PRESIDIO COUNTY UNDERGROUND WATER CONSERVATION DISTRICT

DISTRICT RULES

Originally Adopted July 21, 2008; Amended December 17, 2012; Amended May 24, 2016; Amended November 17, 2023; Amended March 18, 2025; Amended October 23, 2025.

TABLE OF CONTENTS

Page

SECTION 1.	DEFINITIONS AND GENERAL PROCEDURES	1
RULE 1.1	DEFINITIONS OF TERMS	1
RULE 1.2	PURPOSE OF RULES	5
RULE 1.3	USE AND EFFECT OF RULES	5
RULE 1.4	AMENDING OF RULES	6
RULE 1.5	HEADINGS AND CAPTIONS:	6
RULE 1.6	CONSTRUCTION	6
RULE 1.7	METHODS OF SERVICE UNDER THE RULES	6
RULE 1.8	FILING OF DOCUMENTS AND TIME LIMIT	7
RULE 1.9	COMPUTING TIME	7
RULE 1.10	APPLICABILITY; PROCEDURES NOT OTHERWISE PROVIDED FOR	7
RULE 1.11	CONTINUANCE	7
RULE 1.12	REQUEST FOR RECONSIDERATION	7
RULE 1.13	SEVERABILITY	8
SECTION 2.	BOARD	8
RULE 2.1	PURPOSE OF BOARD	8
RULE 2.2	BOARD STRUCTURE, OFFICERS	8
RULE 2.3	MEETINGS	8
RULE 2.4	COMMITTEES	8
RULE 2.5	EX PARTE COMMUNICATIONS	8
SECTION 3.	GENERAL MANAGER	9
RULE 3.1	GENERAL MANAGER	9
RULE 3.2	DELEGATION OF AUTHORITY	9
SECTION 4.	DISTRICT	9
RULE 4.1	MINUTES AND RECORDS OF THE DISTRICT	9
RULE 4.2	CERTIFIED COPIES	9
SECTION 5.	PERMITS	9
RULE 5.1	REGISTRATION OF WELLS	9
RULE 5.2	GENERAL PERMITTING POLICIES AND PROCEDURES FOR NON-EXEMPT WELLS	10
RULE 5.3	STANDARD PERMIT PROVISIONS	15
RULE 5.4	PERMIT AMENDMENTS	16
RULE 5.5	TEMPORARY EMERGENCY PERMITS	17
RULE 5.6	WELL PERMIT EXEMPTION	18
SECTION 6.	OTHER DISTRICT ACTIONS AND DUTIES	19
RULE 6.1	DISTRICT GROUNDWATER MANAGEMENT PLAN	19
RULE 6.2	SEALING, CAPPING, AND PLUGGING OF WELLS	20
RULE 6.3	DRILLER'S LOG, CASING AND PUMP DATA	22
SECTION 7.	HEARINGS	22
RULE 7.1	TYPES OF HEARINGS AND APPLICABILITY	22
RULE 7.2	PERMIT HEARINGS	22
RULE 7.3	UNCONTESTED PERMIT HEARINGS PROCEDURES	24

RULE 7.4 CONTESTED PERMIT HEARINGS PROCEDURES....24
RULE 7.5 PERMIT HEARINGS CONDUCTED BY SOAH....29
RULE 7.6 RULEMAKING HEARINGS....30
RULE 7.7 OTHER MATTERS....33
RULE 7.8 GENERAL HEARING PROCEDURES....33
RULE 7.9 FINAL DECISION; BOARD ACTION....36
RULE 7.10 REQUEST FOR REHEARING AND APPEAL....36
RULE 7.11 HEARINGS ON DESIRED FUTURE CONDITIONS....37
RULE 7.12 APPEAL OF DESIRED FUTURE CONDITIONS....38
SECTION 8. REPORTING GROUNDWATER WITHDRAWALS.... 41
RULE 8.1 WELL METERS....41
SECTION 9. INVESTIGATIONS AND ENFORCEMENT 42
RULE 9.1 NOTICE AND ACCESS TO PROPERTY 42
RULE 9.2 EMERGENCY ORDERS....42
RULE 9.3 RULE ENFORCEMENT; ENFORCEMENT HEARING:....43
SECTION 10. EXPORT OF WATER.... 45
RULE 10.1 Export AUTHORIZATION REQUIRED....45
RULE 10.2 BASIS FOR ACTION ON export REQUEST 45
RULE 10.3 METHOD OF TRANSPORTATION....46
RULE 10.4 MONITORING AND REPORTING....46
SECTION 11. SPACING AND PRODUCTION 46
RULE 11.1 SPACING AND PRODUCTION REQUIREMENTS: 46
RULE 11.2 EXCEPTIONS TO SPACING AND PRODUCTION RULE....48
SECTION 12. FEES 48
RULE 12.1 FEES 48
SECTION 13. AQUIFER STORAGE AND RECOVERY (ASR) 49
RULE 13.1 APPLICABILITY OF DISTRICT RULES TO ASR PROJECTS....49

PRESIDIO COUNTY UNDERGROUND WATER CONSERVATION DISTRICT

DISTRICT RULES

SECTION 1. DEFINITIONS AND GENERAL PROCEDURES

RULE 1.1 DEFINITIONS OF TERMS: In the administration of its duties, the Presidio County Underground Water Conservation District follows the definitions of terms set forth in Chapter 36, Water Code, and other definitions as follows:

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

    a. an owner of land in the Groundwater Management Area;
    b. a district in or adjacent to the Groundwater Management Area;
    c. a regional water planning group with a water management strategy in the Groundwater Management Area;
    d. a person who holds or is applying for a permit from a district in the Groundwater Management Area;
    e. a person who has groundwater rights in the Groundwater Management Area; or
    f. any other person defined as affected by a TCEQ rule.

2. "Agricultural well" means any well devoted solely to raising food for consumption by humans and animals or fiber for clothing. If any part of the well production is used for any other purpose, including processing food or fiber, the well does not qualify as an agricultural well.

3. "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 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.

4. "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.

5. "ASR" means aquifer storage and recovery.

6. "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.

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

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

9. “Casing” means a tubular watertight, except for the perforated portions installed below the top of a geologic strata containing groundwater, structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine the groundwater to their zones of origin and prevent the entrance of surface pollutants.

10. “Cement” means a neat Portland or construction cement mixture of not more than seven gallons of water per ninety-four pound sack of dry cement, or a cement slurry that contains cement along with bentonite, gypsum, or other additives. All manufacturers’ recommendations regarding water content for the mix must be strictly adhered to.

11. “Concentrated Animal Feeding Operation” or “CAFO” means any animal feeding operation with the number of animals established in the TCEQ 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.

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

13. “Discharge” means the amount of water that leaves an aquifer by natural or artificial means.

14. “District” means the Presidio County Underground Water Conservation District.

15. “District Act” means the Presidio County Underground Water Conservation District’s enabling legislation, as may be amended.

16. “District Office” means the office of the District as set by Board resolution.

17. “Drilling Permit” means a permit for a water well to be drilled, re-worked, re-drilled, or re-equipped.

18. “Exempt well” means any well that meets the criteria in Rule 5.6.

19. “Groundwater” means water percolating beneath the earth’s surface.

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

21. “Groundwater Reservoir” means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

22. “Hearing Examiner” means a person appointed by the District’s Board to conduct a hearing or other proceeding.

23. “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 that is 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.

24. “Modeled Available Groundwater” means the amount of groundwater that may be produced on an average annual basis to achieve a Desired Future Condition established under Section 36.108, Water Code.

25. “Mud” means a relatively homogeneous, relatively viscous fluid produced by the suspension of clay-size particles in water. Specifically, it must be a nine and two-tenths pounds per gallon mud or heavier, with a marsh funnel viscosity of fifty seconds or equivalent.

26. “Operating Permit” means a permit for a water well issued or to be issued by the District allowing the withdrawal of a specific quantity of groundwater for a designated period of time.

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

28. “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the District that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for one or more lawful or reasonable purposes.

29. “Poultry” means chickens, turkeys, nonmigratory game birds, and other domestic nonmigratory fowl, but does not include any other bird regulated by the Parks and Wildlife as an endangered or threatened species. For purposes of qualifying for the exemption from the permitting requirements under Rule 5.6, the term “poultry” does not include any animal that is housed at a facility that is used to raise, grow, feed, or otherwise produce poultry for commercial purposes or is a commercial poultry hatchery that is used to produce chicks or ducklings and that qualifies as an Animal Feeding Operation or Concentrated Animal Feeding Operation under TCEQ Rules and as defined by these rules.

30. “Presiding Officer” means the Chair, Vice Chair, Secretary, or other Board Member presiding at any hearing or other proceeding, or a Hearing Examiner conducting any hearing or other proceeding.

31. “Project Operator” means a person holding an authorization under this subchapter to undertake an aquifer storage and recovery project.

32. “Pumpage or Groundwater Production” means all groundwater withdrawn or discharged from the ground.

33. “RRC” means the Railroad Commission of Texas.

34. “SOAH” means the State Office of Administrative Hearings.

35. “TCEQ” means the Texas Commission on Environmental Quality.

36. “Texas Open Meetings Act” means Chapter 551, Government Code.

37. “Texas Public Information Act” means Chapter 552, Government Code.

38. “Texas Rules of Civil Procedure” and “Texas Rules of Evidence” mean the civil procedure and evidence rules, respectively, as amended and in effect at the time of the action or proceeding. Except as modified by the Rules of the District and orders of the Presiding Officer, the rights, duties, and responsibilities imposed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence are the same as a court acting under those rules.

39. “TWDB” means the Texas Water Development Board.

40. “Waste” means any one or more of the following:

    a. withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or 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 in an amount in excess of the amount reasonably needed for that beneficial purpose;
    c. escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
    d. pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
    e. willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, (other than stock tank) lake, reservoir, drain, sewer, street, highway, road or road ditch, or onto any land other than that of the owner unless such discharge is authorized by permit, rule, or order issued by the TCEQ under Chapter 26, Water Code;
    f. groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

g. for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Water Code.

41. "Well" means any facility, device, method, artificial excavation, borehole, or opening in the ground used to withdraw groundwater, or for purposes of monitoring, injection of, or dewatering groundwater.

42. "Well operator" means the person who is authorized to operate a well or a water distribution system supplied by a well.

43. "Well owner" means the person who owns the well and, presumptively, the groundwater to be withdrawn and the land upon which a well is located or is to be located.

44. "Withdraw" means the act or failure to act that results in extracting groundwater by pumping or some other method.

RULE 1.2 PURPOSE OF RULES: These rules are adopted pursuant to the District Act and Chapter 36, Water Code, to enable the District to implement its statutory obligations and authority and these rules are adopted under the District's statutory authority to prevent waste and protect ownership rights in groundwater.

RULE 1.3 USE AND EFFECT OF RULES:

a. These rules are used by the District as guides in the exercise of the powers conferred by law and in the accomplishment of the purpose of the District Act. They may not be construed as a limitation or restriction on the exercise of any discretion nor may they be construed to deprive the District or Board of the exercise of any powers, duties, or jurisdiction conferred by law, nor may 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. These rules are effective December 17, 2012, and amended those rules previously in effect as of July 21, 2008. These rules and have been adopted to simplify procedures, avoid delays, save expense, and facilitate the administration of the applicable laws of the State by the District. These rules are to be construed to attain those objectives.

b. In accordance with the terms and provisions of Section 59 of Article XVI of the Constitution of Texas, Chapter 36 of the Texas Water Code, and the District's enabling legislation, the following rules are hereby adopted by the Presidio County Underground Water Conservation District to carry out the mandate of the District to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions. These rules were developed through a public process involving public hearing and public input, with the intent to develop a regulatory program that is fair and impartial. In developing these rules, the District considered all groundwater uses and needs, groundwater ownership and rights established by law, and the public interest in conservation, preservation, protection, recharging, and prevention of waste of

groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59 of Article XVI of the Texas Constitution.

c. These rules govern, among other things, the drilling, spacing, location, and completion of wells; withdrawal from wells; and other activities associated with wells. Consequently, these rules place the burden of compliance with many of these rules on well owners, well operators, and well drillers. If a well owner does not own the relevant groundwater rights and property associated with the well, that well owner must provide documentation to the District demonstrating who has authority to drill and operate the well, and to withdraw and use the groundwater located beneath the property on which the well is located. The well operator must provide documentation to the District of his or her authority to operate the well.

d. Nothing in these rules 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 established by law, recognizing, however, that Section 36.002 does not prohibit the District from limiting or prohibiting the drilling of a well for failure or inability to comply with minimum well spacing or tract size requirements adopted by the District; affect the ability of the District to regulate groundwater production as authorized under Sections 36.113, 36.116, or 36.122, or otherwise under Chapter 36, 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.

RULE 1.4 AMENDING OF RULES: The Board may, following notice and hearing, amend these rules or adopt new rules. All of the previous rules and regulations of the District have been revised and amended, and except as they are herein republished, they are repealed. Any previous rule or regulation which conflicts with or is contrary to these rules is hereby repealed.

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 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, 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 METHODS OF SERVICE UNDER THE RULES: Except as otherwise expressly provided in these rules, any notice or document required by these rules to be served may be delivered to the recipient, or the recipient's authorized representative, in person, by

agent, by courier receipted delivery, by First Class Mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number. Service by mail is complete upon deposit in a post office or other depository of the United States Postal Service, unless otherwise specified by Chapter 36 of the Water Code or by these rules. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. shall be deemed complete the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed period of time after service, three days will be added to the prescribed period. Where service by other methods has proved impossible, the service may be complete upon publication of the notice in a newspaper with general circulation in the District.

RULE 1.8 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; and, for telephonic document transfers, as of the date on which the telephonic document transfer is complete as reflected by the District's facsimile machine, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. 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 1.9 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 1.10 APPLICABILITY; PROCEDURES NOT OTHERWISE PROVIDED FOR: This Section 1 shall apply to all types of proceedings 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 proceeding at issue. If, in connection with any proceeding, 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 1.11 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 1.12 REQUEST FOR RECONSIDERATION: To appeal a decision of the District, including any determination made by the 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 twenty (20) calendar days of the date of the decision. Such request for reconsideration must be in writing and must state clear and concise grounds for the request. The Board will make

a decision on the request for reconsideration within 45 (forty-five) calendar days thereafter. The failure of the Board to grant or deny the request for reconsideration within forty-five (45) calendar days of the date of filing shall constitute a denial of the request.

RULE 1.13 SEVERABILITY: If any one or more of the provisions contained in these rules is for any reason held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other rules or provisions of these rules and these rules will be construed as if such invalid, illegal, or unenforceable rule or provision had never been contained in these rules.

SECTION 2. BOARD

RULE 2.1 PURPOSE OF BOARD: The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District, and to exercise its rights, powers, and duties in a manner that will effectively and expeditiously accomplish the purposes of the District Act and applicable law. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules, policy orders, and Management Plan.

RULE 2.2 BOARD STRUCTURE, OFFICERS: The Board consists of the members appointed and qualified as required by the District Act. Each year at its regular February meeting, and if there is no February meeting, at its next meeting, the Board will select one of its members to serve as Chair to preside over Board meetings and proceedings, one to serve as Vice Chair to preside in the absence of the Chair, and one to serve as Secretary to keep a true and complete account of all meetings and proceedings of the Board. Members and officers serve until their successors are selected, qualified and sworn in accordance with the District Act, these rules, and applicable law.

RULE 2.3 MEETINGS: The Board will hold a regular meeting each quarter or as needed, on a day the Board may establish. At the request of the Chair, or by written request of at least two members, the Board may hold special meetings. All Board meetings will be held in accordance with the Texas Open Meetings Act.

RULE 2.4 COMMITTEES: The Chair may establish and disassemble committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees.

RULE 2.5 EX PARTE COMMUNICATIONS: Board members may not communicate, directly or indirectly, in connection with any issue of fact or law in any contested case 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 Board member who abstains from voting on any matter in which ex parte communications have occurred or to communications between the Board and the staff or consultants of the District who are not a party or participating on behalf of a party.

SECTION 3. GENERAL MANAGER

RULE 3.1 GENERAL MANAGER: The person employed by the Board as General Manager is the chief administrative officer of the District, pursuant to the District Act and Chapter 36, Water Code, and shall have full authority to manage and operate the affairs of the District, subject only to Board orders. The General Manager, with approval of the Board, is responsible for employing all persons necessary for the proper handling of the business and operation of the District and determining their compensation.

RULE 3.2 DELEGATION OF AUTHORITY: The General Manager may delegate duties as may be necessary to effectively and expeditiously accomplish those duties, provided, that no such delegation may ever relieve the General Manager from responsibilities under the District Act, Board orders, and applicable law.

SECTION 4. DISTRICT

RULE 4.1 MINUTES AND RECORDS OF THE DISTRICT: All documents, reports, records and minutes of the District will be available for public inspection and copying in accordance with the Texas Public Information Act. Upon written application of any person, the District will furnish copies of its public records as required by the Texas Public Information Act, Chapter 552, Government Code. Persons who are furnished copies may be assessed a copying charge, pursuant to Chapter 552, Government Code, and the regulations established by the Office of the Attorney General of Texas. A list of the charges for copies will be furnished by the District upon request.

RULE 4.2 CERTIFIED COPIES: Requests for certified copies must be in writing. Certified copies will be made under the direction of the General Manager. Persons furnished certified copies may be assessed a certification charge, in addition to a copying charge, pursuant to policies established by the General Manger.

SECTION 5. PERMITS

RULE 5.1 REGISTRATION OF WELLS:

a. All wells must be registered with the District. Existing nonexempt and exempt wells shall be registered immediately. All new wells must be registered by the well owner, well operator, or water well driller prior to being drilled. Registration may be by mail or telephonic document transfer, using a form provided by the District. The District staff will review the registration and make a preliminary determination on whether the well meets drilling and operating permit exemptions provided in Rule 5.6, and must inform the registrant of their determination promptly. If the preliminary determination is that the well is exempt from the requirement to obtain a drilling or operating permit, the registrant may begin drilling immediately upon receiving the approved registration from the District.

b. It is a violation of these rules for any person to drill a well or authorize the drilling of a well without the approved registration form filed with the District.

c. 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, the well must be re-registered on a new registration form.

RULE 5.2 GENERAL PERMITTING POLICIES AND PROCEDURES FOR NON-EXEMPT WELLS:

a. **Permit Requirement:** Except as provided in Rules 5.1 and 5.6, the owner or operator of a proposed or existing nonexempt well, or any other person acting on behalf of the owner or operator, must obtain a drilling permit in order for a nonexempt well to be drilled and an operating permit in order for a well to be operated. A well must be permitted prior to drilling and must remain permitted unless and until the well plumbing and power source are disconnected and the well casing or discharge pipe is capped.

b. **Applications and Application Fees:** Each original application for a drilling permit and operating permit, a temporary emergency permit, a permit renewal or a permit amendment requires a separate application. Application forms will be provided by the District and furnished to the applicant upon request. After the application form and fee are submitted, the District may request additional information to complete its review of the application. Any additional information received will become part of the application. An application is not considered administratively complete until all requested information is submitted. Each application for a permit shall be in writing and sworn to, and shall include the following information relevant to the appropriate type of application to be filed, as that information is identified and requested on the District's application form:

1. the name and mailing address of the applicant and the owner of the groundwater rights and property on which the well or Well System will be located;
2. if the applicant is other than the owner of the property on which the well or Well System will be located and the groundwater rights with authority to drill and operate the well(s), documentation establishing the applicable authority to construct and operate each well for the proposed use;
3. the location of each well and the estimated rate at which water will be withdrawn;
4. the date the permit is to expire if the well(s) is/are not drilled or if the existing well(s) is/are not properly completed to meet all statutory and regulatory requirements for the intended purpose of use;
5. a requirement that the water withdrawn under the permit be put to beneficial use at all times;
6. the location of the use of the water from the well(s);
7. the conditions and restrictions, if any, placed on the rate and amount of groundwater withdrawal;
8. 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;
9. a declaration that the applicant will comply with the District Management Plan;
10. a drought contingency plan;

11. a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the TCEQ;
12. the duration the permit is proposed to be in effect, if greater than one year;
13. a written statement addressing each of the applicable criteria in Subsections (c), (d) and (e) of this rule and substantiating why the applicant believes the Board should consider each of these applicable criteria in a manner favorable to the applicant; and
14. if groundwater is proposed to be transferred 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 transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
    C. how the proposed transfer is consistent with the approved regional water plan and certified District Management Plan.

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, unless a request for extension or request for ruling by the Board has been filed as allowed under this subsection. The applicant may request from the District's Board 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) calendar days' notice compliant with the Texas Open Meetings Act. The Board will consider and take action on an applicant's request under this rule at this meeting.

c. **Decision and Issuance of Permit:** In deciding whether or not to issue a permit, and in setting the terms of the permit, the Board will consider the relevant criteria and observe the relevant restrictions and will exercise the authority set forth in Sections 36.113, 36.1131, and 36.122 of the Texas Water Code, and will consider whether:

1. the application contains accurate information and conforms to the requirements prescribed by Chapter 36, 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 7.5, the Board shall consider the Proposal for Decision and Findings of Fact and Conclusions of Law issued by SOAH.

d. **Modifying Permits:** 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 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.

e. **Management to Achieve Desired Future Condition:** In making decisions on permit applications, the District shall manage total groundwater production on a long-term basis to achieve the applicable Desired Future Condition and will 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 5.6 and Section 36.117, Water Code;
3. the amount of groundwater authorized and pumped or discharged 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.

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 aquifer or its subdivision in the District.

f. **Contesting an Application:** If no person notifies the General Manager of their intent to contest the application in writing under Rule 7.2(b), and the General Manager does not contest the application, the application will be presented directly to the Board for final decision. The Board may grant the application or refer the application to the Hearing Examiner for a complete hearing.

g. **Permit Term:** Unless specified otherwise by the Board or these rules, permits are effective for a term ending one year from the last day of the calendar month of issuance. The permit term will be shown on the permit. The Board may issue a permit for a term of

up to five (5) years, provided that the applicant demonstrates the need for a permit term that exceeds one year.

h. **Permit Renewal:**

1. 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:

   A. the application is submitted in a timely manner; and

   B. the permit holder is not requesting a change related to the renewal that would require a permit amendment under District Rule 5.4.

2. The District is not required to renew a permit under District Rule 5.2(h)(1) if the applicant:

   A. is delinquent in paying a fee required by the District;

   B. 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

   C. 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.

3. If the District is not required to renew a permit under District Rule 5.2(h)(2) the permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

4. 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 5.4, the permit as it existed before the permit amendment process remains in effect until the later of:

   A. the conclusion of the permit amendment or renewal process, as applicable; or

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

5. 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 5.2(h)(1) without penalty, unless subsection (2) of District Rule 5.2(h) applies to the applicant.

6. The District may initiate an amendment to a production permit, in connection with the renewal of a permit or otherwise, in accordance with District Rule 5.4. 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.

i. **Permit Provisions:** The permit will contain the standard provisions listed in Rule 5.3 and any other special provisions or exemptions deemed appropriate. The permit may also contain provisions relating to water conservation, accountability, waste prevention, transportation limitations, or any other conditions deemed appropriate by the Board.

j. **Revocation or Modification Permit:** A permit does not become a vested right in the holder, and the Board may, after notice and hearing, revoke or suspend a permit, or modify or amend the permit or permit terms at any time if a basis exists for such revocation, suspension, or modification.

k. **Aquifer-Based Production Limits:** 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 or unreasonable effects on existing groundwater and surface water resources or existing permit holders. 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.

1. The District will continue to study any aquifer conditions that 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 the quantity of proportional adjustment reductions to the amount of permitted production of groundwater, if any, that 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.

2. 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, prevent unreasonable effects on existing groundwater and surface water resources or existing permit holders, or control and prevent subsidence, or 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 Rule 7.2.

RULE 5.3 STANDARD PERMIT PROVISIONS: All permits are granted subject to the District Act, these rules, orders of the Board, the laws of the State of Texas, the District's Management Plan, Desired Future Conditions, and subject to terms and provisions with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that 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, prevent unreasonable effects on groundwater or surface water resources or existing permit holders, or control and prevent subsidence. In addition to any special provisions or other requirements incorporated into the permit, each permit issued shall contain the following standard permit provisions:

a. This permit is granted in accordance with the provisions of the District Act, Water Code, and the rules, Management Plan and orders of the District, and the Desired Future Conditions applicable to the aquifers in the District, and the permittee shall comply with the Water Code, the District Act, the District Rules, orders of the District Board, and all the terms, provisions, conditions, requirements, limitations and restrictions embodied in this permit. Failure to comply with any of these provisions may result in cancellation or revocation of the permit.

b. This permit confers no vested rights in the holder, and it may be revoked or suspended, or its terms may be modified or amended pursuant to the provisions of the District Act. This permit confers only the right to operate under the terms and conditions of the permit, and its terms may be modified or amended pursuant to the District Rules, Chapter 36, Water Code, or District Rule 5.2(k), and the directives of the Texas Legislature, or if necessary to achieve the goals and objectives of the District Management Plan, to achieve the Desired Future Conditions applicable to the District, or to address water quality issues.

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

d. The permittee must keep accurate records of the amount of groundwater withdrawn and the purpose of the withdrawal and such records shall be available for inspection by District representatives. Immediate written notice must be given to the District in the event a withdrawal exceeds the quantity authorized by this permit, or the well is either polluted or causing pollution of the aquifer.

e. The well site must be accessible to District representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.

f. The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application and in any amendments to the application. A finding that false information has been supplied is grounds for immediate revocation of the permit. In the event of conflict between the provisions of this permit and the contents of the application, the provisions of this permit shall control.

g. Violation of this permit's terms, conditions, requirements, or special provisions, is punishable by civil penalties as provided by the District Rules.

h. Wherever District special provisions are inconsistent with other provisions or District Rules, the special provisions prevail.

RULE 5.4 PERMIT AMENDMENTS:

a. **Permit Amendment Increasing Authorized Withdrawal:** Permits may be amended to increase the authorized amount of withdrawal or to change an activity authorized under the permit. A permit amendment is not required for any well, well pump, or pump motor repair or maintenance if such repair or maintenance does not increase the maximum authorized withdrawal or change any applicable term, condition, or restriction of an existing permit.

1. **Submission of Application:** An application by a permit holder for a permit amendment to increase the maximum authorized withdrawal or change any other applicable term, condition, or restriction of an existing permit must be submitted prior to the increase in withdrawal or change described by this provision.

2. **Basis for Amendment:** An applicant for a permit amendment increasing authorized withdrawal must present sufficient evidence that: (1) the amount of withdrawal originally authorized has proved to be inadequate, (2) no suitable alternative water is immediately available to the applicant; and (3) granting the amendment will not impair the rights of any other owner of interest in groundwater.

3. **Action on Request:** The General Manager may grant or deny any application for increased withdrawal in an amount up to but not exceeding ten (10) percent of the amount authorized by the permit, without notice, hearing, or further action by the Board, limited to one request per person per calendar year. The General Manager's action may be appealed to the Board by filing a written request for hearing within 20 (twenty) calendar days of the date of the General Manager's decision. If a written request for hearing is filed, or if the application for increased withdrawal is for an amount greater than ten (10) percent of the initially authorized withdrawal in one calendar year, notice must be issued and a hearing conducted in the manner prescribed for permit hearings in Section 7 of these rules.

b. **Permit Amendment Decreasing Authorized Withdrawal:** An application by a permit holder for a permit amendment decreasing the authorized withdrawal must be made in writing. The General Manager may grant such an amendment without notice, hearing, or further action by the Board.

c. **Permit Amendment to Transfer Ownership of the Permit:** An application to amend the permit to change the name of the permittee must be made immediately after the change in ownership of the groundwater rights or permitted well. The General Manager may grant such an amendment without notice, hearing, or further action by the Board. If the General Manager believes the application merits review and action by the Board, the General Manager may issue notice and set the hearing in accordance with Section 7 of these rules.

RULE 5.5 TEMPORARY EMERGENCY PERMITS:

a. **Basis for Temporary Emergency Permit:** Upon application, the General Manager may grant a Temporary Emergency Permit that authorizes the withdrawal of water from an existing well not currently permitted by the District. An application for a Temporary Emergency Permit must present sufficient evidence that:

1. no suitable alternative water supply is immediately available to the applicant;
2. the well usage will not impair the rights of any other owner of interest in groundwater; and
3. an emergency need for the groundwater exists.

b. **Action on Requests:** The General Manager may grant any application for a Temporary Emergency Permit without notice, hearing, or further action by the Board. The General Manager may deny an application for a Temporary Emergency Permit on any reasonable ground related to the factors in Subsection (a) of this rule or if a determination has been made by the District's Board that the applicant is currently in violation of the District Act or these rules, or that the applicant has a previous unresolved violation on record with the District. Notice of the General Manager's action will be served upon the applicant. Any affected party may appeal the General Manager's action by filing, within 20 (twenty) calendar days of that action, a written request for a hearing before the Board. The Board will hear the appeal at the next available regular Board meeting. The General Manager must immediately inform the Board of any Temporary Emergency Permits granted. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager.

c. **Term of Temporary Emergency Permit:** No Temporary Emergency Permit may be issued unless an application for a permit governed by Rule 5.2 has been filed with the District within 30 (thirty) calendar days of the filing of an application for a Temporary Emergency Permit. The term of any Temporary Emergency Permit granted by the General Manager under this Rule extends only until the Board makes a final decision on the application for the permit under Rule 5.2.

RULE 5.6 WELL PERMIT EXEMPTION:

a. The District's permitting requirements and meter requirements 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 ten (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 ten (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;
   B. such tract was equal to or less than ten (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.

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

   For purposes of an exemption under this subsection, the terms "livestock" and "poultry" 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 RRC provided that the person holding the permit is responsible for drilling and operating the water well and the 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 RRC under Chapter 134, Texas Natural Resources Code, or for production from such a 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. Monitoring wells and leachate wells.

6. Drilling, producing and transporting water from a well that meets the statutory exemption set forth in Section 36.121, Texas Water Code.

b. Accepting consideration, either given or received, for any of the water produced from an otherwise exempt well forfeits any exemption, except as otherwise established by this Rule 5.6 or Section 36.117, Water Code. 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.

c. A well exempted under Subsections (a)(2) and (a)(3) 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 RRC;

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 RRC under Chapter 134, Texas Natural Resources Code; or

d. A person or entity that is exempt from permitting under Subsections (a)(2) and (a)(3) shall report monthly to the District:

1. the total amount of water withdrawn during the month;
2. the quantity of water necessary for the exempt activities; and
3. the quantity of water withdrawn for other purposes, if any.

SECTION 6. OTHER DISTRICT ACTIONS AND DUTIES

RULE 6.1 DISTRICT GROUNDWATER MANAGEMENT PLAN:

a. The Board shall adopt a Management Plan that addresses the following management goals, as applicable: providing the most efficient use of groundwater; controlling and preventing waste of groundwater; controlling and preventing subsidence; addressing conjunctive surface water management issues; addressing natural resource issues; addressing drought conditions; addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and addressing in a quantitative manner the Desired Future Conditions adopted pursuant to Section 36.108, Water Code. The Management Plan forms the basis of the District's regulatory program and permitting requirements.

b. The Board will review the Management Plan at least once every five years after the last approval by the TWDB. The District will amend its Management Plan to address the 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. If the Board considers a new Management Plan necessary or desirable prior to the deadlines provided in this rule, a new Management Plan will be adopted.

c. 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. 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 Presidio County; and
3. make available a copy of the proposed Management 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.

d. The 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 Management Plan or any amendments to the Management Plan.

RULE 6.2 SEALING, CAPPING, AND PLUGGING OF WELLS:

a. **Sealing Wells:** The District may seal wells that are prohibited from withdrawing groundwater within the District by the District Act, these rules or Board orders, or when the General Manager determines that sealing a well is reasonably necessary to ensure that the well will not be operated in violation of the District Act, these rules or Board orders. A well may be sealed when:

1. representations have been made by the well owner or primary operator that no groundwater is to be withdrawn from a well during a particular period;
2. the well has not been properly permitted; or
3. continued operation of the well will result in waste or pollution.

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 sealed well constitutes a violation of these rules and will subject 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 Act and these rules.

b. **Capping Wells:** 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 commingling of water strata, in which case the well must be plugged.

c. **Plugging Wells:** It is the responsibility of the landowner to plug a well that is deteriorated or abandoned. The well must be capped immediately in accordance with Rule 6.2(b). The well casing may not be allowed to deteriorate to a point where commingling of water strata is possible or occurring. The well owner or operator must, within 30 (thirty) calendar days, either equip or plug a deteriorated well such that commingling of strata is prevented.

1. For a well that does not penetrate any undesirable water zone but is deteriorated or abandoned, all removable casing must be removed from the well and the well plugged as follows:

   A. filled with cement to the land surface; or
   B. filled with mud followed by a cement plug not less than ten feet long extending down from the land surface.

2. For a well that penetrates any undesirable water zone and is deteriorated or abandoned, all removable casing must be removed from the well and the well plugged as follows:

   A. filled with cement to the land surface; or
   B. either the zone(s) contributing undesirable water or the fresh water zone(s) must be isolated with cement plugs and the remainder of the well bore filled with mud to form a base for a cement plug not less than ten (10) feet long extending down from the land surface.

3. Any person that plugs a well in the District must, within sixty (60) days after plugging is complete, submit a copy of the plugging report on forms furnished by the Texas Department of Licensing and Regulation to the District.

d. **Recovery of Expenses:** If the well owner fails or refuses to plug or cap the well in compliance with this rule 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 Section 36.118, Water Code. Reasonable expenses incurred by the District in plugging or capping a well constitute a lien on the land on which the well is located. The District shall perfect the lien by filing in the County's 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.

RULE 6.3 DRILLER'S LOG, CASING AND PUMP DATA: Once the District has approved a registration for an exempt well or drilling permit application for a nonexempt well, as applicable, a water well driller must notify the District at least 24 hours prior to commencing drilling, repairing, capping or plugging a well. Complete records must be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled in the District. Such records must include an accurate Driller's log required by Section 1901.251, Texas Occupations Code, and any mechanical, electric or geophysical log that may have been made. Such reports and logs, if available, must be filed within 60 calendar days after completion of the well.

SECTION 7. HEARINGS

RULE 7.1 TYPES OF HEARINGS AND APPLICABILITY: The District conducts the following types of hearings:

a. hearings involving permit-related matters and exceptions to well spacing and production requirements, which are governed primarily by Rules 5.2-5.5, Rules 7.2-7.5 and Rule 11;

b. rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District, which are governed by Rule 7.6;

c. hearings on the District Management Plan, which are governed by Rule 6.1;

d. hearings on the Desired Future Conditions, including the appeal process of Desired Future Conditions, which are governed by Rules 7.11 and 7.12;

e. enforcement hearings, which are governed by Rule 9.3; and

f. all other hearings not described by this rule, which are governed by Rule 7.7.

Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner.

RULE 7.2 PERMIT HEARINGS:

a. **Generally:** The General Manager is authorized to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings as the General Manager deems administratively feasible and appropriate. Other hearings may be scheduled at the dates, times and locations set at a regular Board meeting. The Board shall set a preliminary hearing within 60 days of declaring an application as

administratively complete, and the preliminary hearing must be set within 35 days of the setting of the hearing date. All hearings must be held before a quorum of the Board, a Hearing Examiner, or SOAH in accordance with Rule 7.5. A Hearing Examiner appointed by the Board shall have all of the authority of the Presiding Officer under these rules.

b. **Scheduling of Permit Hearings and Request for Contested Case Hearing:** The General Manager may schedule as many applications at one hearing as the General Manager deems necessary. Any person that wishes to be heard as a potential party to a hearing must appear at the hearing and contest the application. If the General Manager decides to contest the application, the General Manager must, at least five (5) calendar days prior to the hearing date, provide the applicant with written notice of the General Manager's intent to contest the application.

c. **Content of Permit Hearing Notice:** Once the District has received an administratively complete permit or permit amendment application, or if the Board desires to modify or revoke an existing permit, the General Manager shall prepare the notice that includes, at a minimum, 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(s), 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.

d. **Issuance of Permit Hearing Notice:** Not less than ten (10) calendar days prior to the date of the permit 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 Presidio County; and
3. provided to the applicant by regular mail.

e. **Requests to Receive Notice of Permit Hearing:** A person may submit to the District a written request for notice of a hearing on a permitting matter. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail,

facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure to provide notice under this subsection does not invalidate an action taken by the District on a permitting matter.

RULE 7.3 UNCONTESTED PERMIT HEARINGS PROCEDURES:

a. **Informal Hearings:** Uncontested permit hearings may be conducted informally when, in the judgment of the Presiding Officer, the conduct of the proceeding under informal procedures will result in a savings of time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.

b. **Agreement of Parties:** If all parties reach a negotiated or agreed settlement that settles the facts or issues in controversy, or if no person appears to seek party status, or if the General Manager does not file a notice of contested case in accordance with Rule 7.2(b), the proceeding will be considered an uncontested case and the Board may take any action authorized under District Rule 7.3(d).

c. **Decision to Proceed as Contested Case:** If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy, a party or the General Manager files a notice of contested case in accordance with Rule 7.2(b), the Board may declare the case to be contested and convene a preliminary hearing as set forth in Rule 7.4(a). Any case not declared a contested case under this provision will be an uncontested case.

d. **Board Action on Uncontested Application:** 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.

e. **Contested Case Hearing Request by Applicant:** 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.

RULE 7.4 CONTESTED PERMIT HEARINGS PROCEDURES:

a. **Preliminary Hearing:** A preliminary hearing shall be held in a contested permit hearing to consider any matter that may expedite the hearing, determine party status, or otherwise

facilitate the hearing process. The Board shall conduct an evidentiary hearing if a person other than the applicant is designated as a party, 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 under Rule 7.5. 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.

b. **Matters Considered:** Matters that may be considered at a preliminary hearing include, but are not limited to, (1) designation of parties; (2) formulation and simplification of issues; (3) necessity or desirability of amending applications or other pleadings; (4) possibility of making admissions or stipulations; (5) scheduling discovery; (6) identification of and specification of the number of witnesses; (7) filing and exchange of prepared testimony and exhibits; and (8) procedure at the hearing. Action taken at a prehearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.

c. **Assessing Reporting and Transcription Costs:** Upon the timely request of any party, or at the discretion of the Board, the Board may assess reporting and transcription costs to one or more of the parties. The Board will consider the following factors in assessing reporting and transcription cost:

1. the party who requested the transcript;
2. the financial ability of the party to pay the cost;
3. the extent to which the 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.

In any proceeding where the assessment of reporting or transcription costs is an issue, the Board will provide the parties an opportunity to present evidence and argument on the issue.

d. **Designation of Parties:** Parties to a hearing may be designated at the preliminary hearing or at such other times as the Board determines. The General Manager and any person specifically named in a matter are automatically designated as parties. Persons other than the General Manager or a person specifically named must, in order to be admitted as a party, file the notice of contested case under Rule 7.2(b) and appear at the proceeding in person or by a representative and seek to be designated. After the parties are designated, no other person may be admitted as a party unless, in the judgment of the Board, there exists good cause and the hearing will not be unreasonably delayed. A person will only be designated as a party to a hearing if that person demonstrates a justiciable interest related to a legal right, duty, privilege, power or economic interest that is within the District's regulatory authority that would be adversely affected by the action

proposed by the application. A justiciable interest does not include persons who have only an interest common to members of the general public.

e. **Rights of Designated Parties:** Subject to the direction and orders of the Presiding Officer, parties have the right to conduct discovery, present a direct case, cross examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.

f. **Persons Not Designated as Parties:** At the discretion of the Presiding Officer, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing, but shall be subject to cross examination.

g. **Furnishing Copies of Pleadings:** After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or the party's representative in the methods prescribed by Rules 1.7 and 7.8(h). Failure to provide copies or evidence thereof to other parties may be grounds for withholding consideration of the pleading or the matters set forth therein.

h. **Interpreters for Deaf Parties and Witnesses:** If a party or subpoenaed witness in a contested case is deaf, the District will provide an interpreter whose qualifications are approved by the Texas Health and Human Services Commission to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

i. **Agreements to be in Writing:** No agreement between parties or their representatives affecting any pending matter will be considered by the Board unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered of record.

j. **Discovery:** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Presiding Officer. Unless specifically modified by these rules or by order of the Presiding Officer, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized order the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Presiding Officer.

k. **Discovery Sanctions:** If the Presiding Officer finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Presiding Officer may:

1. suspend processing of the application for a permit if the applicant is the offending party;
2. disallow any further discovery of any kind or a particular kind by the offending party;

3. rule that particular facts be regarded as established against the offending party for the purpose of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
4. limit the offending party's participation in the proceeding;
5. disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
6. recommend to the Board that the hearing be dismissed with or without prejudice.

l. **Compelling Testimony; Swearing Witnesses and Subpoena Power:** The Presiding Officer may compel any person to testify who is necessary, helpful, or appropriate to the hearing. The Presiding Officer shall administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The Presiding Officer may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in a manner provided in the Texas Rules of Civil Procedure.

m. **Evidence:** Except as modified by these rules, the Texas Rules of Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Evidence may be admitted if it is relevant to the hearing and of the type commonly relied upon by reasonable prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties. Evidence that is irrelevant, immaterial, or unduly repetitious may be excluded.

n. **Written Testimony:** When a proceeding will be expedited and the interests of the parties not substantially prejudiced, testimony may be received in written form. The written testimony of a witness, 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. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.

o. **Requirements for Exhibits:** Exhibits of a documentary character must be of a size that will not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.

p. **Abstracts of Documents:** When documents are numerous, the Presiding Officer may receive in evidence only those that are representative and require the abstract of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.

q. **Introduction and Copies of Exhibits:** Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the Board and to each of the parties, unless the Presiding Officer rules otherwise.

r. **Excluding Exhibits:** In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be

returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to excluding the exhibit.

s. **Official Notice:** The Presiding Officer may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.

t. **Documents in District Files:** Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.

u. **Oral Argument:** At the discretion of the Presiding Officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Presiding Officer may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the board for final decision, further oral arguments may be heard by the Board.

v. **Closing the Record; Proposal for Decision:** At the conclusion of the presentation of evidence and any oral argument, the Presiding Officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Presiding Officer. If the hearing was conducted by a quorum of the Board and if the Presiding Officer prepared a record of the hearing, the Presiding Officer shall determine whether to prepare and submit a Proposal for Decision ("PFD") to the Board under this rule. If a PFD is required, the Presiding Officer shall submit a report to the Board within 30 (thirty) calendar 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, each designated party, and each person who provided a comment. Any person who receives a copy of the PFD may submit to the Board written exceptions to the hearing report. 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 District Rule 7.8(g) and Section 36.409, Texas Water Code.

w. **Time for Board Action on Certain Permit Matters:** The Board shall act on a permit or permit amendment application, permit revocation or modification, or permit renewal within 60 calendar days after concluding the final hearing. Requests for rehearing and final action on a permit matter shall be conducted under Rule 7.9.

RULE 7.5 PERMIT HEARINGS CONDUCTED BY SOAH:

a. **Generally:** 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 preliminary hearing and is untimely if submitted after the conclusion of the preliminary hearing. 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.

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

c. **Referral:** Upon execution of a contract with SOAH and receipt of the deposit from the appropriate party or parties, the District's Presiding Officer shall refer the application to SOAH. The Presiding Officer's referral to SOAH shall be in writing and shall include the procedures established by the Presiding Officer; 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.

d. **Procedure:** 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 7.8. The District's Board shall conduct a hearing within 45 days of receipt of SOAH's Proposal for Decision and Findings of Fact and Conclusions of Law, and shall act on the application at this hearing or no later than 60 (sixty) 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 10 (ten) 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.

e. **Board Action Following SOAH Hearing:** 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:

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

2. that a prior administrative decision on which the Administrative Law Judge relied is incorrect or should be changed; or

3. that a technical error in a finding of fact should be changed.

f. 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 District Rule 7.5(e).

g. 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.

h. 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.

i. Notwithstanding any other rule, the Board is considered to have adopted the final proposal 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 proposal for decision if the Board has not issued a final decision by:

1. adopting the findings of fact and conclusions of law as proposed by the Administrative Law Judge; or

2. issuing revised findings of fact and conclusions of law as set forth in this rule and the Texas Water Code.

j. A proposed final decision adopted under District Rule 7.5(i) is final, immediately appealable, and not subject to a request for rehearing.

RULE 7.6 RULEMAKING HEARINGS:

a. **Generally:** 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.

b. **District Management Plan:** At its discretion, the Board may hold a hearing to consider adoption of a new District Management Plan in accordance with the procedures for rulemaking hearings, except that notice for the hearing on the management plan shall be governed by Rule 6.1.

c. **Notice of Rulemaking Hearings:** 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. 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 Presidio County;
3. publish notice in one or more newspapers of general circulation in the District;
4. provide notice by mail, facsimile, or electronic mail 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.

d. **Requests to Receive Notice of Rulemaking Hearing:** A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or email to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure to provide notice under this subsection does not invalidate an action taken by the District at a rulemaking hearing.

e. **Scheduling of Rulemaking Hearings:** Any hearing may or may not be scheduled any day of the 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.

f. **Conclusion of Rulemaking 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, 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, 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.

g. PETITION TO MODIFY OR ADOPT A DISTRICT RULE: 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.

1. 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:

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

   (B) 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;

2. 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.

3. 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.

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

5. 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.

6. 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:

   (A) 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

   (B) 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.

7. 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.

RULE 7.7 OTHER MATTERS: A hearing may be held on any matter beyond rulemaking, the District's Management Plan, permitting, enforcement, and Desired Future Conditions, within the jurisdiction of the District, if the Board, or the General Manager when authorized by the Board, deems a hearing to be in the public interest, or if the Board or the General Manager, when authorized by the Board, deems a hearing necessary to effectively carry out the duties and responsibilities of the District. Not less than 10 (ten) calendar days prior to the date of a public hearing under this rule, the District shall publish notice of the subject matter of the hearing, the time, date, and place of the hearing, in a newspaper of general circulation in the District, in addition to posting the notice in the manner provided by the Texas Open Meetings Act.

RULE 7.8 GENERAL HEARING PROCEDURES:

a. **Authority of Presiding Officer:** The Presiding Officer may conduct the hearing or other proceeding in the manner the Presiding Officer deems most appropriate for that particular proceeding. The Presiding Officer has the authority to:

   1. set hearing dates, other than the preliminary hearing date for permit matters set by the General Manager;

2. convene the hearing at the time and place specified in the notice for public hearing;
3. designate and align parties and establish the order for presentation of evidence;
4. administer oaths to all persons presenting testimony;
5. examine witnesses;
6. ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceedings;
7. conduct public hearings in an orderly manner in accordance with these rules; and
8. prescribe reasonable time limits for testimony and the presentation of evidence.

b. **Registration Forms:** Each individual attending a hearing or other proceeding of the District must submit a form providing the person's name and address, whether the person plans to testify, and any other information relevant to the hearing or other proceeding.

c. **Appearance; Representative Capacity:** Any interested person may appear in person or may be represented by counsel, engineer, or other representative, provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.

d. **Alignment of Parties; Number of Representatives Heard:** Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The Presiding Officer may require the participants of an aligned class to select one or more persons to represent them in the proceeding or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.

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

f. **Reporting:** Hearings and other proceedings will be recorded on audio cassette tape, digital recording, or, at the discretion of the Presiding Officer, may be recorded by a certified shorthand reporter. The District does not prepare transcriptions for the public of hearings or other proceedings recorded on audio cassette tape on District equipment, but will arrange for a party at interest to have access to the recording. Subject to availability

of space, any party at interest may, at its own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 7.4(c). If a proceeding other than a permit hearing is recorded by a reporter, and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original transcript filed with the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of any hearing or other proceeding thus reported may be purchased from the reporter.

g. **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, except as required by the Texas Open Meetings Act. If a hearing or other proceeding is continued and a time and place (other than the District Office) 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 must be delivered at a reasonable time to all parties, persons who have requested notice of the hearing, and any other person the Presiding Officer deems appropriate, but it is not necessary to post at the county courthouses or publish a newspaper notice of the new setting. A continuance may not exceed the time limit for the issuance of a final decision under Section 36.4165 of the Texas Water Code.

h. **Filing of Documents; Time Limit:** Applications, motions, exceptions, communications, requests, briefs, or other papers and documents required to be filed under these rules or by law must be received in the hand of the District's Office within the time limit, if any, set by these rules, applicable laws, or by the Presiding Officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.

i. **Computing Time:** In computing any period of time specified by these rules, by a Presiding Officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included.

j. **Affidavit:** Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.

k. **Broadening the Issues:** No person will be allowed to appear in any hearing or other proceeding that in the opinion of the Presiding Officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.

l. **Conduct and Decorum:** Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and will 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 7.9 FINAL DECISION; BOARD ACTION: After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, deny or grant the action sought in whole or part, or take any other appropriate action upon consideration of the factors in Rule 5.2. Either on the final hearing date and 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.

RULE 7.10 REQUEST FOR REHEARING AND APPEAL:

a. An applicant in a contested or uncontested hearing or an applicant 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 Board's decision. On receipt of a timely written request, the Board shall make written findings of fact and conclusions of law regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the Board receives the request.

b. A party to a contested case and who receives a certified copy of the findings and conclusions from the Board may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions. A party to a contested case hearing must first make a request for written findings of fact and conclusions of law under District Rule 7.10(a) before submitting a request for rehearing under this rule. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. The person requesting a rehearing must serve a copy of the request on all parties to the hearing on the same date of filing the request.

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

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

e. 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; or
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.

f. 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 Presidio 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.

g. 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.

RULE 7.11 HEARINGS ON DESIRED FUTURE CONDITIONS: Notwithstanding any other provision of this Section 7 to the contrary, all hearings conducted by the District for the adoption of Desired Future Conditions shall be conducted in accordance with this Rule 7.11.

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

b. **Notice of Hearing on Desired Future Conditions:** At least 10 (ten) calendar days before a hearing or meeting under this Rule 7.11, the District 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 Groundwater Management Area; and
5. information on how the public may submit comments.

Except as provided by Subsection (a), the hearing and meeting notice must be provided in the manner prescribed for a rulemaking hearing under Rule 7.6.

c. **Hearing:** The District shall hold a public hearing to accept public comments on the Desired Future Conditions using procedures prescribed in Rule 7.6.

d. **Summary Report:** 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.

e. **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 the Texas Open Meetings Act.

RULE 7.12 APPEAL OF DESIRED FUTURE CONDITIONS

a. Not later than 120 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 7.12(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 7.12(a), the District's Presiding Officer shall return the petition to the petitioner advising of the defectiveness of the petition. Not later than 60 calendar days after receiving a

petition under Rule 7.12(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 7.12(a) and received by the District.

c. A hearing under District Rule 7.12 must be held:

1. at the District office or Presidio 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.

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 Presidio 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 to the following individuals and entities 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:

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 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. which affected persons shall be named as parties 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.

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 8. REPORTING GROUNDWATER WITHDRAWALS

RULE 8.1 WELL METERS: The permit holder is responsible for measuring the withdrawal of groundwater from each nonexempt well by meter or an alternative measuring method approved by the District in accordance with this section.

a. **Approved Meters:** Meters must be mechanically driven, digital, totalizing water meters. The digital totalizer must not be resettable by the permittee and must be capable of a maximum reading greater than the maximum expected pumpage during the permit term. Battery operated registers must have a minimum five year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association Standards for cold-water meters.

b. **Installation:** Water meters must be installed according to the manufacturer's published specifications in effect at the time of the meter installation, or its accuracy must be verified by the permittee. If no specifications are published, there must be a minimum length of five pipe diameters of straight pipe upstream of the water meter and one pipe diameter of straight pipe downstream of the water meter. These lengths of straight pipe must contain no check valves, tees, gate valves, backflow preventers, blowout valves, or any other fixtures other than those flanges or welds necessary to connect the straight pipe to the meter. In addition, the pipe must be completely full of water throughout the area of the meter. All installed meters must measure only groundwater.

c. **Bypasses:** All bypasses must be metered. A bypass is any pipe of any size connected to the discharge pipe between the well and the meter.

d. **Metering Aggregate Withdrawal:** Where wells are permitted in aggregate, one or more water meters may be used for the aggregate well system if the water meter or meters are installed so as to measure the groundwater production from all wells covered by the aggregated permits.

e. **Meter Accuracy to be Tested:** The District may require the permittee, at the permittee's expense, to test the accuracy of the water meter and submit a certificate of the test results.

The certificate must be on a form provided by the District. The District may further require that the test be performed by a third party qualified to perform meter tests. Certification tests are required no more than once every three years for the same meter and installation. If the test results indicate accuracy outside the range of 95% to 105% of the actual flow, then appropriate steps must be taken to repair or replace the water meter. The District, at its own expense, may undertake random tests and other investigations at any time for the purpose of verifying water meter readings. If the District's tests or investigations reveal that a water meter is not registering within an accuracy of 95% to 105% of actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or wells, the permittee must reimburse the District for the cost of those tests or investigations, and the permittee must take appropriate steps to remedy the problem. If a water meter or related piping or equipment is tampered with or damaged so that the measurement accuracy is impaired, the District may require the permittee, at the permittee's expense, to take appropriate steps to remedy any problem, and to retest the water meter within 90 calendar days from the date the problem is discovered and reported to the permittee. Only equipment capable of accuracy results of plus or minus two percent of actual flow may be used to calibrate or test meters.

f. If the permit holder desires to measure groundwater withdrawals from a well by a method other than metering, the permit holder must secure the written approval of the General Manager for the alternative measuring method.

SECTION 9. INVESTIGATIONS AND ENFORCEMENT

RULE 9.1 NOTICE AND ACCESS TO PROPERTY: District employees, directors and agents are entitled to enter any public or private property within the boundaries of the District or adjacent to any reservoir or other property owned by the District at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water, the compliance with any rule, regulation, permit, or other order of the District, or to carry out technical and other investigations necessary to the implementation of the District Act and these rules. District employees, directors or agents acting under this authority who enter private property shall observe the owner's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access shall give notice in writing, in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District, or information otherwise publicly available. Notice is not required if prior permission has been granted to enter without notice. Inhibiting or prohibiting access to any Board Member, the General Manager, District agents, or employees who are attempting to conduct an investigation under the District Act or these rules shall constitute a violation and shall subject the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such actions, to the penalties established in Rule 9.3.

RULE 9.2 EMERGENCY ORDERS: 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 or pollution. 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 9.3 RULE ENFORCEMENT; ENFORCEMENT HEARING:

a. If it appears or is alleged 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:

1. 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.

2. 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.

3. 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.

b. Show Cause Hearing.

1. Upon recommendation of the General Manger 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 Presidio 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 7.8 of these rules.

2. No show cause hearing under Subsection (b) of this rule may be conducted unless the District serves, on each person made the subject of the show cause hearing, a written notice 30 (thirty) calendar days prior to the date of the hearing. Such notice shall include all of the following information:

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

3. 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.

4. 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.

c. Remedies

1. If the Board determines there has been a violation, 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 (c)(2) of this rule.

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

d. The District shall collect all past due fees and civil penalties accrued that the District is entitled to collect under these rules. The District shall provide written notice by certified mail, return receipt requested, of a violation of the District's rules and the civil penalties assessed against the person or entity in violation of the District's rules. 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.

e. The District may afford an opportunity to the alleged violator to cure a violation through coordination and negotiation with the District. Upon written notification and after 15 (fifteen) calendar days have passed since the date of the certified mailing of the notice of violation without a response or effort to correct a violation and cooperate with the District, the District may initiate a show cause hearing.

f. After conclusion of the show cause hearing, the District may commence suit. Any suit shall be filed in a court of competent jurisdiction in Presidio County. If the District prevails in a suit brought under this Section, the District may seek and the court shall grant, in the same action, recovery of attorney's fees, costs for expert witnesses, and other costs incurred by the District before the Court.

SECTION 10. EXPORT OF WATER

RULE 10.1 EXPORT AUTHORIZATION REQUIRED:
Any person who seeks to export groundwater produced from a well within the District's boundaries to a place of use outside the District's boundaries must first obtain authorization from the District. The Operating Permit authorizing the production of groundwater shall also contain provisions relating to the means and methods of transportation outside the District of groundwater produced within the District, if authorization to transport is approved by the Board.

RULE 10.2 BASIS FOR ACTION ON EXPORT REQUEST: In reviewing a proposed transfer of groundwater beyond the District's boundaries, the Board shall consider the following criteria:

a. the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
b. the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and

c. how the proposed transfer is consistent with the approved regional water plan and approved District Management Plan.

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. The district may periodically review the amount of water that may be transferred out of District and may limit the amount.

RULE 10.3 METHOD OF TRANSPORTATION:

Transporting groundwater must take place through the most efficient means economically feasible, and under no circumstances may groundwater be transported via a surface water course or otherwise causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road or road ditch.

RULE 10.4 MONITORING AND REPORTING:

a. All transportation facilities shall be equipped with flow monitoring devices approved by the District and shall be available at all reasonable times for inspection by District personnel. The flow monitoring devices must accurately measure all groundwater transported.

b. The operator of the transportation facility shall be required to keep records and make reports to the District as to the operation of the transportation facility.
   1. Those granted the authority to transport shall report the volume of water transported on a monthly basis, beginning at the time the authorization is issued. Such reports shall include, but not limited to, the amount of water transported during the preceding month.
   2. Transportation facilities shall submit reports to the District on a monthly basis, beginning at the time the transportation authorization is issued.

SECTION 11. SPACING AND PRODUCTION

RULE 11.1 SPACING AND PRODUCTION REQUIREMENTS:

a. Wells may not be drilled within one hundred (100) feet of any property line. In addition, new wells must be located so that the distance to any other existing well is at least one foot for each one gallon per minute of production capacity up to a maximum of one thousand (1000) gallons per minute. If the capacity of the well exceeds one thousand (1000) gallons per minute then the minimum spacing distance must be an additional one-half (1/2) foot per one gallon per minute in excess of one thousand gallons per minute.

EXAMPLES

500 gpm	=	500 feet
750 gpm	=	750 feet
1000 gpm	=	1000 feet
1250 gpm	=	1375 feet
1500 gpm	=	1750 feet
1750 gpm	=	2125 feet

b. The Board reserves the right in particular subterranean water zones or reservoirs to enter special orders increasing distances provided by this requirement.

c. Subject to and as may be further limited by other requirements and criteria set forth in these rules and Chapter 36, Water Code, and through the permitting process, the maximum cumulative amount of groundwater production by any well owner may not exceed

Igneous Aquifer 651,702 gallons (2 acre feet)
West Texas Bolsons 325,851 gallons (1 acre foot)
Presidio/Redford Bolson 977,553 gallons (3 acre feet)

of groundwater per surface acre with accompanying groundwater rights (i) that are owned or controlled by the well owner and (ii) that overlies the aquifer for which a production permit is sought.

This maximum annual cumulative amount of groundwater production shall be calculated by aggregating all contiguous surface acreage with accompanying groundwater rights that are owned or controlled by the well owner, which must be produced from one or more wells located on that contiguous surface acreage.

If the well owner is a retail public utility as defined by Section 13.002 of the Texas Water Code, the retail public utility may, in lieu of establishing ownership or control of surface acreage with accompanying groundwater rights, calculate this maximum cumulative amount of groundwater production by:

1. using the following inputs: (a) the production amounts listed in this section above and (b) an aggregation of all contiguous surface acreage that overlies the aquifer for which a production permit is sought within the retail public utility's service area, where this service area is defined by a state-issues certificate of convenience and necessity or as otherwise defined by state law; and

2. deducting from this calculation:

    A. surface acreage associated with a permit issued to another well owner of a well located within the retail public utility's service area; and
    B. a volume of groundwater production estimated for exempt use from the aquifer at issue with the retail public utility's service area.

RULE 11.2 EXCEPTIONS TO SPACING AND PRODUCTION RULE:

a. The Board may grant exceptions to the well spacing rule when the Board determines that an exception is necessary to provide water to that particular property or when the terrain requires locating a well within 100 feet of a property line; provided, however, the Board will not relax requirements of the Texas Department of Licensing and Regulation set forth in Title 16, Part 4, Chapter 76, Texas Administrative Code.

b. The Board may grant an exception to the production limit rule when the Board determines that granting the exception will not have a detrimental impact on aquifer levels, nearby well owners, or the quality of groundwater in the aquifer.

c. If an exception to the spacing or production rule is desired, the applicant shall attach an addendum to the drilling or operating permit application, as applicable. This addendum to the application shall be accompanied by a plat or sketch, drawn to scale of one (1) inch equaling two thousand (2000) feet. The plat or sketch shall show thereon the property lines in the immediate area and shall show accurately to scale the location of the three (3) nearest wells within one-half (1/2) mile of the proposed well location. This addendum to the application shall also contain the names and addresses of all property owners adjoining the tract on which the well is to be located, within one-half (1/2) mile, and the owners of the three (3) nearest wells within one-half (1/2) mile of the proposed well location. Such addendum to the application and plat shall be certified by some person actually acquainted with the facts who shall state that all the facts therein are true and correct.

d. The permit hearing notice shall state that the application does not meet spacing or production requirements of the District, and an exception is requested by the applicant.

SECTION 12. FEES

RULE 12.1 FEES:

a. The District may assess the following fees:

2. application fees reasonably expected to meet the cost to the District of processing the application for which the fee is charged;
3. fees for all services provided outside the boundaries of the district; and
4. a reasonable fee or surcharge for groundwater transported beyond the District's boundaries using one of the following methods:

A. a fee negotiated between the District and the transporter;
B. a rate not to exceed 20 (twenty) cents for each thousand gallons of water transferred out of the district; or
C. if production fees are assessed, an export surcharge equal to 50 (fifty) percent of the production fees, in addition to the District's production fee.

b. Effective January 1, 2024, the maximum allowable rate the District may impose for an export fee under District Rule 12.1(a)(4)(B) shall increase each calendar year in

accordance with Section 36.122(e-1), 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 Texas Water Code Section 36.207, 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.

c. The Board shall set all fees by resolution. Fees for services outside the District may not unreasonably exceed the cost to the District of providing those services.

d. Fees are due the first of each month, and are to be included with a monthly pumping report.

SECTION 13. AQUIFER STORAGE AND RECOVERY (ASR)

RULE 13.1 APPLICABILITY OF DISTRICT 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 13.1(a) 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 aquifer storage and recovery 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 aquifer storage and recovery 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 13.1(c)(2).

e. Except as provided by District Rule 13.1(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 aquifer storage and recovery project is subject to the permitting, spacing, and production requirements of the District if the amount of groundwater recovered from the wells exceeds 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 aquifer storage and recovery 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 aquifer storage and recovery 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 aquifer storage and recovery 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.