MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

RULES

Effective November 18, 2025

PECOS COUNTY, TEXAS

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INTRODUCTION

BACKGROUND AND PURPOSE

Texas faces a difficult challenge to develop water policies that serve county, state, regional, and individual Texans' interests. The Texas Constitution authorizes the creation of groundwater conservation districts to plan for, develop, and regulate the use of groundwater. A groundwater conservation district is a local unit of government authorized by the Texas Legislature and ratified by local election of the district's constituents to manage and protect groundwater.

The MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT (the "District") was created in the 76th Legislature, 1999 by Senate Bill 1911, and ratified in the 77th Legislature, 2001 by House Bill 1258. The District was confirmed by qualified voters of Pecos County in November of 2002.

The boundaries of the District are coextensive with the boundaries of Pecos County, Texas. Aquifers and other recognized groundwater formations underlying Pecos County include the Capitan Reef, Dockum, Edwards-Trinity, Pecos Valley, Rustler, and San Andres.

The District is governed by a board of eleven directors elected as follows:

(1) One director shall be elected by the qualified voters of the entire district;

(2) Two directors shall be elected from each of the four Pecos County Commissioners' precincts by the qualified voters of each respective precinct;

(3) One director shall be elected from the City of Iraan by the qualified voters of that city; and

(4) One director shall be elected from the City of Fort Stockton by the qualified voters of that city.

The District has the rights, powers, privileges, authority, functions, and the duties provided by the general law of the State, Chapter 36 of the Texas Water Code, and the District Act.

The substantive rules of the District were initially adopted by the District's Board of Directors on August 18, 2004, at a duly posted public meeting in compliance with the Texas Open Meetings Act and following notice and hearing in accordance with Section 36.101 of the Texas Water Code. The District's rules are hereby adopted as the rules of this District in accordance with Section 59 of Article XVI of the Texas Constitution, Chapter 36 of the Texas Water Code, and the District Act.

The District's rules are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State of Texas. These rules are to be construed to attain those objectives. These rules may be used as guides in the exercise of discretion, where discretion is vested. However, these rules shall not be construed as a limitation or restriction upon the exercise of discretion conferred by law, nor shall they be construed to deprive the District or the District's Board of any powers, duties, or jurisdiction provided by law. These rules will not limit

or restrict the amount and accuracy of data or information that may be required for the proper administration of the law.

Nothing in these rules or Chapter 36 of the Texas Water Code shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by Section 36.002 of the Texas Water Code, recognizing, however, that Section 36.002 does not prohibit the District from limiting or prohibiting the drilling of a well for failure or inability to comply with minimum well spacing or tract size requirements adopted by the District; affect the ability of the District to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under Chapter 36, Texas Water Code, or a special law governing the District; or require that a rule adopted by the District allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner.

PURPOSE OF THE DISTRICT

By statutory enactment and declaration by the Texas Supreme Court, groundwater management by groundwater conservation districts is the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater. The District's locally elected board of directors and staff accomplish this purpose by performing certain duties set forth in the general law of the State, Chapter 36 of the Texas Water Code, and the District Act, and implemented in accordance with these rules.

MISSION STATEMENT

Develop and implement an efficient, economical and environmentally sound groundwater management program to protect, maintain and enhance the groundwater resources of the District, and to communicate and administer to the needs and concerns of the citizens of Pecos County associated with these groundwater resources.

SECTION 1. DEFINITIONS, PURPOSE, AND CONCEPTS OF THE RULES

RULE 1.1 DEFINITIONS OF TERMS

In the administration of its duties the District defines terms as set forth in Chapter 36 of the Texas Water Code unless otherwise modified or defined herein as necessary to apply to unique attributes of the District. The specific terms hereinafter defined shall have the following meaning in these rules, the District's Management Plan, forms, and other documents of the District:

"Abandoned Well" means a well that has not been used for a beneficial purpose for at least one year and/or a well not registered with the District. A well is considered to be in use in the following cases:

(a) a non-deteriorated well which contains the casing, pump and pump column in good condition; or
(b) a non-deteriorated well which has been capped.

"Affected Person" means, with respect to a Groundwater Management Area:

(1) an owner of land in the Groundwater Management Area;

(2) a district in or adjacent to the Groundwater Management Area;

(3) a regional water planning group with a water management strategy in the Groundwater Management Area;

(4) a person who holds or is applying for a permit from a district in the Groundwater Management Area;

(5) a person who has groundwater rights in the Groundwater Management Area;

(6) or any other person defined as affected by a TCEQ rule.

"Animal Feeding Operation" means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 (forty-five) calendar days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season over any portion of the lot or facility.

"Aquifer" means a geologic formation that will yield water to a well in sufficient quantities to make the production of water from this formation feasible for beneficial use. When the term "Aquifer" is used in these rules, it shall also mean the Aquifer's subdivisions.

"Aquifer Storage and Recovery Project" or "ASR Project" means a project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the Project Operator.

"ASR" means aquifer storage and recovery.

"ASR Injection Well" means a Class V injection well used for the injection of water into a geologic formation as part of an ASR Project.

"ASR Recovery Well" means a well used for the recovery of water from a geologic formation as part of an ASR Project.

"Beneficial Use" means "use for a beneficial purpose," which means use for:

(a) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;

(b) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or

(c) any other purpose that is useful and beneficial to the user.

"Best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

"Board" means the Board of Directors of the District.

"Capitan Limestone Aquifer" means the Capitan Reef Complex consists of the Capitan Reef and associated reefs and limestones which were deposited around the perimeter of the Delaware Basin during Permian time. The reef complex is composed of approximately 2,000 feet of massive, vuggy to cavernous limestone and dolomite, bedded limestone, and reef talus. In the study area, (located in the northern part of the Trans-Pecos region of West Texas, which is in the Great Plains physiographic province, and falls within the Rio Grande basin), the reef occurs in a 6 to 10 mile wide, south-southeast trending belt, extending from New Mexico through western Winkler, central Ward, and western Pecos Counties. Depth to the top of the reef ranges from 2,400 to 3,600 feet (Guyton and Associates, 1958). The Capitan Reef Complex yields small to large quantities of moderately to very saline water to wells in the study area that primarily have been used for secondary recovery of oil in Ward and Winkler Counties(Richey and others, 1985).

"Capping" means equipping a well with a securely affixed, removable device that will prevent the entrance of surface pollutants into the well in compliance with regulations of the Texas Department of Licensing and Regulations.

"Casing" means a tubular structure installed in the excavated or drilled borehole to maintain the well opening.

"Concentrated Animal Feeding Operation" ("CAFO") means any animal feeding operation with the number of animals established in TCEQ's rules, including at least 37,500 chickens (other than laying hens), or that has been designated by the TCEQ's Executive Director as a CAFO because it is a significant contributor of pollutants into or adjacent to water in the state.

"Conservation" refers to those water saving practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of waste, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

"Desired Future Condition" means a quantitative description, adopted in accordance with Section 36.108, Texas Water Code, of the desired condition of the groundwater resources in a Groundwater Management Area at one or more specified future times.

"Dewatering Well" means a well used to remove groundwater from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.

"Director" means an elected or appointed member of the Board of Directors of the District.

"Discharge" means the volume of water that passes a given point within a given period of time.

"District" means the Middle Pecos Groundwater Conservation District.

"District Act" means the District's enabling legislation to be codified in Chapter 8851 of the Texas Special District Local Laws effective on April 1, 2013, and originally enacted by Act of the 76th Legislature, 1999, Regular Session, Chapter 1331 (Senate Bill 1911), as amended by Act of the 77th Legislature, 2001, Regular Session, Chapter 1299 (House Bill 1258), and Act of the 82nd Legislature, 2011, Regular Session, Chapter 199 (Senate Bill 564).

"District Management Plan" or **"Management Plan"** means the plan promulgated and adopted by the District, as may be amended and revised by the Board from time to time, pursuant to Sections 36.1071-36.1073 of the Texas Water Code.

"Dockum Group Aquifer" – The Dockum Group of Triassic age consists of upper and lower shaley units and a middle water-bearing sandstone unit often referred to as the "Santa Rosa." Small to moderate quantities of fresh to moderately saline water are produced from the sandstone in Winkler, Ward, eastern Loving, and eastern Reeves Counties, primarily where the aquifer is relatively shallow. In parts of Pecos, Reeves, Ward, and Winkler Counties, where the sandstone is hydraulically connected to the Pecos Valley Aquifer, the combination has been referred to as the Allurosa aquifer.

"District Office" means the principal office of the District at such location as may be established by the Board.

"Domestic Use" means water used by and connected to a household for personal needs or for household purposes such as drinking, bathing, heating, cooking, sanitation or cleaning, and landscape irrigation. Ancillary use may include watering of domestic animals.

"Domestic Well" means a well providing groundwater for domestic use.

"Drill" means drilling, equipping, completing wells, or modifying the size of wells or well pumps/motors (resulting in an increase in pumpage volume) whereby a drilling or service rig must be on location to perform the activity.

"Edwards-Trinity (Plateau) Aquifer" – The Edwards-Trinity (Plateau) aquifer underlies the Pecos Valley Aquifer in the study area, (located in the northern part of the Trans-Pecos region of West Texas, which is in the Great Plains physiographic province, and falls within the Rio Grande basin), in the southwest half of Reeves County and a portion of the Coyanosa area in northwest Pecos County. The aquifer is composed of water-bearing lower Cretaceous sands and limestones that are hydraulically connected to the overlying alluvium. Wells completed in the aquifer produce small to moderate quantities of fresh to moderately saline water, which is generally similar to that of the overlying alluvium. The poorest quality water is the aquifer, with dissolved solids in excess of 3,000 milligrams per liter (mg/l), occurs in the southwestern part of Reeves County where the aquifer receives recharge from the sulfate-rich Rustler aquifer. Water from the Edwards-Trinity(Plateau) aquifer is mostly used for irrigation, with a lesser amount used for industrial purposes in western Reeves County.

"Evidence of Historic or Existing Use" means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by District rule that regulates groundwater based on historic use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or

existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

"Exempt Well" means a well that is exempt pursuant to District Rule 11.3.

"Existing Well" means any well in the District that was drilled on or before the effective date of these rules.

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

"Fees" means charges imposed by the District pursuant to these rules.

"Groundwater Management Area" means an area designated and delineated by the TWDB as suitable for the management of groundwater resources.

"Groundwater Reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries and containing groundwater.

"Historic and Existing Use Period" means the period September 1, 1989, through the effective date of the rules adopting "Historic and Existing Use" rules, September 1, 2004; provided, however, that this period shall extend an additional consecutive 12-month period dating from September 1 - August 30 ("12-month period" or "year") for each such year during which the applicant demonstrates continued beneficial use of water in that year and demonstrates continued beneficial use in each and every year between September 1, 1989, and September 1, 2004, up to an additional, consecutive fifteen years extending to September 1, 1974.

"Hydrogeological Report" means a report that identifies the availability of groundwater in a particular area and formation, and which also addresses the issues of quantity and quality of that water and the impacts of pumping that water on the surrounding environment including impacts to nearby or adjacent wells.

"Irrigation Use" means the application of water, not associated with agricultural irrigation use, to plants or land in order to promote growth of plants, turf, or trees. Irrigation use includes but is not limited to athletic fields, parks, golf courses, and landscape irrigation not tied to domestic use.

"Irrigation Well" means a well providing groundwater for irrigation use (a nonexempt well).

"Leachate Well" means a well used to remove contamination from soil or groundwater.

"Livestock" means domesticated horses, cattle, goats, sheep, swine, poultry, ostriches, emus, rheas, deer and antelope, and other similar animals involved in farming or ranching operations on land, recorded and taxed in the County as an agricultural land use. Dogs, cats, birds, fish, reptiles, small mammals, potbellied pigs, and other animals typically kept as pets are not considered livestock. Livestock-type animals kept as pets or in a pet-like environment are not considered livestock.

"Managed Available Groundwater" refers to the term used by the TWDB in some of its models and associated reports, model runs, and other written documents, and which was defined by statutory law in existence prior to the 2011 legislative session, during which the 82nd Legislature replaced the concept of Managed Available Groundwater with Modeled Available Groundwater.

"Management Zone" means a geographic area delineated under District Rule 10.5 and in accordance with Section 36.116(d), Texas Water Code, and is sometimes referred to as a "management zone".

"Maximum Historic and Existing Use" means the quantity of water put to beneficial use during the single 12-month period (September 1 – August 30) of maximum beneficial use during the Historic and Existing Use Period.

"Modeled Available Groundwater" means the amount of water that the Executive Administrator of the TWDB determines may be produced on an average annual basis to achieve the Desired Future Conditions established for the Aquifers in the District.

"Modify" means to alter the physical or mechanical characteristics of a well, its equipment, or production capabilities. This does not include repair of equipment, well houses or enclosures, or replacement with comparable equipment.

"Monitoring Well" means a well installed exclusively to measure some property of the groundwater or an aquifer that it penetrates, that does not produce more than 5,000 gallons per year.

"New Well" means any well that is not an existing well, or any existing well, which has been modified to increase water production after the effective date of these Rules.

"Office" means the State Office of Administrative Hearings.

"Pecos Valley Aquifer" – During the Cenozoic Era, a thick sequence of alluvial deposits accumulated in two large slumpage depressions. These depressions are herein referred to as the Monument Draw Trough, which developed along the eastern margin of the Delaware Basin, and the Pecos Trough, which occupies the south-central part of the Basin. The troughs were formed by dissolution and removal of evaporates in the underlying Ochoan Series, which resulted in the collapse of the Rustler Formation and younger rocks into the voids (Maley and Huffington, 1953). Water saturated alluvial fill in these troughs is classified as the Pecos Valley Aquifer.

"Permit Amendment" means a minor or major change in a permit.

"Person" includes a corporation, individual, organization, cooperative, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

"Personal Justiciable Interest" means an interest related to a legal right, duty, privilege, power, or economic interest affected by a permit or permit amendment application. A justiciable interest is an interest beyond that shared by the general public.

"Plugging" means the permanent closure of a well in accordance with approved District standards.

"Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination or degradation of, any groundwater within the District that renders the groundwater harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or impairs the usefulness or the public or private use or enjoyment of the water for any lawful or reasonable purpose.

"Presiding Officer" means the Board President or, in the Board President's absence, a Director delegated authority by the Board to preside over a hearing.

"Production Permit" is synonymous with "Operating Permit," both terms which mean the type of a permit that authorizes the operation and production from a water well.

"Project Operator" means a person holding an authorization under this subchapter to undertake an ASR Project.

"Retail Public Utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state, facilities (such as a public water supply well) for providing potable water service for compensation.

"Rustler Aquifer" – The Rustler Formation underlies the entire study area, (located in the northern part of the Trans-Pecos region of West Texas, which is in the Great Plains physiographic province, and falls within the Rio Grande basin), and consists of 200 to 500 feet of anhydrite and dolomite with a basal zone of sandstone and shale. Slightly to moderately saline water occurs in the formation in most of Reeves and western Loving, Ward, and Pecos Counties and has mostly been used for irrigation and livestock supply. Elsewhere, the formation produces very saline to brine quality water that is used primarily for secondary oil recovery. Water in the aquifer occurs under artesian conditions, except in the out crop in the Rustler Hills to the west and in collapsed zones in the two troughs.

"Rules" means the standards and regulations promulgated by the District, as they may be amended from time to time, and are often referred to generally as "rules" or the District's rules.

"Seal" means the impermeable material, such as cement grout, bentonite, or puddling clay, placed in the annular space between the borehole wall and the casing to prevent the downhole movement of surface water or the vertical mixing of groundwater.

"SOAH" means the State Office of Administrative Hearings.

"Special Provisions" means the conditions or requirements added to a permit, which may be more or less restrictive than the Rules as a result of circumstances unique to a particular situation.

"Spring" means a point(s) of natural discharge from an aquifer.

"Static Water Level" means the water level in a well that has not been affected by withdrawal of groundwater.

"Stratum" means a layer of rock having a similar composition throughout.

"Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

"Surface Completion" means sealing off access of undesirable water, surface material, or other potential sources of contamination to the wellbore by proper casing and/or cementing procedures.

"TCEQ" means the Texas Commission on Environmental Quality, and its predecessor and any successor agencies.

"TWDB" means the Texas Water Development Board.

"User" means a person who produces, distributes, or uses water from any Aquifer within the District.

"Waste" shall have the meaning provided for in District Rule 14.1.

"Water Table" means the upper boundary of the saturated zone in an unconfined aquifer.

"Water Tight Seal" means a seal that prohibits the entrance of liquids or solutions, including water, which may enter through the wellhead and potentially, contaminate the well.

"Water Well" means any drilled or excavated facility, device, or method used to withdraw groundwater from the groundwater supply.

"Well" means any artificial excavation or borehole constructed for the purposes of exploring for or producing groundwater, or for injection, monitoring, or dewatering purposes.

"Well Registration" means the creation of a record of the well by use and a well identification number for purposes of registering the well as to its geographic location and for notification to the well owner in cases of spills or accidents, data collection, recordkeeping and for future planning purposes. (See Section 9 of the District's rules).

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

"Withdraw or Withdrawal" means the act of extracting groundwater by pumping or any other method other than the discharge of natural springs.

RULE 1.2 PURPOSE OF RULES

The rules of the District are promulgated and adopted under the District's statutory authority to achieve the following purposes and objectives: to provide for conserving, preserving, protecting, and recharging of groundwater or of a groundwater reservoir or its subdivisions, in order to control subsidence, or prevent waste of groundwater. The District's orders rules, requirements, resolutions, policies, guidelines or similar measures have been implemented to fulfill these objectives.

RULE 1.3 USE AND EFFECT OF RULES

These rules are used by the District as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act and Chapter 36 of the Texas Water Code. They shall not be construed as a limitation or restriction on the exercise of any discretion, where it exists, nor shall they be construed to deprive the District or Board of the exercise of any powers, duties or jurisdiction conferred by law; nor shall they be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act or Chapter 36.

RULE 1.4 AMENDING OF RULES

The Board may, following notice and hearing, amend or repeal these rules or adopt new rules from time to time, following the procedure set forth in the Rulemaking Section of these rules, and applicable law.

RULE 1.5 HEADINGS 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.

RULE 1.6 CONSTRUCTION

A reference to a title or chapter without further identification is a reference to a title or chapter of the Texas Water Code, unless the context of usage clearly implies otherwise. A reference to a section or rule without further identification is a reference to a section or rule in these rules, unless the context of usage clearly implies otherwise. Construction of words and phrases is governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code. The singular includes the plural, and the plural includes the singular. The words “and” and “or” are interchangeable and shall be interpreted to mean and/or.

RULE 1.7 SEVERABILITY

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

RULE 1.8 SEVERABILITY CLAUSE

If any section, sentence, paragraph, clause, or part of these rules should be held or declared invalid for any reason by a final judgment of the courts of this state or of the United States, such decision or holding shall not affect the validity of the remaining portions of these rules, and the Board does hereby declare that it would have adopted and promulgated such remaining portions irrespective or the fact that any other sentence, section, paragraph, clause, or part thereof may be declared invalid.

RULE 1.9 COMPLIANCE

All permit holders and registrants of the District shall comply with all applicable rules and regulations of other governmental entities. Where the District's rules and regulations are more stringent than those of other governmental entities, the District's rules and regulations shall control.

RULE 1.10 VERB USAGE

The verbs may, can, might, should, or could are used when an action is optional or may not apply in every case. The verbs will, shall, or must are used when an action is required. The verb cannot is used when an action is not allowed or is not achievable. Unless otherwise expressly provided for in these rules, the past, present, and future tense shall include each other.

SECTION 2. BOARD AND DISTRICT STAFF

RULE 2.1 MEETINGS

The Board shall meet at least once each quarter and may meet more frequently as the Board may establish from time to time. At the request of the Board President, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held and conducted according to the Texas Open Meetings Act, Chapter 551, Texas Government Code. Directors shall not knowingly conspire to meet in numbers less than a quorum for the purpose of secret deliberations.

RULE 2.2 COMMITTEES

The Board President may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees. Committee members serve at the pleasure of the Board President.

RULE 2.3 ASSISTANT SECRETARY

A Director or member of the District staff may be appointed by the Board as Assistant Secretary to the Board to assist in meeting the responsibilities of the Board Secretary, if desired by the Board.

RULE 2.4 GENERAL MANAGER

The Board may employ or contract with a person to manage the District, and title this person "General Manager". The General Manager shall have full authority to manage and operate the affairs of the District, subject only to Board orders. The Board will review the compensation and/or contract of the General Manager each year at the beginning of the third quarter of every fiscal year. The General Manager, with approval of the Board, may employ all persons necessary for the proper handling of business and operation of the District, and their compensation will be set by the Board.

SECTION 3. BOARD

RULE 3.1 PURPOSE OF BOARD

The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District for conserving, preserving, protecting and recharging the groundwater and aquifers within the District, and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption, implementation, and enforcement of the District's rules and orders.

RULE 3.2 BOARD STRUCTURE, OFFICERS

The Board may elect officers annually, but must elect officers at the first meeting following the November elections of each even-numbered year. Directors and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these rules, and qualified under applicable State law. If there is a vacancy on the Board, the remaining Directors shall appoint a Director to serve the remainder of the term. If at any time there are fewer than three qualified Directors, the Pecos County Commissioners Court shall appoint the necessary number of persons to fill all the vacancies on the Board. The appointed Director's term shall end on qualification of the Director elected at that election.

RULE 3.3 EX PARTE COMMUNICATIONS

Directors may not communicate, directly or indirectly, about any issue of fact or law in any contested hearing before the Board, with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. This rule does not apply to a Director who abstains from voting on any matter in which ex parte communications have occurred or to communications between the Board and the staff, professional, or consultants of the District.

SECTION 4. GENERAL PROCEDURAL PROVISIONS

RULE 4.1 DISTRICT ADDRESS

The District's mailing address is P.O. Box 1644, Fort Stockton, Texas, 79735, and its physical address shall be established by the Board and posted on the District's Internet site, if the District has a functioning Internet site.

RULE 4.2 COMPUTING TIME

In computing any period of time specified by these rules, by a Presiding Officer, by the Board, or by law, the period shall begin on the day after the act, event, or default in question, and shall conclude on the last day of that designated period, unless the last day is a Saturday, Sunday, or legal holiday on which the District Office is closed, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday on which the District Office is closed.

RULE 4.3 FILING OF DOCUMENTS AND TIME LIMIT

Applications, requests, or other papers or documents shall be filed either by hand delivery, mail, or telephonic document transfer to the District Office. The document shall be considered filed as of the date received by the District for a hand delivery; as of the date reflected by the official United States Postal Service postmark if mailed; and, for telephonic document transfers, as of the date on which the telephonic document transfer is complete, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If a person files a document by facsimile, he or she must file a copy by mail within three (3) calendar days. A document may be filed by electronic mail ("email") only if the Board or Presiding Officer has expressly authorized filing by email for that particular type of document and expressly established the appropriate date and time deadline, email address, and any other appropriate filing instructions.

RULE 4.4 METHODS OF SERVICE UNDER THE RULES

Except as otherwise provided for in these rules, and notice or document required by these rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier-receipted delivery, by certified or registered mail sent to recipient's last known address, by email to the recipient's email address on file with the District if written consent is granted by the recipient, or by facsimile to the recipient's current facsimile number and shall be accomplished by 5:00 o'clock p.m. (as shown by the clock in the recipient's office) of the date on which it is due. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by facsimile is complete upon transfer, except that any transfer commencing after 5:00 o'clock p.m. (as shown by the clock in the recipient's office) shall be deemed complete the following business day. If service or delivery is by mail, and the recipient has the right to perform some act or is required to perform some act within a prescribed period of time after service, three (3) calendar days will be added to the prescribed period. Where service by other methods has proved unsuccessful, the service shall be complete by such other method as may be approved by the Board. The person or person's attorney shall certify compliance with this rule in writing over signature and on the filed document. A certificate by a person or the person's attorney of record, or the return of an officer, or the affidavit of any person showing service of a document, shall be prima facie evidence of the fact of service.

RULE 4.5 USE OF FORMS

The General Manager will furnish forms and instructions for the preparation of any application, declaration, registration or other document that is required to be filed with the District on a form prepared by the District. The use of such forms is mandatory. Supplements may be attached if there is insufficient space on the form. If supplements are used, the data and information entered therein shall be separated into sections that are numbered to correspond with the numbers of the printed form.

RULE 4.6 MINUTES AND RECORDS OF THE DISTRICT

All official documents, reports, records, and minutes of the District will be available for public inspection and copying in accordance with the Texas Public Information Act.

RULE 4.7 APPLICABILITY; PROCEDURES NOT OTHERWISE PROVIDED FOR

This Section 4 shall apply to all types of hearings conducted by the District to the extent this Section is not inconsistent with any other section of these rules that applies to the type of hearing at issue. If, in connection with any hearing, the Board determines that there are no statutes or other applicable rules resolving particular procedural questions then before the Board, the Board will direct the parties to follow procedures consistent with the purpose of these rules, the District Act, and Chapter 36 of the Texas Water Code.

RULE 4.8 CONTINUANCE

Unless provided otherwise in these Rules, any meeting, workshop, or hearing may be continued from time to time and date to date without published notice after the initial notice, in conformity with the Texas Open Meetings Act.

RULE 4.9 REQUEST FOR RECONSIDERATION

To appeal a decision of the District, including any determinations made by the Board or General Manager, concerning any matter not covered under any other section of these rules, a request for reconsideration may be filed with the District within 20 (twenty) calendar days of the date of the decision. Such request for reconsideration must be in writing and must state clear and concise grounds for the request. The Board will make a decision on the request for reconsideration within 45 (forty-five) calendar days thereafter. The failure of the Board to grant or deny the request for reconsideration within 45 (forty-five) calendar days of the date of filing shall constitute a denial of the request. This rule is not intended to be a prerequisite for a person to exhaust administrative remedies prior to filing suit in court.

SECTION 5. HEARINGS GENERALLY

RULE 5.1 APPLICABILITY

(a) Rulemaking hearings are governed by Section 6 of the District's rules.

(b) Hearings on the District Management Plan are governed by Section 8 of the District's rules.

(c) Permit-related hearings and hearings on applications for well-spacing exceptions are governed by Section 11 of the District's rules.

(d) Hearings to prevent waste, pollution, or degradation of the quality of groundwater under Section 14 of the District's rules may be conducted under Rule 14.4.

(e) Enforcement hearings are governed by Section 15 of the District's rules.

(f) Hearings on the Desired Future Conditions, including the appeal process of Desired Future Conditions, are governed by Section 17 of the District's rules.

(g) All other hearings not described in this rule are governed by Rule 5.2.

RULE 5.2 HEARINGS ON OTHER MATTERS

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

SECTION 6. RULEMAKING HEARINGS

RULE 6.1 GENERAL

A rulemaking hearing involves matters of general applicability that implement, interpret, or prescribe the law or District's policy, or that describe the procedure or practice requirements of the District. The District will update its rules to implement the Desired Future Conditions before the first anniversary of the date that the TWDB approves the District Management Plan that has been updated to reflect the adopted Desired Future Conditions.

RULE 6.2 NOTICE AND SCHEDULING OF HEARINGS

(a) For all rulemaking hearings, the notice shall include a brief explanation of the subject matter of the hearing, the time, date, and place of the hearing, location, or Internet site at which a copy of the proposed rules may be reviewed or copied, if the District has a functioning Internet site, and any other information deemed relevant by the General Manager or the Board.

(b) Not less than 20 (twenty) calendar days prior to the date of the hearing, and subject to the notice requirements of the Texas Open Meetings Act the General Manager shall:

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

(2) provide notice to the County Clerk of Pecos County;

(3) publish notice in one or more newspapers of general circulation in the District;

(4) provide notice by mail, fax, or email to any person who has requested notice under Subsection (c); and

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

(c) A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing

attempted service by first class mail, fax, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(d) Failure to provide notice under Subsection (c) does not invalidate an action taken by the District at a rulemaking hearing.

(e) Any hearing may or may not be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. Any hearing may be continued from time to time and date to date without published notice after the initial published notice in conformity with the Texas Open Meetings Act. The District must conduct at least one hearing prior to adopting amendments to the District's rules.

RULE 6.3 RULEMAKING HEARINGS PROCEDURES

(a) General Procedures: The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. In conducting a rulemaking hearing, the Presiding Officer may elect to utilize procedures set forth in these Rules for permit hearings to the extent that and in the manner that the Presiding Officer deems most appropriate for the particular rulemaking hearing. The Presiding Officer will prepare and keep a record of the rulemaking hearing in the form of an audio or video recording or a court reporter transcription at his or her discretion.

(b) Submission of Documents: Any interested person may submit written statements, protests, or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing; provided, however, the Presiding Officer may grant additional time for the submission of documents.

(c) Oral Presentations: Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

(d) Conclusion of the hearing: At the conclusion of the hearing, the Board may take action on the subject matter of the hearing, take no action, or postpone action until a future meeting or hearing of the Board. When adopting, amending, or repealing any rule, the District shall:

(1) consider all groundwater uses and needs;
(2) develop rules that are fair and impartial;
(3) consider the groundwater ownership and rights described by Section 36.002, Texas Water Code;
(4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater

reservoirs or their subdivision, consistent with the objectives of Section 59, Article XVI, Texas Constitution;

(5) consider the goals developed as part of the District Management Plan under Section 36.1071, Texas Water Code; and

(6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

(e) Hearing Registration Form: A person participating in a rulemaking hearing shall complete a hearing registration form stating the person's name, address, and whom the person represents, if applicable.

RULE 6.4 CONDUCT AND DECORUM

Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. 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 will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer deems necessary.

RULE 6.5 PETITION TO MODIFY OR ADOPT DISTRICT RULE

(a) A person with a real property interest in groundwater located within the District's jurisdictional boundaries may file a petition with the District to request the adoption or modification of a rule.

(b) Petitions under this rule must be submitted in writing on the Petition to Adopt or Modify Rules Form appended to these rules to the District office and must comply with the following requirements:

(1) A separate petition must be filed for each general topic proposed to be addressed by a rule modification or change;

(2) Each petition must be signed and state the full name of each person signing the petition and the person's contact information, including phone number, physical address, mailing address, and email address, if any;

(3) Each petition must include:

(A) proof that the person submitting the petition has a real property interest in groundwater located within the District's jurisdictional boundaries;

(B) a written explanation of the proposed rule or rule modification's intended purpose;

(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) If a person is unable to comply with any procedures required under this rule, then the person must submit to the District, on the same day that the person submits a petition under this rule, a written explanation as to why compliance with the required procedure(s) is not possible and must submit a written request that the Board waive the specific procedure(s) at issue. Upon receipt of a written explanation and request as described herein, the Board may, at its sole discretion, waive any procedure set forth under this rule. A petition may be denied for failure to comply with the requirements under this rule.

(d) The District will provide notice of the Board's consideration of and action on a petition in accordance with District Rule 6.2 at least 20 (twenty) calendar days prior to the date of the hearing.

(e) Any person with a real property interest in groundwater located within the District may provide written public comment on the petition to the District. It is strongly encouraged that written comment be provided at least seven (7) calendar days before the petition is to be considered at a publicly noticed Board meeting.

(f) Notice of the Board's consideration of and action on a petition shall be included on a Board agenda with three (3) business days' notice compliant with the Texas Open Meetings Act.

(g) Any person desiring to testify on a petition during a hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, and the time period for oral presentations. In addition, the Presiding Officer may limit or exclude questions and cumulative, irrelevant, or unduly repetitious presentations.

(h) Within 90 (ninety) calendar days after submission of a petition that complies with this rule, the Board shall consider the petition at a Board meeting and either:

(1) grant the petition in part or in its entirety and initiate rulemaking proceedings on the subject matter identified in the granted petition in accordance with the rulemaking procedure set forth in these rules; or

(2) deny the petition in part or in its entirety and provide an explanation for denial in the minutes of the Board meeting or in a separate written statement to be kept in the District's records.

(i) Nothing in this rule may be construed to create a private cause of action for a decision to accept or deny a petition filed under this rule.

SECTION 7. EMERGENCY RULES AND ORDERS

RULE 7.1 EMERGENCY RULES

The Board may adopt an emergency rule without prior notice and/or hearing if the Board finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 (twenty) calendar days' notice. The Board shall prepare a written statement of the reasons for this finding. An emergency rule adopted shall be effective for not more than 90 (ninety) calendar days after its adoption by the Board. The Board may extend the 90-day period for an additional 90 (ninety) calendar days if notice of a hearing on the final rule is given not later than the 90th calendar day after the date the rules is adopted. An emergency rule adopted without notice and/or a hearing must be adopted at a meeting conducted under Chapter 551, Texas Government Code.

RULE 7.2 EMERGENCY ORDER AUTHORIZING TEMPORARY PRODUCTION FOR DEMONSTRATED EMERGENCY NEED

(a) A person can request in writing that the District issue an emergency order authorizing the production of groundwater for a beneficial use without a permit for a temporary period of time during which the person can submit a Production Permit application. This request must be in writing and include sufficient factual detail of the emergency situation; the quantity of groundwater needed (in gallons or acre feet); the proposed source of the groundwater (identify the aquifer); the specific location of the well from which the groundwater will be produced; and the period of time proposed for the requested emergency authorization. This request must be submitted to the District's office by any means that ensures receipt by the District.

(b) Upon receipt and consideration of the written request for an emergency order under this rule, the District's Board President or General Manager may issue an emergency order partially or fully granting the request. An order issued under this rule will provide a time limit during which it is effective, which may not exceed 75 (seventy-five) calendar days.

(c) Upon issuance of an order under this rule, the requestor is not required to hold a permit but must use its best efforts to prepare and submit a Production Permit application. The beneficiary of the emergency order authorization must submit a Production Permit application to the District within 20 (twenty) calendar days of issuance of the emergency order. If a Production Permit application is timely submitted under this subsection, then it is within the discretion of the District's Board President or General Manager to extend the 75-day timeframe of the emergency order while the application is pending.

(d) If neither the District's Board President nor General Manager issues an order under this rule after reviewing the request, the requestor's remedy is to submit a Production Permit application.

(e) If an emergency order is issued, the District's Board must be notified of the circumstances and relief granted at the District's next Board meeting.

RULE 7.3 EMERGENCY PERMIT AMENDMENT

If an emergency water need is demonstrated to the Board, the Board may amend a Production Permit or Historic or Existing Use Permit to authorize production from one or more additional wells owned or operated by the permit holder to provide flexibility to the entity with the emergency water need as long as the amendment is consistent with Rule 11.1(b). A hearing is not required under this rule. The Board may take action under this rule at a meeting for which notice has been provided in accordance with the Texas Open Meetings Act.

SECTION 8. DISTRICT MANAGEMENT PLAN

RULE 8.1 ADOPTION OF A MANAGEMENT PLAN

The Board shall adopt a Management Plan that specifies the acts, procedures, performance and avoidance necessary to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to prevent interference between wells, to prevent degradation of water quality, to prevent waste, and to avoid impairment of Desired Future Conditions. The District shall use the District's rules to implement the Management Plan.

RULE 8.2 AMENDMENT

The Board will review and readopt or amend the plan at least every fifth year after its last approval by TWDB. The District will amend its plan to address goals and objectives consistent with achieving the Desired Future Conditions within two years of the adoption of the Desired Future Conditions by the Groundwater Management Area.

RULE 8.3 EFFECTIVE DATE

The Management Plan and any amendments thereto take effect on approval by the TWDB's Executive Administrator or, if appealed, on approval by the TWDB. Approval of the Management Plan remains in effect until the District fails to timely readopt a Management Plan, the District fails to timely submit the District's readopted Management Plan to the TWDB's Executive Administrator, or the TWDB's Executive Administrator determines that the readopted Management Plan does not meet the requirements for approval, and the District has exhausted all appeals to the TWDB or appropriate court.

RULE 8.4 NOTICE

(a) The notice of a hearing on any adoption or amendment of the Management Plan shall include the time, date, and place of the hearing, location or Internet site at which a copy of the proposed plan may be reviewed or copied, if the District has a functioning Internet site, and any other information deemed relevant by the General Manager or the Board.

(b) Not less than ten (10) calendar days prior to the date of the hearing, and subject to the notice requirements of the Texas Open Meetings Act, the General Manager shall:

(1) post notice in a place readily accessible to the public at the District Office;
(2) provide notice to the county clerk of Pecos County; and
(3) make available a copy of the proposed plan at a place accessible to the public during normal business hours, and post an electronic copy on the District's Internet site, if the District has a functioning Internet site.

(c) Any hearing may or may not be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. Any hearing may be continued from time to time and date to date without notice after the initial notice, in compliance with the Texas Open Meetings Act. The District must conduct at least one hearing prior to adopting the plan or any amendments to the plan.

RULE 8.5 HEARING PROCEDURES

(a) General Procedures: The Presiding Officer will conduct the hearing in the manner the Presiding Officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The Presiding Officer will prepare and keep a record of the hearing in the form of an audio or video recording or a court reporter transcription at his or her discretion.

(b) Submission of Documents: Any interested person may submit written statements, protests, or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing; provided, however, the Presiding Officer may grant additional time for the submission of documents.

(c) Oral Presentations: Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

(d) Conclusion of the hearing: At the conclusion of the hearing, the Board may take action on the subject matter of the hearing, take no action, or postpone action until a future meeting or hearing of the Board. When adopting, amending, or repealing the Management Plan, the District shall:

(1) use the District's best available data and groundwater availability modeling information provided by the TWDB's Executive Administrator together with any available site-specific information that has been provided by the District to the TWDB's Executive Administrator for review and comment before being used in the plan;
(2) address the management goals set forth in Section 36.1071, Texas Water Code; and
(3) use and address objectives consistent with achieving the Desired Future Conditions as adopted during the joint planning process.

(e) Hearing Registration Form: A person participating in a hearing on the Management Plan shall complete a hearing registration form stating the person's name, address, and whom the person represents, if applicable.

SECTION 9. WATER WELL REGISTRATION

RULE 9.1 REGISTRATION

All water wells, existing and new, exempt and nonexempt, must be registered with the District and are required to comply with the District's registration requirements in these rules.

RULE 9.2 GENERAL REGISTRATION POLICIES AND PROCEDURES

9.2.1 Each person who intends to drill, equip, modify, complete, operate, change type of use, plug, abandon, or alter the size of a well within the District must complete and submit to the District the District's Notice of Intent to Drill a New Well (Notice of Intent), registration or permit application form, as applicable, even though the well may be exempt from the requirement of a permit under District Rule 11.3.

9.2.2 Pre-registration: For all proposed new exempt and nonexempt wells, the owner of the proposed new well, or the well operator or any other person acting on behalf of the owner of the proposed new well must file a Notice of Intent prior to drilling the proposed new well. If it is believed by the person filing the Notice of Intent that the proposed new well will be exempt under District Rule 11.3, then the Notice of Intent must reflect the basis for the exemption, and must be approved by the District prior to drilling the new well. Within five (5) calendar days from receipt of a Notice of Intent, the District's General Manager shall (1) determine whether the well is exempt under the District's rules, (2) complete the District Use Only section at the end of the Notice of Intent indicating whether the well is exempt, and (3) return a copy of the completed Notice of Intent by facsimile or mail to the address(es) and facsimile number(s) set forth in the Notice of Intent. If the District's determination is that the well is exempt, drilling may begin immediately upon receiving the approved Notice of Intent. The drilling of a new exempt well is subject to the rules of the District. Upon completion of the new exempt well, a registration form must be completed and filed. If the District's determination is that the well is nonexempt, a Drilling Permit application must be filed and approved by the District before drilling may begin.

9.2.3 Registration: All wells must be registered. Existing nonexempt and exempt wells shall be registered immediately. New nonexempt wells shall be registered immediately upon completion pursuant to a Drilling Permit. New exempt wells shall be registered immediately upon completion pursuant to an approved pre-registration.

9.2.4 Re-registration: If the owner or operator of a registered well plans to change the type of use of the groundwater, increase the withdrawal rate, or substantially alter the size of the well or well pump in a manner that does not require a permit, the well must be re-registered on a new registration form.

9.2.5 In the event of an emergency during the drilling of a new exempt well or with an existing well, as defined by the well driller or well service operator, as applicable, an exempt well may be reworked prior to re-registration. The registration requirement will be waived for a 48-hour period.

9.2.6 Term: A registration certificate is perpetual in nature, subject to cancellation for violation of these Rules.

9.2.7 Transfer of Registration: Upon submission to the District of written notice of transfer of ownership or control of any water right or water well covered by a registration and documents evidencing the transfer, the District's General Manager will amend the well registration to reflect the new owner(s).

SECTION 10. PRODUCTION LIMITATIONS

RULE 10.1 HISTORIC AND EXISTING USE PERMITS

The District shall designate the quantity of groundwater that may be produced on an annual basis in each Historic and Existing Use Permit issued by the District, and each permit shall be subject to the conditions of the District Act, Chapter 36 of the Texas Water Code, and these rules, provided, however, that the quantity that may be withdrawn shall not exceed the Maximum Historic and Existing Use demonstrated by the applicant, and determined by the Board, except as that designated quantity of groundwater may be reduced if the District imposes restrictions under these rules and/or permit conditions, or consistent with a Demand Management Plan developed under Rule 10.3(b).

RULE 10.2 PRODUCTION PERMITS

The District shall designate the quantity of groundwater that may be produced on an annual basis under a Production Permit pursuant to the conditions of the District Act, Chapter 36 of the Texas Water Code, and these rules, provided, however, that the quantity shall not exceed an amount demonstrated by the applicant and determined by the Board to be necessary for beneficial use throughout the permit term, except as may be reduced if the District imposes restrictions under these rules and/or permit conditions, or consistent with a Demand Management Plan developed under Rule 10.3(b).

RULE 10.3 AQUIFER-BASED PRODUCTION LIMITS

(a) The District may limit the total amount of authorized annual production and maximum annual rate of groundwater withdrawal for any aquifer within the District as the District determines to be necessary based upon the best available hydrogeologic, geographic, and other relevant scientific data, including but not limited to noted changes in the water levels, water quality, groundwater withdrawals, annual recharge, or the loss of stored water in the aquifer, to avoid impairment of any Desired Future Condition. The District may also develop, utilize, and/or adopt groundwater availability models in support of the District's management of the groundwater within its jurisdiction. The District may establish a series of index or monitoring wells to aid in this determination.

(b) The District will continue to study what aquifer conditions may indicate that proportional adjustment reductions to the amount of permitted production of groundwater are necessary to avoid impairment of the Desired Future Conditions of any of the various aquifers within the District. The District will also continue to study what quantity of proportional adjustment reductions to the amount of permitted production of groundwater are necessary to avoid impairment of the Desired Future Conditions of any of the various aquifers within the District. The Board will consider the findings of the District regarding actions necessary to avoid impairment of the Desired Future Conditions of any of the various

aquifers within the District, and may adopt, after appropriate rulemaking notice and hearing, an aquifer-specific Demand Management Plan setting forth a schedule of the actions that may be necessary to avoid impairment of the Desired Future Conditions of any of the various aquifers within the District.

(c) The Board has the right to modify a permit if data from monitoring wells within the source aquifer or other evidence reflects conditions such as but not limited to an unacceptable level of decline in water quality of the aquifer, or as may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence, or to avoid impairment of the Desired Future Conditions of any of the various aquifers within the District. If the Board has an interest in modifying a permit under this rule, it must provide notice and an opportunity for hearing pursuant to Section 11 of the District's rules.

(d) Upon adoption of Desired Future Conditions and setting of the Modeled Available Groundwater numbers for any aquifer or its subdivisions in the District, the District shall, to the extent possible, issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable Desired Future Condition for each such aquifer or its subdivision in the District. If the total amount of production within an aquifer, or its subdivision, as applicable, is less than the total volume of exempt and permitted groundwater production that will achieve an applicable Desired Future Condition for that aquifer, production amounts authorized under Historic and Existing Use and Production Permits may remain the same or be increased, as set forth under these rules. As determined by the District, if the total amount of production within an aquifer exceeds the Modeled Available Groundwater set for an aquifer, production amounts may be decreased proportionally among all permit holders producing from that aquifer, if necessary to avoid impairment of the Desired Future Condition. Any necessary reductions will first be applied to Production Permits, and, subsequently, if production still exceeds the Modeled Available Groundwater set for an aquifer after reducing Production Permits in their entirety, to Historic and Existing Use Permits, as set forth under Rule 10.4.

RULE 10.4 PROPORTIONAL ADJUSTMENT

(a) When establishing proportional adjustment restrictions, the Board shall first set aside an amount of groundwater equal to an estimate of total exempt use.

(b) After setting aside an amount of groundwater for exempt use, to the extent of remaining groundwater availability, the Board shall allocate groundwater to Historic and Existing Use Permits according to the permitted Maximum Historic and Existing Use in each. If there is insufficient groundwater availability to allow withdrawal under all Historic and Existing Use Permits, the Board shall allocate the groundwater availability first to the Historic and Existing Permits in an amount up to the Eligible Recharge Credit, on a pro rata basis relative to all other Historic and Existing Permits. The Eligible Recharge Credit shall mean 30% of the permitted Maximum Historic and Existing Use that is designated for and previously put to irrigation use in each Historic and Existing Use Permit. The groundwater authorized for withdrawal pursuant to an Eligible Recharge Credit must be withdrawn from the same aquifer that has been recharged with groundwater allocated under the respective permit or application. The remaining groundwater availability shall then be allocated

among the Historic and Existing Use Permits up to an amount authorized under each permit on an equal percentage basis until total authorized production equals groundwater availability for a particular aquifer district-wide or within a management zone, if applicable. The Eligible Recharge Credit shall be applied in such a manner that the irrigation user's Existing and Historic Use Permit shall not be proportionally reduced to the extent of the Eligible Recharge Credit. The only basis for proportionately reducing the Eligible Recharge Credit shall be in the event that 100% of the non-recharge credit portion of the Historic and Existing Use Permit allotments has been reduced. If it can be demonstrated and the Board takes official action to determine that the irrigation recharge is more or less than 30%, then the Eligible Recharge Credit may be adjusted by subsequent rulemaking. No groundwater shall be authorized for production under Production Permits if there is insufficient water availability to satisfy all Historic and Existing Use Permits and exempt use, subject to Subsection (e) of this rule. The Eligible Recharge Credit for irrigation use under a Production Permit shall not be applied where there is equal to or less than enough groundwater to satisfy all Historic and Existing Use Permits and exempt use.

(c) If there is sufficient groundwater to satisfy all Historic and Existing Use Permits and exempt use, the Board shall then allocate remaining water availability first to the existing Production Permit holders in an amount equal to their Eligible Recharge Credit, on a pro rata basis relative to all other Production Permits. The Eligible Recharge Credit shall mean 30% of the groundwater allocated under each Production Permit that is designated for and previously put to irrigation use. The groundwater authorized for withdrawal pursuant to an Eligible Recharge Credit must be withdrawn from the same aquifer that has been recharged with groundwater allocated under the respective Production Permit. The remaining groundwater availability shall then be allocated among the Production Permits up to an amount authorized under each permit on an equal percentage basis until total authorized production equals groundwater availability for a particular aquifer district-wide or within a management zone, if applicable. The recharge credit shall be applied in such a manner that the irrigation user's Production Permit shall not be proportionally reduced to the extent of the recharge credit. The only occasion for proportionately reducing the Eligible Recharge Credit shall be in the event that 100% of the non-recharge credit portion of the Production Permit allotments has been reduced, and there is only sufficient groundwater availability to supply exempt use and Historic and Existing Use. If it can be demonstrated and the Board takes official action to determine that the irrigation recharge is more or less than 30%, then the recharge credit shall be adjusted accordingly. No groundwater may be authorized for production under new Production Permits if there is insufficient groundwater availability to satisfy all existing Production Permits, subject to Subsection (e) of this rule.

(d) If there is sufficient groundwater to satisfy all Historic and Existing Use Permits, exempt use, and existing Production Permits, the Board may then allocate remaining groundwater availability to applications for new or amended Production Permits approved by the District.

(e) When establishing proportional adjustment restrictions that contemplate the reduction of authorized production or a prohibition on authorization for new or increased production, the Board may also choose to proportionately reduce any existing Production Permits on a pro rata basis, excluding the authorized Eligible Recharge Credit, in order to make groundwater available for new applications for Production Permits and may allocate to

each surface acre a designated amount of groundwater. In doing so, the Board may elect to allocate more water to surface acreage recognized under existing Production Permits than to surface acreage associated with applications for new Production Permits.

RULE 10.5 MANAGEMENT ZONES

(a) As set forth in the District Management Plan and illustrated in Figures 1 through 4 below, and in furtherance of the purposes set forth in Section 36.116(d) of the Texas Water Code, the following management zones are established within the principal areas of irrigation and other beneficial uses of groundwater and pertinent surrounding areas of Pecos County:

(1) Management Zone 1 – Leon-Belding Irrigation Area and Vicinity of City of Fort Stockton to include outlets of Comanche Springs;

(2) Management Zone 2 – Bakersfield Irrigation Area; and

(3) Management Zone 3 – Coyanosa Irrigation Area.

The delineation of each Management Zone is based upon relevant model grid cells and associated data on file with the District and accessible to the public.

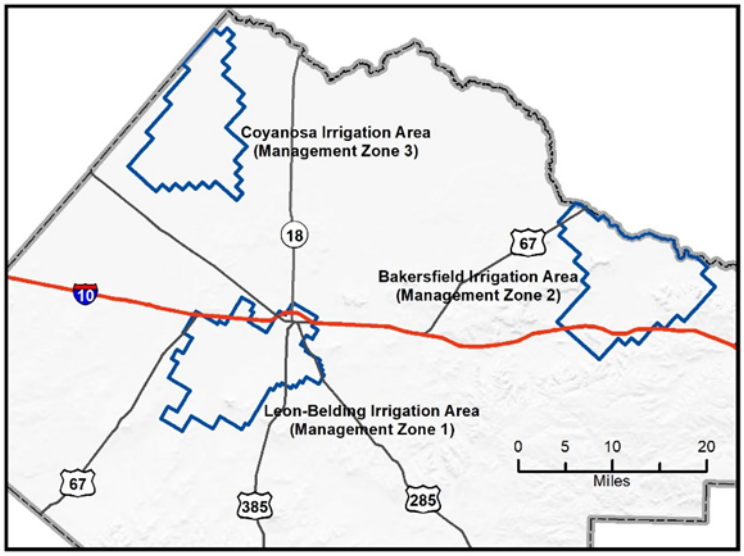


Figure 1, District Designated Management Zones

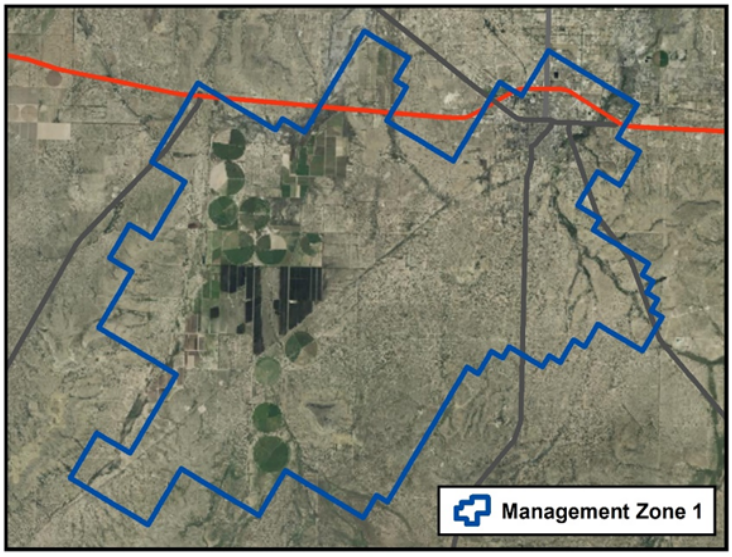


Figure 2, District Management Zone 1

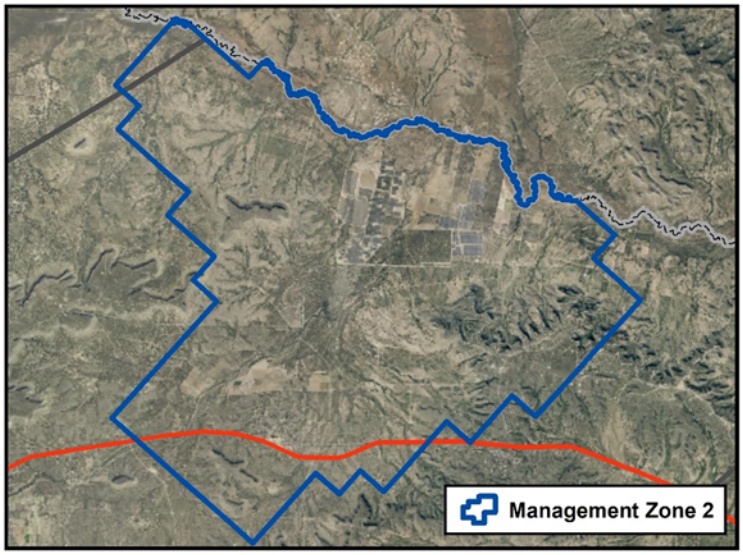


Figure 3, District Management Zone 2



Figure 4, District Management Zone 3

(b) The District shall establish benchmarks of sustainable groundwater use over time to avoid impairment of the Desired Future Condition of each of the aquifers within each management zone, and will re-establish benchmarks from time to time as necessary to be consistent with such Desired Future Conditions. The benchmarks of sustainable groundwater use are threshold amounts of acceptable drawdown over time. The threshold amounts of acceptable drawdown are the average predicted drawdown values over time for each management zone predicted in Scenarios 10 and 11 of TWDB GAM-Run 09-35, Version 2, used to establish the DFCs for the Edwards-Trinity (Plateau) and Pecos Valley aquifers in the District. The predicted drawdown values over time for Management Zones 1 and 2, located in the GMA-7 portion of the District, are from Scenario 10. The predicted drawdown values over time for Management Zone 3, located in the GMA-3 portion of the

District, are from Scenario 11. The threshold amounts of acceptable drawdown over time for each management zone are as presented in TWDB GAM Task Report 10-033, which presents more detailed information on Pecos County than otherwise available in but consistent with Scenarios 10 and 11 of TWDB GAM-Run 09-35. The threshold amounts of acceptable drawdown over time for each management zone are as follows:

Year	Management Zone-1 Average Draw-Down (in feet, rounded to nearest foot)	Management Zone-2 Average Draw-Down (in feet, rounded to nearest foot)	Management Zone-3 Average Draw-Down (in feet, rounded to nearest foot)
2015	3	1	2
2020	7	2	4
2025	10	2	5
2030	13	2	7
2035	17	2	8
2040	20	3	9
2045	23	3	11
2050	26	3	12
2055	29	3	13
2060	32	3	15

Table 1, Example Predictive Average Drawdown Values over Time in Edwards-Trinity (Plateau) and Pecos Valley Aquifers for MPGCD Management Zones from TWDB GAM Task Report 10-033.

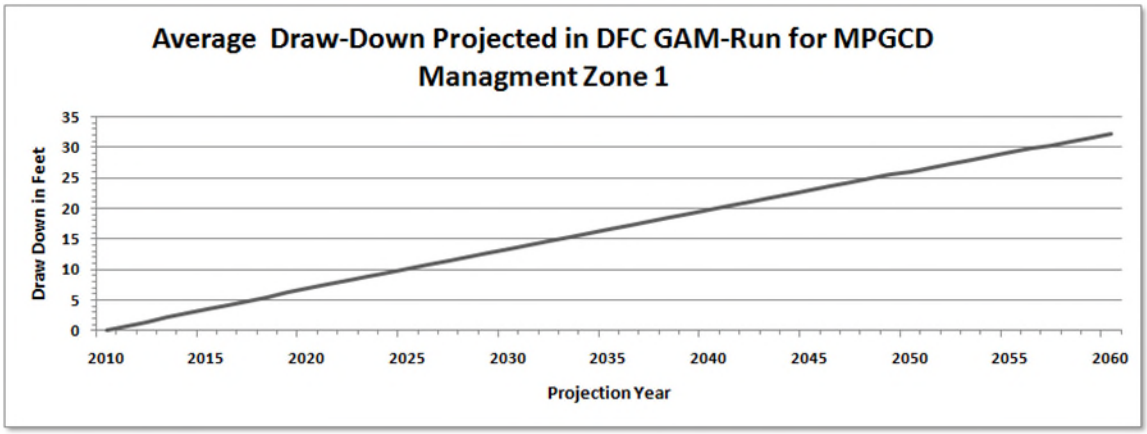


Figure 5, Chart of Predictive Average Drawdown Values over Time in Edwards-Trinity (Plateau) and Pecos Valley Aquifers for MPGCD Management Zone 1 from TWDB GAM Task Report 10-033.

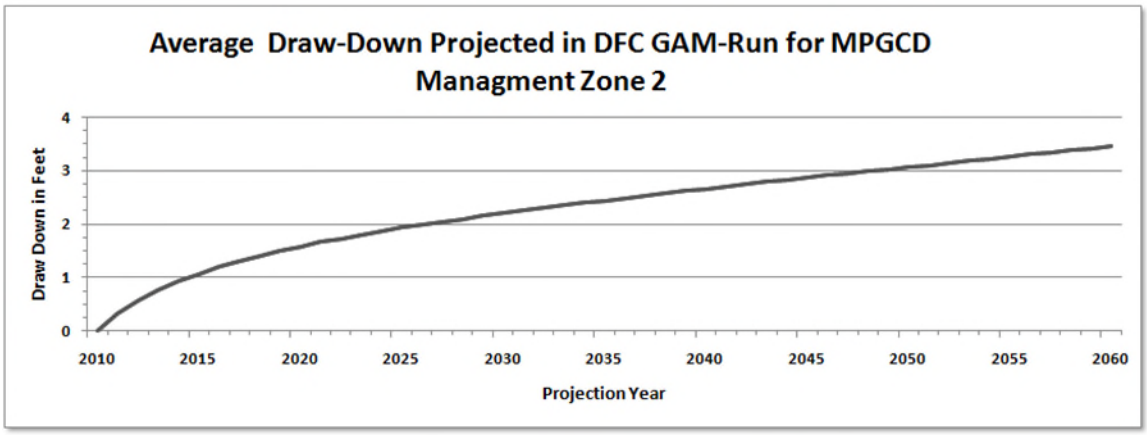


Figure 6, Chart of Predictive Average Drawdown Values over Time in Edwards-Trinity (Plateau) and Pecos Valley Aquifers for MPGCD Management Zone 2 from TWDB GAM Task Report 10-033.

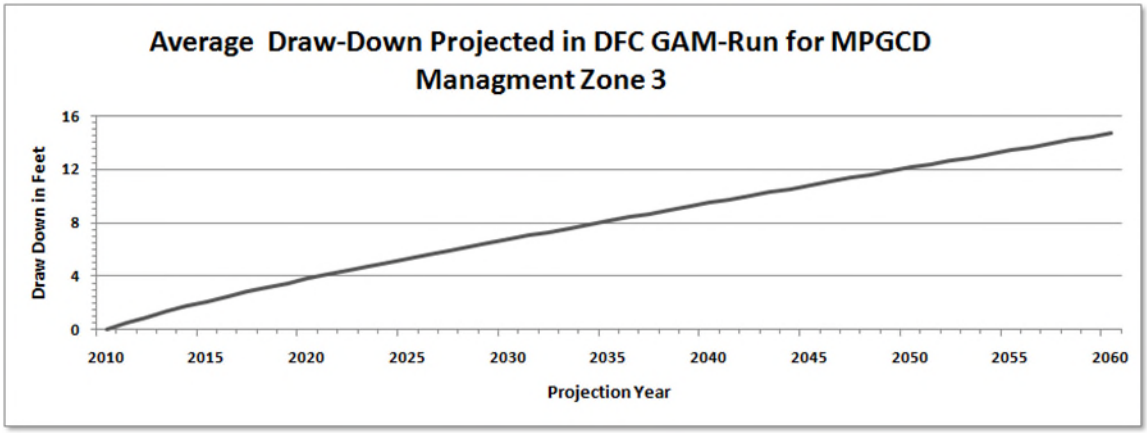


Figure 7, Chart of Predictive Average Drawdown Values over Time in Edwards-Trinity (Plateau) and Pecos Valley Aquifers for MPGCD Management Zone 3 from TWDB GAM Task Report 10-033.

(c) At least every five years, the District will assess the amount of average drawdown realized in each of the management Zones established by the District. The District will compare the amount of realized drawdown in each Management Zone to the time-appropriate threshold of acceptable drawdown in order to determine whether the amount of groundwater use occurring in the Management Zone appears likely to impair the DFC. The District may elect to assess the aquifer drawdown realized in any Management Zone and compare the realized drawdown to the time-appropriate threshold of acceptable drawdown as often as necessary to effectively manage groundwater use and insure the aquifer DFCs are not impaired. The Board may authorize the General Manager to determine whether a comparison of realized drawdown to the threshold of acceptable drawdown is needed for any Management Zone.

(d) The District recognizes that, as of the date of these Rules, the majority of groundwater used the Management Zones is for agricultural irrigation involving widespread intensive seasonal use of groundwater followed by a general cessation of use by the majority of users in the Management Zones. The District further recognizes that after the general cessation of use the aquifer recovers from the effects of the previous intensive seasonal use to reach

a point of maximum water-level recovery prior to initiation of the succeeding intensive-use season. The District also recognizes that the threshold of acceptable drawdown values generally represent the year-end maximum recovered water level of the aquifer in the Management Zones for the referenced year. However, the actual date of the maximum recovery of the aquifer water levels in the Management Zone may occur anytime from the month of November of a given calendar year through the month of February of the following year.

(e) To facilitate the comparison of realized drawdown to the thresholds of acceptable drawdown over time in the Management Zones the District will use the following procedures or actions:

(1) Establish several monitor wells in and around each Management Zone for the purpose of observing and quantifying the amount of aquifer drawdown realized over time in each Management Zone;
(2) Develop maps of maximum water-level recovery conditions for year 2010 following procedures in this subsection below;
(3) On or before February 25, 2013, adopt after notice and hearing, the maps of 2010 Management Zone water levels as the 2010 benchmarks for future comparisons of water levels under these rules;
(4) Observe the recovery of aquifer water levels as represented by the monitor wells after the intensive-use season to determine the apparent point of maximum water-level recovery in the Management Zone;
(5) In observing the recovering water levels in the monitor wells of a Management Zone, the District may determine that the apparent point of maximum water-level recovery from the season of intensive use in any given year occurs on a date through the month of February of the succeeding year;
(6) Compile the water-level data, of the Management Zone for the year in which the comparison is to be made;
(7) Determine the water-level drawdown from the established year 2010 conditions for the centroid of each grid-cell of the TWDB Edwards-Trinity (Plateau) / Pecos Valley Aquifer GAM located in the Management Zone area from the water-level contour map;
(8) Calculate the average drawdown of aquifer water levels for the year in which the comparison is to be made in each Management Zone using the set of GAM grid-cell centroid drawdown values for that year;
(9) Compare the calculated average water-level drawdown value for the Management Zone to the DFC-based threshold of acceptable drawdown for the year in which the comparison is to be made, taking into consideration how the distribution of monitoring wells and the amount of pumping known or estimated to be occurring within a Management Zone may affect comparison with the results of TWDB GAM Task Report 10-033 used to establish the thresholds of acceptable drawdown; and
(10) Adopt, after notice and hearing, maps of water levels of all the aquifers, which were not addressed in subsection (3) above, as benchmarks for future comparisons of water levels under these rules.

(f) The Board may, after appropriate rulemaking notice and hearing, establish proportional adjustment reductions based upon the availability of groundwater, benchmarks of sustainable groundwater use over time, and/or degradation of water quality that could result from declining water levels if the Board determines reductions are required to conform with these rules. Upon adoption of a Desired Future Condition and setting of Modeled Available Groundwater for an aquifer within the District, the District shall ensure that the groundwater available for production within a management zone or among management zones designated for that aquifer does not impair the Desired Future Condition and is consistent with the Modeled Available Groundwater for that aquifer within the District. Restrictions within a certain management zone will be uniformly applied within that management zone.

(g) As determined by the District, if the total amount of production within a management zone causes the benchmark of sustainable use within the management zone to be impaired, production amounts authorized under Historic and Existing Use and Production Permits may be decreased within a management zone.

RULE 10.6 LIMIT SPECIFIED IN PERMIT

The maximum annual quantity of groundwater that may be withdrawn under a Historic and Existing Use Permit or Production Permit issued by the District shall be no greater than the amount specified in the permit or the amended permit unless the District makes a determination under Section 10 to increase or decrease the authorized amount of withdrawal. Permits may be issued subject to conditions and restrictions placed on the rate and amount of withdrawal pursuant to the District's rules and permit terms necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence. The permit holder, by accepting the permit, agrees to abide by any and all groundwater withdrawal regulations established by the District that are currently in place, as well as any and all regulations established by the District in the future. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment of and agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions.

In addition to any special provisions or other requirements incorporated into the permit, each permit is subject to the following standard permit provisions:

(a) This permit is granted in accordance with the provisions of the rules of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permit holder will comply with the rules of the District.

(b) The permit terms may be modified or amended pursuant to the provisions of the District's rules or to comply with statutory requirements.

(c) The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.

(d) Withdrawals from all nonexempt wells must be accurately measured either by meter or District-approved alternative measuring method, in accordance with the District's rules. The owner or operator of all permitted wells must file an annual pumpage report with the District.

If the well is metered, the meter readings must be attached to the annual pumpage report filed with the District. Wells that are drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons per day are not required to have a meter or report annual production if used for domestic purposes or for watering livestock or poultry.

(e) The General Manager or Board may, after notice and hearing consistent with permitting hearings governed by Section 11, reduce the quantity of groundwater authorized under a production permit if the applicant has not demonstrated that the water allocated has been withdrawn and put to beneficial use for the purpose and in the amount described in the permit for at least one calendar year during the first three full calendar years following issuance of the permit. The applicant has the burden of proof to demonstrate that the groundwater allocated has been withdrawn and put to beneficial use for the purpose and in the amount described in the permit. No parties other than the permit holder and General Manager may be named as parties in the hearing. The District shall provide written notice of this hearing by certified mail (return receipt requested), hand delivery, first class mail, fax, email, FedEx, UPS, or any other type of public or private courier or delivery service. If the District is unable to provide notice to the permit holder by any of these forms of notice, the District may tape the notice on the door of the permit holder's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the alleged violator resides or in which the alleged violator's office is located.

(f) The well site must be accessible to District representatives for inspection, and the permit holder agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.

(g) The application pursuant to which this permit has been issued is incorporated in the permit, and the permit is granted on the basis of, and contingent upon, the accuracy of the information supplied in that application. A finding that false information has been supplied is grounds for immediate revocation of the permit.

(h) Violation of a permit's terms, conditions, requirements, or special provisions is punishable by civil penalties as provided by the District's rules.

(i) The permit may also contain provisions relating to the means and methods of export outside the District of groundwater produced within the District.

RULE 10.7 MEASURING AND REPORTING GROUNDWATER WITHDRAWALS

(a) Nonexempt wells: Every owner or operator of a nonexempt Water Well is responsible for measuring withdrawals from each Water Well either by a District-approved meter or alternative measuring method. Meters must be selected and installed in accordance with the District General Manager's specifications and approval, at the well owner's cost. Meters are not required to be installed on nonexempt wells that are drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons per day, as long as an alternative measuring method approved by the District is used to record and report groundwater production from this type of well.

(b) Alternative measuring method: The District may authorize the use of an alternative measuring method in lieu of a meter if it can be demonstrated by the well owner that the alternative measuring method is capable of accurate measurement of groundwater withdrawal. The owner of a nonexempt well must secure the District General Manager's approval of an alternative measuring method of determining the amount of groundwater withdrawn. The District General Manager may authorize the alternative measuring method if the applicant well owner demonstrates that the alternative measuring method can accurately measure the groundwater withdrawn. Reporting shall still be required by an owner or operator of a well who is using a District-approved alternative measuring method. A report reflecting annual withdrawals, on a calendar-year basis, shall be provided by any means approved by the General Manager, or more frequently, if requested by the General Manager.

(c) Exempt wells:

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

(A) the total amount of water withdrawn during the month;
(B) the quantity of water necessary for mining activities; and
(C) the quantity of water withdrawn for other purposes.

(2) A report reflecting the total amount of water withdrawn each month from a well exempt under District Rule 11.3(a)(2) must be submitted to the District by the owner or operator. The owner and the operator of such a well may coordinate to determine the amount of monthly withdrawals and to submit this report. However, both the owner and operator of such a well are responsible for ensuring that the withdrawals are determined and that the report is submitted to the District.

(3) The groundwater production from wells subject to reporting under this Subsection (c) must be measured by meter or alternative measuring method approved under this Rule 10.7.

(d) A meter shall be read and the meter reading monthly recorded to reflect the actual amount of pumpage throughout each calendar year. A report reflecting the annual withdrawals and annual system water loss, on a calendar-year basis, shall be provided by any means approved by the General Manager, or more frequently, if requested by the General Manager. The permit holder subject to this reporting requirement shall keep accurate records of the amount of groundwater withdrawn and the purpose of the withdrawal, and such records shall be available for inspection by the District or its representatives. Where wells are permitted in the aggregate, metering and reporting are required on a well-by-well basis.

(e) Immediate written notice shall be given to the District in the event a withdrawal exceeds or is anticipated to exceed the quantity authorized by a permit issued by the District.

(f) Meter accuracy to be tested. The District may require a well owner or operator, at the well owner's or operator's expense, to test the accuracy of the meter and submit a certificate of the test results. The District also has the authority to test a meter. If a test reveals that a meter is not registering within an accuracy of 95%-105% of actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or Well System, the well owner or operator must take appropriate steps to remedy the problem, and to retest the meter within 90 (ninety) calendar days from the date the problem is discovered.

(g) Violation of Metering and Reporting Requirements: False reporting or logging of meter readings, intentionally tampering with or disabling a meter, or similar actions to avoid accurate reporting of groundwater use and pumpage shall constitute a violation of these rules and shall subject the person performing the action, as well as the well owner, and/or the primary operator who authorizes or allows that action, to such remedies as provided in the District Act and these rules.

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

(i) Meter Maintenance: Costs of meter maintenance shall be borne by the well owner or operator.

(j) Water Use Reporting: Pursuant to Texas Water Code Sections 36.109 and 36.111, if the Board or General Manager deems it useful or otherwise necessary for the District to secure monthly groundwater use data, the General Manager may notify any user of groundwater that monthly groundwater use must be reported to the District.

SECTION 11. GENERAL PERMITTING POLICIES AND PROCEDURES

RULE 11.1 REQUIREMENT FOR PERMIT TO DRILL, OPERATE, OR ALTER THE SIZE OF A WELL OR WELL PUMP; PERMIT AMENDMENT

(a) Permits Required: No person may drill, operate, equip, complete, or alter the size of a well or well pump without first obtaining a permit or approved pre-registration, as applicable, from the District as provided by statutory law and these rules.

(b) Permit Amendment Required: A permit amendment is required prior to any deviation from the permit terms regarding the maximum amount of groundwater to be produced from a well, the location of a proposed well, the purpose of use of the groundwater, the location of use of the groundwater, or the drilling and operation of additional wells, even if aggregate withdrawals remain the same. A Historic and Existing Use Permit may not be amended to modify the purpose of use for which the Historic and Existing Use Permit was

originally granted, but may be amended to modify the place of use to a place inside or outside the district. The District may authorize a permit holder to lease or otherwise transfer ownership of a Historic and Existing Use Permit or the amount of groundwater production authorized under such a permit, as long as the purpose of use does not change and as long as the withdrawal is made from the same aquifer and within the same management zone, if applicable, and such transfers are subject to the Rule 11.9.1 and Rule 11.10.10.

(c) Absent an express reservation of rights in the transferor, the transfer of ownership of the well(s) designated by a permit is presumed to transfer ownership of the permit, and the transfer of the land and well site on which the well is located is presumed to transfer ownership of the well. The ownership of a permit may be transferred separately from the ownership of water rights and a well and land and well site on which the well is located, subject to these Rules and permit conditions, with sufficient documentation of an ownership or contractual right to hold the permit. If a transferor retains any interest in the permit, the District may issue a second permit to the transferee that contains the benefits severed and transferred. The District may thereafter amend the permit of the transferor accordingly, along with any appropriate conditions relevant to the transfer imposed by the District. The District shall limit the amount of production authorized in the transfer of a permit to a different location of use to the amount of water produced and beneficially used by the transferor under the original permit.

(d) If the production authorized for two or more wells that have been aggregated to function as part of a Well System under Rule 11.2 and one or more wells under the Well System will be transferred, the District may allocate a pro rata share of the total authorized production to each well transferred unless the conveyance documents transferring the well(s) clearly provides for a different method of allocation.

(e) Upon submission to the District of written notice of transfer of ownership or control of any water right or water well covered by a permit and documents evidencing the transfer, the District's General Manager will amend the permit to reflect the new owner(s).

RULE 11.2 AGGREGATION OF WITHDRAWAL AMONG MULTIPLE WELLS

A Drilling Permit application must be filed for each well that requires permitting. However, one application shall be filed for a Production Permit, or for renewal thereof, which consolidates two or more wells that will function as part of a Well System.

RULE 11.3 PERMIT EXCLUSIONS AND EXEMPTIONS

(a) The District's permit requirements in these rules do not apply to:

(1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is located or to be located on a tract of land larger than 10 acres and drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day; provided, however, that this exemption shall also apply after the effective date of this rule to a well to be drilled, completed, or equipped on a tract of land equal to or less than 10 acres in size only if:

(A) the well is to be used solely for domestic use or for providing water for livestock or poultry on the tract;

(B) such tract was equal to or less than 10 acres in size prior to the effective date of this rule; and

(C) such tract is not further subdivided into smaller tracts of land after the effective date of this rule and prior to the drilling, completion, or equipping of the well.

i. A well qualifying for exemption under this subsection must observe a minimum distance of 50 feet from the property line and 50 feet from other wells.

ii. For purposes of an exemption under this subsection, the terms "livestock use" and "poultry use" do not include livestock or poultry operations that fall under the definition of "Animal Feeding Operation" or "Concentrated Animal Feeding Operation" set forth in District Rule 1.1.

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

(3) drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, 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.

(4) drilling a water well for temporary use to supply water to a rig that is actively engaged in drilling a groundwater production well permitted by the District except that this exemption may not exceed 180 (one hundred eighty) calendar days but may be extended until the groundwater production well is complete.

(5) an injection water source well permitted by the Railroad Commission of Texas for secondary or enhanced oil or gas recovery.

(6) a well used for an ASR Project, except as provided under District Rule 18.1.

(7) monitoring wells.

(8) leachate wells.

(9) dewatering wells.

(b) A well exempted under Subsections (a)(2), (3), (4), and (5) above loses its exemption and must be permitted and comply with all the District's rules in order to be operated if:

(1) the groundwater withdrawals that were exempted under Subsection (a)(2) are no longer 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 of Texas;

(2) the groundwater withdrawals that were exempted under Subsection (a)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Texas Natural Resources Code;

(3) the groundwater withdrawals that were exempted under Subsection (a)(4) are no longer used solely to supply water for secondary or enhanced oil recovery pursuant to the terms of the permit issued by the Railroad Commission of Texas; or

(4) the groundwater withdrawals that were exempted under Subsection (a)(5) exceed the amount specified in the permit issued by TCEQ.

(c) A water well exempted under Section (a) above shall:

(1) be pre-registered and registered in accordance with rules promulgated by the District; and

(2) be equipped and maintained so as to conform to the District's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution of harmful alteration of the character of the water in any groundwater reservoir.

(d) Registered wells observe exemptions that were in place at the time of filing the registration.

(e) A well exempt under this section will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt.

RULE 11.4 HISTORIC AND EXISTING USE PERMITS

The District recognizes the validity of Historic and Existing Use Permits granted under the District's rules and will continue to recognize the rules and procedures applicable to a Historic and Existing Use permit existing at the time the permit was granted. The District no longer accepts applications for Historic and Existing Use Permits because the deadline has passed, and the application procedures and the Historic and Existing Use Permit permitting process are now obsolete. Historic and Existing Use Permits are subject to the transfer, renewal, and permit amendment provisions set forth in these rules.

RULE 11.5 PERMITS REQUIRED TO DRILL A NEW WELL

(a) Every person who drills a water well after the initial effective date of these rules must file the Notice of Intent provided for in Rule 9.2. Every person who drills a nonexempt well must file a permit application on a form approved by the District.

(b) Drilling Permit Requirement: The well owner, well operator, or any other person acting on behalf of the well owner must obtain a Drilling Permit from the District prior to drilling a new water well, perforating an existing well or increasing the size of a well pump therein so that the well could reasonably be expected to produce 25,000 gallons per day or more, unless the well is an exempt well under District Rule 11.3.

RULE 11.6 PERMITS REQUIRED TO OPERATE A NEW WELL OR FOR INCREASED WITHDRAWAL AND BENEFICIAL USE FROM AN EXISTING WELL

Prior to and no later than 21 (twenty-one) calendar days after completion of a new water well, or reworking or re-equipping an existing water well, the well owner or well operator must file a completed Production Permit application on a form approved by the District. A Production Permit may only be issued if the well from which water is proposed to be withdrawn has been drilled or if the Production Permit is subject to the well being drilled in accordance with the terms of a Drilling Permit. If the Drilling Permit expires without a well being drilled, any associated Production Permit shall expire at the same time the Drilling Permit expires.

RULE 11.7 PERMIT TERM

(a) Drilling Permit Term: Unless specified otherwise by the Board or these rules, Drilling Permits are effective for a term ending 120 (one hundred twenty) calendar days after the date the permit is issued by the District, which may be extended by the General Manager with good cause shown.

(b) Historic and Existing Use Permit and Production Permit Terms: Unless specified otherwise by the Board or these rules, Historic and Existing Use Permits and Production Permits are effective until the end of the calendar year in which they are issued. If renewed, such permits shall thereafter be effective for one-year terms from the initial expiration date unless specified otherwise by the Board. The permit term will be shown on the permit. A permit applicant requesting a permit term longer than one year must substantiate its reason for the longer term and its need to put groundwater to beneficial use throughout the proposed permit term.

RULE 11.8 PERMIT RENEWAL

(a) Permit Renewal: Renewal applications shall be provided by the District prior to expiration of the permit term, and shall be filed with the District no later than January 15th of the new year for which the permit renewal is requested. Production Permits will not be renewed unless the well has been drilled at the time of the renewal application.

(b) Renewal Application Requirements: The District will timely provide a form for an application for renewal prior to expiration of the permit term. The renewal application will

be a streamlined application and will not include all of the elements required for an original application.

(c) The District shall, without a hearing, renew or approve an application to renew a Production Permit before the date on which the permit expires, provided that:

(1) the application is submitted in a timely manner; and

(2) the permit holder is not requesting a change related to the renewal that would require a permit amendment under the District's rules.

(d) The District is not required to renew a permit under District Rule 11.8(c) if the applicant:

(1) is delinquent in paying a fee required by the District;

(2) is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication; or

(3) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or District rule.

(e) If the District is not required to renew a permit under District Rule 11.8(d), the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

(f) Any permit holder seeking renewal may appeal the General Manager's ruling by filing, within ten (10) calendar days of notice of the General Manager's ruling, a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next available regular Board meeting. The General Manager shall inform the Board of any renewal applications granted or denied. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager. The General Manager may authorize an applicant for a permit renewal to continue operating under the conditions of the prior permit, subject to any changes necessary under proportional adjustment regulations or these rules, for any period in which the renewal application is the subject of a hearing.

(g) If the holder of a Production Permit, in connection with the renewal of a permit or otherwise, requests a change that requires an amendment to the permit under District Rule 11.1, the permit as it existed before the permit amendment process remains in effect until the later of:

(1) the conclusion of the permit amendment or renewal process, as applicable; or

(2) a final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.

(h) If the permit amendment process results in the denial of an amendment, the permit as it existed before the permit amendment process shall be renewed under District Rule 11.8(c) without penalty, unless subsection (d) of District Rule 11.8 applies to the applicant.

(i) The District may initiate an amendment to a Production Permit, in connection with the renewal of a permit or otherwise, for the purpose of achieving a Desired Future Condition or another statutory purpose of the District. Any amendment initiated by the District shall be processed in accordance with Section 11 of the District's rules. If the District initiates an amendment to a Production Permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable.

RULE 11.9 PERMIT APPLICATIONS

11.9.1 Requirements for All Permit Applications:

(a) Each application for a water well Drilling Permit, Production Permit, and permit amendment requires the filing of a separate application. The application must be completed on the District's form and may be supplemented. Each application for a permit shall be in writing and sworn to, and shall include the name, mailing address, phone number, and email address of the applicant and the owner of the land on which the well or Well System is or will be located.

(b) In addition to the information required of all permit applications in Rule 11.9.1(a), an application for a Drilling Permit or to amend a Drilling Permit must include the following information:

(1) if the applicant does not own the well site(s) and proposed well(s), documentation establishing the applicable authority to construct, drill, and complete each well on each proposed well site;

(2) the location of each well and the estimated rate at which water will be withdrawn;

(3) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;

(4) the date the permit is to expire if each well is not drilled or if each existing well is not properly completed to meet all statutory and regulatory requirements for the intended purpose of use;

(5) a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the Commission;

(6) a location map of all existing wells within a one half (1/2) mile radius of the proposed well or Well System or the existing well or wells to be modified;

(7) a map or other document from the Pecos County Tax Appraisal District indicating the ownership and location of the subject property;

(8) a document indicating the location of each proposed well or each existing well to be modified, the subject property, and adjacent owners' physical and mailing addresses;

(9) notice of any application to TCEQ to obtain or modify a Certificate of Convenience and Necessity to provide water and wastewater service with water obtained pursuant to the requested permit; and

(10) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose.

(c) In addition to the information required of all permit applications in Rule 11.9.1(a), an application for a production permit or to amend a production permit must include the following information:

(1) if the applicant does not own the well site(s), proposed well(s), and groundwater, documentation establishing the applicable authority to operate each well and produce and beneficially use the groundwater from each well;

(2) the annual amount of groundwater claimed to be necessary for beneficial use during each year of the proposed permit term with information supporting the annual amount of use requested for each proposed purpose of use;

(3) a requirement that the water withdrawn under the permit be put to beneficial use at all times;

(4) the location of the use of the water from the well or Well System;

(5) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;

(6) a declaration that the applicant will comply with the District's rules and all groundwater use permits and plans promulgated pursuant to the District's rules;

(7) a declaration that the applicant will comply with the District Management Plan;

(8) a drought contingency plan;

(9) a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the Commission;

(10) the duration the permit is proposed to be in effect, if greater than one year;

(11) a written statement addressing each of the applicable criteria in Rules 10.2 and 11.10.10(a), (b), and (c) and substantiating why the applicant believes the Board should consider each of these applicable criteria in a manner favorable to the applicant; and

(12) if groundwater is proposed to be exported out of the District, the applicant shall describe the following issues and provide documents relevant to these issues:

(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 export on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and

(C) how the proposed export is consistent with the approved regional water plan and certified District Management Plan.

(13) a hydrogeological report shall be attached to an application that:

(A) requests a new Production Permit for 1,000 acre feet or more per year from one or more wells or an associated Well System;

(B) requests a new Production Permit or amendment to an existing Production Permit in an amount that when combined with the amount of an existing Production or Historic and Existing Use permit or permits associated with the same well or wells or Well System is at least 1, 000 acre feet per year; or

(C) requests to amend and increase by at least 250 acre feet the annual maximum permitted use of a Production Permit for a well or Well System.

This report must address the area of influence of the well(s) and any associated Well System for which a permit is being requested and a description of the aquifer that will supply water to each well, and be complete in a manner that complies with the requirements adopted in Rule 11.9.3.

(14) the hydrogeological report required in Subsection (13) shall be updated for each and every permit amendment application that requests an increase in production of at least 1,000 acre feet per year from one or more wells or an associated Well System authorized under an existing Production or Historic and Existing Use Permit or Permits that currently authorize at least 1,000 acre feet per year.

(15) the results of a pump test for each well for which a production permit or amendment to a production permit is being requested depends upon the following thresholds:

(A) If the annual amount of groundwater withdrawal from one or more wells or an associated Well System in any calendar year during the permit term is more than 20 acre feet and less than 1,000 acre feet, the pump test(s) and results must meet the requirements of Rule 11.9.2(a);

(B) If an application is subject to the hydrogeological report requirements in Subsection (13) of this rule, the pump test(s) and results must meet the requirements of Rule 11.9.2(b).

(d) The General Manager or Board may waive one or more of the informational requirements for an application to amend a production permit depending on the nature of the amendment provided that the Board has sufficient, relevant information to consider the application at the hearing.

(e) The applicant must provide the District with the information relevant to the type of application that is required in this Rule 11.9 for the District to declare that the application is administratively complete. If the District provides a written list of application deficiencies, the applicant shall have 60 (sixty) calendar days to fully respond to the General Manager's satisfaction, after which a deficient application expires. The applicant may request an extension of this 60-day period or a ruling on the administrative completeness of its application by filing a written request with the District. The District will set an applicant's request under this rule on its next regularly scheduled Board meeting agenda, with three (3) business days' notice compliant with the Texas Open Meetings Act. The Board will consider and take action on an applicant's request under this rule at this meeting.

11.9.2 Specific Capacity Pump Test and Pump Test Report Requirements

(a) Specific Capacity Pump Test and Pump Test Report Requirements required by Rule 11.9.1(c)(15)(A)(for one or more nonexempt wells or an associated Well System proposed to be authorized to annually withdraw less than 1,000 acre feet): The specific capacity pump test will provide the District with site-specific aquifer properties and well-yield information necessary to better evaluate a production permit application. The District is aware that a pump test to obtain aquifer specific capacity information requires site preparation, specialized monitoring equipment, monitoring during the test and pump test data analysis which can be time consuming and somewhat costly. The District will assist the production permit applicant with site preparation, provide the required water level monitoring equipment and conduct the technical analysis of the specific capacity pump test.

As part of its consideration of the relevant permitting factors in Rules 11.10.10, the MPGCD Board will consider the specific capacity pump test analysis results provided by the applicant along with input on these results from MPGCD's General Manager and professionals and, if there is a contested hearing, input on these results from any parties admitted into the contested hearing.

The dedicated pump must have the production capacity to meet the permit applicant's requested groundwater demand. The District must be notified at least 14 days in advance of any specific capacity pump test. A specific capacity pump test conducted without prior approval from the District will be deemed noncompliant with MPGCD permit requirements.

If the specific capacity pump test activity is found to be flawed or not acceptable by the District's General Manager, the District's General Manager may require the specific capacity pump test to be repeated.

The District Manager has the authority to exempt a permit applicant from this requirement provided the permit applicant provides good cause why other information submitted with

the application is sufficient to describe the type of site-specific aquifer properties and well-yield information that would be obtained from the pump test and associated analysis.

(1) Specific Capacity Pump Test Site Preparation

(A) Availability of local monitor wells: The District is working to expand its understanding of the groundwater resources within the District to ensure the best available science is considered during the permitting process. If a well located within 1,000 feet of and completed within the same aquifer as the permit applicant's specific capacity pump test well is available to be monitored during the pump test, the General Manager may require that it be monitored during the test. This monitor well would provide additional, important aquifer properties. A monitor well(s) may not be actively pumping during the pump test.

(B) Installation of Water-level Transducers and the Determination of Static Water Levels

i. The District staff will assist in the installation of District's own water-level transducers into the permit applicant's well to be pump tested and additional transducers into any monitor wells identified for the specific capacity pump test.

ii. The District staff will determine the depth from the static water level of the well to the top of the pump intake (pump test water column thickness) prior to a pump test to understand at what water level depth the water level will drop below the water level transducer or below the pump intake. It is recommended that the water level transducer depth should be located at least 10 feet above the pump intake.

iii. Prior to a specific capacity pump test, static water levels of the pump test well and any associated monitor wells must be measured by transducers for at least 24 hours prior to the pump test.

iv. The District's staff will make sure that the transducers are time synchronized if there is more than one transducer. The transducers will be programmed to collect water levels every 15 minutes during the entire pump test event which includes: 24 hours before pumping commences, during pumping (8 or 12 hours), and for at least 8 hours after pumping concludes (well recovery measurements).

(2) Determination of Specific Capacity Pump Test Discharge Rate: The specific capacity pump test discharge rate should be representative of the production needed to meet the permit applicant's requested instantaneous production rate (expressed in gallons per minute) and annual quantity of production (expressed in gallons or acre-feet per year). The District's General Manager will provide guidance to the permit applicant on a recommended pump test discharge rate.

(3) Monitoring of Specific Capacity Pump Test Discharge Rate: During a specific capacity pump test, the water level within the well usually declines and, as it does, the well discharge rate will also decrease. The permit applicant needs to provide a flow meter or a method to accurately estimate (within 10% of the actual rate) the pump test discharge rate during the specific capacity pump test. The pump test discharge monitoring method must be pre-approved by the District's General Manager before the pump test begins.

There should be allowance for increasing the pump rpm to maintain a constant discharge rate during the specific capacity pump test or, with the District General Manager's approval, the average discharge rate during the pump test could be used to calculate the well's specific capacity.

(4) Specific Capacity Pump Test Time Period: The specific capacity pump test time period will vary depending on the aquifer and will be confirmed by the District's General Manager in the following ranges:

(A) At least an 8-hour specific capacity pump test for the Edwards-Trinity, Pecos Alluvium and Dockum aquifers.

(B) At least a 12-hour specific capacity pump test for the Rustler, Capitan, San Andres and Igneous aquifers.

(5) Specific Capacity Pump Test

(A) The District staff will help initiate the pump test at an agreed-upon time determined by the District General Manager and the permit applicant. The District will verify that the water-level transducers are active and collecting water level data.

(B) Using a conductivity meter provided by the District measure the discharge water conductivity at 5 to 10 minutes after the pump test has started, mid-way through the pump test and at the end of the pump test. The District's staff will collect the first and last conductivity measurements.

(C) The permit applicant is responsible for monitoring and recording the pumping well's discharge rate changes during the pump test and the mid-pump test water quality conductivity measurement.

(D) Upon completion of the required time for the pump test, the District's staff will shut down the pump test and confirm that the water-level transducers are still active and collecting water level data.

(6) Post Specific Capacity Pump Test: After the completion of the water level recovery measurements, the District's staff will:

(A) Remove transducers from all the wells, and collect pump test information from the permit applicant (variation in pump test discharge rates or the time

which permit applicant adjusted pump rate to fixed discharge rate and mid-pump test water quality measurement).

(B) The District's staff will download all the water level transducer data into an Excel spreadsheet with notations on the variations of pump discharge rates with time.

(C) District's groundwater consultant (PG or PE) will take pump test data provided by the District and calculate specific capacity and determine aquifer properties for the monitor wells (if available).

(D) District's groundwater consultant will prepare a brief report to provide to the District's Board and the permit applicant.

(b) Pump Test and Pump Test Report Requirements Associated with Hydrogeological Report required by Rule 11.9.1(c)(14) and (15)(B) (for one or more nonexempt wells or an associated Well System proposed to be authorized to annually withdraw at least 1,000 acre feet): The American Society of Testing and Materials (ASTM) documents D4043 (Selection of Aquifer Test Method) and D4050 (Field Procedure, Pump Tests) provide guidance for designing and implementation of pump tests, and D4105 (Confined Aquifer Pump Test Analysis) or D4106 (Unconfined Aquifer Pump Test Analysis) provide guidance to determine aquifer properties. A permit applicant can purchase these documents at http://global.ihs.com/standards.cfm?publisher=ASTM&RID=Z06&MID=5280 and is strongly encouraged to review these documents prior to designing and conducting any pump tests.

(1) Pump Tests:

Pump tests conducted without prior approval from the District may be deemed noncompliant with the District's Production Permit requirements. The District must be notified at least 48 hours in advance of any pump test conducted as part of the hydrogeological investigation.

Texas registered geoscientists (P.G.) and/or engineers (P.E.) with five years or more of groundwater experience will be required to oversee the design and implementation of each pump test and associated monitor wells and will evaluate the pump test results to determine aquifer properties. Aquifer properties to be determined from the pump tests include specific capacity, transmissivity, hydraulic conductivity, and possibly storage coefficient or storativity values.

(2) Pump Test Monitor Wells:

Monitor wells are required for applicant well fields with multiple wells. Monitor wells selected by the applicant for the pump test must comply with the District's monitor well requirements and the monitor well selection must be pre-approved by the District's General Manager. Monitor wells may not be actively pumping during the pump test. The use of existing private wells within two miles of the pumping wells and within the same groundwater producing formation is acceptable if the well meets the District's monitor well requirements.

A monitor well selected for the pump test is required to monitor only the applicant's aquifer and exhibit a connection with the pumping wells indicated by a minimum of 0.2 feet of drawdown during the pump test. For confined aquifers, the District may also require a monitor well in an overlying aquifer to monitor potential water level fluctuations and to determine whether there is communication between the applicant's aquifer and overlying aquifers.

(3) Pump Test Requirements:

(A) If possible, the District and/or the applicant will meet with any adjacent landowners with large operating wells (>250 gpm) within a two-mile radius of the pump test pumping wells prior to the pump test. The District and/or the applicant will inform the landowners of the date of the pump test, and, if possible, determine whether the landowners' wells will be active during the scheduled pump test. If the landowners' wells are going to be active during the pump test, the District will request that the landowners do not vary the pumping rates during the pump test.

(B) The designed pump test results must be able to be used to mimic the well field's impact of the applicant's requested acre feet per year pumpage.

(C) Static water levels of each pump test pumping and monitor wells should be measured every 12 hours for a total of 36 hours for the Pecos Valley Alluvium, Edwards-Trinity Plateau, and Dockum clastic aquifers and for a total of 72 hours for the Rustler and Capitan Reef Complex karstic aquifers and the San Andres karstic formation prior to the beginning of the pump test.

(D) Flow meters will be used to monitor each pumping well's groundwater production.

(E) Measure water levels and pump test discharge rates and times during pump test at acceptable frequency according to ASTM 4050.

(F) A metered pump test of not less than a continuous 36 hours for the dominantly clastic aquifers, including the Pecos Valley Alluvium (clastic), Edwards-Trinity Plateau (carbonate karst and clastic), and Dockum (clastic).

(G) The documentation of times of field activities, weather changes, and pump test adjustments and/or problems will be recorded.

(H) A recovery phase of a period sufficient for a 95 percent recovery of beginning water levels of each pumping well and 90 percent recovery for each monitor well, not to exceed time period of pumping activity. Water level measurements during recovery should be measured at the same frequency as during the pumping phase (frequent at beginning and decreasing frequency with time).

(I) Water quality parameters (pH, temperature, and conductivity) of the pump test wells' discharged water will be measured at the beginning of the pump test and every 12 hours during the pump test.

(J) Water quality analysis will include TDS, SO4, Cl, Ca, Mg, Na, HCO3, F, Br, and NO3 from each pumping well and will be collected twice—prior to and at the end of each pump test.

The applicant may request that the District's General Manager consider a variation of the above pump test requirements. The District's General Manager has 30 days to review and approve or disapprove the variance request.

(4) Pump Test Report Requirements:

(A) A discussion about the general characteristics of the aquifer, including, but not limited to: confined or unconfined, clastic or karstic, variation in aquifer thickness, and interpreted degree of karst development. Discuss whether the production wells are partially or fully penetrating and the impact on monitor well selection.

(B) For each pump test and monitor well, tables listing water level changes with times, initial water levels at the start of pump test (for pumping and monitor wells), pump test date, start time, end time, changes during and final pumping rates, and water quality parameters measured during the pump test, as a report appendix.

(C) For each pump test and monitor well, a table listing the water level recovery measurements with times as a report appendix.

(D) Copies of field notes collected during the pump test as a report appendix.

(E) A discussion of the reasoning for the selection of the pump test analysis method used to estimate the aquifer properties for each pumping and monitor well in the pump test.

(F) A table listing final estimated aquifer properties for each pumping and monitor well in the pump test.

(G) A table of the pumping wells water quality parameters collected during the pump test.

(H) A discussion of any observed groundwater quality changes (if any) that occurred during the pump test.

If the pump test activity or analysis is found to be flawed or not acceptable by the District's General Manager, the District's General Manager may require that the pump test or analysis be repeated in an acceptable manner before the groundwater Production Permit application may be considered.

11.9.3 Hydrogeological Report Requirements for Production Permits for >1,000 Or More Acre-Feet Per Year: Planning and implementation of all hydrogeological reports required for a Production Permit application should be coordinated with the District to minimize technical issues and to expedite the review process of the application. The District may exercise discretion in the application of the guidelines on an individual and site-specific basis in order to allow a practicable application of the guidelines while ensuring a result yielding the information needed by the District to manage groundwater resources.

The hydrogeological report is intended to provide information to the District on:

(1) the geologic setting of the applicant's proposed production well field;

(2) well construction information of production and monitor wells;

(3) local aquifer characterization of aquifer properties by pump tests; and

(4) an evaluation of whether the proposed use of water unreasonably affects existing groundwater resources or existing permit holders.

(a) Geologic Setting of Applicant's Proposed Production Well Field: The report shall include a discussion of the surface and subsurface geology of the applicant's tract of land on which each proposed production well or wells are located and will include a brief description of the local geology and the selected aquifer within a two-mile radius of each of Applicant's proposed wells. The description will include:

(1) A table that illustrates the stratigraphic column of geological formations overlying and underlying the applicant's identified producing aquifer.

(2) The following figures will be required for the hydrogeological report based on available subsurface well data. The aerial extent of the following figures will include the applicant's proposed production well field and a two-mile buffer zone, reflected by concentric circles with a radius of two miles from each of the applicant's proposed wells.

(A) A figure illustrating the location of the applicant's proposed production and monitor wells, property boundary, and each existing water well located within a two-mile radius of the applicant's proposed production wells. This figure will include the name of each adjacent landowner whose property adjoins the applicant's, the locations of existing water wells, and the names of local streets and/or roads.

(B) A figure illustrating the contoured top depth of the producing aquifer. (This is not required for the Pecos Valley Alluvium or Edwards-Trinity Plateau aquifers.)

(C) A figure illustrating the most recent available water level measurements of the applicant's and adjacent landowners' existing water wells within a two-mile radius of the proposed well field.

(b) Required Well Construction Information: The hydrogeological report will include well construction information for each of the applicant's existing groundwater production and monitor well(s) to be used in the proposed well field. New, proposed production and monitor wells will need a well construction schematic, based on available information. Well construction information for each production and monitor well should include the following:

(1) the identification of the aquifer to be produced from;

(2) the total depths, diameters, and expected screen or production intervals of each of the applicant's existing and proposed production and monitor wells;

(3) each production well's proposed maximum pumping rate; and

(4) a water well driller's report and/or driller's log (if available) for existing wells.

(c) Local Aquifer Characterization: The District may require a pump test to determine local aquifer characterization of the applicant's proposed well field and to evaluate the potential impact of the requested production on existing wells and the District's DFCs. Production from all confined aquifers will require pump tests. The District may exempt the applicant from conducting pump tests on unconfined aquifers if:

(1) the proposed well field (multiple production wells) is in an unconfined aquifer and each proposed well is more than two miles from the applicant's property lines;

(2) the proposed well field involves a single production well in an unconfined aquifer and is more than one mile from the applicant's property lines; or

(3) there are no other landowners' production wells using the applicant's designated unconfined aquifer within two miles of the applicant's property lines.

If the District grants an exemption to the applicant for a pump test, local aquifer properties from available groundwater models (TWDB, USGS, or available reviewed consultant's groundwater models with the District's prior approval) will be used to estimate the potential for unreasonable effects on existing wells by the proposed pumping, including, but not limited to, identifying water level declines within a two-mile radius from each of the applicant's proposed wells.

The applicant may appeal the District's General Manager's decision to require pump tests by filing with the District a request for reconsideration identifying all the reasons why the applicant believes a pump test is unnecessary. The District's General Manager has 30 days to review the appeal and decide whether to support or repeal the pump test requirement. The applicant may appeal the General Manager's decision on the request for reconsideration by filing with the District a written appeal to the District's Board identifying all the reasons why the applicant believes a pump test is unnecessary.

*Pump test and pump test report guidance is provided in Rule 11.9.2.

(d) Potential of Unreasonable Effects from Proposed Production on Existing Wells and Groundwater Resources: The applicant is required to estimate the potential water level impacts caused by the proposed pumping to wells located within a two-mile radius of the applicant's well field applying the assumptions and otherwise meeting the requirements enumerated below in this section. This analysis must mimic the applicant's expected full production operations.

(1) The time periods for water level decline analyses are 30, 180, 365, and 730 days.

(2) The water level impact for the above time periods must be estimated for each well within a two-mile radius from each of the applicant's proposed wells; or a figure illustrating calculated water level decline contours at one quarter (1/4) mile intervals up to two miles (eight contour intervals) for each time period is acceptable.

(3) The water level impact information should also be summarized in a report table.

The applicant has two options on how to evaluate the potential of water level impacts:

Option 1: The applicant can have the District's consultant hydrogeologist assist in completing Section (d) of the applicant's hydrogeological report. If the applicant chooses this option, the applicant realizes that having the District's hydrogeologist complete the hydrogeological report does not guarantee that the District's Board will approve the application, just that the hydrogeological report will be administratively and technically complete. The hydrogeological analysis of the provided pump test results may be favorable or unfavorable for the applicant. The District's hydrogeologist will make a recommendation to the District's Board based on his or her professional opinion of the hydrogeological information provided and compiled in the report.

The applicant will provide the completed hydrogeological report (Sections (a), (b), and (c)) and the pump test results (in an Excel format) to the District's hydrogeologist. If a Production Permit application requests 10,000 acre feet per year or less, then the District's hydrogeologist will use the applicant's pump test derived aquifer properties and estimate water level declines for all the report required wells using pump test simulation software.

If a Production Permit application requests more than 10,000 acre feet per year, then an existing groundwater availability model will be run to estimate the water level declines and potential DFC impacts. The groundwater availability model used for this analysis will be selected by the District's hydrogeologist after discussions with the applicant's groundwater consultants. In the case of the San Andres formation (for which no groundwater availability models exist), a detailed analysis using pump test simulation software will be completed.

If no pump test was required from the applicant for the hydrogeological report, the local aquifer properties will be obtained from the District's hydrogeologist's selected groundwater availability model (USGS, TWDB, or consultant's groundwater model) to determine the water level impact analyses. After running the pump test simulation software (<10,000 acre feet) or groundwater models (>10,000 acre feet), the District's hydrogeologist will generate all the required well level change text, figures, and charts necessary to complete the applicant's hydrogeological report.

The District will charge the applicant the District's hydrogeologist's hourly fee for this service.

Option 2: The applicant may use their own consultant and/or groundwater model (groundwater model must be reviewed and accepted by the District's hydrogeologist prior to model runs) to complete the water level impact analyses. The applicant's consultant will provide text, figures, and tables to meet the above-stated District requirements for the water level impact analyses.

RULE 11.10 PERMIT HEARINGS

11.10.1 All hearings shall be held before a quorum of the Board, a hearings examiner delegated in writing the responsibility to preside over the hearing, or SOAH in accordance with Rule 11.10.4.

11.10.2 Notice and Scheduling of Hearing: Once the District has received an administratively complete application for a water well Drilling Permit, Production Permit, or a permit amendment, or if the Board desires to modify an existing permit, the General Manager will issue a written notice of the hearing on the application in accordance with these rules.

(a) Notices of all hearings of the District shall be prepared by the General Manager and shall, at a minimum, state the following information:

(1) the name and address of the applicant or permit holder;

(2) the name or names of the owner or owners of the land if different from the applicant or permit holder;

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

(4) the address or approximate proposed location of the well or Well System, if different than the address of the applicant or permit holder;

(5) 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, or if the Board desires to modify an existing permit, a brief explanation of the proposed permit modification and the basis for the proposed modification; and

(6) any other information the Board or General Manager deems appropriate to include in the notice.

(b) Not less than ten (10) calendar days prior to the date of the hearing, notice shall be:

(1) posted by the General Manager at a place readily accessible to the public in the District office;

(2) provided by the General Manager to the County Clerk of Pecos County, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the county courthouse; and

(3) provided to the applicant by regular mail.

Not less than ten (10) calendar days prior to the date of the hearing, notice may be provided by regular mail to landowners who, in the discretion of the General Manager, may be affected by the application.

(c) A person may request notice from the district of a hearing on a permit or a permit amendment application. The request shall be memorialized 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 first class mail, fax, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(d) Failure to provide notice under Subsection (c) does not invalidate an action taken by the District at the hearing.

(e) The Board shall conduct an evidentiary hearing on a permit or permit amendment application if a party appears to protest that application or if the General Manager proposes to deny that application in whole or in part, unless the applicant or other party in a contested hearing requests the District to contract with SOAH to conduct the evidentiary hearing. If no one appears at the initial, preliminary hearing and the General Manager proposes to grant the application, the permit or permit amendment application is considered uncontested, and the Board may act on the permit application after considering the permitting criteria in these rules. Unless one of the parties in a contested hearing requests a continuance and demonstrates good cause for the continuance, the Board may conduct the preliminary and evidentiary hearings on the same date.

(f) Any hearing may or may not be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. All hearings shall be held at the location set forth in the notice.

(g) The General Manager shall set an initial, preliminary hearing date within 60 (sixty) calendar days after the date the administratively complete application is submitted. The initial, preliminary hearing shall be held within 35 (thirty-five) calendar days after the setting of the date. Within this same time frame, the General Manager shall post notice and set a hearing on the application before the District Board. The General Manager may schedule as many applications at one hearing as the General Manager deems necessary.

11.10.3 Authority of Presiding Officer: The Presiding Officer may conduct preliminary and evidentiary hearings or other proceedings in the manner the Presiding Officer deems most appropriate for the particular hearing. The Presiding Officer has the authority to:

(a) set hearing dates, other than the initial, preliminary hearing date for permit matters;

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

(c) rule on motions;

(d) permit the receipt of and rule on the admissibility of evidence consistent with Subchapter D, Chapter 2001, Texas Government Code;

(e) establish the order for presentation of evidence;

(f) administer oaths to all persons presenting testimony;

(g) examine and allow cross-examination of witnesses;

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

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

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

(k) issue subpoenas, require depositions, or order other discovery consistent with Subchapter D, Chapter 2001, Texas Government Code;

(l) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer; and

(m) determine how to apportion among the parties the costs related to a contract for the services of a Presiding Officer and the preparation of the official hearing record.

11.10.4 Appearance; Presentation; Time for Presentation; Ability to Supplement; Conduct and Decorum; Written Testimony; Hearing before SOAH:

(a) Appearance: Protestants and non-protestant interested persons may present evidence, exhibits, or testimony, or make an oral presentation as allowed by the Presiding Officer. A person appearing in a representative capacity may be required to prove proper authority. Each person attending and participating in a hearing of the District must submit on a form provided by the District, prior to or at the commencement of the initial, preliminary hearing, the following information: the person's name and address, who the person represents if other than himself, whether the person wishes to testify, whether the person is protesting the application, and any other information relevant to the hearing.

(1) Protestants: To protest an application for a permit or permit amendment, a potential party must attend the permit hearing prepared to articulate his or her justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and how that justiciable interest would be adversely affected by the permit proposed by the application. This potential party must attend the initial, preliminary hearing and be prepared to address and respond to inquiry and any cross-examination regarding their alleged justiciable interest. A justiciable interest does not include persons who have only an interest common to

members of the general public. It is recommended that a person desiring to protest an application for a permit or permit amendment file with the District a notice of protest setting forth the protestant's justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and how that justiciable interest would be adversely affected by the permit proposed by the application. It is recommended that the notice of protest be submitted so that it is received by the District at least two business days before the permit hearing. The Board may take testimony and shall deliberate and take official action at the hearing to determine whether the protestant has sufficiently demonstrated their justiciable interest and how that justiciable interest would be adversely affected by the permit proposed by the application. If the Board finds that a protestant does not adequately establish that its justiciable interest is affected by the proposed permit, then the protestant shall not be allowed to participate in the hearing.

(2) Non-protestant interested persons: A person may appear at an initial, preliminary hearing in person or by representative provided the representative is fully authorized, in writing, to speak and act for the principal. Any person appearing and offering any evidence pursuant to this subsection shall be subject to cross-examination.

(3) Request for SOAH Hearing: If an application is contested, any party to the hearing may request that the District contract with SOAH to conduct further proceedings in the hearing. A request for a SOAH hearing under this rule must be made to the Board at the initial, preliminary hearing and is untimely if submitted after the conclusion of the preliminary hearing.

(b) After the Presiding Officer calls a hearing to order, the Presiding Officer shall announce the subject matter of the hearing and the order and procedure for presentations.

(c) The Presiding Officer may prescribe reasonable time limits for the presentation of evidence and oral argument at the preliminary and evidentiary hearings.

(d) If requested with good cause shown and if allowed in the sole discretion of the Presiding Officer, any person who appears at a hearing and makes a presentation before the Board may supplement that presentation by filing additional written evidence with the Board within ten (10) calendar days after the date of conclusion of the hearing. Cumulative, repetitive, and unduly burdensome evidence filed under this subsection will not be considered by the Board. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th calendar 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.

(e) Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. 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 will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer deems necessary.

(f) Written Testimony: When the Presiding Officer determines that a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, the Presiding Officer may allow testimony to be received in written form, which testimony shall be subject to cross-examination. If the Presiding Officer allows written testimony, the written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally.

(g) SOAH Hearing:

(1) Deadline, Location: If timely requested by the applicant or other party to a contested hearing, the District shall contract with SOAH to conduct the hearing on the application. The Board shall determine whether the SOAH hearing will be held in Travis County or at the District Office or other regular meeting place of the Board, after considering the interests and convenience of the parties, and the expense of a SOAH contract.

(2) Costs, Deposit: The party requesting that the hearing be conducted by SOAH shall pay all costs associated with the contract for the hearing and shall make a deposit with the District in an amount that is sufficient to pay the estimated SOAH contract amount before the hearing begins. If the total cost for the contract exceeds the amount deposited by the paying party at the conclusion of the hearing, the party that requested the hearing shall pay the remaining amount due to pay the final price of the contract. If there are unused funds remaining from the deposit at the conclusion of the hearing, the unused funds shall be refunded to the paying party.

(3) Referral: Upon execution of a contract with SOAH and receipt of the deposit from the appropriate party or parties, the District's Presiding Officer shall refer the application to SOAH. The Presiding Officer's referral to SOAH shall be in writing and shall include procedures established by the Presiding Officer under Subsection (g)(4) below; a copy of the permit application, all evidence admitted at the preliminary hearing, the District's rules and other relevant policies and precedents, the District Management Plan, and the District Act; and guidance and the District's interpretation regarding its regulations, permitting criteria, and other relevant law to be addressed in a Proposal for Decision and Findings of Fact and Conclusions of Law to be prepared by SOAH. The District or Presiding Officer may not attempt to influence the Finding of Facts or the Administrative Law Judge's application of the law in a contested case except by proper evidence and legal argument. SOAH may certify one or more questions to the District's Board seeking the District Board's guidance on District precedent or the District Board's interpretation of its regulations or other relevant law, in which case the District's Board shall reply to SOAH in writing.

(4) Procedure before SOAH: A hearing conducted by SOAH is governed by SOAH's procedural rules; Subchapters C, D, and F, Chapter 2001, Texas Government Code; and, to the extent, not inconsistent with these provisions, any procedures established by the Presiding Officer under District Rule 11.10.3.

(5) District's Receipt of SOAH's Proposal for Decision and Findings of Fact and Conclusions of Law: The District's Board shall conduct a hearing within 45 (forty-five) days of receipt of SOAH's Proposal for Decision and Findings of Fact and Conclusions of Law, and shall act on the application at this hearing or not later than 60 days after the date that the Board's final hearing on the application is concluded in a manner consistent with Section 2001.058, Texas Government Code. At least ten (10) calendar days prior to this hearing, the Presiding Officer shall provide written notice to the parties of the time and place of the Board's hearing under this subsection by mail and fax, for each party with a fax number. The Presiding Officer shall exercise his or her authority under Rule 11.10.3 in conducting this hearing.

(6) The Board may (i) remand an issue germane to the application or the proposed findings of fact and conclusions of law, (ii) change a finding of fact or conclusion of law made by the Administrative Law Judge, or (iii) vacate or modify an order issued by the Administrative Law Judge, only if the Board determines:

(A) that the Administrative Law Judge did not properly apply or interpret applicable law, District rules, written policies, or prior administrative decisions;

(B) that a prior administrative decision on which the Administrative Law Judge relied is incorrect or should be changed; or

(C) that a technical error in a finding of fact should be changed.

(7) A final decision issued by the Board must be in writing and must either adopt the findings of fact and conclusions of law as proposed by the Administrative Law Judge or include revised findings of fact and conclusions of law consistent with Rule 11.10.4(g)(6).

(8) Notwithstanding any other rule, for hearings conducted by the State Office of Administrative Hearings, the Board shall issue a final decision not later than the 180th calendar day after the date of receipt of the final proposal for decision from State Office of Administrative Hearings. The deadline may be extended if all parties agree to the extension.

(9) Notwithstanding any other rule, if a motion for rehearing is filed and granted by the Board under Section 36.412 of the Texas Water Code, the Board shall make a final decision on the application not later than the 90th calendar day after the date of the decision by the Board that was subject to the motion for rehearing.

(10) Notwithstanding any other rule, the Board is considered to have adopted the final proposed for decision of the Administrative Law Judge as a final order on the 181st

calendar day after the date the Administrative Law Judge issued the final proposed 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 conclusion of law as set forth in this rule and the Texas Water Code.

(11) A proposed final decision adopted under Rule 11.10.4(g)(10) is final, immediately appealable, and not subject to a request for rehearing.

11.10.5 Recording

(a) Contested Hearings: Contested Hearings: A record of the hearing in the form of an audio or video recording or a court reporter transcription shall be kept in a contested hearing. The Presiding Officer shall have the hearing transcribed by a court reporter upon a request by a party to a contested hearing. Court reporter transcription costs may be assessed against the party requesting the transcription or among the parties to the hearing. In assessing reporting and transcription costs, the Presiding Officer must consider the following factors:

(1) the party who requested the transcript;
(2) the financial ability of the requesting party to pay the costs;
(3) the extent to which the requesting party participated in the hearing;
(4) the relative benefits to the various parties of having a transcript;
(5) the budgetary constraints of a governmental entity participating in the proceeding; and
(6) any other factor that is relevant to a just and reasonable assessment of costs.

(b) Uncontested Hearings: In an uncontested hearing, the Presiding Officer may substitute meeting minutes or the report required under Rule 11.10.9 for a method of recording the hearing.

11.10.6 Evidence; Broadening the Issues

(a) The Presiding Officer shall admit evidence if it is relevant to an issue at the hearing.

(b) The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(c) No person will be allowed to appear in any hearing whose appearance, in the opinion of the Presiding Officer, is for the sole purpose of unduly broadening the issues to be considered in the hearing.

11.10.7 Continuance: The Presiding Officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the Presiding Officer before it is

recessed, a notice of any further setting of the hearing or other proceeding which shall include the date, hour, place and subject of the meeting will be provided by regular mail at a reasonable time to the parties and any other person the Presiding Officer deems appropriate, but it is not necessary to post or publish a notice of the new setting, except as required by the Texas Open Meetings Act. A continuance may not exceed the time limit for the issuance of a final decision under Section 36.4165 of the Texas Water Code. This rule applies only to permit hearings.

11.10.8 Uncontested Hearings: If no persons timely protest the application and the General Manager proposes to grant the application, the application shall be considered uncontested and the General Manager may act on the application without subjecting the application to a permit hearing before the Board.

(a) The Board may take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The Board may issue a written order to:

(1) grant the application;

(2) grant the application with special conditions; or

(3) deny the application.

(b) 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:

(1) includes special conditions that were not part of the application as finally submitted; or

(2) grants a maximum amount of groundwater production that is less than the amount requested in the application.

(c) If, during a contested case hearing, all interested persons contesting the application withdraw their protests or are found by the Board not to have a justiciable interest affected by the application, or the parties reach a negotiated or agreed settlement which, in the judgment of the Board, settles the facts or issues in controversy, the proceeding will be considered an uncontested hearing and the Board may take any action authorized under District Rule 11.10.8(a).

11.10.9 Proposal for Decision: 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 Rule 11.10.5(a), the Presiding Officer shall determine whether to prepare and submit a Proposal for Decision ("PFD") to the Board under this rule. If a PFD is required, the Presiding Officer shall submit a PFD to the Board within 30 days after the date the hearing is finally concluded. The PFD must include a summary of the subject matter of the hearing, the evidence or public comments received, and the Presiding Officer's recommendations for Board action on the subject matter of the hearing. A copy of the PFD shall be provided to the applicant and each designated party. The applicant and any designated party may submit to the Board written exceptions to the PFD. The Presiding Officer may direct the General

Manager or another District representative to prepare the PFD and recommendations required by this Rule. The Board shall consider the PFD at a final hearing. Additional evidence may not be presented during this final hearing, however the parties may present oral argument to summarize the evidence, present legal argument, or argue an exception to the PFD. A final hearing may be continued in accordance with Rule 11.10.7 and Section 36.409, Texas Water Code.

11.10.10 Board Action: Either on the final hearing date or no later than 60 (sixty) calendar days after the final hearing date is concluded, the Board must take action on the subject matter of the hearing.

(a) In deciding whether or not to issue or amend a Drilling Permit, Production Permit, or Historic and Existing Use Permit, and in setting the permitted volume and other terms of a permit, the Board must consider whether:

(1) the application contains accurate information and conforms to the requirements prescribed by Chapter 36, Texas Water Code;

(2) the water well(s) complies with spacing and production limitations identified in these rules;

(3) the proposed use of water does or does not unreasonably affect existing groundwater and surface water resources or existing permit holders;

(4) the proposed use of water is dedicated to a beneficial use;

(5) the proposed use of water is consistent with the District Management Plan;

(6) the applicant agrees to avoid waste and achieve water conservation;

(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; and

(8) for those hearings conducted by SOAH under Rule 11.10.4, the Board shall consider the Proposal for Decision and Findings of Fact and Conclusions of Law issued by SOAH.

(b) In deciding whether or not to modify a permit, and in setting the modified permitted volume and other terms of a permit, the Board must consider whether the data from monitoring wells within the source aquifer or other evidence reflects:

(1) an unacceptable level of decline in water quality of the aquifer;

(2) that modification of the permit is necessary to prevent waste and achieve water conservation;

(3) that modification of the permit will minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure;

(4) that modification of the permit will lessen interference between wells;

(5) that modification of the permit will control and prevent subsidence; and

(6) that modification of the permit is necessary to avoid impairment of Desired Future Conditions.

(c) The Board shall consider the relevant criteria and observe the relevant restrictions and may exercise the authority set forth in Sections 36.113, 36.1131, and 36.122 of the Texas Water Code. In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve an applicable Desired Future Condition and consider:

(1) the Modeled Available Groundwater;

(2) the TWDB Executive Administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by District Rule 11.3 and Section 36.117, Texas Water Code;

(3) the amount of groundwater authorized under permits previously issued by the District;

(4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and

(5) yearly precipitation and production patterns.

(d) The District may not impose any restrictions on the production of groundwater for use outside of the District other than imposed upon production for in-district use, and shall be fair, impartial, and nondiscriminatory.

11.10.11 Request for Rehearing and Appeal:

(a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings of fact and conclusions of law from the Board not later than the 20th calendar day after the date of the decision.

(b) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the party who requested them, and to each designated party, not later than the 35th calendar day after the date the Board receives the request. A party to the contested case hearing may request a rehearing before the Board not later than the 20th calendar day after the date the Board issues the findings and conclusions. A party to a contested hearing must first make a request for written findings and conclusions under District Rule 11.10.11(a) before a party to the contested case may submit a request for rehearing under this rule.

(c) A request for rehearing must be filed in the District office and must state clear and concise

grounds for the request. The person requesting a rehearing must provide copies of the request to all parties to the hearing.

(d) If the Board grants a request for rehearing, the Board shall, after proper notice, schedule the rehearing not later than the 45th calendar day after the date the request is granted.

(e) The failure of the Board to grant or deny a request for rehearing before the 91st calendar day after the date the request is submitted is a denial of the request.

(f) A decision by the Board on a permit or permit amendment application is final:

(1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing;

(2) if a request for rehearing is filed on time and the Board denies the request for rehearing, on the date the Board denies the request for rehearing; or

(3) if a request for rehearing is filed on time and the Board grants the request for rehearing:

(A) on the final date of the rehearing if the Board does not take further action;

(B) if the Board takes further action after rehearing, on the expiration of the period for filing a request for rehearing on the Board's modified decision if a request for rehearing is not timely filed; or

(C) if the Board takes further action after rehearing and another request for rehearing on this Board action is timely filed, then Subsections 3(A) and (C) of this rule shall govern the finality of the Board's decision.

(g) The applicant or party to a contested case hearing must exhaust all administrative remedies with the District prior to seeking judicial relief from a District decision on a permit or permit amendment application. After all administrative remedies are exhausted with the District, an applicant or a party to a contested case hearing must file suit in a court of competent jurisdiction in Pecos County to appeal the District's decision on a permit or permit amendment application within 60 (sixty) calendar days after the date the District's decision is final. An applicant or party to a contested case hearing is prohibited from filing suit to appeal a District's permitting decision if a request for rehearing was not timely filed.

(h) 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.

SECTION 12. REWORKING AND REPLACING A WELL

RULE 12.1 REWORKING AND REPLACING A WELL

(a) An existing well may be reworked or re-equipped in a manner that will not change the existing well status.

(b) A permit must be applied for and granted by the Board if a party wishes to replace an existing well with a replacement well.

(c) A replacement well, in order to be considered such, must be drilled within a reasonable distance of the existing well as long as it meets the District's spacing requirements.

(d) In the event the application meets spacing and production requirements, the General Manager may grant such application without further notice.

SECTION 13. WELL LOCATION AND COMPLETION

RULE 13.1 RESPONSIBILITY

(a) After an application for a well Drilling Permit has been granted, the well or wells, if drilled, must be drilled within a reasonable distance of the location specified in the Drilling Permit, and not elsewhere, provided, however, that spacing restrictions be met. If the well or wells are drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code.

(b) As described in the Texas Water Well Drillers' Rules, all well drillers and persons having any exempt or nonexempt well drilled, deepened, or otherwise altered shall adhere to the provisions of the rule prescribing the location of wells and proper completion. Each and every exempt and nonexempt well shall be completed in accordance with all statutory and regulatory requirements applicable to the type of well required for the purpose of use authorized under the permit. The driller of any exempt or nonexempt well shall file with the District the well log required by Section 1901.251, Texas Occupations Code, and, if available, the geophysical log and electric log.

RULE 13.2 LOCATION OF DOMESTIC, INDUSTRIAL, INJECTION, IRRIGATION WELLS

Location of wells should be as specified in *16 Texas Administrative Code, Chapter 76.1000.*

RULE 13.3 STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS

Standards of completion shall be as specified in *16 Texas Administrative Code, Chapter 76.1000.*

RULE 13.4 RE-COMPLETIONS

Standards shall be as specified in *16 Texas Administrative Code, Chapter 76.1003.*

RULE 13.5 SPACING REQUIREMENTS

(a) Spacing and Location of Existing Wells: Wells drilled prior to the Effective Date of these rules are not subject to spacing requirements of this rule except that these existing wells shall have been drilled in accordance with state law in effect, if any, on the date such drilling commenced.

(b) Spacing and Location of New Wells: All new permitted wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, except that wells shall not be located within 50 (fifty) feet from a property line or any existing well. Water well drillers shall indicate the method of completion performed on the Well Report (Texas Department of Licensing and Regulation Form #001 WWD, Section 10, Surface Completion). The District does not impose any additional requirements, but shall consider evidence submitted at the hearing on the permit application that demonstrates that the proposed new well(s) adversely impact and interfere with neighboring wells.

(c) Exceptions to Spacing Requirements:

(1) The Board may grant exceptions to the spacing requirements of the District if the requirements of this section are met.

(2) If an exception to the spacing requirements of the District is desired, the person seeking the exception shall submit an application to the Board and provide written notice of the application to all owners of adjacent property and owners of registered wells located on adjacent property. In the application, the applicant must explain the circumstances justifying an exception to the spacing requirements of the District. The application must include a plat or sketch, drawn to scale, one inch equaling 200 feet. The application and plat must be certified by some person actually acquainted with the facts who shall state that the facts contained in the application and plat are true and correct, and that notice was sent to each of the appropriate property and well owners.

(3) The Board shall conduct a hearing within 65 (sixty-five) calendar days after the application is administratively complete, and no sooner than 20 (twenty) calendar days after the applicant's notice was sent to each of the appropriate property and well owners. The District shall post notice and conduct the public hearing in accordance with Section 11 of the District's rules. Provided, however, if all owners of adjacent property and owners of registered wells execute a waiver in writing, stating that they do not object to the granting of the exception, the Board may proceed, upon notice to the applicant only and without hearing, and determine the outcome of the application. The applicant may waive notice or hearing or both.

(4) If the applicant presents waivers signed by all landowners and well owners whose property or permitted wells would be located within the applicable minimum distance established under these Rules from the proposed well site stating that they have no objection to the proposed location of the well site, the Board, upon the General Manager's recommendation, may waive certain spacing requirements for the proposed well location.

SECTION 14. WASTE AND BENEFICIAL USE

RULE 14.1 DEFINITION OF WASTE

"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 municipal, industrial, 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, or is not used for such purposes with a reasonable degree of efficiency. Includes line losses in excess of those determined to be unavoidable.

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

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

(e) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well other than the natural flow of natural springs unless such discharge is authorized by permit, rule, or order issued by TCEQ under Chapter 26 of the Texas Water Code, *Water Quality Control*;

(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;

(g) groundwater used for heating or cooling that is allowed to drain on the land surface as tailwater and not re-circulated back to the aquifer;

(h) the loss of groundwater in the distribution system and/or storage facilities of the water supply system which should not exceed acceptable "system water losses" as defined by the American Water Works Association standard; or

(i) Pursuant to Section 11.205 of the Texas Water Code, unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste and unlawful to willfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

RULE 14.2 WASTEFUL USE OR PRODUCTION

(a) No person shall intentionally or negligently commit waste.

(b) Underground water shall not be produced within, or used within or without the District in such a manner as to constitute waste.

(c) Any person producing or using groundwater shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of water.

RULE 14.3 POLLUTION OR DEGRADATION OF QUALITY OF GROUNDWATER

(a) No person shall cause pollution or harmfully alter the character of the underground water of the District by means of salt water or other deleterious matter admitted from another stratum or strata or from the surface of the ground, or from the operation of a well.

(b) No person shall cause pollution or harmfully alter the character of the underground water of the District by activities on the surface of the ground which cause or allow pollutants to enter the groundwater through recharge features, whether natural or manmade.

(c) No person shall cause degradation of the quality of groundwater.

RULE 14.4 ORDERS TO PREVENT WASTE, POLLUTION, OR DEGRADATION OF QUALITY OF GROUNDWATER

After providing 15 (fifteen) calendar days' notice to affected parties and an opportunity for a hearing, the Board may adopt orders to prohibit or prevent waste, pollution, or degradation of the quality of groundwater. If the factual basis for the order is disputed, the Board shall direct that an evidentiary hearing be conducted prior to consideration and decision on the entry of such an order. If the Board President or his or her designee determines that an emergency exists requiring the immediate entry of an order to prohibit waste or pollution and protect the public health, safety, and welfare, he or she may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of 15 (fifteen) calendar days or until a hearing can be conducted. In such an emergency, the Board President or his or her designee is also authorized, without notice or hearing to pursue a temporary restraining order, injunctive, and other appropriate relief in a court of competent jurisdiction.

RULE 14.5 REQUIRED EQUIPMENT ON WELLS FOR THE PROTECTION OF GROUNDWATER QUALITY

14.5.1 EQUIPMENT REQUIRED. The following equipment must be installed on all wells having a chemical injection, chemigation or foreign substance unit in the water delivery system: an in-line, automatic quick-closing check valve capable of preventing pollution or harmful alteration of the groundwater. Such equipment must be installed on all new wells at the time of completion. Such equipment shall be installed on all existing wells the next time the wells are serviced.

14.5.2 CHECK VALVES. The type of check valve installed shall meet the following specifications:

(a) Check valves must be equipped with a TCEQ-approved hazardous materials backflow device, and installed in a manner approved by Texas Department of Licensing and Regulation ("TDLR").

(b) A vacuum-relief device shall be installed between the pump discharge and the check valve in such a position and in such a manner that insects, animals, floodwater, or other pollutants cannot enter the well though the vacuum-relief device. The vacuum-relief device may be mounted on the inspection port as long as it does not interfere with the inspection of other anti-pollution devices.

SECTION 15. INVESTIGATIONS AND ENFORCEMENT

RULE 15.1 NOTICE AND ACCESS TO PROPERTY

Board Members and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District's rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District agents or employees who are attempting to conduct an investigation under the District's rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in Texas Water Code Chapter 36.

RULE 15.2 CONDUCT OF INVESTIGATION

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

RULE 15.3 RULE ENFORCEMENT; ENFORCEMENT HEARING

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

(a) Informal Notice: The officers, staff or agents of the District acting on behalf of the District or the Board may inform the person of the violation via telephone by informing, or attempting to inform, the appropriate person to explain the violation and the steps necessary to cure the violation. The information received by the District through this informal notice concerning the violation and the date and time of the telephone call will be documented and will remain in the District's files. Nothing in this subsection shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

(b) Written Notice of Violation: The District may inform the person of the violation through written notice of violation. Each notice of violation issued herein shall explain the basis of the violation, identify the rule or order that has been violated or is currently being violated, and list specific required actions that must be satisfactorily completed to cure a past or present violation to address each violation raised, and may include the payment of applicable civil penalties. Notice of a violation issued herein shall be provided through a delivery method in compliance with these Rules. Nothing in this Subsection shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

(c) Compliance Meeting: The District may hold a meeting with any person whom the District believes to have violated, or to be violating, a District rule or order to discuss each such violation and the steps necessary to satisfactorily remedy each such violation. The General Manager may conduct a compliance meeting without the Board, unless otherwise determined by the Board or General Manager. The information received in any meeting conducted pursuant to this subsection concerning the violation will be documented, along with the date and time of the meeting, and will be kept on file with the District. Nothing in this subsection shall limit the authority of the District to take action, including emergency actions or any other appropriate enforcement action, without prior notice provided under this subsection.

15.3.2 Show Cause Hearing.

(a) Upon recommendation of the General Manager to the Board or upon the Board's own motion, the Board may order any person that it believes has violated or is violating any provision of the District's rules a District order to appear before the Board at a public meeting, held in accordance with the Texas Open Meetings Act, and called for such purpose and to show cause of the reasons an enforcement action, including the assessment of civil penalties and initiation of a suit in a court of competent jurisdiction in Pecos County, should not be pursued against the person made the subject of the show cause hearing. The Presiding Officer may employ the procedural rules in Section 11 of the District's rules.

(b) No show cause hearing under subsection (a) of this Rule may be conducted unless the District serves, on each person made the subject of the show cause hearing, a written notice ten (10) calendar days prior to the date of the hearing. Such notice shall include all of the following information:

(1) the time, date, and place for the hearing; and
(2) the basis of each asserted violation; and
(3) the rule or order that the District believes has been violated or is currently being violated; and
(4) a request that the person duly appear and show cause of the reasons an enforcement action should not be pursued.

(c) The District may pursue immediate enforcement action against the person cited to appear in any show cause order issued by the District where the person cited fails to appear and show cause of the reasons an enforcement action should not be pursued.

(d) Nothing in this rule shall constrain the authority of the District to take action, including emergency actions or any other enforcement action, against a person at any time, regardless of whether the District decides to hold a hearing under this Section.

15.3.3 Remedies

(a) The Board shall consider the appropriate remedies to pursue against an alleged violator during the show cause hearing, including assessment of a civil penalty, injunctive relief, or assessment of a civil penalty and injunctive relief. In assessing civil penalties, the Board may determine that each day that a violation continues shall be considered a separate violation. The civil penalty for a violation of any District rule is hereby set at the lower of $25,000.00 per violation per day or a lesser amount determined after consideration, during the enforcement hearing, of the criteria in subsection (b) of this rule, unless a higher amount per violation per day is justified if it is determined that the person gained an economic benefit as a result of the violation that was greater than $25,000.00, and, if justified, in an amount determined to be necessary and appropriate to outweigh the economic benefit gained by the person as a result of the violation and discourage future violations.

(b) In determining the amount of a civil penalty, the Board of Directors shall consider the factors set forth in section 36.102(b-1) and (f) of the Texas Water Code.

15.3.4 The District shall collect all past due fees and civil penalties accrued that the District is entitled to collect under the District's rules. The District shall provide written notice of the alleged violation and show cause hearing by certified mail, return receipt requested, hand delivery, first class mail, facsimile, email, FedEx, UPS, or any other type of public or private courier or delivery service. If the District is unable to provide notice to the alleged violator by any of these forms of notice, the District may tape the notice on the door of the alleged violator's office or home, or post notice in the newspaper of general circulation in the District and within the county in which the alleged violator resides or in which the alleged violator's office is located. Any person or entity in violation of these rules is subject to all past due fees and civil penalties along with all fees and penalties occurring as a result of any violations that ensue after the District provides written notice of a violation. Failure to pay required fees will result in a violation of the District's rules and such failure is subject to civil penalties.

15.3.5 The District may afford an opportunity to the alleged violator to cure a violation through coordination and negotiation with the District.

15.3.6 After conclusion of the show cause hearing, the District may commence suit. Any suit shall be filed in a court of competent jurisdiction in Pecos County. If the District prevails in a suit brought under this Section, the District may seek and the court shall grant, in the interests of justice and as provided by Subsection 36.066(h), Texas Water Code, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court.

RULE 15.4 SEALING OF WELLS

Following notice to the well owner and operator and upon resolution by the Board, the District may seal wells that are prohibited from withdrawing groundwater within the District to ensure that such wells are not operated in violation of the District's rules. A well may be sealed when: (1) no application has been made for a permit to drill a new water well which is not excluded or exempted; or (2) no application has been made for a Production permit to withdraw groundwater from an

existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or (3) the Board has denied, canceled or revoked a Drilling Permit or a Production permit.

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

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

RULE 15.5 CAPPING AND PLUGGING OF WELLS

(a) The District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must remain capped until such time as the conditions that led to the capping requirement are eliminated. If well pump equipment is removed from a well and the well will be re-equipped at a later date, the well must be capped, provided however that the casing is not in a deteriorated condition that would permit co-mingling of water strata, in which case the well must be plugged. The cap must be capable of sustaining a weight of at least four hundred (400) pounds and must be constructed with a water tight seal to prevent entrance of surface pollutants into the well itself, either through the well bore or well casing.

(b) A deteriorated or abandoned well must be plugged in accordance with the Texas Department of License and Regulation, Water Well Drillers and Pump Installers Rules (16 TAC Chapter 76). It is the responsibility of the landowner to see that such a well is plugged to prevent pollution of the underground water and to prevent injury to persons and animals. Registration of the well is required prior to, or in conjunction with, well plugging.

Any person that plugs a well in the District must submit a copy of the plugging report to the District and the Texas Department of License and Regulation within 30 (thirty) calendar days of plugging completion.

(c) If the owner or lessee fails or refuses to plug or cap the well in compliance with this rule and District standards within 30 (thirty) calendar days after being requested to do so in writing by an officer, agent, or employee of the District, then, upon Board approval, any person, firm, or corporation employed by the District may go on the land and plug or cap the well safely and securely, pursuant to TWC Chapter 36.118.

Reasonable expenses incurred by the District in plugging or capping a well constitutes a lien on the land on which the well is located.

The District shall perfect the lien by filing in the deed records an affidavit, executed by any person conversant with the facts, stating the following:

(1) the existence of the well;

(2) the legal description of the property on which the well is located;
(3) the approximate location of the well on the property;
(4) the failure or refusal of the owner or lessee, after notification, to close the well within 30 (thirty) calendar days after the notification;
(5) the closing of the well by the District, or by an authorized agent, representative, or employee of the District; and
(6) the expense incurred by the District in closing the well.

SECTION 16. FEES

RULE 16.1 GROUNDWATER EXPORT FEE

(a) The District may impose an export fee or surcharge, established by Board resolution, for export of groundwater out of the District using one of the following methods:

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

(2) a rate not to exceed 20 (twenty) cents for each thousand gallons of water exported from the District.

If a production fee is assessed, this export fee shall not exceed 10 percent of the amount of the fee assessed for the production of water for use within the District.

(b) Payment of the Groundwater Export Fee shall be made at a time negotiated under 16.1(a)(1) or no later than the payment deadline established by the General Manager.

(c) Effective January 1, 2024, the maximum allowable rate the District may impose for an export fee under Rule 16.1(a)(2) shall increase each calendar year in accordance with Section 36.122(e-1) of the Texas Water Code. An increase in the export fee is not valid unless it is approved by the Board after a public hearing. The District may only use funds obtained from the rate increase under this subsection for costs related to assessing and addressing impacts associated with groundwater development as provided by Section 36.207 of the Texas Water Code Section, including:

(A) maintaining operability of wells significantly affected by groundwater development;

(B) developing or distributing alternative water supplies; and

(C) conducting aquifer monitoring, data collection, and aquifer science.

RULE 16.2 RETURNED CHECK FEE

Any person who tenders to the District a check that is returned to the District for insufficient funds, account closed, signature missing, or any other reason shall immediately remit funds to the District

in the amount of the check that was returned and reimburse the District for any expenses associated with the returned check that were incurred by the District.

SECTION 17. PROPOSED DESIRED FUTURE CONDITIONS; PUBLIC COMMENT, HEARING, AND BOARD ADOPTION; APPEAL OF DESIRED FUTURE CONDITIONS

RULE 17.1 PUBLIC COMMENT

Upon receipt of proposed Desired Future Conditions from the Groundwater Management Area's district representatives, a public comment period of 90 (ninety) calendar days commences, during which the District will receive written public comments and conduct at least one hearing to allow public comment on the proposed Desired Future Conditions relevant to the District. The District will make available at the Distriict Office a copy of the proposed Desired Future Conditions and any supporting materials, such as the documentation of factors considered under Subsection 36.108(d) and groundwater availability model run results.

RULE 17.2 NOTICES OF HEARING AND MEETING

(a) At least ten (10) calendar days before a hearing or meeting under this Section, the Board must post notice that includes:

(1) the proposed Desired Future Conditions and a list of any other agenda items;
(2) the date, time, and location of the hearing;
(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 management area; and
(5) information on how the public may submit comments.

(b) Except as provided by Subsection (a), the hearing and meeting notice must be provided in the manner prescribed for a rulemaking hearing under Rule 6.2(b) and Subsection 36.101(d), Texas Water Code.

RULE 17.3 HEARING

The District shall hold a public hearing to accept public comments using procedures prescribed in Section 6 of these rules.

RULE 17.4 DISTRICT'S REPORT ON PUBLIC COMMENTS AND SUGGESTED REVISIONS

After the public hearing, the District shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed Desired Future Conditions, and the basis for any suggested revisions.

RULE 17.5 BOARD ADOPTION OF DESIRED FUTURE CONDITIONS

As soon as possible after the District receives the Desired Future Conditions resolution and explanatory report from the Groundwater Management Area's district representatives pursuant to

Subsection 36.108(d-3), the Board shall adopt the Desired Future Conditions in the resolution and explanatory report that apply to the District. The Board shall issue notice of its meeting at which it will take action on the Desired Future Conditions in accordance with Rule 17.2(a) and (b).

RULE 17.6 APPEAL OF DESIRED FUTURE CONDITIONS

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

(1) evidence that the petitioner is an affected person;

(2) a request that the District contract with SOAH to conduct a hearing on the petitioner's appeal of the reasonableness of the Desired Future Condition;

(3) evidence that the districts did not establish a reasonable Desired Future Condition of the groundwater resources within the relevant Groundwater Management Area.

(b) Not later than ten (10) calendar days after receiving a petition described by Subsection (a), the District's Presiding Officer shall determine whether the petition was timely filed and meets the requirements of Rule 17.6(a) and, if so, shall submit a copy of the petition to the TWDB. If the petition was untimely or did not meet the requirements of Rule 17.6(a), the District's Presiding Officer shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than 60 (sixty) calendar days after receiving a petition under Rule 17.6(a), the District shall:

(1) contract with SOAH to conduct the requested hearing; and

(2) submit to SOAH a copy of any petitions related to the hearing requested under Rule 17.6(a) and received by the District.

(c) A hearing under District Rule 17.6 must be held:

(1) at the District office or Pecos County Courthouse unless the District's Board provides for a different location; and

(2) in accordance with Chapter 2001, Texas Government Code, and SOAH's rules.

Not less than ten (10) calendar days prior to the date of the hearing, notice may be provided by regular mail to landowners who, in the discretion of the General Manager, may be affected by the application.

(d) Not less than ten (10) calendar days prior to the date of the SOAH hearing under this rule, notice shall be issued by the District and meet the following requirements:

(1) state the subject matter, time, date, and location of the hearing;

(2) be posted at a place readily accessible to the public at the District's office;

(3) be provided to the County Clerk of Pecos County, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the County Courthouse; and

(4) be sent by certified mail, return receipt requested; hand delivery; first class mail; fax; email; FedEx; UPS; or any other type of public or private courier or delivery service to:

(A) the petitioner;

(B) any person who has requested notice in writing to the District;

(C) each nonparty district and regional water planning group located within the same Groundwater Management Area as a district named in the petition;

(D) TWDB's Executive Administrator; and

(E) TCEQ's Executive Director.

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

(e) Before a hearing is conducted under this rule, SOAH shall hold a prehearing conference to determine preliminary matters, including:

(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person seeking to participate in the hearing is an affected person who is eligible to participate; and

(3) each affected person that shall be named as a party to the hearing.

(f) The petitioner shall pay the costs associated with the contract for the hearing conducted by SOAH under this rule. The petitioner shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. After the hearing, SOAH may assess costs to one or more of the parties participating in the hearing and the District shall refund any money exceeding actual hearing costs to the petitioner. SOAH shall consider the following in apportioning costs of the hearing:

(1) the party who requested the hearing;

(2) the party who prevailed in the hearing;

(3) the financial ability of the party to pay the costs;

(4) the extent to which the party participated in the hearing; and

(5) any other factor relevant to a just and reasonable assessment of costs.

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

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

(i) If the District in its final order finds that a Desired Future Condition is unreasonable, not later than the 60th calendar day after the date of the final order, the District shall coordinate with the districts in the Groundwater Management Area at issue to reconvene in a joint planning meeting for the purpose of revising the Desired Future Condition found to be unreasonable in accordance with the procedures in Section 36.108, Texas Water Code.

(j) The Administrative Law Judge may consolidate hearings requested under this rule that affect two or more districts. The Administrative Law Judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

SECTION 18. AQUIFER STORAGE AND RECOVERY (ASR)

RULE 18.1 APPLICABILITY OF DISTRICT'S RULES TO ASR PROJECTS

(a) As a general matter, TCEQ has exclusive jurisdiction over the regulation and permitting of ASR Injection Wells. However, the District has concurrent jurisdiction over an ASR Injection Well that also functions as an ASR Recovery Well. The District is entitled to notice of and may seek to participate in an ASR permitting matter pending at TCEQ and, if the District qualifies as a party, in a contested hearing on an ASR application.

(b) The provisions of District Rule 18.1 apply to an ASR Recovery Well that also functions as an ASR Injection Well.

(c) A Project Operator shall:

(1) register an ASR Injection Well and ASR Recovery Well associated with the ASR Project if a well is located in the District;

(2) submit to the District the monthly report required to be provided to TCEQ under Section 27.155, Texas Water Code, at the same time the report is submitted to TCEQ; and

(3) submit to the District the annual report required to be provided to TCEQ under Section 27.156, Texas Water Code, at the same time the report is submitted to TCEQ.

(d) If an ASR Project recovers an amount of groundwater that exceeds the volume authorized by TCEQ to be recovered under the project, the Project Operator shall report to the District the volume of groundwater recovered that exceeds the volume authorized to be recovered in addition to providing the report required by District Rule 18.1(c)(2).

(e) Except as provided by District Rule 18.1(f), the District may not require a permit for the drilling, equipping, operation, or completion of an ASR Injection Well or an ASR Recovery Well that is authorized by TCEQ.

(f) Each ASR Recovery Well that is associated with an ASR Project is subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells will exceed the volume authorized by TCEQ to be recovered under the project. The requirements of the District apply only to the portion of the volume of groundwater recovered from the ASR Recovery Well that exceeds the volume authorized by TCEQ to be recovered.

(g) A Project Operator may not recover groundwater from an ASR Project in an amount that exceeds the volume authorized by TCEQ to be recovered under the project unless the Project Operator complies with the applicable requirements of the District as described by this rule.

(h) The District may not assess a production fee or export fee or surcharge for groundwater recovered from an ASR Recovery Well, except to the extent that the amount of groundwater recovered under the ASR Project exceeds the volume authorized by TCEQ to be recovered.

(i) The District may consider hydrogeologic conditions related to the injection and recovery of groundwater as part of an ASR Project in the planning for and monitoring of the achievement of a Desired Future Condition for the aquifer in which the wells associated with the project are located.

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MIDDLE PECOS
Groundwater Conservation District
P. O. Box 1644, Fort Stockton, Texas 79735
Phone: 432/336-0698; Fax: 432/336-3407
Email: mpgcd@mpgcd.org

PETITION TO ADOPT OR MODIFY A DISTRICT RULE

Instructions: This Petition to Adopt or Modify a District Rule form must be completed as required by District Rule 6.5 and filed at the District office. Each rule adoption or modification requested must be submitted on a separate Petition to Adopt or Modify a District Rule form.

A person unable to comply with any procedures under District Rule 6.5, or to provide the information required by this form, may file a written explanation as to why compliance with the required procedure(s) is not possible along with a written request that the District waive the specific procedure(s). The written explanation and written request must be submitted to the District Office at the same time as this Form.

Additional information may be attached to this form.

1. **Text of Proposed Rule or Rule Modification** (underline words proposed to be added to the text of the current rules and strike through words proposed to be deleted from the text of the current rules):

2. **Written Explanation of the Intended Purpose of the Proposed Rule or Rule Modification:**

3. **Allegation of Injury or Inequity that could Result from Failure to Adopt Proposed Rule or to Modify Current Rule:**

4. **Description of Petitioner(s) Real Property Interest in Groundwater in the District** (attach proof of real property interest in groundwater located within the District for each petitioner):

Petitioner(s) Information (Please include information for additional petitioners as appropriate).

Petitioner #1:

First Name _____ Last Name _____ Phone Number _____ Email Address _____

Physical Address _____ City _____ State _____ Zip code _____

Mailing Address _____ City _____ State _____ Zip code _____

Signature _____ *Date* _____

Petitioner #2:

First Name _____ Last Name _____ Phone Number _____ Email Address _____

Physical Address _____ City _____ State _____ Zip code _____

Mailing Address _____ City _____ State _____ Zip code _____

Signature _____ *Date* _____

Petitioner #3:

First Name _____ Last Name _____ Phone Number _____ Email Address _____

Physical Address _____ City _____ State _____ Zip code _____

Mailing Address _____ City _____ State _____ Zip code _____

Signature _____ *Date* _____

Additional information may be attached to this form.