

APPENDIX C
HICKORY UWCD NO 1 RULES

Hickory UWCD # 1
Rules (Adopted February 12, 2009)

RULE 1. DEFINITIONS

RULE 1.1 DEFINITIONS: The definitions that follow are presented in alphabetical order. The order of appearance does not imply or mean to assign priority or relative importance.

"Abandoned Well" shall mean a well from which a) the pump has been removed and/or b) the casing and pump column are deteriorated and c) that has not been used for six consecutive months. A well is considered to be in use in the following cases: (A) a non-deteriorated well that contains the casing, pump, and pump column in good condition; or (B) a non-deteriorated well that has been capped.

"Aggregate Withdrawal" shall mean the amount of groundwater withdrawn from two or more wells in a water system which is permitted under a single permit for a total pumpage of all wells in the aggregate.

"Agricultural" shall mean any of the following activities:

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

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

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

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

(E) Wildlife management; and

(F) Raising or keeping equine animals.

"Agricultural Use" shall mean using water for any use or activity involving agriculture,

"Annular Space" shall mean the space between the casing and borehole wall.

"Applicant" shall mean a person applying for a permit or permit amendment who is the owner of the land on which the well(s) or proposed well(s) are located unless the landowner authorizes, in writing, another person to act as well operator, to apply for the permit or registration, and otherwise act on his behalf in matters pertaining to registration or permitting or wells on his property.

"Aquifer" shall mean a formation or group of saturated geologic units capable of storing and yielding water in usable quantities.

"Aquifer Mining" shall mean the existence of that condition where the average annual available recharge of an aquifer or a portion of the aquifer is less than the annual production from the aquifer. For purposes of these rules the terms of "Aquifer overdrafting", reduction of artesian pressure" and "drawdown of the water table or aquifer" shall mean aquifer mining.

"Artesian Pressure" shall mean the pressure in a confined aquifer.

"Artesian Well" shall mean a well completed in the confined portion of an aquifer such that, when properly cased, water will rise in the well, by natural pressure, above the top of the confined aquifer.

"Beneficial Use or Beneficial Purpose" shall mean groundwater use for:

(A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, fish and wildlife, or pleasure purposes;

(B) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or

(C) any other purpose that is useful and beneficial to the user(s) and does not commit waste as defined in this rule.

"Bentonite" shall mean a sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellets form which is mixed with water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

"Board" shall mean the Board of Directors of the Hickory Underground Water Conservation District No. 1, consisting of five (5) duly elected members.

"Capped Well" shall mean a well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining a weight of 400 pounds and constructed in such a way that it cannot be removed by hand.

"Casing" shall mean a tubular watertight structure installed in the excavated or drilled hole to maintain the well bore.

"Cement" shall mean a neat Portland or construction cement mixture of not more than seven (7) gallons of water per ninety-four (94) pound sack of dry cement, or cement slurry that contains cement and may also contain bentonite, gypsum or other additives.

"Completion" shall mean a sealing off of undesirable water in the well bore by proper casing and/or cementing procedures and adherence to State standards for completion.

"Conservation" shall mean practices, techniques and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water.

"Contested Hearing" shall mean a permit hearing that is noticed and conducted according to the procedures of Rule 12.3.

"Contiguous" shall mean property within a continuous perimeter boundary situated within the District. Contiguous may also apply to properties that are divided by a publicly owned road or highway if the properties would otherwise share a common border.

"Deteriorated Well" shall mean a well, the condition of which will cause, or is likely to cause, pollution of any groundwater in the District.

"Discharge" means the amount of water that leaves an aquifer by natural or artificial means.

"District" shall mean the Hickory Underground Water Conservation District Number 1. For the purpose of filing reports, applications or other required documents it shall mean the District headquarters in Brady, Texas.

"Driller's Log" shall mean a record, made at the time of drilling, showing the depth, thickness, character of the different strata penetrated, and location of water-bearing strata, as well as the depth, size and character of casing installed.

"Domestic Use" shall mean use of groundwater by an individual or a household to support essential domestic activity. Such essential domestic activity includes water for use(s) inside the home; for irrigation of lawns, flower beds, shrubs, trees shading the home, or a family garden and/or orchard with manual sprinklers and garden hoses; for

watering of domestic animals; for protection of foundations; and for swimming pools. Essential domestic activity does not include:

(A) water used to support activities for which consideration is given or for which the product of the activity is sold;

(B) Pond, lake, tank, reservoir, or other confinement which has a capacity greater than 50,000 gallons;

(C) Non-closed system geothermal heating/cooling systems.

(E) Water use which constitutes waster as defined by these rules.

"Enforcement Action" shall mean an action taken by the District to enforce District Rules or any other law within its authority.

"Enforcement Hearing" shall mean a hearing held on an enforcement action which is noticed and conducted according to the procedures of Rule 12.4.

"Exempt Well" shall mean a well which is not subject to permitting by the District pursuant to Section 36.117(b) of the Texas Water Code, generally being wells drilled and equipped to produce less than 25,000 gpd for domestic and livestock purposes, and certain wells used for mineral exploration and/or production purposes pursuant to said statute.

"Flow Monitoring Device" shall mean an electrical or mechanical register that incorporates both a digit totalizer and instantaneous flowrate indicator utilizing generally accepted units (i.e. gallons, acre feet, or acre inches.)

"Fresh Water" shall mean water having physical and chemical properties such that it is suitable and feasible for beneficial use.

"Groundwater" shall mean water percolating below the surface of the earth, but not including water in a defined subterranean system or in the underflow of a river.

"Hazardous substances" shall mean any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 CFR Part 302, as amended.

"Hazardous wastes" shall mean any "solid waste," as that term is defined by 30 Texas Administrative Code 335.1, identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

"Hearings Officer" shall mean any person appointed by the Board to conduct a hearing on a permit, rule or enforcement matter.

"Inflows" means the amount of water that flows into an aquifer from another formation.

"Irrigation System, Installer, and Irrigator" shall mean a person or system as defined in 30 Texas Administrative Code, Section 344.1.

"Landscape Irrigation" shall mean systems or devices used to deliver water to lawns and shrubbery at private residences and at commercial establishments for ornamental purposes solely.

"Licensed Water Well Driller" shall mean any person who holds a license issued by the State of Texas pursuant to the provisions of the Texas Water Well Drillers Act, as amended, and substantive rules of the Water Well Drillers board, or its successors.

"Lot" shall mean any single contiguous parcel of land covered by deed.

"Managed Available Groundwater" means the amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer as determined under Section 36.108.

"Manager" shall mean a person selected by the Board to manage and operate the affairs of the District subject only to the orders of the Board.

"Open or Uncovered Wells" shall mean an excavation at least ten feet in depth dug for the purpose of producing underground water and is not covered or capped as required by the Texas Water Code.

"Open Meetings Act" shall mean Chapter 551, Government Code.

"Public Information Act" shall mean Chapter 552, Government Code.

"Other Aquifer Penetration" shall mean any penetration of an aquifer within the District including oil and gas test wells; mineral test wells (stratigraphic or core holes or geophysical shot holes); or any other penetrations that fall under the oversight of the TCEQ or Texas Railroad Commission.

"Owner" shall mean without limitation any person or legal entity having legal title to the property on which the water well or proposed water well is located.

"Party in a Contested Hearing" shall mean an applicant or other persons who have a justiciable interest related to a legal right, duty, privilege, power, or economic interest

that is within the District's regulatory authority and that may be affected by a permit or permit amendment. Said party shall not include persons who have an interest common to members of the public.

"Permit" shall mean a permit for drilling and production for non-exempt use as described in Rule 8.

"Person" shall mean any individual, partnership, firm, governmental agency, political subdivision, corporation, or other legal entity.

"Plugging" shall mean an absolute sealing of the well bore in accordance with the Texas Water Well Drillers rules.

"Pollution" shall mean 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 of the water for any lawful or reasonable purpose.

"Presiding Officer" shall mean the Chairman, Vice Chairman, Secretary, or other Board member presiding at any hearing or other proceeding, or a Contested Hearings Officer.

"Recharge" means the amount of water that infiltrates to the water table of an aquifer.

"Recharge Zone" shall mean the area of an aquifer where rainfall, surface water, or both, infiltrates into the aquifer.

"Respondent" shall mean the individual who receives a notice of violation under Rule 12.4.

"Retail Public Utility" shall mean any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling in this state facilities for providing potable water service or service, or both, for compensation.

"Rules" shall mean the rules of the District compiled in this document and as may be supplemented or amended from time to time.

"Rulemaking Hearing" shall mean a Board meeting noticed and conducted according to Rule 12.1 at which the Board considers changes to District Rules and Management Plan during which the public has an opportunity to comment on such changes.

"Service Area" shall mean:

(A) the total acreage within the corporate boundary of a municipality in the case of a municipal water utility;

(B) Except for those lots defined in a platted subdivision which will be added to the existing service of the servicing retail public utility, the extraterritorial jurisdiction of a retail public utility.

"Total aquifer storage" means the total calculated volume of groundwater that an aquifer is capable of producing

"Toxic pollutants" shall mean any pollutants subject to regulation under 40 Code of Federal Regulations (CFR), Chapter I, Part 129, as defined in 40 CFR 129.4, as amended.

"Tract" shall mean a contiguous parcel of land under the ownership of a single entity, such as a corporation, partnership or trust, or an individual or individuals holding as joint owners or tenants in common.

"Transport" shall mean the transport of water out of the District.

"Transfer" shall mean moving water from one well location(s) in the District to another non contiguous location(s) in the District.

"Underground Water" shall mean water, percolating below the earth's surface, but shall not include water in a defined subterranean stream or in the underflow of a river.

"Undesirable Water" shall mean water that can cause pollution or water that is injurious to human or animal life, vegetation, land or fresh water.

"Waste" (§ 36.001(8)) shall mean 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;

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

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

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

(F) groundwater pumped for irrigation or landscape irrigation that escapes as irrigation tail water onto land other than that of the owner of the well unless written permission has been granted by the occupant of the land receiving the discharge;

(G) for water produced from an artesian well, waste has the meaning assigned by Section 11.205;

(H) the supply of groundwater to any surface reservoir with a capacity greater than 50,000 gallons except as provided in District Rules;

(I) groundwater pumped for industrial use or application in excess of that quantity, if any, recognized by the industry according to its Standard Industrial Code (SIC) classification as being the maximum amount of water necessary to efficiently meet the demands for the particular use or application to which the groundwater is being made;

(J) groundwater used for heating or cooling that is allowed to drain onto the land surface as tail water and is not re-circulated back to the aquifer (a non-closed system).

(K) loss of groundwater in a distribution system and/or storage facilities in excess of 20% of total annual pumpage. Excessive line loss is a nonbeneficial use of groundwater.

"Water" shall mean groundwater.

"Well" or "Water Well" shall mean and include any artificial excavation into which groundwater from the district aquifers may flow and be produced.

"Well Location" shall mean the location of a proposed well on an application duly filed until such application is granted or denied, or the location of a well on a valid permit.

RULE 1.2 PURPOSE OF RULES: These rules, regulations and modes procedure herein contained are and have been adopted for the purpose of simplifying procedure, avoiding delays, saving expense, and facilitating the administration of the groundwater laws of the State by the District. These rules shall pertain to all wells producing some or all of their water from the Hickory

Aquifer regardless of date drilled, and to all other wells in the District drilled after August 12, 1999.

RULE 1.3 USE AND EFFECT OF RULES: These rules may be used 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, where such exists; 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.

RULE 1.4 ACTIONS ON RULES:

- A. All changes to the District's Rules will be made after notice and hearing pursuant to the requirements of Rule 12.1. Such changes include repeal or amendment of existing Rules and the adoption of new Rules.
- B. The Board may adopt an emergency Rule without prior notice or hearing, or with an abbreviated notice and hearing, according to Rule 12.2 (36.1001).

RULE 1.5 HEADINGS AND CAPTIONS: The section and other headings and captions contained in these rules are for reference purposes only. They do not affect the meaning or interpretation of these rules in any way.

RULE 1.6 CONSTRUCTION: A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of Chapter 36 of the Texas Water Code. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Government Code. All references to Texas statutes and the Texas Administrative Code shall be to those statutes and regulations as amended.

RULE 1.7 METHODS OF SERVICE UNDER THESE RULES: Except a 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 transfer to the recipient's current telecopier number or digitally signed email. Service by mail is complete upon transfer deposit in a post office or other official depository in the United States Postal Service. Service by telephonic document transfer is complete upon documented transfer, except that any transfer occurring after 5:00 p.m. Central Standard Time will be deemed complete on the following business day. Where service by one or more methods has been attempted and failed, the service is complete upon notice publication in a

generally circulated newspaper in McCulloch, San Saba, Mason, Kimble, Concho, and Menard County.

RULE 1.8 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 shall not affect any other rules or provisions of these rules, and these rules shall be construed as if such invalid, illegal or unenforceable rules or provision had never been contained in these rules.

RULE 2. BOARD OF DIRECTORS

RULE 2.1 PURPOSE OF BOARD: The Board was created to determine policy and regulate groundwater within the boundaries of the District; for promulgating rules and taking actions to conserve, preserve, protect and recharge the groundwater within the District; and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.

RULE 2.2 BOARD STRUCTURE, OFFICERS: The Board consists of the members elected and qualified as required by the District Act. The offices of the board of directors shall consist of President, Vice-President, and Secretary. At the first meeting of the board of directors after the regular election and after the canvass of the returns and declaring the results of the election, the board shall elect from among their number, the officers hereinabove specified, who shall hold office for the duration of their term or until their successor is elected and qualified.

RULE 2.3 MEETINGS: The Board will hold a regular meeting on the second Thursday in January, April, July and October of each year and may hold other meetings at such other times and places as the business of the District may require. Notice to the directors as to meetings shall be required. Special meetings of the directors may be called by the President or a majority of the board of directors, upon three (3) days notice by mail, stating the purpose or purposes thereof and the time and place of such meeting. All Board meetings will be noticed and held in accordance with the provisions of the Texas Open Meetings Act.

RULE 3. DISTRICT STAFF

RULE 3.1 MANAGER: The Board may employ a person to manage the District, and title this person Manager. The Manager shall have only those powers, duties, or responsibilities in performing District functions as determined by the Board. The Board shall determine the salary and review the position of Manager during the last quarter of every fiscal year. The manager, with approval of the Board, may

employ all persons necessary for the proper handling of business and operation of the District and their salaries shall be set by the Board and may delegate such duties as may be necessary to effectively and expeditiously accomplish these duties; provided, however, that no such delegation may relieve the Manager from responsibilities under the Texas Water Code, the act creating the District, and the policies, orders and permits promulgated by the Board. The Board may also employ co-managers or consulting managers to perform duties or responsibilities determined by the Board.

RULE 4. MANAGEMENT PLAN

RULE 4.1 DISTRICT MANAGEMENT PLAN: The District Management Plan specifies the acts, procedures, performances and avoidance necessary to conserve, preserve and protect the aquifer, to prevent waste and regulate the decline of the water table, and forms the basis of the District rules in regards to permitting decisions and other requirements imposed by the Board. The Board will review the plan at least every fifth year. The Board's action on the Plan, either to renew it or to amend or replace it, will occur after an opportunity for notice and hearing by using the procedure required by Rule 12.1. A plan, once adopted, remains in effect until the adoption of a new plan. The District Management Plan will be prepared in accordance with Section. 36.1071.

RULE 5. DISTRICT RECORDS

RULE 5.1 MINUTES AND RECORDS OF THE DISTRICT: All documents, reports, records, and minutes of the District are available for public inspection and copying to the extent required by the Public Information Act. Upon written application of any person, the District will furnish copies of its public records. A copying charge shall be established pursuant to the Public Information Act. A list of the charges for copies will be furnished by the District.

RULE 5.2 CERTIFIED COPIES: Requests for certified copies must be in writing. Certified copies will be made under the direction of the Board of Directors. A certification charge and copying charge may be assessed, pursuant to policies established by the Board of Directors.

RULE 6.0 – DRILLING AND PRODUCTION PREREQUISITES

RULE 6.1 NOTICE OF INTENT TO DRILL: A Notice of Intent to Drill shall be filed with the district prior to the drilling of any well, whether exempt or permitted. Following receipt of a Notice of Intent to Drill, the Manager may approve the drilling of any well that is exempt from permitting under Rule 8.2 or Section 36.117 of the Texas Water Code and drilling may proceed.

Permits must be issued for non-exempt wells pursuant to the provisions of Rule 8 prior to the commencement of drilling. Any non-exempt well which is drilled prior to receiving permit approval is in violation of District Rules, and is subject to injunction against production and levy of fines.

RULE 6.2 DRILLER'S LOG REQUIRED

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 with: a) an accurate driller's log and record of completion and equipping of the well, b) any electric log which may have been made, and c) a registration submitted on forms furnished by the District. Upon completion of the well, District personnel shall have access to the property at a reasonable times for all District purposes, including inspection of the well, performing production tests and completing the inventory of the well.

RULE 6.3 FAILURE TO FILE: Failure to file accurate driller's logs and records of equipping and completion of the wells, including any electric logs made, pump test data, any water level data, water quality data, or any data pertinent to the well, in the District office in Brady, Texas, within sixty (60) days after completion of the well or project will constitute an violation of these rules. In such event the District may take appropriate action under Rule 14 or any other applicable rule or statute to enforce compliance with this rule.

RULE 7.0 - WELL REGISTRATION

RULE 7.1 REGISTRATION REQUIRED FOR ALL WELLS

Registration is required for all wells drilled in the District including wells that are exempt from permitting under Rule 8.2, and those used for monitoring purposes. Registration shall be on forms provided by the District and shall include the following information:

- (a) The exact location of the well including the County, section, block, or other legal description; and latitude and longitude;
- (b) Use or proposed use of well;
- (c) Size or proposed size of the pump;
- (d) For those wells drilled after the effective date of this Rule an agreement, by the applicant, that a complete well construction registration form and Driller's and geophysical log (if available) will be

furnished to the District upon completion of the well and prior to the production of water from the well.

(e) Such additional data as may be required by the-Manager; and

(f) The name and address of the landowner applicant .

(g) The name and address of the well operator, if different from the landowner.

B. All wells so registered shall be equipped and maintained so as to conform to the standards set by the Texas Water Well Drillers and Pump Installers Rules, 16 Texas Administrative Code Chapter 76.

RULE 8. WELL PERMITTING

RULE 8.1 STANDARD PERMIT PROVISION: No person shall begin to drill , alter, or produce from a well without having received a permit from the District, unless the well is exempted from permitting under Rule 8.2. For purposes of these rules, alteration of a permitted well, changes in pumping equipment that results in an increase in pumping rate , change in use(s) or location of use, or loss of exemption shall be considered as a new well requiring a new permit application by the Owner.

A. Application for a well drilling and production permit shall be made to the District on permit forms promulgated by the District for all wells drilled and completed unless the well is exempted from permitting under Rule 8.2.

B. When approved by the District Board the permit shall authorize the drilling of the well and shall specify the location of the well, the annual maximum production allowed from the well, ownership of the well, and nature of the permitted beneficial use of production from the well.

RULE 8.2 EXEMPTIONS; EXCEPTIONS; LIMITATIONS:

The following exemptions, exceptions and limitations apply to permitting of wells:

A. The District may not require a permit for drilling or producing from a well exempted from permitting under Section 36.117(b)(1) including: wells used solely: (1) for domestic use or, (2) for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

B. The District may not require a permit for drilling or producing from a well for groundwater used to supply water for hydrocarbon production in accordance with 36.117(b)(2) and (3), except that permits may be required by the District for water wells drilled for hydrocarbon production under conditions defined in 36.117(d)(1) and (2).

C. In addition to the exceptions required by law in Texas Water Code, Section 36.117 (b) stated above, the District also exempts from the requirement of a permit a well on a lot ten (10) acres or less in size if there shall be only one well per lot and a) that well is used to supply groundwater to no more than four households solely for domestic use and b) a member of each household shall either be the owner of the well, a person related to the owner or a member of the owner's household within the second degree by consanguinity or affinity, or an employee of the owner. Wells exempted by the provisions of this sub-section C are required to be registered pursuant to Rule 7 and are subject to the regulations of Rule 9.

D. A well to supply water for a subdivision of land for which plat approval is required by Chapter 232, Local Government Code, is not exempted under Subsections A and C above.

E. Wells exempted under this rule and Section 36.117 of the Texas Water Code are required to be registered pursuant to Rule 7.0

F. Nothing in the exemptions of Rule 5.2(A), (C) and (D) above -shall be construed to allow waste of groundwater as defined in Rule 1.1) (36.0001(8)).

(a) The supply of groundwater to a surface reservoir (stock tank, lake, or non-enclosed impoundment) that has a capacity greater than 50,000 gallons is considered waste, except for surface catchments used by irrigators for temporary daily storage of groundwater prior to irrigation use or impoundments required by municipal or industrial users for the treatment of the groundwater.

(b) The area and capacity of surface reservoirs permitted for livestock or wildlife management purposes in excess of 50,000 gallons surface storage will be based on the total contiguous acreage and the carrying capacity of the acreage for the livestock or wildlife management watered.

G. At any time the production of a well exempted by Rule 8.2 exceeds the exempted amount or is used for purposes or at locations other than those exempted under in this rule the well is no longer exempted and continued use is a violation of District Rules subject to injunction and civil penalties until such time as it is permitted by the District for such increased production, change in use or change in location of use.

H. Wells exempted under this Rule shall be equipped and maintained so as to conform to the District's rules requiring installation of casing, pipe and fittings to prevent waste or pollution.

I. The District may impose more restrictive permit conditions on new permit applications and applications for increased production by existing permit holders if the limitations are reasonably necessary to protect existing use (36.113(e)(3)).

RULE 8.3 WELL PERMIT APPLICATION:

A. The permit application provided for herein must be filed with the District on the form or forms promulgated by the District, contain all requested information, be sworn to, and such permit must be obtained from the District prior to the drilling of a water well and production of water.

B. All permit applications shall include a description of methods used in the system to:

- (1) Prevent contamination of the groundwater supply, including as a minimum a backflow preventor on wells used for irrigation;
- (2) Achieve water conservation;
- (3) Measure the amount of water produced by the well;
- 4) measure drawdown;
- 5) Prevent or minimize interference with existing permitted or registered wells.

C. The District will determine whether the application, maps, and other materials comply with the requirements of this rule and are administratively complete. The District may require amendment of the application, maps, or other materials to achieve necessary compliance and/or may require additional information to be provided to the District.

D. Municipal applicants for a permit, amendment or renewal shall submit to the District a copy of Applicant's State approved water conservation plan and drought management plan. Applicants for non-municipal permits shall submit forms which contain water conservation and drought management information requested by the District.

RULE 8.4 PERMIT APPLICATIONS PROCEDURE; TERM, RENEWAL, AND AMENDMENT:

A. Rule 8.4 B, C, D. and E. and Texas Water Code Section 36.114 are applicable to all well permit applications and applications for amendment.

B. Within sixty days after the date that an application for a permit or permit amendment is filed, the Manager will make a determination as to whether the application contains the data and maps required by district rules and is administratively complete. An administratively complete application requires information set forth in the application instructions and/or in accordance with Rule 8.3, and Texas Water Code Sections 36.113 and 36.1131. If the Manager determines that the application is incomplete, the Manager shall notify the applicant of the deficiencies. Any such application for which deficiencies have not been remedied within 60 days of notification by the manager will be cancelled, and another application for the requested production must be submitted *de novo*, unless that applicant, prior to the expiration of the 60 day-period, has requested and received an extension from the Board. Only one such 30-day extension may be granted by the Board.

C. Within 60 days after the application is administratively and technically complete the District shall conduct a public hearing on the completed application at a time and location which has been noticed in the same manner as the District's regular monthly Board meetings. The public hearing may be held in conjunction with any regular or specially called meeting of the Board, or a special meeting may be called solely for the purpose of holding a hearing on an application.

D. At the hearing at which the Board first considers the application, the Board will determine the need for a Rule 8.5 hearing (Sec. 36.114B). Conditions of a well permit application which may be considered by the Board when determining the need for a hearing pursuant to this Rule are set forth in Rules 8. 4 and 8.5:

E. If the Board determines at the initial hearing that no Rule 8.5 hearing is needed, the Board may act immediately on the application at the Board meeting (Section 36.114(c)). The application may be granted in whole or in part as amended. The application may be approved only if the Board of Directors finds that the proposed use does not constitute waste and that such use constitutes a use for a beneficial purpose, as those terms are defined in these Rules, or is otherwise consistent with the objective and goals of the District's Management Plan or with these Rules. In evaluating whether the application is consistent with the District Management Plan or Rules, the District will consider whether:

(1) the proposed use of water adversely affects existing groundwater and surface water resources or existing permitted and registered wells;

(2) the proposed use of water is dedicated to a beneficial use and does not constitute waste;

(3) the proposed water production is consistent with the District Management Plan;

(4) the applicant has agreed to avoid waste and achieve water conservation;

(5) the applicant has agreed that reasonable diligence shall be used to protect groundwater quality and that the applicant shall follow well plugging guidelines at the time of well closure; and

(6) the well will meet District spacing and production limits.

F. If the application is approved, the District Manager shall issue a permit in accordance with the Board's decision setting forth the name of the owner, location of the well, type of use, maximum number of acre-feet to be produced and any limiting conditions such as requirements for metering, drilling, maintenance and measuring of monitor wells, or annual water quality tests.

G. The effective date of the permit will be 10 days after the date on which the Board's order is signed. The permit will include a statement that the permit becomes effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H will run from that effective date

RULE 8.5 - CONTESTED CASE HEARINGS.

A. A contested application is one in which:

1. parameters of the application regarding production, spacing, setback, use or location of use are not consistent with District Rules and Management Plan;

2. one or more parties file a contest of an application. Parties contesting an application must file notice of their intent to contest at least ten days prior to the date set for the initial hearing

3. one or more parties have requested a rehearing of an application approved pursuant to the provisions of Rule 8.4E. Parties requesting a rehearing must file the request within 10 days of the Board's issuance of its permit.

B. Parties contesting an application or requesting a rehearing on a Board decision on an application shall be limited to parties to the original hearing.

C. All contested case hearings will be conducted in accordance with the provisions of Rule 15.3

D. Within 30 days following the completion of all hearings on a contested case the Board will issue a written order reflecting its decision. If the application is approved the District Manager shall issue a permit in accordance with the Board's order setting forth the name of the owner, location of the well, type of use, maximum number of acre-feet to be produced and any limiting conditions such as requirements for metering, drilling, maintenance and measuring of monitor wells, or annual water quality tests.

RULE 8.6 COMPLETION OF PERMIT PROCESS; AMENDMENT OR TRANSFER OF PERMIT

A. If the Board comes into possession of information not previously available to the Board and which would have been of material significance in the Board's original decision, following notice and hearing the Board may cancel, change conditions, or let stand the permit.

B. The application/permit process will be deemed completed upon the completion and equipping of the well and the filing of the required information and copy of the drillers log with the District.

C. Each permit shall state that it will automatically terminate within a specified time period unless a well has been completed and placed into production within that specified period. Except as provided below, once a permit is issued pursuant to an application to drill a well, it remains valid for a period of twenty-four (24) months for municipalities or public water suppliers and for a period of six (6) months for all other water users, after which time if the well is not drilled the permit is cancelled and a new application process shall be initiated. Upon written request by permittees permits may be extended by the Board, for reasonable cause shown, for an additional six months. No permit shall be granted for a period exceeding five years before commencement of production unless the applicant submits a specific request for a longer development period with the original application and includes therewith supporting justification, including detailed plans, engineering studies and specific timetables establishing the necessity for additional time. The District may require the permittee to provide periodic progress reports, and may provide for cancellation of the permit if the permittee is not in compliance with the conditions and time schedule set forth in its application and/or permit or has evidenced intent that the water will not be used for the purposes or in the location stated in the application or permit.

D. Permits may be transferred to another person through change of ownership of the well provided all permit conditions remain unchanged and in compliance with District rules and the District is notified of the change in ownership. A change in purpose of use by the new well owner or location of use invalidates the permit and requires a new permit or permit amendment.

E. Permits issued under these Rules after February 12, 2009, are subject, following notice and an enforcement hearing conducted according to procedures required by Rule 15.4, to amendment or revocation by the District for waste, for deviation from the purposes and terms of the permit, or, where declines in the water table have been shown to have impaired existing use, to proportionate reduction among all such permit holders within the affected area of the aquifer.

F. Permit amendments or new permits are required for any change in well size, depth, or use, or an increase in production over the permitted amount.

RULE 8.7 REPORTING AND MONITORING:

A. Reporting: All permittees shall annually report to the District the total amount pumped per well during the previous year. To facilitate reporting the District will make available forms to report the amount of water used annually. Reports must be completed and returned to the District office in Brady, Texas by March 15th of the year following the reporting period. Failure to timely file the annual report will subject the permittee to a civil penalty of \$100/day for the first 30 days of delinquency, \$500/day for every day after 30 days, and other sanctions provided in these rules.

B. Monitoring: All permitted wells shall be equipped with a flow monitoring device approved by the District and available for District inspection.

C. Water Quality Sampling: Owners of registered wells shall allow the District to sample such wells for water quality analysis as often as deemed necessary to implement District goals, but no more frequently than annually, except for:

1) monitor wells, which may be sampled semi-annually or quarterly; or

2) where there is evidence of, or a complaint has been filed with the District alleging, contamination of groundwater in the area where the well is located.

RULE 9.0 WELL SPACING

RULE 9.1 WELL SPACING (§ 36.116):

A. All water wells intended for domestic and livestock use shall be a minimum of fifty feet (50 ft.) from property lines and public roadways. On any new division of property, new property lines shall also be fifty feet (50ft.) from any existing wells, unless the owner of the existing well grants a variance to the adjoining landowner. Where public roadways are involved it is permissible to use the centerline of a public roadway to calculate the distance required for the setback of a tract bordering a roadway.

B. Wells shall be located a minimum horizontal distance of 100 feet from any concentrated source of pollution, such as existing or proposed livestock or poultry yards and septic system absorption fields. Such horizontal distance may be decreased, provided the total depth of pressurized cement slurry in the annular space (the space between the casing and the borehole wall), is increased by twice the horizontal _____ reduction, or to the top of the water bearing strata, but in no case shall such distance be less than 50 feet (16 Texas Administrative Code, Section 76.1000(a)). In order to obtain such an exception from the District, the owner shall submit an affidavit stipulating the additional cement slurry in the annular space, the reduction of the horizontal minimum distance, and a release of District from any liability resulting from the well's location in proximity to any concentrated source of pollution. The affidavit shall be signed by the owner, notarized and recorded with the county.

C. In all other respects the spacing of wells shall conform to the requirements of 16 Texas Administrative Code 76.1000(a)

RULE 10. PRODUCTION AND DEPLETION LIMITATIONS

RULE 10.1 PRODUCTION LIMITATIONS:

A. Each permit application, or related group of applications, requesting new or additional production of greater than 500 acre feet per year of groundwater on a contiguous tract shall include an evaluation by a licensed engineer or geologist of the impact of the proposed production on water levels within the aquifer(s) from which the wells are proposed to produce water.

B. The District may deny in whole or part any permit application which, due to its proposed production volume, will cause or contribute to water table decline with potential impairment to existing use in the aquifer(s), or relevant parts thereof, or would have a high probability of exceeding a seven (7) foot drawdown of the water table over a three year period.

C. The evaluation of the impact of proposed production on the water levels in the aquifer shall consist of:

(i) Evaluating the historical rate of water-level decline in the outcrop area or areas relevant to the permit application, then estimating the additional water-level decline which will be caused by the proposed production in the relevant outcrop area or areas:

(ii) The evaluation shall use a statistically valid trend analysis, a computer model, or any other method commonly used by professional geologists or groundwater hydrologists which will provide accurate results and is acceptable to the District.

D. Permittees with permitted production exceeding 500-1000 acre-feet/year will be required to maintain one or more monitor wells in locations deemed necessary by the District for the purpose of monitoring potential impairment of existing wells on adjacent properties or within a one-mile radius, whichever is greater. The location, number and depth of such monitor wells shall be determined by the District on the basis of engineering data supplied to the District by the applicant and/or by the District's engineering consultants. Permittees shall collect and furnish to the District regular periodic data on water levels in required monitor wells, and such wells and data shall be available at all times for inspection and testing by District staff.

RULE 11. WASTE and POLLUTION

RULE 11.1 PROHIBITION AGAINST WASTE:

A. Groundwater shall not be produced within, or used within or without the District, in such a manner as to constitute waste as defined by Rule 1.1.

B. Any owner producing or using groundwater shall use every feasible precaution, in accordance with the latest approved methods, to stop and prevent waste of such water.

C. Groundwater pumped for industrial or commercial use or application shall be considered waste if the quantity is in excess of the quantity, if any, recognized by the industry according to its Standard Industrial Code (SIC) classification to be the maximum amount of water necessary to efficiently meet the demands for the particular use or application in question.

RULE 11.2 PROHIBITED AQUIFER PENETRATIONS: There shall be no

excavation or drilling of a well(s), or use of an excavation or a well(s) for the purpose of temporarily or permanently disposing of the following materials or substances, as defined in District Rules, within the District unless such drilling, construction or operations are approved and permitted by the governing regulatory agency:

- (1) Radioactive wastes
- (2) Toxic pollutants
- (3) Hazardous substances
- (4) Hazardous wastes
- (5) Polychlorinated biphenyls(PCBs)
- (6) Soils, fluids or other materials or substance contaminated with any of the above.

RULE 12. WELL CONSTRUCTION AND COMPLETION STANDARDS

RULE 12.1 WELL CONSTRUCTION AND COMPLETION STANDARDS:

Monitor wells are exempt from this rule; however, their construction shall follow state guidelines.

A. The diameter of the drilled hole shall be a minimum of three inches (3") larger than the outside diameter of the casing to be used down to a depth of fifty feet (50') or to the top of the first potable water bearing strata above fifty feet (50').

B. Either steel pipe or polyvinyl chloride (PVC) casing may be used. PVC casing shall meet minimum specifications as defined by the Department of Licensing and Regulations Water Well Drillers and Pump Installers in 16 Texas Administrative Code Chapter 76.

C. a) Wells Drilled to All Aquifers:The annular space in the borehole shall be filled with cement slurry or bentonite from ground level to a depth of not less than fifty feet (50') below the land surface or to the top of the first potable water bearing strata above fifty feet (50').

b) Wells Drilled to the Hickory Aquifer: In addition, the Board of Directors may require the annular space in the borehole to be cemented from ground level to the top of the Hickory, Lion Mountain or Welge sandstone water-bearing strata when district data, and/or evidence presented at the permit hearing, indicate a probability that water from the subject sandstone formation may be commingled with waters from overlying strata, or that overlying waters may be produced from an uncased well.

c) All wells shall satisfy all State water well completion and annular space sealing requirements.

D. The casing shall extend at least eighteen inches (18") above land surface at a site not generally subject to flooding; provided however, that if a well must be placed in a flood prone area, it shall be completed with a water tight sanitary well seal and steel casing extending a minimum of thirty six inches (36") above known flood levels.

E. All wells completed with plastic casing shall be completed according to one of the three surface completion methods as described by the following:

(1) Slab - The slab or block shall extend at least two feet (2') from the well in all directions and have a minimum thickness of four inches (4"), and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing. The surface of the slab shall be sloped to drain away from the well. The top of the casing shall extend a minimum of one foot (1') above the top of the slab.

(2) Steel and PVC Sleeve - The steel sleeve shall be a minimum of 3/16" in thickness and/or the plastic sleeve shall be a minimum of schedule 80 sun resistant and twenty four inches (24") in length and shall extend twelve inches (12") into the cement, except when steel casing or a pitless adapter is used. The casing shall extend a minimum of one foot (1') above the original ground surface, and the steel sleeve shall be two inches (2"), larger in diameter than the plastic casing being used.

(3) Pitless Adapters - In wells with Steel or Plastic Casings completed with pitless adapters, the adapters shall be welded to the casing or fitted with another suitably effective seal, and the borehole-casing annulus filled with cement slurry or bentonite to a depth of not less than fifty feet (50') below land surface, or to the top of the first potable water bearing strata above fifty feet (50'). All wells completed with pitless adapters shall satisfy all State water well completion and annular space sealing requirements that pertain to pitless adapters.

F. Wells completed with steel casing shall meet all specifications set forth by the Water Well Driller and Pump Installers Rules, 16 Texas Administrative Code Chapter 76, and need to be completed at the surface with the annular space filled with cement slurry or bentonite as described in Rule 8.1C.

G. All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.

H. All wells shall be equipped with a water tight sanitary well seal with an inspection port, or some other means which allows for free access to the water table for the purpose of water level measurement and disinfection. Any well presently not equipped with a water tight sanitary well seal is required to be so equipped in the future when that well is serviced. On those wells with odd sized casing, which cannot be fitted with a factory made water tight sanitary well seal, the completion shall be done in a manner that shall prevent any pollutants (waste, insects, chemicals, etc.) from entering the well.

RULE 12.2 PERSONS AUTHORIZED TO DRILL WELLS AND INSTALL PUMPS:

A. Only persons who are licensed water well drillers, in good standing with the Department of Licensing and Regulation Texas Water Well Drillers Board and whose licenses are verified with the District are allowed to commercially drill water wells within the District. License verification with the District shall be on forms provided by the District and be in accordance with and contain information called for in the form of verification. Owners may personally drill water wells on their own property provided wells are completed according to State and District completion requirements.

B. Commercial Pump Installers are required to show licensed verification with the District. License verification shall be on forms provided by the District and shall be in accordance with and contain the information called for in the form of verification.

RULE 13. TRANSPORTATION OF GROUNDWATER OUT OF THE DISTRICT

RULE 13.1 PURPOSE: By the authority granted it under Section 36.122 of the Texas Water Code, the District adopts these rules and requires that an application shall be made and a transport permit be obtained to transfer groundwater out of the District. Transport applications shall be on forms provided by the District and contain all required information before application is considered. All water wells producing water for the transfer of water out of the District in any manner shall be permitted

wells. Rule 13 applies only to a transfer of water that is permitted after September 1, 1997 (36.122(n)).

RULE 13.2 EXCEPTIONS: Water used for emergency purposes such as for fire fighting may be transported by truck out of the District on a per incident basis without need for a transport permit. Likewise occasional transport by truck out of the District of water for support of county or state construction or paving projects may be made without need for a transport permit.

RULE 13.3 APPLICATION PROCEDURES: All applications to obtain permits to transfer groundwater out of the District (transport permits) will be considered and processed under the same procedures as applications for well permits under Rule 8 and shall contain the following:

- (1) The name and address of the applicant,
- (2) The legal description of the exact location(s) of the well(s) from which water to be transported is to be produced and the well(s) permit number,
- (3) The name and address of the well owner(s) of the land upon which is located the well(s) which is to produce water to be transported,
- (4) The time schedule for construction and/or operation of the facility,
- (5) A construction and operations plan that shall include, but is not limited to, information as to a technical description of the facilities to be used for transportation of water,
- (6) The use of the water to be transported,
- (7) The volume of water to be transported annually,
- (8) Scientific evidence showing that the proposed operation will not cause pollution as defined in Rule 1 or waste as defined in Rules 1 and 11,
- (9) A scientific evaluation by a licensed engineer or geologist showing the impact of the proposed groundwater production for transportation on the quantity and quality of water available within the District pursuant to Rule 10,

(10) Scientific evaluation showing the projected effect of the proposed transfer on aquifer conditions, depletions, subsidence, or effects on existing permit holders or other groundwater users within the District,

(11) Evidence that the proposed transfer conforms to the goals and objectives of the approved District Management Plan and the pertinent Regional Water Plans,

(12) A water conservation plan and a drought management plan,

(13) Additional information that may be required by the Board.

RULE 13.4 HEARING: The District shall conduct a hearing on an application for a transport permit in accordance with procedures set forth in Rule 15.3.

RULE 13.5 PERMIT APPROVAL/DENIAL:

(1) The District may not impose more restrictive permit conditions on transporters than the District imposes on existing in-district users, except as provided in §36.122 of the Texas Water Code or otherwise allowed by law. In reviewing a proposed transfer of groundwater out of the District, the Board will consider:

(a) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested (§36.122(f)(1)),

(b) the projected effect of the proposed transfer on aquifer conditions, and depletion, with special concern for the possibility of water table decline and effects on existing permit holders or exempt groundwater users within the District (36.122(f)(2))

(c) the approved pertinent Regional Water Plans and certified District Management Plan (36.122(f)(3)),

RULE 13.6 TRANSPORT FEE (§36.122(e)(1)(2)): The District may impose a reasonable fee or surcharge for a transport fee using one of the following methods:

(1) A fee negotiated between the district and the transporter,

(2) A rate not to exceed the amount authorized by Section 36.122(e) of the Texas Water Code.

RULE 13.7 PERMIT TO TRANSPORT GROUNDWATER OUT OF THE DISTRICT: If a permit is granted to an applicant, the permit may specify the following (§36.122):

(1) The amount of water that may be transferred out of the District; and the period for which the water may be transferred (§36.122 (h)).

(2) A transport permit will be issued for an initial term of at least 3 years if construction of a conveyance system has not been initiated prior to the issuance of the permit (36.122(i)(l)); or at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit (§36.122 (j)(2)).

(3) If during the initial term of a transport permit, construction of a conveyance system is begun, the transport permit will automatically be extended to the full 30-year term; provided, however, that the District may review the transport permit every five years and, if conditions warrant, reduce permitted production in accordance with the provisions of Rule 10.

(4) In its five-year review and renewal of a transport permit, the District shall consider relevant and current data for the conservation of groundwater resources and will consider the permit in the same manner it would consider a permit under Rules 8.3 through 8.7 and Rule 10. The District may reduce the amount of water authorized by the transport permit by 10% per year until decline in the water table in the affected area of the aquifer ceases.

(5) The District may not alter the terms of an export of groundwater if the purchase for that purpose was in effect on or before June 1, 1997 (36.122(m)).

RULE 13.8 MONITORING AND REPORTING:

(1) All permitted 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,

(2) The operation of a permitted transportation facility shall be required to keep records and provide monthly production reports to the District, which show daily production rates.

RULE 14: INVESTIGATIONS AND ENFORCEMENT

RULE 14.1 NOTICE AND ACCESS TO PROPERTY: (§36.123) Board Members and District representatives and employees are entitled to access to all property within the District to carry out technical and other routine investigations (i.e. photographing, sampling, monitoring and testing) necessary to the implementation of the District Rules. Prior to entering upon the property for the purpose of conducting an investigation, the person seeking access will give notice in writing or in person or by telephone to the owner, operator, agent, or employee of the well owner, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission has been granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District representative or employees who are attempting to conduct an investigation under District Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in §36.102.

RULE 14.2 INVESTIGATION OF POSSIBLE VIOLATION(S) (§36.123):

A. When the District's Board of Directors has been informed of a possible violation of a District Rule, the District Manager will notify the owner of the potential violation and request to meet with the owner to investigate the potential violation.

B. Investigations or inspections that require entrance upon property will be conducted at reasonable times, and will be consistent with the establishment's reasonable rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations shall identify themselves and present credentials upon request of the owner.

C. Following the investigation, the District Manager shall report to the Board of Directors the findings of the investigation. If the Board determines that no violation has occurred, the District will notify the owner by letter of the Board's finding that no violation has occurred or that no determination can be made.

D. If the Board of Directors determines from the investigation that a violation has occurred, the District will notify the owner by certified mail that the owner is in violation and outline the action the owner shall take to come into compliance with District Rules.

E. When the owner notifies the District that compliance has been met, an investigation by the District Manager will be made and reported to the Board. The

Board shall determine if compliance has been met by the owner. If so, the District will notify the owner by letter that compliance with District Rules has been met. If not, the District may require further corrective measures or take enforcement action.

RULE 14.3 RULE ENFORCEMENT: If the Board determines that a landowner or well is not in compliance with District Rules, then the Board may choose from the following actions to ensure compliance:

A. Begin the enforcement hearing process under Rule 12.4 for permit revocation, involuntary amendment or suspension.

B. Enforce these rules by injunction, mandatory injunction or other appropriate remedy in a court of competent jurisdiction.

C. Assess any or all reasonable civil penalties for breach of any District Rule as authorized in §36.102 of the Texas Water Code. A penalty under this Rule is in addition to any other penalty provided by law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the District's principal office or meeting place is located. If the District prevails in any suit to enforce its Rules, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other cost incurred by the District before the court. The amount of the attorney's fee shall be fixed by the court.

D. After a notice and an enforcement hearing conducted according to the procedure required by Rule 15.4, order a non-compliant well to be sealed under District Rule 14.4A.

E. Continue to work with the owner until compliance is met and may mandate the monitoring of groundwater use by requiring the metering of the well or any other monitoring methods and provide regular production reports as determined by the Board.

F. Any combination of the above actions or other reasonable means as determined by the Board to ensure compliance.

RULE 14.4 SEALING, CAPPING AND PLUGGING WELLS:

A. SEALING OF WELLS: After notice and an enforcement hearing conducted according to the procedure required by Rule 12.4, the District may seal wells to ensure that a well is not operated in violation of the District Rules. A well may be sealed when:

(1) no permit has been obtained to drill a new water well that requires a permit under Rule 8;

(2) no application form has been filed for a permit to withdraw groundwater; or

(3) the Board has denied, cancelled or revoked a drilling permit or an operating permit.

The well may be sealed by physical means and tagged to indicate that the well has been sealed by the District. Other appropriate action may be taken as necessary to preclude operation of the well or to detect unauthorized operation of the well. Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a well that has been sealed constitutes a violation of these rules and subjects the person performing that action, as well as any well owner or primary operator who authorizes or allows that action, to such penalties as provided by the District Rules.

B. CAPPING WELLS: After notice and an enforcement hearing conducted according to the procedure required by Rule 12.4, the District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well shall 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 shall 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 shall be plugged. The cap shall be capable of sustaining a weight of at least four hundred (400) pounds.

C. PLUGGING WELLS: A deteriorated or abandoned or open and uncovered well shall be plugged in accordance with the Well Driller and Pump Installers Rules, 16 Texas Administrative Code Chapter 76. It is the responsibility of the owner to see that such a well is plugged to prevent pollution of the underground water and to prevent injury to persons.

D. PLUGGING REPORT: Not later than the 30th day after a well is plugged, the person plugging the well shall submit a plugging report to the District on a form provided by the District.+

RULE 15. HEARINGS

This Rule 15 sets forth circumstances and procedures for holding formal hearings on the specific topics stated. Nothing in this Rule 15 will preclude the District Board from including as a standard Board meeting agenda item an allotted time for public comment and said agenda item for public comment will not be considered a hearing as defined by this Rule 15.

RULE 15.1 RULE MAKING HEARING

A. Once the District has developed a proposal involving changes to District Rules or changes to the District Management Plan the District will decide at which Board meeting the proposal will be considered for action. The Board meeting at which the proposal is considered under this Rule will be considered the hearing on the proposal and fulfills the requirement, if any, for a hearing.

B. The Manger shall provide notice of all rulemaking hearings in accordance with the Open Meetings Act.

C. In addition to the notice required by the Open Meetings Act, not later than the 20th day before the date of the hearing, notice shall be provided as follows:

(1) Post notice in a place readily accessible to the public at the District office;

(2) Provide notice to the county clerks of McCulloch, Mason, San Saba, Menard, Concho and Kimble County;

(3) Publish notice in one or more newspapers of general circulation in each county in the District; and

(4) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 15.1.F. Failure to provide notice under this Rule 15.1.C(4) does not invalidate an action taken by the District at a hearing under Rule 15.1.

D. Notice of the hearing on the proposal required by Rule 12.1.C. will include:

(1) A statement that District's Board of Directors will consider proposed changes to the District's Rules or Management Plan, and a brief summary of the substance of those changes.

(2) The time, date, and location of the hearing.

(3) The agenda of the hearing.

(4) A statement that the proposal is available to be reviewed or copied at the District Office and on the District's website prior to the hearing.

(5) A statement that the District will accept written comments and give the deadline for submitting written comments.

(6) A statement that oral public comment will be taken at the hearing.

E. Copies of the proposal will be available during normal business hours at the District and posted on the District's website.

F. A person may submit to the District a written request for notice of hearings conducted under Rule 15.1. A request is effective for the remainder of the calendar year in which the request is received by the District.

G. Anyone interested in the proposal may submit written comments about the proposal to the District at least 5 business days prior to the scheduled hearing at which the proposal will be considered by the Board.

H. Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.

I. The District will make and keep in its files an audio recording of the hearing, written minutes of the hearing, and any written comments submitted at the hearing.

J. The Board will issue a written order or resolution reflecting its decision and the proposal that the Board approves will be an attachment to that written order or resolution.

K. The effective date of the written order will be the date on which the Chairman of the District signs the order or resolution. The order or resolution will include a statement that the proposal becomes effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H will run from that effective date.

L. If in the course of the deliberation during the hearing, the Board decides to substantially change the proposal, the Board will "continue" or postpone the matter until a future Board meeting. Prior to consideration of the substantially changed proposal, the District will provide a notice and opportunity for comment and hold a hearing on the substantially changed proposal. It is solely within the discretion of the Board what constitutes a substantial change to a proposal under this Rule.

RULE 15.2 ADOPTION OF EMERGENCY RULES

A. The District may adopt an emergency rule without following the notice and hearing provisions of Rule 15.1, if the Board:

- (1) Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
- (2) Prepares a written statement of the reasons for its finding under Rule 15.2.A(1).

B. An emergency rule under this Rule 15.2 must be adopted at a meeting of the Board subject to the requirements of the Open Meetings Act. Notice required by the Open Meetings Act shall be provided.

C. Except as provided by Rule 15.2.D., a rule adopted under this Rule may not be effective for longer than 90 days.

D. If notice of a hearing under Rule 15.1 is given before the emergency rule expires under Rule 15.2.C., the emergency rule is effective for an additional 90 days.

RULE 15.3 HEARINGS ON PERMITS AND PERMIT AMENDMENTS

A. In this Rule, "applicant" means a person who is applying for a permit or permit amendment, and "application" means the formal process for applying for a well permit or permit amendment. For this Rule "permit" shall mean a drilling and production permit or a permit for transport of water.

B. In accordance with Rule 5.4E, the Board may hold a hearing on one or more applications. The decision by the Board for a hearing will be made at the Board meeting in which the administratively complete application(s) is/are first brought before the Board for consideration. Any hearing will be held as part of a scheduled Board meeting at the regular Board meeting location unless the Board provides for the hearing to be held at a different location

C. Notice (Sec. 36.404)

- (1) If the Board schedules a hearing on a permit or permit amendment, the District will give notice of the hearing as provided by this section.

(2) The notice must include:

(a) The name of the applicant;

(b) The address or approximate location of the well or proposed well;

(c) 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;

(d) The time, date, and location of the hearing;

(e) A statement that the District will accept written comments on the application and give the deadline for submitting written comments;

(f) A statement that oral public comment on the application will be taken at the hearing; and

(g) Any other information the Board considers relevant and appropriate.

(3) Not later than the 10th day before the date of a hearing, the District will:

(a) Post notice in a place readily accessible to the public at the District office;

(b) Provide notice to the county clerk; and

(c) Provide notice by:

(1) Regular mail to the applicant;

(2) Regular mail, facsimile, or electronic mail to any person who has requested notice under Subsection (4);

(3) Regular mail to any other person entitled to receive notice under District Rules; and

(4) Other notification deemed appropriate by the Board.

(4) A person may request notice from the District of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of 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 e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

(5) Failure to provide notice under Subsection (3)(c)(ii) does not invalidate an action taken by the District at the hearing.

D. Hearing Registration (36.405)

The District may require each person who participates in a hearing to submit a hearing registration form stating:

(1) The person's name;

(2) The person's address; and

(3) Whom the person represents, if the person is not there in the person's individual capacity,

E. Hearing Procedures (36.406)

(1) The hearing must be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a hearing Examiner to preside at and conduct the hearing on the permit or permit amendment. The appointment of a hearing Examiner shall be made in writing. If the hearing is conducted by a quorum of the Board, the President will preside. If the President is not present, the Board will select one of the Directors present to preside. Notice of all hearings conducted by a quorum of the Board will be made in accordance with the Open Meetings Act.

(2) The presiding officer may:

(a) Convene the hearing at the time and place specified in the notice;

(b) Set any necessary additional hearing dates;

(c) Designate the parties regarding a contested application;

(d) Establish the order for presentation of evidence;

(e) Administer oaths to all persons presenting testimony;

(f) Examine persons presenting testimony;

(g) Ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party.

(h) Allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by telephone, a deposition before the hearing, or other reasonable means;

(i) Continue a hearing from time to time and from place to place without providing notice under Rule 15.3.C. If the continuance is not announced on the record at the hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.(36.409)

(j) If the Board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material at the same time to any person who provided comment at the hearing and to any party to a contested hearing. A persons who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th day after the date the additional material was received.(36.408(g))

F. Evidence. (36.407)

The presiding officer shall:

(1) Admit relevant evidence; and

(2) Prescribe reasonable time limits for testimony and the presentation of evidence;

G. Recording. (36.408)

The presiding officer shall prepare and keep a record of each hearing in the form of meeting minutes except in a contested hearing an audio recording shall also be made. On the request of a party to a contested hearing, the hearing shall be transcribed by a court reporter. The costs of such court reporter may be assessed against the party requesting it or among the parties to the hearing. The presiding officer may exclude a party from further participation in the hearing for failure to pay or have paid by others in a timely manner costs assessed against that party under this Rule 15.3.G.

H. Report. (36.410)

If the Board has appointed a hearing examiner to be the presiding officer at the hearing, the hearing examiner shall submit a report to the Board not later than the 30th day after the date the hearing is concluded. The report must include:

- (1) A summary of the subject matter of the hearing;
- (2) A summary of the evidence received; and
- (3) The presiding officer's recommendations for Board action on the subject matter of the hearing.

A copy of the report shall be provided to the applicant and to each party who provided comments or to each designated party. The applicant and other parties who receive the report may submit to the Board written exceptions to the report within 10 days of issuance of the report.

I. Board Action. (36.411)

The Board shall act on a permit or permit amendment application within 60 days after the final hearing on the application is concluded.

J. Request for Rehearing or Findings and Conclusions. (36.412)

- (1) Not later than the 20th day after the date of the Board's decision, an applicant, or a party to a contested hearing, may administratively appeal a decision of the Board on an application by requesting written findings and conclusions or a rehearing before the Board.

(2) On receipt of a timely written request, the Board will make written findings and conclusions regarding a decision of the Board on permit or permit amendment. The Board will provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35th day after the date the Board receives the request. The applicant or a party to a contested hearing, may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.

(3) A request for rehearing must be filed in the District office and must state the grounds for the request. The person requesting a rehearing must provide copies of the request to all parties to the hearing.

(4) If the Board grants a request for rehearing, the Board will schedule the rehearing not later than the 45th day after the date the request is granted.

(5) 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.

K. Decision; When Final. (36.413)

(1) A decision by the Board on permit or permit amendment is final if:

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

(b) A request for rehearing is filed on time, on the date:

(i) the Board denies the request for rehearing; or

(ii) the Board renders a written decision after rehearing.

(2) An applicant or a party to a contested hearing may file a suit against the District under Texas Water Code § 36.251 to appeal a decision on permit or permit amendment not later than the 60th day after the date on which the decision becomes final. A timely filed request for rehearing is a prerequisite to any such suit.

RULE 15.4 HEARINGS ON ENFORCEMENT ACTIONS

A. Once the District has determined that a person may have violated any rule under the District's jurisdiction and that the Board is considering taking some action against the person, the District will decide at which Board meeting the enforcement action will be considered. The Board meeting at which the enforcement action is considered under this Rule will be considered the enforcement hearing on the matter and fulfills the requirement.

B. The Manger shall post notice in accordance with the Open Meetings Act.

C. Notice of the enforcement hearing will be mailed to the respondent by certified mail, return receipt requested, at least ten days prior to the scheduled hearing date. This notice serves as the notice of violation.

D. Anyone attending the enforcement hearing may make oral comments at the time designated for comments.

E. The Board, at its sole discretion, may administer an oath to the staff, the respondent, and anyone who makes oral comments on the enforcement action.

F. The Board, at its sole discretion, may appoint a Hearings Officer or committee of the Board to conduct the enforcement hearing (Hearing Body). Any hearing conducted by a Hearing Body, will be conducted in the same manner as provided in this Rule 15.4. At the close of the enforcement hearing, the Presiding Officer of the Hearing Body will make a written recommendation to the Board. The recommendation will become part of the record. The Board is not required to approve the recommendation of the Hearing Body.

G. The Board will issue a written order reflecting its decision and actions. Actions may include the sealing of the well(s), cancellation of permit(s), civil penalties or injunctions.

H. The effective date of the written order will be the date on which the President of the District signs the order or resolution. The order or resolution will include a statement that the order or resolution becomes effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H will run from that effective date.

REPEAL OF PRIOR REGULATIONS

All 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.

SAVINGS CLAUSE

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