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**NECHES AND TRINITY VALLEYS  
GROUNDWATER CONSERVATION  
DISTRICT**

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*DISTRICT RULES*

**Effective as of June 11, 2003  
Amended May 10, 2007**



# NECHES AND TRINITY VALLEYS GROUNDWATER CONSERVATION DISTRICT

<b>TABLE OF CONTENTS:</b>	<b>PAGE</b>
RULE 1 Definitions and Concepts	2
RULE 2 Waste	7
RULE 3 Permit and Registration Required	7
RULE 4 Fees and Reports	9
RULE 5 Issuance of Permits	10
RULE 6 Requirements of Driller's Log, Casing, and Pump Data	13
RULE 7 Minimum Spacing of Wells	14
RULE 8 Exception to Spacing Rules	15
RULE 9 Place of Drilling Well	16
RULE 10 Right to Inspect and Test Wells	16
RULE 11 Open Wells to be Capped	17
RULE 12 General Rules of Procedure for Hearing	17
RULE 13 Well Registration	17
RULE 14 Transfer of Groundwater Out of the District	18
RULE 15 Enforcement	22

# **RULES OF THE NECHES TRINITY VALLEYS**

## **GROUNDWATER CONSERVATION DISTRICT**

**Effective as of June 11, 2003**

**Amended May 10, 2007**

In accordance with Section 59 of Article 16 of the Texas Constitution and with the Acts of the 77<sup>th</sup> Legislature (2001), Ch. 313, S.B. 1821 and Chapters 35 and 36 of the Texas Water Code, Neches and Trinity Valleys Groundwater Conservation District adopts the following Rules as the Rules of the District. Each rule as worded below herein has been in effect since date of passage and as may be amended.

The Rules, regulations, and modes of procedure contained below are and have been adopted for the purposes of achieving the goals of the District Act and the Management Plan, prevent waste, and protect rights of owners of interest in groundwater while simplifying procedure, avoiding delays, saving expense, and facilitating the administration of the groundwater laws of the State and the Rules of this District. To the end that these objectives be attained, these Rules shall be so construed.

These Rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case shall they, or any of them, be construed as a limitation or restriction upon the exercise of any discretion of the Board, where such exist; nor shall they in any event be construed to deprive the Board of an exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount and character of data or information which may be required for the proper administration of the law. Any reference to the Texas Water Code includes the section referenced and any subsequent amendments.

### **RULE 1 – DEFINITIONS AND CONCEPTS**

1.1 Unless the context indicates a contrary meaning, the words hereinafter defined shall have the following meaning in these Rules:

(a) “Beneficial use” means:

- (1) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
- (2) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
- (3) any other purposes that is useful and beneficial to the user and approved by the Board.

(b) The “Board” shall mean the Board of Directors of the Neches and Trinity Valleys Groundwater Conservation District, consisting of seven (7) Board members.

(c) “Commission” means the Texas Commission on Environmental Quality.

- (d) "District Act" means acts of the 77<sup>th</sup> Legislature (2001), Chapter 313, S.B. 1821 and the nonconflict of provisions of Chapter 36, Texas Water Code, as same may be amended.
- (e) "District Office or Offices" shall mean the location or locations as may be established by resolution of the Board.
- (f) "District" shall mean Neches and Trinity Valleys Groundwater Conservation District.
- (g) "Domestic Use" means the use of water at a single-family household to support domestic activities including drinking, washing, and sanitation. Domestic use does not include use for any commercial purpose or at any commercial establishment. Domestic use does not include a use at any commercial establishment with a single-family household.
- (h) "Drilling" includes drilling, equipping, or completing wells or modifying the size of wells or well pumps to change pumpage volume.
- (i) "Drilling Permit" means a permit issued by the District allowing a water well to be drilled.
- (j) "Fee or Fees" means the amount required to be paid as established by the Board of Directors.
- (k) "Groundwater" means water percolating below the surface of the earth.
- (l) "Hearing Body" means the Board, any committee of the Board, or a hearing examiner at any hearing held under the authority of the District Act.
- (m) "Hearing Examiner" means a person appointed by the Board to conduct a hearing or other proceeding.
- (n) "Hearing Rules and Procedures" means the rules and procedures for hearings adopted by the Board for hearings and other proceedings of the District, as they may be supplemented or amended from time to time.
- (o) "Operator" shall mean the person who operates a well.
- (p) "Operating Permit" means a permit issued by the District for a water well, allowing groundwater to be withdrawn from a water well for a designated period.
- (q) "Owner" shall mean and include any person that has the right to produce water from the land either by ownership, contract, lease or easement

- (r) "Person" shall mean any individual, partnership, firm, or corporation, limited liability company, or other legal entity.
- (s) "Rules" shall mean these Rules of the District and the Hearing Rules and Procedures as they may be supplemented or amended from time to time.
- (t) "Waste" means any one or more of the following:
  - (1) 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;
  - (2) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
  - (3) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata not containing groundwater;
  - (4) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter from another stratum or from the surface of the ground;
  - (5) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26, Texas Water Code; groundwater released on well startup or well development in order to improve water quality shall not constitute waste as defined above.
  - (6) 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
  - (7) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Texas Water Code.
- (u) "Well" or "Water Well" shall mean and include any artificial excavation constructed for the purpose of exploring for or producing groundwater
- (v) "Exempt Well" shall mean any well for which the District is prohibited to require a permit under the District Act, Texas Water Code §36.117 or the District Rules.

Exempt wells include wells used solely for domestic or agriculture use or for providing water for livestock or poultry that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons per day and certain wells for hydrocarbon production. Wells to supply water for a subdivision of land for which plat approval is required by law or regulation are not exempt. For all purposes herein, an Exempt Well shall be exempt from permitting requirements and production fees but shall not be exempt from pre-registration or registration requirements.

(w) "Monitor Well," means any well used for the sampling or measurement of any chemical or physical property of subsurface strata or their contained fluids.

(x) "Remediation Well" means any well used to produce contaminated water from a subsurface strata pursuant to a plan approved by the Texas Commission on Environmental Quality or other agency with applicable jurisdiction.

(y) "Agriculture or Agricultural" means:

- (1) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (2) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
- (3) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial use;
- (4) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
- (5) wildlife management;
- (6) raising or keeping equine animals.

(z) "Registration" means the process under Rule 13 of "grandfathering" wells which were in existence and use prior to the Effective Date of these Rules.

1.2 The definitions contained in Texas Water Code Section 36.001 shall also be included to the extent that they are used in these Rules. In the event there is a conflict between these Rules and 36.001, 36.001 shall control.

1.3 Purpose of Rules. The Rules are the foundation for achieving the goals of the District Act and Management Plan.

- 1.4 Use and Effect of Rules. The District uses these Rules as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act and Management Plan.
- 1.5 Amendment of Rules. The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time.
- 1.6 Headings and Caption. The section and other headings and captions contained in these Rules are for reference purposes only. They do not affect the meaning or interpretation of these Rules in any way.
- 1.7 Construction. A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the Water Code, Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Government Code.
- 1.8 Method of Service under these Rules. Except as otherwise expressly provided in these Rules, any notice or documents required by these Rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document facsimile transfer to the recipient's current telecopier number. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on 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 time after service, three days will be added to the prescribed period. Where service by one of more methods has been attempted and failed, the service is complete upon notice publication in a generally circulated newspaper in Cherokee, Henderson or Anderson County.
- 1.9 Severability. If any one or more of the provisions contained in these Rules are for any reason held to be 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 must be construed as if such invalid, illegal or unenforceable Rules or provision had never been contained in these Rules.
- 1.10 Burden of Proof: In all matters regarding applications for permits, exceptions, and other matters for which District approval is required, the burden shall be upon the applicant or other persons seeking a permit, exception, or other authority to establish that all conditions, criteria, standards, or prerequisites have been met.

## **RULE 2 – WASTE**

- (a) Groundwater shall not be produced within, or used within or without the District, in such a manner or under such conditions as to constitute waste as defined in Rule 1 hereof.
- (b) Any person producing or using groundwater shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of such water.
- (c) No person shall pollute or harmfully alter the character of a groundwater reservoir of the District by means of salt water or other deleterious matter admitted from other stratum or strata or from the surface of the ground.
- (d) No person shall commit waste as that term is defined by Rule 1.1 (s).

## **RULE 3 – PERMIT AND REGISTRATION REQUIRED**

- 3.1 No person shall drill, modify, complete, change type of use, plug, abandon, or alter the size of a well within the District without first registering the well with the District, or making application for a new well even though the well may be exempt from the requirement of a permit under Texas Water Code Section 36.117 or Rule 1.1 (u).
- 3.2 The District staff will review the application for registration and make a preliminary determination on whether the well meets the requirements, exclusions, or exemptions.
- 3.3 No permit shall be required for the drilling of wells exempt by Texas Water Code §36.117 or Rule 1.1 (u).
- 3.4 Exempted Wells shall be registered with the District on forms provided therefore and all Fees and/or deposits paid before drilling. All exempt wells shall be equipped and maintained so as to conform to the District's Rules requiring installation of casing, pipe and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir. Forms for registrations shall be provided by the District.
- 3.5 Any existing operational well not exempt under Rule 1.1 (u), in existence prior to effective date of these Rules is considered grandfathered and will automatically be granted an operating permit upon completion of the well

registration procedure as provided in Rule 13. These grandfathered wells will not be assessed a registration or permit fee if the procedure is completed by January 1, 2004 and the owner or operator provides all the information requested by the District. The volume allowed by the permit will be determined by past or planned production of the well.

- 3.6 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 Texas Railroad Commission is exempt from District Fees provided the person holding the permit is responsible for drilling and operating the water well and it is located on the same lease or field associated with the drilling rig.
- 3.7 A well-exempted under provision Rule 1.1 (u) above must be permitted and comply with all District Rules if:
- (1) the purpose of the well is no longer solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or
  - (1) the withdrawals are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.
- 3.8 All permits are granted subject to these rules, orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit, each permit issued must contain the following standard permit provisions:
- (a) This permit is granted in accordance with the provisions of the Rules of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with the Rules of the District.
  - (b) This permit confers only the right to operate and its terms may be modified or amended. Within 10 days after the date of sale, the operating permit holder must notify the District in writing the name of the new owner of a permitted well. Any person who becomes the owner of a currently permitted well must, within 20 calendar days from the date of the change in ownership, file an application for a permit amendment to effect a transfer of the permit.
  - (c) The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.
  - (d) **(1)** Withdrawals from all non-exempt wells, except wells used for Domestic or agricultural capable of providing more than 25,000 gallons per day but less than 100,000 gallons per day, must be

accurately metered and their pumpage reported to the District quarterly.

(2) Wells which are required to report pumping under rule (d)(1) and pay Production Fees to the District and which are not required to meter or report the amount of water produced for any other purpose or to any other governmental agency may apply for a non-metered permit if the well does not produce more than 3,000,000 gallons annually. Wells qualifying under this rule may apply for a non-metered permit as specified by the Rule 4 with forms and requirements set by action of the Board.

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

(f) Violation of a permit's terms, conditions, requirements, or special provisions is punishable by civil penalties as provided by the District Rules and by law and may also result in permit revocation or cancellation.

(g) The permit may also contain provisions relating to the means and methods of transportation of water produced within the District.

3.9 Except as provided below, a permit is not required for a Monitor Well or a Remediation Well. A copy of the Driller's Report must be filed with the District within (30) thirty days. If the use of Monitor Well or Remediation Well is changed to produce non-contaminated water, it then becomes subject to the permitting or registration requirements of these Rules depending upon use and volume.

#### **RULE 4 – FEES AND REPORTS**

In accordance with SB 1821, HB 1604, and Section 36.205 of the Texas Water Code, and except as provided below, the Board adopts a production Fee of \$0.025 per 1,000 gallons for all nonexempt wells except wells used for Domestic use or Agricultural use, which are not capable of producing more than 100,000 gallons per day. The fee is payable on water produced on or after July 1, 2007. The production Fee for Agricultural use is set at \$0.00. Operators of nonexempt wells shall provide payment to the District each quarter. Payment shall be due within thirty (30) days of the last day of March, June, September, and December with their quarterly reports. Operators shall provide monthly production records to document payment amount. The payment shall be accompanied by the report form specified by the Board.

- 4.1 The District adopts a non-metered production permit for wells as specified in Rule 3.8(d)(2). The annual minimum charge is set at the rate for the production fee as applies to 1,000,000 gallons. The District may establish different levels of permitted usage and a maximum for non-metered permits by Board action. In addition to the production fees, the District by Board action may establish permit application fees.
- 4.2 In accordance with Section 36.122 of the Texas Water Code the District adopts a transfer fee of 50% of and in addition to the production fee for water transported out of the District.
- 4.3 Each application for a permit to drill a well shall be accompanied by the Fee or Fees as established herein or by resolution of the Board.
- 4.4 Each day that a payment remains unpaid after it is due shall constitute a separate violation of these Rules. A late payment charge equal to one percent per month following the due date shall be assessed on past due production fees.
- 4.5 An entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorized the drilling of a water well shall report monthly to the District:
  - (1) the total amount of water withdrawn during the month;
  - (2) the quantity of water necessary for mining activities; and
  - (3) the quantity of water withdrawn for other purposes.

## **RULE 5 – ISSUANCE OF PERMITS FOR NON-EXEMPT WELLS**

- 5.1 Every person who drills a water well after the effective date of these Rules, other than an Exempt Well, must file an Application for Permit on a form approved by the Board. Each permit application must be accompanied by the fee.
- 5.2 Drilling Permit Requirement: The well owner, well operator, or any other person acting on behalf of the well owner must obtain a drilling permit from the District prior to drilling a new water well other than an exempt well, developing a well field or perforating an existing well.
- 5.3 Operating Permit Requirement: Within 14 days after the completion of a new water well, reworking, or re-equipping of an existing water well as provided in Rule 5.10 below, the well owner or well operator must file a completed operating permit application.

5.4 Permit Applications: Each original application for a water well drilling permit, operating permit, transport permit, and permit amendment requires a separate application and payment of the associated fee. Application forms will be provided by the District and furnished to the applicant upon request.

The application for a permit shall be in writing and sworn to, and shall include the following:

- a) the name and mailing address of the applicant and the owner of the land on which the well will be located;
- b) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and/or operate a well for the proposed use;
- c) a location map of all existing wells within a quarter (1/4) mile radius of the proposed well or the existing well to be modified;
- d) a map from the county appraisal District indicating the location of the proposed well or the existing well to be modified, the subject property, and adjacent owners' physical addresses and mailing addresses;
- e) notice of any application to the Texas Commission on Environmental Quality to obtain or modify a Certificate of Convenience and Necessity to provide water or wastewater service with water obtained pursuant to the requested permit;
- f) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose.
- g) 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.
- h) a water conservation plan or a declaration that the applicant will comply with the Management Plan.
- i) the location of each well latitude and longitude and the estimated rate at which water will be withdrawn;
- j) a water well closure plan or a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the Commission.
- k) a hydrogeological report addressing the area of influence, draw down, recovery time, and other pertinent information required by the District shall be required for the following:
  - (1) Requests to drill a well with a daily maximum capacity of more than 2 million gallons; or,
  - (2) Requests to modify to increase production or production capacity of a Public Water Supply, Municipal, Commercial, Industrial, Agricultural or Irrigation well with an outside casing diameter greater than 10 inches.

The well must be equipped (or tested at a rate equal to or greater

than the rate necessary) for its ultimate planned use and the hydrogeologic report must address the impacts of that use. The report must include hydrogeologic information addressing and specifically related to the proposed water pumpage levels at the proposed pumpage site intended for the proposed well or for the proposed transporting of water outside the District. Applicants may not rely solely on reports previously filed with or prepared by the District.

- 5.5 Transfer Permit Requirement: The well owner, well operator, or any other person acting on behalf of the well owner, must obtain a transfer permit to transfer groundwater produced from within the District outside the District's boundaries as provided in Rule 14.
- 5.6 Notice of Permit Hearing: Once the District has received a completed original application for a water well drilling permit, operating permit, a transport permit, or a permit amendment and associated fees the General Manager will issue written notice indicating a date and time for a hearing on the application in accordance with these Rules. The District may schedule as many applications at one hearing as deemed necessary. Notice will be mailed to any person who either owns land within a quarter (1/4) mile or holds a Permit from the District for a well located within a quarter (1/4) mile of the proposed well.
- 5.7 Drilling Permits: Unless specified otherwise by the Board or these Rules, drilling permits are effective for a term ending 120 calendar days after the date the permit application was received.
- 5.8 Transfer Permits: Unless specified otherwise by the Board or these Rules, transport permits are effective for five (5) years. Notwithstanding the period specified above, the District may periodically review the amount of water that may be transferred under the permit and may limit the amount.
- 5.9 Effect of Acceptance of Permit: Acceptance of the permit by the person to whom it is issued constitutes acknowledgment of and agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions.
- 5.10 Reworking and Replacing a Well:
  - a) An existing well may be reworked or re-equipped in a manner that will not change the permitted well status. A change in the permitted well status will require an operating permit amendment.
  - b) A permit must be applied for if a party wishes to replace an existing well with a replacement well.

- c) A replacement well, in order to be considered such, must be drilled within fifteen feet of the existing well.
- d) The location of the old well (the well being replaced) shall be protected in accordance with the spacing Rules of the District until the replacement well is drilled and tested. The landowner or his/her agent must within 120 days of the issuance of the permit declare in writing to the District which one of these two wells he desires to produce. If the landowner does not notify the District of his/her choice within this 120 days, then it will be conclusively presumed that the new well is the well he/she desires to retain. Immediately after determining which well is retained for production, the other well shall be:
  - (1) Properly equipped in such a manner that it cannot produce more than 25,000 gallons of water a day; or
  - (2) Closed in accordance with applicable state law and regulation Section 756.002, Texas Health and Safety Code.

A permit to rework, re-equip, re-drill or replace an existing well may be granted by the Board without notice or hearing so long as the production capacity of the new well does not exceed the capacity of the existing well.

#### 5.11 Emergency Authorization

An existing retail water utility, as defined in Texas Water Code Chapter 13, or the owner of a well used for Agriculture, who has a Permit or Certificate of Registration from the District to operate the well, may apply to the District for emergency authorization to drill and operate a well as set forth below. The authorization does not constitute a Permit as required above and does not relieve the utility or Agricultural User from applying for and obtaining one. The emergency authorization can be made by any two of the following: the General Manager and any Board officer. Before granting the authorization, the following conditions must be met:

- a) An Application on the form prescribed by the Board and all Fees must be submitted to the District;
- b) Persons owning property adjoining the proposed well site must be given written notice of the proposed well;
- c) The Applicant must have received authorization from the Commission to drill and operate the well, if applicable;
- d) The "emergency," which must present an imminent threat to the public health and safety or to an Agricultural activity, must be explained to the satisfaction of the District and any requested documentation submitted;
- e) The Application must not have been previously denied; and,
- f) Such other information as may be requested has been received by the District.

After the emergency authorization is granted, the Board shall hold a hearing on the application at which it may issue or deny the requested Permit. If the Permit is denied, the applicant shall immediately cease drilling or production operations.

5.12 All Permits are issued on the condition that the well is drilled in strict compliance with these Rules and the rules and regulations of the Commission and the Texas Department of Licensing and Regulation.

## **RULE 6 – REQUIREMENT OF DRILLERS LOG, CASING AND PUMP DATA**

- (a) Complete records shall be kept and reports thereof made to the District concerning the drilling, maximum production potential, equipping and completion of all wells drilled. Such records shall include an accurate driller's log, any electric log which shall have been made, and such additional data concerning the description of the well, its potential, hereinafter referred to as "maximum rate of production" and its actual equipment and rate of production permitted by said equipment as may be required by the Board. Such records shall be filed with the District Board within 60 days after completion of the well.
- (b) The well driller shall deliver either in person, by fax, email, or send by first-class mail, a photocopy of the State Well Report to the District within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.
- (c) No person shall produce water from any well hereafter drilled and equipped within the District, except that necessary to the drilling and testing of such well and equipment, unless or until the District has been furnished an accurate driller's log, any electric log which shall have been made, and a registration of the well correctly furnishing all available information required on the forms furnished by the District. In the case the well has been drilled after Emergency Authorization has been given under Rule 5.11, the foregoing information must be submitted within ten (10) days from the date the well is completed.

## **RULE 7 – MINIMUM SPACING OF WELLS**

(a) Distance Requirements:

- (1) No non exempt well to be drilled subsequent to the date of enactment of this rule shall be drilled such that said well shall be located nearer than fifty (50') feet from the nearest property line; provided that the Board, may grant exceptions to allow drilling within shorter distances in accordance with Rule 8.

(2) In the interest of protecting life and for the purpose of preventing waste, preventing overlapping cones of depression resulting from production rates, and preventing confiscation of property, the Board reserves the right to limit the number of wells on a tract of land or require a minimum distance between wells.

(3) Subdivision of property:

(i) In applying this rule and applying every special rule with relation to spacing in all of the subterranean water zones and/or reservoirs underlying the confines of this District, no subdivision of property made subsequent to the adoption of the original spacing rule will be considered in determining whether or not any property is being confiscated within the terms of such spacing rule, and no subdivision of property will be regarded in applying such spacing rule or in determining the matter of confiscation if such subdivision took place subsequent to the promulgation and adoption of the original spacing rule.

(ii) Any subdivision of property creating a tract of such size and shape that it is necessary to obtain an exception to the spacing rule before a well can be drilled thereon is a voluntary subdivision and not entitled to a permit to prevent confiscation of property if it were either, (a) segregated from a larger tract in contemplation of water resource development, or (b) segregated by fee title conveyance from a larger tract after the spacing rule became effective and the voluntary subdivision rule attached.

(b) Change in Use of Well:

Any well existing at the date of enactment of this Rule must comply with the provisions of this rule if after the date of enactment of this rule the ultimate use of the water produced from the well is changed in whole or in part such that the water produced from the well annually is increased. Ultimate use of the water shall be defined as domestic, municipal, industrial, agricultural, or irrigation use.

## **RULE 8 – EXCEPTION TO SPACING RULE**

(a) In order to protect vested property rights, to prevent waste, to prevent confiscation of property, or to protect correlative rights, the Board may grant exception to the above spacing regulations. This rule shall not be construed

so as to limit the power of the Board, and the powers stated are cumulative only of all other powers possessed by the Board. The Board may consider whether a well located on adjoining property is draining the Applicant's property.

- (b) If an exception to such spacing regulations is desired, application therefore shall be submitted by the applicant in writing to the Board at its District office on forms furnished by the District. The application shall be accompanied by a plat or sketch, drawn to scale of one (1) inch equaling one thousand (1000) feet. The plat or sketch shall show thereon the property lines in the immediate area and shall show accurately to scale all wells within a quarter mile of the proposed well site. The application shall also contain the names of all property owners adjoining the tract on which the well is to be located and the ownership of the wells within a quarter mile of the proposed location. Such 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.
- (c) Such exception may be granted ten (10) days after written notice has been given to the applicant and all adjoining owners and all well owners within a quarter mile of the proposed location, and after a public hearing at which all interested parties may appear and be heard, and after the Board has decided that an exception should be granted. Provided, however, that if all such owners execute a waiver in writing stating that they do not object to the granting of such exception, the Board may thereupon proceed to decide upon the granting or refusing of such application without notice of hearing except to the applicant. The applicant may also waive notice or hearing or both.

## **RULE 9 – PLACE OF DRILLING WELL**

After an application for a well permit has been granted, the well, if drilled, must be drilled within fifty feet of the location specified in the permit so long as that location does not violate any spacing requirements in these rules. If the well should be commenced or drilled at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36, Texas Water Code, as amended. The District shall have the right to confirm reported distances and inspect the wells or well locations.

## **RULE 10 – RIGHT TO INSPECT AND TEST WELLS**

- (a) The directors, engineers, attorneys, agents, operators and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works,

The cost of improvements, plants, facilities, equipment, or appliances. restoration shall be borne by the district or the water supply corporation.

(b) District employees 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 in the state or the compliance with any rule, regulations, permit, or other order of the district. District employees or agents acting under this authority who enters private property shall observe the establishment'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.

#### **RULE 11 – OPEN WELLS TO BE CAPPED**

Every owner or operator of any land within the District upon which is located any open or uncovered well is, and shall be, required to close or cap the same permanently with a covering capable of sustaining weight of not less than four hundred (400) pounds, except when said well is in actual use by the owner or operator thereof; and no such owner or operator shall permit or allow any open or uncovered well to exist in violation of this requirement. Officers, agents and employees of the District are authorized to serve or cause to be served written notice upon any owner or operator of a well in violation of this rule, thereby requesting such owner and/or operator to close or cap such well permanently with a covering in compliance herewith. In the event any owner or operator fails to comply with this rule, the District may go on the land and close the well safely and securely. Closure may be by the District or an entity under contract with the District, all expenditures thereby incurred shall constitute a lien upon the land where such well is located, provided, however, no such lien shall exceed the actual cost for any single closing. Any officer, agent, or employee of the District, is authorized to perfect said lien by the filing of the affidavit authorized by Section 36.118 of the Texas Water Code. All of the powers and authority granted in such section are hereby adopted by the District, and its officers, agents, and employees are hereby bestowed with all of such powers and authority.

#### **RULE 12 – GENERAL RULES OF PROCEDURE FOR HEARING**

All hearings whether conducted by the Board or before a Hearings Examiner shall be conducted in accordance with the Hearing Rules and Procedures as adopted by the Board and as they may be amended from time to time.

## **RULE 13 – WELL REGISTRATION**

In order to provide for the “grandfathering” of existing Exempt or non exempt water wells, a Certification of Registration for a well can be issued only after the location of the well and the wellhead equipment of the well has been determined by field survey by District personnel, and/or designated agents acting for the District. A well owner or agent shall apply to the District for validation. The costs to the well owner or the well owner’s agent shall be set by the Board. The Board on its own initiative may cause to be issued a Certificate of Registration for wells drilled and equipped within the District for which the landowner or his agent has not applied for a Permit or for wells not otherwise properly permitted, provided that such wells were not drilled, equipped and operated (pumped) in such a manner as to violate any other Rules and regulations of the District. To the extent available, the well owner shall provide all of the information required in Rules 6 and 5.4 and as may otherwise be requested by the District. Well sites already owned by a retail public utility may be registered with the District.

## **RULE 14 – TRANSFER OF GROUNDWATER OUT OF THE DISTRICT**

- (a) Purpose. In recognition of the fact that the transfer of groundwater resources from the District for use outside of the District impacts residents and property owners of the District differently than use within the District, and in order to manage and conserve groundwater resources within the District, and provide reasonable protection of the public health and welfare of residents and property owners of the District, a ground water transfer permit is required to produce groundwater from within the District’s boundaries and to transfer such groundwater for use outside the District.
- (b) Scope. A groundwater transfer permit is required for production of any water from a well within the District, all or part of which is regularly transported for use outside the District. A groundwater transfer permit shall be obtained prior to commencing construction of wells or other facilities utilized to transfer groundwater from the District. Water wells to be used for the transfer of water outside of the District shall be subject to all other requirements of the District.
- (c) Exceptions. A groundwater transfer permit is not required for transfers of groundwater from the District in the following cases:

- (1) Transfers of groundwater from the District that were occurring on or before June 11, 2003 to the extent the production or transportation capacity of facilities used to produce or transfer groundwater District are not increased over the capacity of such facilities existing or permitted by the District on or before June 11,

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(2) Transfers of groundwater from the District which are incidental to beneficial use within the District. A groundwater transfer permit is not required for transferring groundwater that is part of a product manufactured in the District, or if the groundwater is to be used on property that straddles the District boundary line. Water that is bottled is not considered to be a product manufactured for this exclusion.

(d) Application. An application for groundwater transfer permit shall be filed in the District office by the owner of the groundwater rights or owner or operator of the production facilities. The following information shall be provided:

- (1) The name and mailing address of the applicant and the owner of the land on which the well is or will be located;
- (2) If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
- (3) A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
- (4) A water conservation plan;
- (5) A declaration that the applicant will comply with the District's management plan;
- (6) The location of each well and the estimated rate at which water will be withdrawn;
- (7) A water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the Board.
- (8) A drought contingency plan;
- (9) Data showing the availability of water in the District and in the proposed receiving area during the period for which water supply is requested;
- (10) Alternate sources of supply that might be utilized by the applicant, and the feasibility and the practicability of utilizing such supplies;
- (11) The amount and purposes of use in the proposed receiving area for which water is intended;
- (12) The projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or existing permit holders or other groundwater users within the District;

- (13) The indirect costs and economic and social impacts associated with the proposed transfer of water from the District.
  - (14) Proposed plan of the applicant to mitigate adverse hydrogeologic, social or economic impacts of the proposed transfer of water from the District;
  - (15) How the proposed transfer is addressed in the approved regional water plan and certified District management plan;
  - (16) The names and addresses of the property owners within one-half (1/2) mile of the location of the well(s) from which water to be transported is to be produced, and the location of any wells on those properties.
  - (17) The time schedule for construction and/or operation of the well.
  - (18) Construction and operation plans for the proposed facility, including, but not limited to:
    - I. A technical description of the proposed well(s) and production facility, including depth of the well, the casing diameter, type and setting, the perforated interval, and the size of pump.
    - II. A technical description of the facilities to be used for transportation of water.
  - (19) If the water is to be used by someone other than the applicant, a signed contract between the applicant and the user or users.
  - (20) Additional information that may be required by the District.
- (e) Application Processing Fee. An application processing fee, sufficient to cover all reasonable and necessary costs to the District of processing the application, will be charged. The application must be accompanied by the Fee. If the fee is determined by the General Manager or the Board to be insufficient to cover anticipated costs of processing the application, the applicant may be required to post a deposit in an amount determined by the General Manager or the Board's representative to be sufficient to cover anticipated processing cost. As costs are incurred by the District in processing the application, those costs may be reimbursed from funds deposited by the applicant. The applicant shall be provided a monthly accounting of billings against the application processing deposit. Any funds remaining on deposit after the conclusion of application processing shall be returned to the applicant. If initially deposited funds are determined by the General Manager to be insufficient to cover costs

incurred by the District in processing the application, an additional deposit may be required. If the applicant fails to deposit funds as required by the District, the application may be dismissed.

- (f) Notice. Within 30 days following a determination by the District that the application is complete, notice of the application shall be mailed by the applicant to all property owners within one-half mile of the property upon which the well(s) is to be located and published in a newspaper of general circulation within the District. The District will provide the notice to the applicant for mailing and publication. Notice shall include at least the following information:

- (1) the name and address of the applicant;
- (2) the date the application was filed;
- (3) the time and place of the hearing;
- (4) the location of the proposed well(s) from which water to be transported is to be produced;
- (5) A description of the production facility; and
- (6) A brief summary of the information in the application.

- (g) Hearing. If requested by the applicant, any affected person opposed to the application having a justifiable interest, or the General Manager, a contested case public hearing shall be conducted in accordance with provisions of the Texas Administrative Procedure Act, Gov't Code- 2000.01, et seq. If not requested by any party, the public hearing on the application may be conducted by the Board at a regular or special meeting.

- (h) Permit

(1) The permit to transfer groundwater out of the District may be issued as a consolidated permit authorizing drilling, production, and transfer of water from the District. Whether issued as a consolidated permit or separately, the requirements for a permit to transfer groundwater out of the District are cumulative with all other permits or other requirements of the District.

(2) In determining whether to issue a permit to transfer groundwater out of the District, Board shall consider, in addition to all other factors applicable to issuance of a permit from the District:

- I. The availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
  - II. The availability of feasible and practicable alternative supplies to the applicant;
  - III. The amount and purposes of use for which water is needed in the proposed receiving area;
  - IV. 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;
  - V. The indirect cost and economic and social impacts associated with the proposed receiving area;
  - VI. The approved regional water plan and certified District management plan; and,
  - VII. Other facts and considerations necessary by the Board for protection of the public health and welfare and conservation and management of natural resources in the District.
- (3) If it determines to issue a permit to transfer groundwater out of the District, the Board may limit the permit as warranted by consideration of those factors identified above. In addition to conditions identified by Texas Water Code – 36.1131, the permit to transfer water out of the District shall specify:
- I. The amount of water that may be transferred out of the District;
  - II. The period for which the water may be transferred
  - III. Any monitoring or reporting requirements determined to be appropriate; and,
  - IV. Such other terms and provisions with reference to the drilling, equipping, completion, or alterations of wells or pumps that may be necessary to conserve the groundwater, prevent waste, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.
  - V. That it may be cancelled if the required production and transfer fees are not paid when due.

## **RULE 15 – ENFORCEMENT**

In accordance with the Texas Water Code, 36.102, the District may enforce Chapter 36 of the Texas Water Code and its Rules by injunction, mandatory injunction or other appropriate remedy in a court of competent jurisdiction. The Board adopts civil penalties for breach of Chapter 36 of the Texas Water Code and any rule of the District. Civil penalties shall not exceed \$10,000 per day per violation, and each day of a continuing violation shall constitute a separate violation of the Rules. The Board must authorize any enforcement action prior to it being filed in a court.

End of District Rules