications will be exempt as defined in Section 36.117 of the Texas Water Code, except as required by the District to have a permit under Section 8861.102 of the Act
2. No permit shall be required for the drilling of water supply wells exempt under the provisions of Section 36.117(b)(2), Texas Water Code, as amended (being generally wells used for the production of oil, gas, or other minerals and water wells used in conjunction therewith). However, water wells drilled after September 1, 1997, to supply water for hydrocarbon production activities must meet the spacing requirements of the District. These wells must be registered with the District before drilling (§36.117(e)).
3. Drilling a well without a permit or operating a well at a higher rate of production than the rate approved for the well is declared to be illegal, wasteful per se, and a nuisance.
4. Permits are required for wells:
  - a. wells used for domestic and livestock use on tracts less than 100 acres in size that are less than 500 feet deep and pump more than 9,000 gallons per day (gpd).
  - b. that produce or will produce water used for Industrial and/or manufacturing purposes
  - c. that produce or will produce water used for commercial and/or municipal purposes
  - d. that produce or will produce water used for irrigation
  - e. that produce or will produce water used for recreational or pleasure purposes
  - f. that produce or will produce water for all other non-exempt uses.
  - g. All wells used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.
5. All wells newly permitted after April 15, 2015, including wells for which a permit is amended for a new use shall be required to have a meter installed that will accurately measure the amount of water produced from the well. District personnel are authorized to inspect the meters during regular business hours following reasonable notice to the landowner.
6. All wells will be required to submit an annual water use report. The annual water use report must be submitted to the District on or before March 31<sup>st</sup> of each year for the previous year's use.
7. After April 15, 2015 irrigation permits will not be granted for furrow irrigation.
8. Permits shall include the following information, submitted on the application forms provided by the District:
  - a. name and address of the well operator, or authorized person to whom the permit is issued.

- b. name and address of the fee owner of the land on which the well is to be drilled.
  - c. location of the proposed well or including the county, legal description, latitude and longitude coordinates, and the number of feet to the nearest property lines;
  - d. The location of all wells located within a mile radius of the proposed well, and the names and addresses of the owners of said wells.
    - i. distance in feet to nearest well;
    - ii. nature or purpose of proposed well use;
    - iii. location of proposed use;
    - iv. well status - new, producing, abandoned, capped, or plugged;
    - v. well description including:
      - 1. date drilled and date of application;
      - 2. well depth;
      - 3. casing type and size; surface completion;
      - 4. pump type;
      - 5. pump HP; and
    - vi. on applications for new wells submitted after April 15, 2015, the type and size of meter to be installed to measure production
    - vii. gallons per minute (GPM) being produced.
    - viii. maximum quantity of water proposed to be produced each month
    - ix. a statement that the applicant will comply with the District's management plan and rules.
    - x. a statement that the applicant will comply with well plugging guidelines and report closure to the commission;
  - e. such additional data as may be required by the Board.
9. All permits issued or well sites authorized under these Rules are conditional, and the Board may revoke its authorization if the person to whom the authorization was issued does not comply with the Rules of the District; does not comply with the terms and conditions stated in the drilling permit; or abandons the well. The District shall provide reasonable notice and opportunity for hearing before revoking the authorization.

#### 9.02 PERMIT APPLICATION PROCEDURES.

1. The Board shall issue or cause to be issued a drilling permit for a properly spaced well upon proper application executed, sworn to, and filed by the owner or his/her agent with the District, accompanied by the required deposits or fees, containing the matters specified below, and approved at a hearing of the Board pursuant to Rule 9.03. A drilling permit is required for each new non-exempt well, or for alteration in size or pumping capacity of existing wells, except in the case of a dry hole where another well may be drilled, at the applicant's own risk, using the same permit subject to the requirements of Sections 9.02-9.09. All applications shall be in writing, on forms provided by the District and contain the information called for in the application form and shall be prepared in accordance with all instructions which may have been issued by the Board with respect to the filing of an application. An application shall be considered properly filed when completed, signed,



sworn to and tendered to the District or to a person duly designated by the District to receive the same. Otherwise, the application will not be considered.

2. Rules for entities filing applications:
  - a. If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent. The agent shall be requested to present satisfactory evidence of his authority to represent the applicant, such as lease contract, power of attorney, etc.
  - b. If the application is by a partnership, the applicant shall be designated by the firm name followed by the words "a Partnership" and the application shall be signed by at least one of the general partners who is duly authorized to bind all of the partners.
  - c. In the case of a corporation, public district, county or municipality, the application shall be signed by a duly authorized official. A copy of the resolution or other authorization to make the application may be required by the officer or agent receiving the application.
  - d. In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.
3. Such applications shall be submitted on forms supplied by the District and shall include the following:
  - a. All information required pursuant to Rule 9.01 (e) above.
  - b. The type of application - new well, rework, redrill, replacement, or other.
  - c. The proposed use of the well to be drilled, whether test well, irrigation, industrial, or municipal, or other.
  - d. Farm / Ranch data - Total acreage.
  - e. Each applicant requesting new or additional production of 3 acre-feet per acre per year or more per irrigated acre or service area shall provide the District with a study by a licensed hydrogeologist or hydrogeological engineer evaluating the impact of the proposed production on aquifer water levels within the District boundaries. The study shall employ a statistically valid trend analysis or computer model, or other method generally acceptable to professional hydrologists and to the District.
  - f. An agreement by the applicant that the completed well registration form (furnished by the District) and well report will be furnished to the District by the applicant upon completion of this well and prior to the production of water therefrom (except for such production as may be necessary to the drilling and testing of such well.)

#### 9.03 NOTICE OF PERMIT HEARING.

1. Once the district receives an administratively complete original application for a permit, permit renewal, or permit amendment, the Manager shall, at least ten (10) days prior to the hearing date, issue a written notice indicating a date and time for a hearing by the Board on the application in accordance with these rules. Not less than ten days before the hearing,

notice of the hearing shall be emailed and mailed to the applicant and shall be published in a newspaper of general circulation within the county.

2. As many applications may be scheduled for one hearing as the manager deems necessary. Any person that wishes to be heard as a potential party to a hearing must, at least five business days prior to the hearing date, provide the District with written notice of that person's intent to appear at the hearing. If the Manager decides to contest the application, he/she must, at least five (5) business days prior to the hearing date, provide the applicant with written notice of his/her intent to contest the application.
3. Hearings may be held in conjunction with any regular or special meeting of the Board which are noticed and conducted pursuant to the Texas Open Meetings Law, Chapter 551 Texas Government Code.

#### 9.04 FACTORS TO BE CONSIDERED BY THE BOARD IN ISSUING A PERMIT.

*Texas Water Code Sec. 36.113(d)*

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

1. the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;
2. the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
3. the proposed use of water is dedicated to any beneficial use;
4. the proposed use of water is consistent with the district's approved management plan;
5. if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;
6. the applicant has agreed to avoid waste and achieve water conservation; and
7. the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

The application may be granted in whole, in part, or may be amended. If neither the manager of the District nor any other person contests the application, the Board shall grant the permit.

#### 9.05 TIME LIMIT FOR WELL COMPLETION FOLLOWING ISSUANCE OF PERMIT.

1. Any drilling permit granted hereunder shall remain valid if the work permitted shall have been completed within six (6) months from the filing date of the application. It shall thereafter be void. Provided, however, that the District, for good cause, may extend the life of such permit for an additional four (4) months if an application for such extension shall have been made to the District during the first six (6) month period. Provided, further, that when it is made known to the District that a proposed project will take more time to

complete, the District, upon receiving a written application may grant such time as is reasonably necessary to complete such project.

2. If a newly drilled well is a dry hole or the production is marginal, the drilling permit may be used to drill another well, at the applicant's own risk, until a producing well is discovered and completed provided that:
  - a. the dry hole or marginal well is properly plugged;
  - b. the new location for another well meets all of the spacing requirements of the District;
  - c. the driller furnishes to the District a properly completed well report and/or well plugging report on each newly drilled well.

#### 9.06 REQUIREMENT OF DRILLER'S WELL REPORT, CASING AND PUMP DATA

1. Complete records shall be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled either by a licensed driller or an individual landowner. Such records shall include an accurate driller's log, any electric log which shall have been made, and such additional data concerning the description of the well, its potential, hereinafter referred to as "maximum rate of production" and its actual equipment as may be required by the District. Such records shall be filed with the District within 60 days after the completion of the well.
2. Subject to the Water Well Drillers rules, every licensed well driller shall deliver either in person, e-mail, or send by first-class mail, a photocopy of the State Well Report to the District within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.
3. No person shall produce water from any well hereafter drilled and equipped within the District, except that necessary to the drilling and testing of such well and equipment, unless or until the District has been furnished an accurate driller's log, any electric log which shall have been made, and a registration of the well correctly furnishing all available information required on the forms furnished by the District.

#### 9.07 PERMIT TERM.

1. A permit grants a right to the well owner to produce water in the amount stated therein, and in accordance with the terms of the permit setting the rate, quantity, purpose, and location of the production, until there is a change, or proposed change, in any of the following:
  - a. amount of water produced
  - b. location of the well
  - c. purpose of use of the water
  - d. location of use of the water
  - e. ownership of the well
  - f. a finding by the District in accordance with 9.08(3) that a depletion in aquifer levels has persisted for a period of a year or more following the establishment of baseline

- levels, following notice and a public meeting, that it is necessary to reduce permitted production in order to conserve and preserve the District's groundwater supplies.
2. Upon the occurrence, or proposed occurrence of any change in any one or more conditions a-e set forth above, the well owner must file an amendment application for a well permit with the District, to be acted upon in the same manner, and in accordance with the same procedures hereinabove set forth in Section 9.02 - 9.06 as for an original permit application.
  3. Upon the occurrence of condition 9.07.1.f, the District will notify all permit holders in the affected area of the District and forward to them applications for permit amendments, which applications will be acted upon as set forth in Section 9.02 - 9.06. All permitted production within the area will be reduced proportionately.

#### 9.08 REVOCATION AND FORFEITURE

1. A permit may be revoked for non-compliance with District rules following notice and a show cause hearing as set forth in Section 5 above;
  - a. If the well should be commenced or drilled at a different location than the location given on the drilling permit application and the new location is in violation of the District rules, the drilling or operation of such well may be enjoined by the District pursuant to Chapter 36, Texas Water Code, as amended and/or the District may initiate enforcement proceedings under Section 5. The District shall have the right to confirm reported distances and inspect the wells or well locations.
  - b. Failure to abide by the rules of the district concerning drilling permits, and by the terms and limitations of the permit itself, is a violation of the law and/or the rules of the district and subjects the landowner, the driller, and the pump installer to legal action by the district. A violation occurs on the first day the drilling, alteration, or operation of a well begins and continues each day thereafter until the appropriate permits are approved.
2. A permit may be forfeited in whole or in part, for four (4) years non-production from a permitted well. A partial forfeiture shall be made of that portion of a well's permitted production which has not been produced during four consecutive years.
3. The District shall maintain monitor wells within the District boundaries which shall be measured quarterly to establish baseline data for water level declines. Based on studies of no less than five-year's duration, if the District determines that pumping within the District is depleting the aquifer, the District may, upon notice and hearing, reduce the volume of production of a permitted well.

### SECTION 10: WELL SPACING AND PRODUCTION REQUIREMENTS

#### 10.01 – MINIMUM SPACING OF WELLS

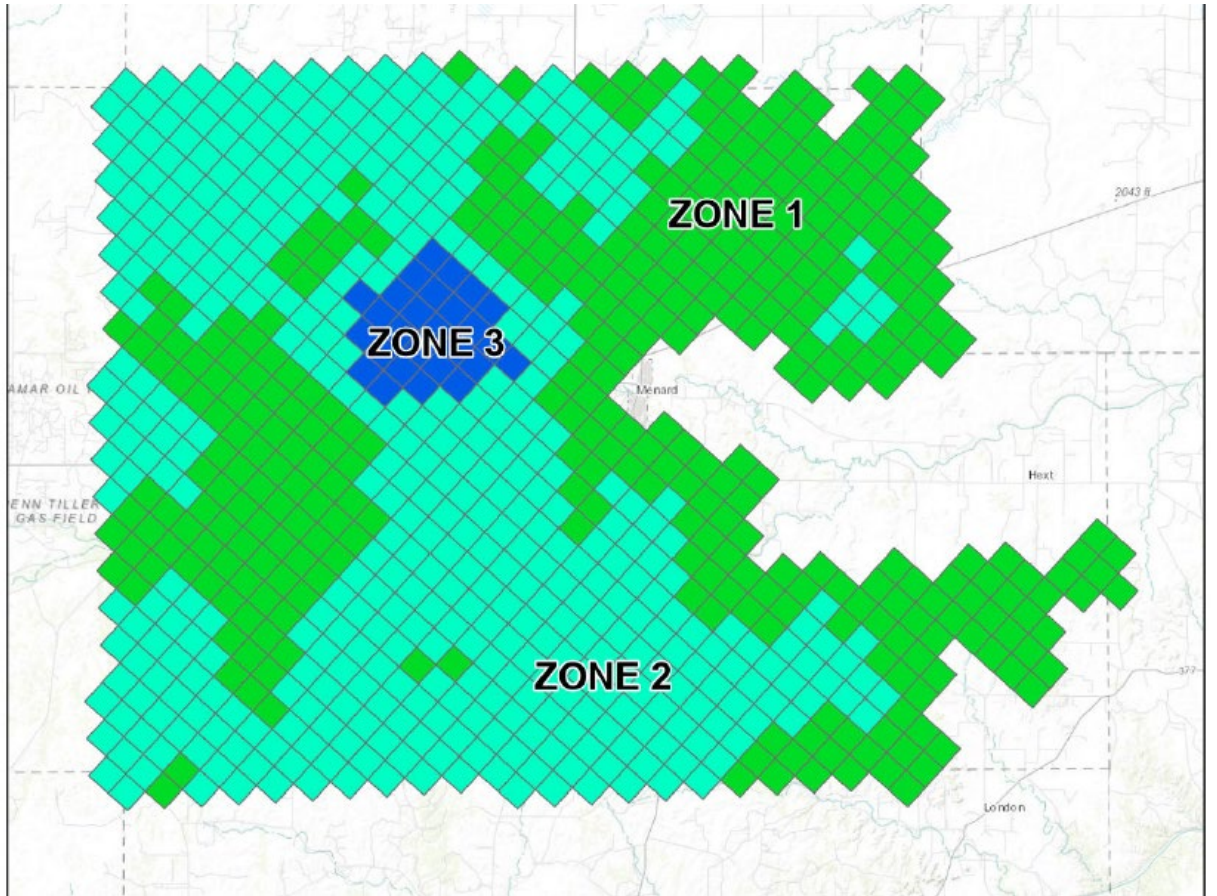
1. Distance Requirements.
  - a. All Wells must be at least fifty (50) feet from the nearest property line;
  - b. All wells drilled before August 2024 are required to be 400 feet from the nearest well or authorized well site.

- c. The Board, in order to prevent waste or confiscation of property, may grant exceptions to permit drilling within shorter distances than those described when the Board shall determine that such exceptions are necessary either to prevent waste or confiscation of property, except that no subdivision of property made subsequent to the adoption of the original spacing requirement will be considered in determining whether or not property is being confiscated within the terms of the spacing requirements.
- d. A well must be located at a minimum horizontal distance of 50 feet from a water-tight sewage facility or a liquid waste collection facility.
- e. A well must be located a minimum horizontal distance of 150 feet away from any contamination area such as existing or proposed livestock or poultry yard, privies, and septic system absorption fields.
- f. No well may be located within 500 feet of a sewage treatment plant, solid waste disposal site, land irrigated by sewage plant effluent, sewage wet well, sewage pumping station, or drainage structure or facilities containing industrial waste discharges or sewage treatment system water.
- g. For wells registered prior to August 2024 seeking an increase in production, the well spacing and production requirements will follow Rule 10.01.2

2. Well Density.

- a. Wells drilled after August 2024, and wells registered prior to August 2024 seeking an increase in production, must follow the spacing limits listed below for wells completed in the Edwards Aquifer, Alluvium Aquifers, or any well completed to less than 500 ft

<b>Pumping Capacity of Well Equipped (gpm)</b>	<b>Minimum Distance from Existing Well (Ft)</b>
<b>ZONE 1</b>	
Up to 6.25 gpm	100
> 6.25 gpm to 15 gpm	300
> 15 gpm to 25 gpm	3,000
> 25 gpm to 50 gpm	3,500
<b>ZONE 2</b>	
Up to 6.25 gpm	50
> 6.25 to 15 gpm	100
> 15 gpm to 25 gpm	200
> 25 gpm to 50 gpm	500
> 50 gpm to 100 gpm	2,500
<b>ZONE 3</b>	
Up to 6.25 gpm	50
> 6.25 to 15 gpm	100
> 15 gpm to 25 gpm	200
> 25 gpm to 50 gpm	300
> 50 gpm to 100 gpm	1,000
> 100 gpm to 500 gpm	2,500
> 500 gpm	3,000



- b. Wells completed in the Hickory and Ellenburger Aquifers, or wells completed more than 600 feet deep, must be 1,000 feet from the nearest well in the same formation.
- c. In applying this rule, if the property is “Drilled to Density”, the District may issue a drilling permit for a test well or a replacement well. The landowner or his agent must within 4 months of the issuance of the permit or extension date thereof declare in writing which well he desires to produce. Within 30 days after determining which well will be retained for production, the well that is not to be produced shall be plugged and a properly completed Plugging Report shall be submitted to the District on forms supplied by the District. Failure to abide by the rules of the district concerning the plugging of these wells is a violation of the law and/or the rules of the district and subjects the landowner to legal action by the District. A violation occurs at the end of the 30 day period and continues each day thereafter until the appropriate action is taken to plug the well.

10.02: EXCEPTIONS TO SPACING AND PRODUCTION RULES

- 1. In order to protect vested property rights, to prevent waste, to prevent confiscation of property, or to protect correlative rights, the Board may grant exception to the above

spacing regulations. This rule shall not be construed so as to limit the power of the Board, and the powers stated are cumulative only of all other powers possessed by the Board.

2. If an exception to such spacing regulations is desired, the application shall be submitted by the applicant in writing to the Board at its District Office on forms furnished by the District. The application shall explain the circumstances justifying an exception to the spacing provisions. If not already supplied to the District in an application for a non-exempt well, the application shall be accompanied by a plat or sketch. The plat or sketch shall show thereon the property lines in the immediate area and shall show accurately to scale all wells within one (1) mile of the proposed well site. The application shall also contain the names and addresses of all property owners adjoining the tract on which the well is to be located and the ownership of the wells within one mile of the proposed location. Such application and plat shall be certified by some person acquainted with the facts who shall state that all the facts therein are true and correct.
3. Such an exception may be granted after notice of hearing. Ten (10) days written notice of a public hearing will be given to the applicant and all landowners within the minimum distance requirements in Section 11.01.02a above. At a public hearing all interested parties may appear and be heard, and the Board may grant an exception. Provided, however, that if all such owners execute a waiver in writing stating that they do not object to the granting of such exception, the Board may thereupon proceed to decide upon the granting or refusing of such application without notice of hearing except to the applicant. The applicant may also waive notice or hearing or both.
4. An application for an exception to the spacing rule is considered to be contested when a written notice of protest or opposition is filed with the Board on or before the date on which such application has been set for hearing and the protestant(s) or intervener(s) appear at the hearing held on the application. Where neither protestants nor interveners so appear and offer testimony or evidence in support of their contentions or raise a question of law with reference to any pending application, the application may be considered as non-contested.
5. Exceptions to the spacing rule will not be granted for property subdivided after the adoption and effective date of these rules.

## SECTION 11: PERMIT AND PERMIT APPLICATION HEARINGS

### 11.01 APPLICABILITY

This chapter applies to the notice and hearing process used by the District for permit and permit amendment applications.

### 11.02 SCHEDULING OF PUBLIC HEARING

1. The General Manager or Board may schedule a public hearing on permit or permit amendment applications received by the district as necessary.

2. The General Manager or Board may schedule more than one application for consideration at a public hearing, and a public meeting may be held in conjunction with a regularly scheduled meeting of the Board.
3. Except as provided by Section 11.2.4, the District shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the District requires a separate permit or permit amendment application.
4. The District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.
5. Except for hearings conducted under Section 12.06.2, a hearing must be held at the District office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location.

#### 11.03 NOTICE

1. The District schedules a hearing on an application for a permit, permit amendment, or exception from spacing requirements, the General Manager shall give notice of the hearing as provided by this rule.
2. The notice must include the name of the applicant; the address or approximate location of the well or proposed well; a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater; the purpose of the proposed use and any change in use; the time, date, and location of the hearing; and any other information the General Manager or Board considers relevant and appropriate.
3. Not later than the 10th day before the date of a hearing, the General Manager shall:
  - a. post notice in a place readily accessible to the public at the District office;
  - b. provide notice to the county clerk of Menard County; and
  - c. provide notice by:
    - i. regular mail, or electronic mail to the applicant;
    - ii. regular mail, or electronic mail to any person who has requested notice under Section 4.02; and
    - iii. regular mail to any other person entitled to receive notice under the rules of the District.
4. A person may request notice from the District of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by regular mail, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.
5. Failure to provide notice under Section 4.02 does not invalidate an action taken by the District at the hearing.



#### 11.04 BOARD ACTION; CONTESTED CASE HEARING REQUESTS; PRELIMINARY HEARING

1. The Board may take action on any uncontested permit or permit amendment application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The Board may issue a written order to grant the application, grant the application with special conditions, or deny the application.
2. The District may allow any person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application.
3. Contested case hearings may be requested in connection with the following: Operating Permits, Transport Permits, permit amendment applications, requests for exceptions to spacing requirements, and recharge permits.
4. Requests for contested case hearings must be submitted by 5:00 pm the day before the public hearing at which the application is scheduled to be heard. Participation in a hearing on a contested application will be limited to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.
5. A protest or request for a contested case hearing shall be submitted in writing and must include the following:
  - a. The name and address of the protestant/requestor.
  - b. The protestant/requestor shall identify any injury that will result from the proposed action or matter to be considered by the Board.
  - c. If the protest or request is based on claim of interference with some present right of the protestant/requestor, the protest or request shall include a statement of the basis of the protestant/requestor's claim of right.
  - d. The protestant/requestor shall call attention to any amendment of the application which, if made, would result in withdrawal of the request.
  - e. If a contested case hearing is desired, the person desiring the hearing must include the statement "I/we request a contested case hearing."
6. For any document filed with the District, a hearings examiner, or the State Office of Administrative Hearings related to a contested case, the filer must:
  - a. Serve a copy on all parties and/or the contestant at or before the time that the document is filed; and
  - b. Include a certificate of service on all documents presented for filing that indicates the date and manner of service and the name and address of each person served.
7. The preliminary hearing may be conducted by a quorum of the Board, an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing, or the State Office of Administrative Hearings under Texas Water Code Section 36.416 and Section 11.06.

8. An applicant or other party who desires a preliminary and/or contested case hearing before the State Office of Administrative Hearings must make that request concurrent with the request for a contested case hearing.
9. The determination of whether a hearing request should be granted is not a contested case hearing. Following a preliminary hearing, the Board, Hearing Examiner, or SOAH shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. If the Board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the Board may take any action authorized under Section 11.04.1.
10. An applicant may, not later than the 20th day after the date the Board issues an order granting the application, demand a contested case hearing if the order includes special conditions that were not part of the application as finally submitted, or grants a maximum amount of groundwater production that is less than the amount requested in the application.
11. At the discretion of the Board or hearing examiner, persons not designated as parties may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record but may not be considered by the Board or hearing examiner as evidence.

#### 11.05 HEARING PROCEDURES

1. A hearing must be conducted by a quorum of the Board, 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 the State Office of Administrative Hearings under Texas Water Code Section 36.416.
2. Except as provided below or by Texas Water Code Section 36.416, the Board president or the hearings examiner shall serve as the presiding officer at the hearing. If the hearing is conducted by a quorum of the Board and the Board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.
3. The presiding officer may:
  - a. convene the hearing at the time and place specified in the notice;
  - b. set any necessary additional hearing dates;
  - c. designate the parties regarding a contested application;
  - d. establish the order for presentation of evidence;
  - e. administer oaths to all persons presenting testimony;
  - f. permit the receipt of and rule on the admissibility of evidence;
  - g. rule on motions;
  - h. examine and allow cross-examination of persons presenting testimony;
  - i. issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;

- j. require the taking of depositions and compel other forms of discovery under these Rules;
  - k. ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
  - l. prescribe reasonable time limits for testimony and the presentation of evidence;
  - m. exercise the procedural rules of the District; and
  - n. determine how to apportion between the parties costs related to a contract for the services of a presiding officer and the preparation of the official hearing record.
4. The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
  5. If the Board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the material was received.
  6. The presiding officer, at the presiding officer's discretion, may issue an order at any time before Board action under Section 11.13 that refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing; determines how the costs of the procedure shall be apportioned among the parties; and appoints an impartial third party as provided by Texas Government Code Section 2009.053 to facilitate that procedure.

#### 11.06 HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

1. By order, the Board may delegate to the State Office of Administrative Hearings the authority to conduct hearings designated by the Board.
2. If requested by the applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct the hearing. The hearing must be held in Travis County or at a location within the District chosen by the District.
3. The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party. All

other costs may be assessed as authorized by Texas Water Code Chapter 36 and these Rules.

4. If the Board refers a preliminary hearing or contested case hearing to the State Office of Administrative Hearings, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code, as supplemented by these Rules.
5. An administrative law judge who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing, but the District deciding the case may not supervise the administrative law judge.
6. The District shall provide the administrative law judge with a written statement of applicable rules or policies.
7. The District may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.
8. The Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, only if the Board determines:
  - a. that the administrative law judge did not properly apply or interpret applicable law, District Rules, written policies provided under Subsection 6, or prior administrative decisions;
  - b. that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
  - c. that a technical error in a finding of fact should be changed

#### 11.07 DISCOVERY AND EX PARTE COMMUNICATIONS

1. Discovery and depositions in contested case proceedings will be governed by the Texas Rules of Civil Procedure unless otherwise provided by the presiding officer, hearings examiner, Administrative Law Judge or agreement of the parties.
2. Ex Parte Communications:
  - a. For applications for which there is a right to a contested case hearing, a member of the Board may not, at any time after the application has been filed and before the Board has taken final action, communicate, directly or indirectly, about any issue of fact or law with any representative of the District or other designated party to the application, except on notice and opportunity for all parties to participate.
  - b. Subsection (a) does not apply if:
    - i. The Board member abstains from voting on a matter in which he or she engaged in ex parte communications;
    - ii. The communications are by and between members of the Board consistent with the Texas Open Meetings Act;

- iii. The communications are with District staff who have not participated in any hearing in the contested case and are for the purpose of using the special skills or knowledge of the staff in evaluating the evidence; or
- iv. The communications are with legal counsel representing the Board of Directors.

#### 11.08 RECORDING

1. Except as provided by Section 11.08.2, the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by Section 12.08.1 if the parties have agreed that the costs assessed against that party will be paid by another party.
2. If a hearing is uncontested, the presiding officer may substitute minutes or the proposal for decision required under Section 11.12 for a method of recording the hearing provided by Section 11.08.1.

#### 11.09 CONTINUANCES

1. The presiding officer may continue a hearing from time to time and from place to place without providing notice under Section 11.02, above.
2. If the presiding officer continues a 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 certified mail, return receipt requested, to the requestor and/or all parties.
3. If a hearing is not concluded on the day it begins, the Board shall, to the extent possible, proceed with the hearing on each subsequent working day until the hearing is concluded.
4. A continuance may not exceed the time limit for a final decision under Section 11.16.

#### 11.10 REMAND TO BOARD

1. A hearings examiner may remand an application to the Board as follows:
  - a. All timely hearing requests have been withdrawn;
  - b. All parties to a contested case reach a settlement so that no facts or issues remain controverted; or
  - c. The party or parties requesting the hearing fails to appear.
2. After remand, the application will be uncontested, and the applicant will either be deemed to have agreed to the action proposed by the General Manager or, if the parties have

reached a settlement agreement, the agreement will be presented to the Board for its consideration. District staff will set the application for consideration at a Board meeting.

#### 11.11 CERTIFIED QUESTIONS

1. At any time during a contested case proceeding, on a motion by a party or on the hearings examiner's own motion, the hearings examiner may certify a question to the Board.
2. Issues regarding District policy, jurisdiction, or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are appropriate for certification. Policy questions for certification purposes include, but are not limited to:
  - a. The District's interpretation of its rules and applicable statutes;
  - b. The portion of the Act, the District Rules, or other statutes that are applicable to a proceeding; and
  - c. Whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
3. If a question is certified, the hearings examiner shall submit the certified issue to the District. District staff will place the certified issue on the agenda of a meeting of the Board. The District will give the hearings examiner and parties 30 day notice of the meeting at which the certified question will be considered. Within ten days after the certified question is filed with the District, parties to the proceeding may file briefs. Within ten days of the filing of such briefs, parties may file responses. Briefs and responses shall be filed with the District with copies served on the hearings examiner. The District will provide copies of the certified questions and any briefs and responses to the Board. The hearings examiner may abate the hearing until the District answers the certified question or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.
4. The Board will take action and issue a written decision on the certified issue and provide copies to the parties and the hearings examiner. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

#### RULE 11.12 PROPOSAL FOR DECISION

1. Except as provided by Section 11.12.5, the presiding officer shall submit a proposal for decision to the Board not later than the 30th day after the date the evidentiary hearing is concluded.
2. The proposal for decision must include a summary of the subject matter of the hearing; a summary of the evidence or public comments received; and the presiding officer's recommendations for Board action on the subject matter of the hearing.
3. The presiding officer shall provide a copy of the proposal for decision to the applicant and each designated party.
4. A party may submit to the Board written exceptions to the proposal for decision.

5. If the hearing was conducted by a quorum of the Board and if the presiding officer prepared a record of the hearing as provided by Section 11.08.1, the presiding officer shall determine whether to prepare and submit a proposal for decision to the Board under this rule.
6. The Board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Section 11.09.

### 11.13 BOARD ACTION

The Board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded.

### 11.14 REQUEST FOR REHEARING OR FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings of fact and conclusions of law not later than the 20th day after the date of the Board's decision unless the Board issued findings of fact and conclusions of law as part of the final decision.
2. On receipt of a timely written request, the Board shall make written findings of fact and conclusions of law regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings of fact and conclusions of law to the person who requested them, and to each designated party, not later than the 35th day after the date the Board receives the request. A party to a contested hearing may request a rehearing not later than the 20th day after the date the Board issues the findings of fact and conclusions of law.
3. The Board shall consolidate requests for rehearing filed by multiple parties to the contested case hearing, but only one rehearing may be considered per matter.
4. A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing.
5. If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.
6. If a motion for rehearing is filed and granted by the Board, the Board shall make a final decision on the application not later than the 90th day after the date of the decision by the Board that was subject to the motion for rehearing. The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.
7. The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

#### 11.15 DECISION; WHEN FINAL

1. A decision by the Board on a permit or permit amendment application is final:
  - a. if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
  - b. if a request for rehearing is filed on time, on the date:
    - i. the Board denies the request for rehearing; or
    - ii. the Board renders a written decision after rehearing.
2. Except as provided by Section 11.15.3, an applicant or a party to a contested hearing may file a suit against the District under Texas Water Code Section 36.251 to appeal a decision on a permit or permit amendment application not later than the 60th day after the date on which the decision becomes final.
3. An applicant or a party to a contested hearing may not file suit against the District under Texas Water Code Section 36.251 if a request for rehearing was not filed on time.

#### 11.16 DECISION; WHEN FINAL AFTER A CONTESTED CASE BEFORE SOAH.

1. A final decision of the Board after a contested case before SOAH must be in writing and must either adopt the proposed findings of fact and conclusions of law as proposed by the ALJ or include revised findings of fact and conclusions of law consistent with section 12.6.8.
2. Notwithstanding any other provision of these rules, the Board shall issue a final decision after a contested case before SOAH not later than the 180th day after the date of receipt of the final proposal for decision from SOAH. The deadline may be extended if all parties agree to the extension.
3. The Board is considered to have adopted a final proposal for decision of the administrative law judge as a final order on the 181st day after the date the administrative law judge issued the final proposal for decision if the Board has not issued a final decision by:
  - a. adopting the findings of fact and conclusions of law as proposed by the administrative law judge; or
  - b. issuing revised findings of fact and conclusions of law as provided by section 11.6.8.
4. A proposal for decision adopted under Section 11.16.3 is final, immediately appealable, and not subject to a request for rehearing.

## SECTION 12: TRANSFER OF WATER FROM THE DISTRICT

*Texas Water Code Sec. 36.122*

#### 12.01 APPLICATION REQUIRED.

1. If an application for a permit or an amendment proposes the transfer of groundwater outside of a district's boundaries, the district may also consider the provisions of this section in determining whether to grant or deny the permit or permit amendment.
2. An application must follow the procedures listed in Section 9 of these Rules
3. In addition to conditions provided by Section 9, the permit shall specify:



- a. the amount of water that may be transferred out of the district; and
  - b. the period for which the water may be transferred.
4. The period specified shall be:
  - a. at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or
  - b. at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit.
5. A district shall extend a term on or before its expiration in the manner prescribed by Section 9:
  - a. to a term that is not shorter than the term of an operating permit for the production of water to be transferred that is in effect at the time of the extension; and
  - b. for each additional term for which that operating permit for production is renewed under Section 9 or remains in effect under Section 9.
6. A permit extended under Section 9 continues to be subject to the conditions contained in the permit as issued before the extension.
7. The district may periodically review the amount of water that may be transferred under the permit and may limit the amount.

#### 12.02 EXCEPTION.

A permit is not required if the groundwater is to be used on the property of a landowner that straddles the district boundary.

#### 12.03 FACTORS TO BE CONSIDERED BY THE DISTRICT PRIOR TO APPROVING A PERMIT.

1. Pursuant to TAC Section 36.122, before approving any permit for transport of groundwater outside of the District boundaries, the District shall consider the following:
  - a. the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;
  - b. the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and
  - c. the approved regional water plan and approved district management plan.

#### 12.04 FEES.

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

1. A fee negotiated between the District and the exporter;
2. A rate not to exceed 20 cents for each thousand gallons of water exported from the district
  - a. The maximum allowable rate the District may impose for an export fee or surcharge increases by 3% each calendar year.

- b. An export fee or surcharge is not valid unless it is approved by the Board after public hearing.

## SECTION 13: ADMINISTRATIVE FEES

*Texas Water Code Sec. 36.205*

### 13.01 FEES

1. The District shall collect fees for all services provided outside of the District. The fees shall be established by the Board and be reviewed and revised as needed to cover the cost to the District.
2. The Board may establish by resolution a schedule of administrative fees, such as fees for processing of applications and for services provided outside the District. The Board will attempt to set fees at an amount that does not unreasonably exceed the cost to the District of performing the function for which the fees are charged.

### 13.02 WATER EXPORT FEE

1. As authorized by Texas Water Code §36.122, as amended, entities transporting water outside of the boundaries of the District are subject to a water export fee using one of the following methods:
  1. a fee negotiated between the District and the transporter; or
  2. a rate not to exceed 20 cents per thousand gallons of water transported out of the District
  3. the maximum allowable rate the District may impose for an export fee or surcharge may be increased by three percent each calendar year.