

RULES OF THE
KINNEY COUNTY GROUNDWATER
CONSERVATION DISTRICT

Adopted September 10, 2010

Amended March 12, 2015

DISTRICT MISSION

The mission of the Kinney County Groundwater Conservation District is to develop, promote, and implement water conservation and management strategies to conserve, preserve, and protect the groundwater supplies of the District, to protect and enhance recharge, prevent waste and pollution, and to promote efficient and beneficial use of groundwater within the District.

The District seeks to protect the rights of owners of water rights as defined in Chapter 36 (Section 36.002), Water Code, within the District from impairment of their groundwater quality and quantity from within the District and to guard against the same from outside the District by all means available, pursuant to the power and duties granted under Subchapter D, Chapter 36, Water Code.

The District desires to manage the production and quality of groundwater within the District on a sustainable basis that allows the capture of water flowing through the county without jeopardizing the viability of water in the county during extended periods of low rainfall or unduly increasing the frequency of the natural cycles for springs and intermittent streams going dry.

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SECTION 1 -- GENERAL PROVISIONS

RULE 1.01 PURPOSE OF RULES AND APPLICABILITY

These Rules are adopted to achieve the purposes of the District Act and accomplish its objectives and requirements as set out in the District's Groundwater Management Plan. With respect to any permit or permit application, these Rules govern the permitting process for any well that is not the subject of a pending permit application filed prior to the effective date of these Rules. Any permit application pending on the effective date of these Rules is governed by the Rules in effect at the time such application was filed with the District.

RULE 1.02 DISTRICT ADDRESS

The District's mailing address is Post Office Box 369, Brackettville, Texas 78832. The office is located in Brackettville, Texas.

RULE 1.03 COMPUTING TIME

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

RULE 1.04 METHODS OF SERVICE UNDER THE RULES

Except as otherwise provided for in these Rules, any notice or document required by these Rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier-receipted delivery, by certified or registered mail, return receipt requested, sent to recipient's last known address, by e-mail to the recipient's e-mail address on file with the District if written consent is granted by the recipient, or by facsimile document transfer to the recipient's current facsimile number and shall be accomplished by 5:00 o'clock p.m. of the date on which it is due.

Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. If service or delivery is by mail, and the recipient has the right to perform some act or is required to perform some act within a prescribed period of time after service, three (3) days will be added to the prescribed period.

Service by telephonic document transfer is complete upon transfer, except that any transfer commencing after 5:00 o'clock p.m. shall be deemed complete the following business day. Where service by other methods has proved unsuccessful, the service shall be complete upon publication of the notice in a newspaper of general circulation in the district.

RULE 1.05 USE OF FORMS

The District will furnish forms and instructions for the preparation of any application, declaration, registration or other document that is required to be filed with the District on a form prepared by the District. The use of such forms is mandatory. Supplements may be attached if there is insufficient space on the form. Supplements must identify the sections of the form to which the information contained in the supplement pertains.

SECTION 2 -- REGISTRATION OF WELLS OR NEW WELLS

RULE 2.01 REGISTRATION

- A) Exempt Use Wells.** As used in these Rules, the phrase “exempt use wells” means any use exempted by Section 36.117, Water Code.
- B) Registration.** The District requires that all exempt use wells be registered with the District on the approved District form for purpose of information gathering in the furtherance of groundwater management and groundwater planning. No person owning or operating an exempt use well may appear before the District in any permit hearing or other adjudication unless such well is first registered with the District. Exempt use wells that have not been registered with the District cannot be included in any long-term water planning or aquifer management and this could result in negative water table conditions in the future.
- C) Review by Office Staff.** The Office Staff will review the completed form and determine if the well is for exempt use or non-exempt use and whether a permit is required. If exempt from the permit requirements, the Office Staff will issue a Registration Certificate with a well number.
- D) Forfeiture of Exemption.** A well for exempt use under this section will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt or illegal under these Rules or Chapter 36, Water Code. Forfeiture of exempt status will occur upon notice to the well owner, following a hearing before the Board.

RULE 2.02 REGISTRATION OF EXISTING WELLS

No person may operate an existing well, other than a well used solely for exempt uses, without first obtaining a permit. The District does not require a permit or a permit application or a permit amendment for maintenance or repair of a well if the maintenance or repair does not increase the production capabilities of the well.

**RULE 2.03 PROCEDURE FOR DRILLING A WELL OR
REWORKING AN EXISTING WELL**

- A) Application.** An application must be filed with the District to drill, equip, substantially alter or increase the output of an existing well by more than 5%. A violation of this Rule occurs on the first day of the drilling, equipping, completion, or alteration without the appropriate registration or permit. Fines may begin and continue each day thereafter until the appropriate registration or permit is issued.
- B) Preparation of Application.** An application for a well registration, permit, or permit amendment shall be made on forms provided by the District.
- C) District Review.** At the District President’s direction, either the Designated District Employee or District President will review the application and make a preliminary determination of whether the well meets the exemption from permitting provided in these Rules and whether the well is in compliance with these Rules. The Applicant will be informed of the determination within five (5) business days from the date of receipt of the completed application.
- 1) Exempt Use Well.** If the District President’s or Designated District Employee’s preliminary determination is that the well is for exempt uses and in compliance with these Rules, and all applicable fees have been paid, the Applicant may begin construction or other activity immediately upon receiving the approved registration.
- 2) Non-Exempt Use Well.** If the District President’s or Designated District Employee’s preliminary determination is that the exemption does not apply, the Applicant must complete the process for a Test Permit under Rule 3.03.

RULE 2.04 TERM OF DRILLING PERMIT

A Permit issued in accordance with this rule will expire and be null and void with no further action of the Board if drilling of the well is not completed within 365 calendar days of the date the Permit is issued. Thereafter, the Applicant must file a new Permit Application.

RULE 2.05 SPACING

- A)** An Exempt use well must not be within fifty (50) feet of a neighboring property line. The District President or the Designated District Employee may grant the Landowner a variance.
- B)** A Non-Exempt use well must not be within three hundred (300) yards of a neighboring property line.

- C) A written statement filed with the District from the neighbor stating that there is no objection to a well closer to the property line can override the yard spacing requirement in 2.05.B. This variance must be filed with the Kinney County Clerk and become a part of the County Record.
- D) An Applicant may bring a request for an exception to subsection B) to the Board.

RULE 2.06 LOCATION OF WELLS AFTER EFFECTIVE DATE OF THESE RULES

- A) **Drilling Range.** After an Application for a well permit has been granted, the well, if drilled must be drilled within thirty (30) feet of the location specified in the permit but not closer than fifty (50) feet from the property line if the well is for exempt use and three hundred (300) yards if the well is for Non-Exempt use.
- B) **Location Restrictions.** A well shall be located at a minimum distance of:
 - 1) **five hundred** (500) feet from any sewage, wastewater, or other liquid-waste collection facility;
 - 2) **one hundred** (100) feet from any concentrated source of contamination, including, but not limited to, a septic tank, septic drain field, or OSST spray field; and
 - 3) **five hundred** (500) feet from a cemetery.
- C) **Flood Plains.** If a new well is to be located within a one hundred (100)-year flood plain as defined by the Federal Emergency Management Agency, the well must comply with TDLR Rules, 16 TAC Chapter 76.

RULE 2.07 MINIMUM STANDARDS OF NEW WELL COMPLETION

- A) **TDLR Rules.** The minimum requirements for well drilling shall be the TDLR Rules, 16 TAC Chapter 76. The District may, by Resolution, impose additional requirements for well drilling, as circumstances may require. To the extent that any Rule or Resolution adopted by the District is more restrictive than those imposed by the TDLR Rules, the District’s Rule or Resolution shall be controlling.
- B) **Annular Space.** The annular space between the borehole and the casing shall be filled from ground level to a minimum depth of twenty (20) feet with API Class A neat cement.
- C) **Sealing.** A steel reinforced concrete slab or sealing block shall be placed above the cement around the casing at the ground surface.

- 1) **Slab Block.** The slab or block shall extend at least two (2) feet from the well in all directions, have a minimum thickness of four (4) inches to include three-eighths (3/8th) rebar at twelve (12) inch o. c. or 6 x 6 x 10 mesh reinforcing wire.
 - 2) **Slab Surface Slope.** The surface of the slab shall be sloped to drain away from the well.
- D) Casing Top.** The top of the casing shall extend a minimum of one (1) foot above the ground surface.
- E) PVC Casing Instead of Concrete.** If a well is to be completed with polyvinyl chloride (PVC) casing, in lieu of placing a concrete slab around the casing at the ground surface as provided for in section C) of this Rule, a steel sleeve may be used to protect the casing from breakage. The steel sleeve shall be a minimum of three-sixteenth (3/16) inches in thickness and eighteen (18) inches in length, shall extend six (6) inches in to neat cement, and shall be two (2) inches larger in diameter than the PVC casing being used.
- F) Prohibition on Commingling of Aquifers.** All wells that are to be completed in the artesian or confined portion of an aquifer shall be completed so that waters from other strata or zones are not allowed to commingle through the borehole-casing annulus. With respect to such wells, one of the following shall apply:
- 1) **Steel Casing.** If the well is to be completed with steel casing, the annular space between the borehole and the casing shall be filled with neat cement from the top of the water-bearing formation of production to the land surface.
 - 2) **PVC Casing.** If the well is to be completed with PVC casing, the borehole-casing annulus shall be filled with cement, pelletized bentonite, grout, or other suitable material if specifically approved by the Board, from the top of the water-bearing formation of production to the land surface provided that if cement is not used, a cement plug will be installed as required by the TDLR Rules.
- G) Gravel Packed Wells.** If a well is to be gravel packed the full length of the casing, or string of casing must be set to the top of the desired aquifer formation and extend one foot above land surface. The second string of casing may then be set at the desired depth in the aquifer, and the annulus.
- H) Gravel Packed Wells in Unconfined Portion of Aquifer.** If a gravel-packed well is to be drilled in the unconfined portion of an aquifer, it shall be completed with a double string of casing. The outside string of casing shall be set at a depth of twenty (20) feet below land surface, extend one foot above land surface, and shall be completed according to the TDLR Rules. The second string of casing may then be set inside of the first string of casing at the desired depth in the aquifer, and the annulus between the two casings shall contain bentonite grout.

- I) Undesirable Water.** If a well penetrates any undesirable water in a zone or zones that contained water that differs in “chemical quality,” the undesirable water shall be sealed off and confined to its zone of origin. When undesirable water is encountered in a zone overlying fresh water, the well shall be cased from the top of the fresh water zone to the land surface and the annular space between the casing and the borehole shall be cemented to the land surface. When undesirable water is encountered in a zone underlying a fresh water zone, the portion of the well bore opposite the undesirable water zone shall be filled with cement to a height that will prevent the entrance of the undesirable water into the well.
- J) Capping Well.** The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

RULE 2.08 PERSONS AUTHORIZED TO CONSTRUCT

Only licensed water well drillers in good standing with TDLR and not known to have any unresolved violations of any of the District’s Rules may construct water wells within the District.

RULE 2.09 DRILLING LOGS

- A) Driller’s Logs Required.** The driller of any water well within the District shall keep an accurate driller’s log for each well. The driller shall file a copy of each log and a report detailing the drilling, equipping, and completing of the well with the District within sixty (60) days after the date the well is completed. The report shall include all information submitted by the driller to the TDLR. In the event that the driller’s log and report required under this section are not filed within sixty (60) days after the date the well is completed, the driller shall be subject to enforcement by the District for violation of this Rule.
- B) Uncompleted Wells.** In the event the landowner prevents the driller from completing the well to state specifications, the driller shall report any uncompleted wells to the District. The landowner must cure the discrepancy within thirty (30) days or be subject to enforcement by the District for violation of these Rules.
- C) Review of Drilling Logs.** Within sixty (60) days of completion of the well, the Driller will submit completed well logs to the District. The Office Staff will review the logs and if satisfactory, issue a registration certificate with well number to the Applicant. Within thirty (30) calendar days following the next regular Board meeting, the Office Staff shall return the drilling deposit by District check. If the well log is not filed with the District within the sixty (60) days of completion of the well, the drilling deposit is forfeited to the District and the District will file a complaint with TDLR.

SECTION 3 – PERMITS

RULE 3.01 TYPES OF PERMITS

- A) Existing Use Permit.** A permit on an existing, non-exempt well that was completed and operational on or before January 7, 2003, and that produced and used groundwater at any time during the Existing Use Period. The Existing Use Period is the period from January 1, 1992, through January 7, 2003.

- B) Historic Use Permit.** A permit on an existing, non-exempt well that was completed and operational on or before December 31, 1991, and that produced and used groundwater at any time during the Historic Use Period. The Historic Use Period is the period from January 1, 1960, through December 31, 1991.

- C) Testing Permit.** A permit for an existing or new well that has not had a hearing by the Board or has not been through a contested case hearing. All well production is on a temporary basis.

- D) Regular Permit:** A Permit issued after a hearing by the Board or a contested case hearing for a specified amount.

- E) Transport Permit:** Permit issued for water to be transported outside the District.

RULE 3.02 EVALUATION OF PERMIT APPLICATION

An application shall be limited to only one well.

Applicant: For applications for a groundwater withdrawal permit, if the well or proposed well has one owner, that owner shall file the application. If there is more than one owner, a joint application shall be filed by those owners. In the case of more than one owner, the owners shall select one among them to act for and represent them before the District. Written documentation satisfactory to the District, must accompany the application. Unless the ownership of the well by the lessee, assignee, or easement holder is clearly established in the documentation defining the relationship between parties, a lessee or designee of the surface estate or an easement holder, will not be considered the owner of the well. If the Applicant is a lessee or owns groundwater rights severed from the surface estate, the Applicant shall provide written notice of the application to each groundwater rights owner and surface estate owner by certified mail, return receipt requested. Groundwater rights must be evidenced by a certified copy of a recorded deed. The application is not administratively complete until evidence of the notice provided, including the signed returned receipts or the refused or undelivered certified letters are provided to the District.

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

- 1) the application conforms to the requirements of Chapter 36, Water Code, and is accompanied by the prescribed fees;
- 2) the quantity of groundwater proposed to be withdrawn unreasonably affects existing groundwater and surface water resources, existing permit holders or other groundwater users within the District;
- 3) the proposed use of water is dedicated to any beneficial use;
- 4) the proposed use of the water is consistent with the District's certified water management plan;
- 5) the Applicant has agreed to avoid waste and achieve water conservation; and
- 6) the Applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the Applicant will follow well plugging guidelines at the time of well closure.

RULE 3.03 REQUIREMENTS FOR A TESTING PERMIT

A) Application. An Application must be filed with the District on a form provided by the district. A separate application is required for each well.

B) Minimum Requirements for Application. An application must contain the following information in sufficient detail to be considered administratively complete by the District:

- 1) **Applicant's Information.** The application must contain the following information:
 - a) the name, mailing address, physical address, 911 emergency address and phone number of the Applicant and the owner of the land on which the well is or will be located, supported by a run sheet from a title company duly licensed in the State of Texas;
 - b) shows or provides the documentation establishing the applicable authority to construct and operate a well for the proposed use, if the Applicant is other than the owner of the property;
 - c) a statement of the nature and purpose of the proposed use and the approximate amount of water in acre feet to be used for each purpose; and

- d) a declaration that the Applicant will comply with:
 - i) the District's Rules;
 - ii) the District's Groundwater Management Plan;
 - iii) TDLR Rules (16 TAC §76);
 - iv) Chapter 36, Water Code; and
 - v) the District's drought contingency plan.

2) **Technical Information.** The application must be accompanied by a map that adequately details the proposed project, showing:

- a) the project's location on the map;
- b) the project's GPS location (Latitude and Longitude Coordinates);
- c) the project's surface elevation in feet above mean sea level (msl); and
- d) all monitoring well locations.

3) **Other Information.** The application must also contain the following information:

- a) the proposed pumping volume, in gallons per minute;
- b) the pump horsepower;
- c) the casing size in inches;
- d) the depth of well (in feet) and producing formations;
- e) a description of the use of the water to be pumped;
- f) meter information from a District approved vendor; and
- g) mitigation plan – a water conservation plan or a declaration that the Applicant will comply with the district's management plan.

C) Completeness of Application. The Designated District Employee will review the application for completeness. An application shall be considered administratively complete if it (a) includes all information required, (b) is properly completed, signed, and notarized, (c) is accompanied by payment of all applicable fees; and (d) includes any maps, documents, or supplementary information requested by the Board or Staff. At the District President's direction, either the Designated District Employee or District President will make a determination of administrative completeness.

D) Action on Incompleteness. If the Designated District Employee or District President's preliminary determination is that the application is not in compliance with

all District Rules, the Designated District Employee shall notify the Applicant of the provisions that are not in compliance and the changes needed to bring the proposed well application into compliance. The Applicant may resubmit the application to the District after correcting the appropriate provisions. The District will not take action on an application that is not administratively complete. An application may be rejected as not administratively complete if the District finds that substantive information required by the application or District staff is missing, false, or incorrect. The District will notify Applicants submitting incomplete applications in writing. An Applicant shall have sixty (60) days from the date of the District's notification to correct the application before the application expires.

E) Action on Administrative Completeness. If the Designated District Employee or District President determines that the application is administratively complete, the following shall occur:

- 1) The Applicant will place notice of the proposed permit in each local newspaper of general circulation in Kinney County on a form approved by the District and proof of publication filed with the District.
- 2) Following publication in a local newspaper, the proposed Testing Permit will be considered at the next available meeting of the Board.
- 3) If the Board approves the application, the Applicant will pump the well for a minimum of one (1) year or, within one year, perform a pump test acceptable to the District. The Applicant must submit the actual amount pumped by providing monthly pumping reports. The District will reserve the right to observe, monitor, and inspect all phases of construction, and the pumping test. If the pumping rate causes detrimental impacts to any land owner's wells, base spring flow or the aquifer, the District shall have the authority to cause a decrease in pumping or stoppage of pumping until recharge has occurred. The pumping may be resumed at a reduced rate once conditions have normalized for the surrounding wells and springs. This process shall continue until a pumping rate is established that is not detrimental to any entity protected by the District's Management Plan, and shall establish sustainable yield. The District must approve the meter and the meter installation. The Applicant will be responsible for notifying the District seven (7) days in advance for commencement of the above-named activities. The Applicant shall bear all costs associated with the pump test and monitoring of wells of landowners who have registered as interested persons, spring flows or aquifer levels required by the approved pump test.
- 4) All monitoring wells must be registered with the District.
- 5) Within sixty (60) days from the date the notice is published, a person may request in writing to be an interested person with respect to the testing permit concerned. If the person seeking interested person status has one or more existing wells, that person must allow the District to monitor his or her well or wells during the one-

year process to obtain interested person status. Such a request and offer to monitor is a prerequisite to becoming a protestant in any subsequent application for a non-temporary permit by the Applicant. The requirement to allow the District to monitor the person's wells is to assess the impact that the Applicant's future pumping may have on the person seeking interested person status. All permitted owners of surface water rights in the Groundwater Management Zone may request interested person status.

F) Compliance with Groundwater Management Plan. In issuing permits, the District shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:

- 1) the modeled available groundwater determined by the executive administrator;
- 2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by District rules and Section 36.117, Water Code;
- 3) the amount of groundwater authorized under permits previously issued by the District;
- 4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and
- 5) yearly precipitation and production patterns.

RULE 3.04 REQUIREMENTS FOR A REGULAR PERMIT

After granting a test permit by the District and the well has been pumped for a minimum of one (1) year, or an acceptable pumping test has been completed, the Applicant must submit an application for a Regular Permit on a form approved by the District, which must state the quantity pumped or requested in acre feet. The amount granted for a Regular Permit may not exceed the maximum amount requested and tested for under the test permit. The Applicant submission must contain a written request for a public hearing on a form approved by the District.

RULE 3.05 REQUIREMENTS FOR A TRANSPORT PERMIT

Applicant wanting a Transport Permit must be a party to the water supply contract with the end user or be the end user.

The procedure for transport permit applications is described in more detail in Section 6.

RULE 3.06 PERMIT ACTIONS BY THE BOARD NOT REQUIRING A HEARING

- A) Applications for Permits or Permit Amendments other than Test Permits.** Within sixty (60) days from the date on which the District determines that an application is administratively complete, the application shall be set on the agenda for Board action at a Board meeting. Such setting shall be no later than the next available Board meeting.
- B) Required Notice.** The Applicant shall publish notice of the application no less than fourteen (14) days before the Board meeting at which the application will be considered. The notice shall include the name of the Applicant and the address or location of the well and other information deemed relevant by the District.
- C) Notice to Applicant.** Notice of the Board meeting at which the Application will be considered shall be mailed to the Applicant at least seven (7) days prior to the scheduled meeting date. Such notice may be waived by the Applicant.
- D) Public Comment.** Anyone interested in the application may attend the meeting and make oral comments at the time designated for comments. The presiding officer shall administer the oath to the Applicant and anyone who makes oral comments on the application.
- E) Board Action if No Request for Contested Case Hearing.** If no request for a contested case hearing is made, the Board shall issue a written order or resolution reflecting its decision. If the Board approves the Application, the permit shall be an attachment to that written order or resolution. The Board's decision shall be made within sixty (60) days after the final hearing at which the Application was considered. If the Board votes to issue the permit at an amount less than the amount requested on the application, or votes to issue the permit with conditions that were not part of the original proposal, or denies the permit, the applicant may demand a contested case hearing by submitting a written demand to the District office no later than the close of business on the tenth (10th) business day after the Board's vote.
- F) Effective Date if No Contested Case Hearing.** The effective date of the written order shall be ten (10) days after the date on which the District President or the Presiding Officer, signs the order or resolution, if no request for a contested case hearing is received by the District. The order or resolution shall include a statement that the order or resolution and its attachment become effective and final within ten (10) days of that date. An order or resolution of an application that was not considered in a contested case hearing may not be appealed.
- G) Effective Date if Request for Contested Case Hearing Denied.** If there is a timely filed request for a contested case hearing and, the Board determines that there will be

no contested case hearing, the effective date of the written order shall be the date on which the Board denies the contested case hearing.

RULE 3.07 PERMIT ACTIONS REQUIRING A CONTESTED CASE HEARING

- A) Application.** This Rule applies only to applications for which the District has received a timely filed request for a contested case hearing.
- B) Request for Contested Case Hearing and Party Status must be in writing.** A person who is an owner of a permitted or registered well in the same management zone as the well application and who is willing to allow the District to monitor wells on his or her property may request Party Status in a contested case hearing. All requests for Party Status in a contested case hearing must be in writing and filed with the District. If a person allows the District to monitor his or her wells but the District does not monitor the well the person may provide well data from a credible source.
- C) Deadline to Request a Contested Case Hearing.** A request for a contested case hearing must be physically delivered to the District office no later than 5:00 p.m. the last business day before the date of the Board meeting at which the application is first scheduled to be considered. Failure to file a request for contested case hearing waives any right to appear as a party in a contested case hearing or to appeal any decision on the application.
- D) Pre-Hearing Conference.** If the District receives a written request for a contested case hearing, the District shall schedule a pre-hearing conference at its next regularly scheduled Board meeting or at a Board meeting not less than thirty-five (35) days after the date of the request. The pre-hearing conference may be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process, including, but not limited to:
- 1) whether a valid contested case hearing request has been submitted and if so, the designation of parties;
 - 2) the Contested Case Hearing Fee deposit amount required to be paid by each designated party;
 - 3) formulation and simplification of issues; and
 - 4) the hearing schedule, including any necessary discovery.
- E) Open Meetings Notice.** Notice required by the Open Meetings Act shall be provided for the hearing if conducted by a quorum of the Board.

F) Required Notices. In addition to the notice required by the Open Meeting Act, not later than the tenth (10th) day before the date of the hearing notice may 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 Clerk of Kinney County;
- 3) mail notice to the Applicant by regular mail;
- 4) mail notice to the individual requesting a contested case hearing by regular mail;
- 5) mail notice to the record owner, according to the Appraisal District Records of Kinney County, Texas, of all tracts of land overlying the groundwater rights if severed from the surface, all tracts of land adjoining the tract of land upon which the well is located or proposed to be located, and all Permitted owners of surface water rights within the Management Zone; and
- 6) provide notice by mail, fax, or e-mail to any person who has requested notice under Rule 3.07.G.

G) Requirements of Notice. Notice of the hearing on the application shall include the following:

- 1) the name of the Applicant;
- 2) the address or location of the well;
- 3) a brief explanation of the proposed permit or permit amendment, including the requested amount of groundwater, the purpose of the proposed use, and any change in use;
- 4) the time, date and location of the hearing; and
- 5) any other information the District considers relevant and appropriate.

H) Third Party Requests for Notice. Any person may submit to the District a written request for notice of a hearing on a permit or permit amendment. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a hearing in a later year, a person must submit a new request. Failure to provide notice does not invalidate an action taken by the District at a contested case hearing.

D) Selection of Presiding Officer.

- 1) The hearing may be conducted by a quorum of the Board or the Board may appoint a Hearing Examiner to preside at and conduct the hearing on the application. If the District President is not present, the Board shall select one of the Directors who is present to preside. By order, the Board may delegate to SOAH the authority to conduct hearings designated by the Board.
- 2) If the Board refers a contested case hearing to SOAH, then the applicable rules of practice and procedure of SOAH (1 TAC Ch. 155) govern any contested case hearing of the District, as supplemented by this subchapter.
- 3) If the Board refers a contested case hearing to SOAH, the administrative law judge who conducts the contested case hearing shall serve as the hearings examiner and consider applicable District rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.
- 4) If the Board refers a contested case hearing to SOAH, the District may not attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.
- 5) If requested by the Applicant or other party to a contested case, a district shall contract with the SOAH to conduct the hearing. The party must file such a request not later than the fourteenth (14th) day before the date the evidentiary hearing is scheduled to begin. The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by SOAH. The party requesting the hearing before SOAH shall pay all costs associated with the contract for the hearing and shall, before the hearing begins, deposit with the district an amount sufficient to pay the contract amount. At the conclusion of the hearing, the district shall refund any excess money to the paying party.
- 6) When an application is referred to contested case hearing by the Board, the District will file all applicable documents to have the matter referred to SOAH.
- 7) In referring the case to contested case hearing, the District will:
 - a) notify the administrative law judge of the applicable burden of proof for the Applicant to establish all of the prima facie elements;
 - b) identify for the administrative law judge any additional issues that have been raised in the request(s) for contested case hearing; and
 - c) provide the administrative law judge with a written statement of applicable rules and policies of the District.

J) Duties of Presiding Officer. The presiding officer has the following authority and obligations:

- 1) May convene the hearing at the time and place specified in the notice;
- 2) May set any necessary additional hearing dates;
- 3) May designate the parties regarding a contested application who qualify under Section 3.03 (E) (5);
- 4) May establish the order for presentation of evidence;
- 5) May administer oaths to all persons presenting testimony;
- 6) May examine persons presenting testimony;
- 7) May ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
- 8) Shall admit relevant evidence and may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
- 9) May prescribe reasonable time limits for testimony and the presentation of evidence;
- 10) May allow testimony to be submitted in writing and sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means;
- 11) May continue a hearing from time to time and from place to place without providing notice under Rule 3.07.E. If the continuance is not announced on the record at the hearing, the presiding officer shall provide notice of the continued hearing by regular mail to the parties. In any event, if the hearing is being conducted by a quorum of the Board, Open Meetings notice under Rule 3.09.D shall be provided.

K) Recordings. Under Section 36.408, Water Code, the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcriptions cost against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding office may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection if the parties have agreed that the costs assessed against that party will be paid by another party. If a hearing is uncontested, the presiding officer may substitute minutes or the report required under Section 36.410, Water Code.

L) Service of Documents

- 1) For any document filed with the District or the hearings examiner in a contested case, the person filing that document must serve a copy on all parties at or before the time that the request is filed.
- 2) A document presented for filing must contain a certificate of service indicating the date and manner of service and the name and address of each person served. The District may authorize a document to be filed without a certificate of service but will require the certificate be served within three (3) days thereafter.

M) Continuances

- 1) The Board may continue a hearing related to a contested case under the jurisdiction of the Board from time to time and from place to place.
- 2) The notice of the hearing must indicate the times and places at which the hearing may be continued.
- 3) If a hearing is not concluded on the day it begins, the Board shall, to the extent possible, proceed with the hearing on each subsequent working day until the hearing is concluded.

N) Discovery. Discovery in contested case proceedings will be governed by Chapter 2001, Subchapter D, Tex. Gov't Code and Title 1, Section 155.31, Tex. Admin. Code, as supplemented by this subchapter. Depositions in a contested case shall be governed by Tex. Gov't Code §§ 2001.096-2001.102.

O) Expenses of Witness or Deponent

- 1) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or a proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary or proper for the purposes of the contested case, is entitled to receive:
 - a) Ten (0.10) cents for each mile for going to and returning from the place of the hearing or deposition if the place is more than twenty-five (25) miles from the person's place of residence and the person uses the person's personally owned or leased motor vehicle for the travel;
 - b) Reimbursement of the transportation expenses of the witness or deponent for going to and returning from the place where the hearing is held or the deposition is taken, if the place is more than twenty-five (25) miles from the person's place of residence and the person does not use the person's personally owned or leased motor vehicle for the travel;

- c) Reimbursement of the meal and lodging expenses of the witness or deponent while going to and returning from the place where the hearing is held or deposition is taken, if the place is more than twenty-five (25) miles from the person's place of residence; and
 - d) Ten dollars (\$10) for each day or part of a day that the person is necessarily present.
- 2) Amounts required to be reimbursed or paid shall be reimbursed or paid by the party at whose request the witness appears or the deposition is taken.
- 3) The District may directly pay a commercial transportation company for the transportation expenses or a commercial lodging establishment for the lodging expenses of a witness or deponent if this section otherwise requires the District to reimburse the witness or deponent for those expenses.
- 4) The District may not pay a commercial transportation company or commercial lodging establishment or reimburse a witness or deponent for transportation, meal, or lodging expenses at a rate that exceeds the maximum rates provided by law for state employees. The District may not adopt rules that provide for payment or reimbursement rates that exceed those maximum rates.
- 5) In this section:
 - a) "Commercial lodging establishment" means a motel, hotel, inn, apartment, or similar entity that offers lodging to the public in exchange for compensation.
 - b) "Commercial transportation company" means an entity that offers transportation of people or goods to the public in exchange for compensation.

P) Evidentiary Matters

- 1) Evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.
- 2) The rules of privilege recognized by law shall be given effect.
- 3) An objection to an evidentiary offer may be made and shall be noted in the record.
- 4) Evidence may be received in writing if:
 - a) it will expedite the hearing; and
 - b) the interests of the parties will not be substantially prejudiced.

- 5) A copy or excerpt of documentary evidence may be received if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.
- 6) A party may conduct cross-examination required for a full and true disclosure of the facts.
- 7) Witnesses may be sworn and their testimony taken under oath.
- 8) Official notice may be taken of:
 - a) all facts that are judicially cognizable; and
 - b) generally recognized facts within the area of the District's specialized knowledge. Each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information. Each party is entitled to an opportunity to contest material that is officially noticed. The special skills or knowledge of District staff may be used in evaluating the evidence.

Q) Depositions and Subpoenas

- 1) On its own motion, or on the written request of a party, and on deposit of an amount that will reasonably ensure payment of the estimated total amount, the Board will issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken for a contested matter pending before it. Requests for issuance of commissions requiring deposition or subpoenas in a contested case will be in writing and directed to the Board.
- 2) A party requesting the issuance of a commission requiring deposition or a subpoena will file an original of the request with the District. District staff will arrange for the request to be presented to the Board at the next available meeting.
- 3) In the case of a deposition, the Board will issue a commission addressed to the officer authorized by statute to take a deposition, requiring that the deposition of a witness be taken. The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers or other objects that may be necessary and proper for the purpose of the proceeding. Additionally, the commission will require the officer to whom it is addressed to examine the witness before the officer on the date and at the place named in the commission; and take answers under oath to questions asked the witness by a party to the proceeding, the District, or an attorney for a party or the District. The commission will require the witness to remain in attendance from day to day until the deposition is begun and completed.

- 4) In the case of a hearing, if good cause is shown for the issuance of a subpoena, and if an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue, the District will issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers or other objects that may be necessary or proper for the purpose of the proceeding.

R) Ex Parte Communications

- 1) For applications for which there is a right to a contested case hearing, a member of the Board may not, at any time after the application has been filed and before the Board has taken final action, communicate, directly or indirectly, about any issue of fact or law with any representative of the District or other designated party to the application, except on notice and opportunity for all parties to participate.
- 2) Subsection (1) does not apply if:
 - a) the Board member abstains from voting on a matter in which he or she engaged in ex parte communications;
 - b) the communications are by and between members of the Board consistent with the Open Meetings Act;
 - c) the communications are with District staff who have not participated in any hearing in the contested case for the purpose of using the special skills or knowledge of the staff in evaluating the evidence; or
 - d) the communications are with legal counsel representing the Board of Directors.

S) Remand to Board

- 1) A hearings examiner may remand an application to the Board as follows:
 - a) all timely hearing requests have been withdrawn;
 - b) all parties to a contested case reach a settlement so that no facts or issues remain controverted; or
 - c) the party or parties requesting the hearing defaults.
- 2) After remand, the application will be uncontested, and the Applicant will either be deemed to have agreed to the action proposed by the general manager or, if the parties have reached a settlement agreement, the agreement will be presented to the Board for its consideration. District staff will set the application for consideration at a Board meeting.

T) Informal Dispositions and Alternative Dispute Resolution

- 1) An informal disposition of a contested case may be made by:
 - a) stipulation;
 - b) agreed settlement;
 - c) consent order; or
 - d) default.
- 2) The hearings examiner may require the parties enter into mediation or other alternative dispute resolution process. The hearings examiner may also determine how the costs of the alternative dispute procedure shall be apportioned among the parties, appoint an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

U) Certified Questions

- 1) At any time during a contested case proceeding, on a motion by a party or on the hearings examiner's own motion, the hearings examiner may certify a question to the Board.
- 2) Issues regarding District policy, jurisdiction, or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are appropriate for certification. Policy questions for certification purposes include, but are not limited to:
 - a) the District's interpretation of its rules and applicable statutes;
 - b) the portion of the Act, the District rules, or other statutes that are applicable to a proceeding; and
 - c) whether District policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
- 3) If a question is certified, the hearings examiner shall submit the certified issue to the District. District staff will place the certified issue on the agenda of a meeting of the Board. The District will give the hearings examiner and parties thirty (30) day notice of the meeting at which the certified question will be considered. Within ten (10) days after the certified question is filed with the District, parties to the proceeding may file briefs. Within ten (10) days of the filing of such briefs, parties may file responses. Briefs and responses shall be filed with the District with copies served on the hearings examiner. The District will provide copies of the certified questions and any briefs and responses to the Board. The hearings examiner may abate the hearing until the District answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed.

- 4) The Board will take action and issue a written decision on the certified issue and provide copies to the parties and the hearings examiner. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the District's final decision in the proceeding.

V) Scheduling of a Meeting of the Board

- 1) After receiving the proposal for decision or other disposition from the hearings examiner, District staff shall schedule the presentation of the proposal to the Board. The District shall provide ten (10) day notice to the parties of the date of the final hearing before the Board at which the proposal will be presented and considered. The Board may reschedule the presentation of the proposal. The District will send notice of the rescheduled meeting date to the parties no later than ten (10) days before the rescheduled meeting.
- 2) Any party to the contested case hearing may make an oral presentation at the Board meeting in which the proposal for decision in that case is presented to the Board.
- 3) On the written request of a party to a contested case, the oral proceedings before the Board at which the proposal for decision is presented and oral presentations are made, may be transcribed by a court reporter. A party that desires a transcript of the proceedings shall bear the cost, or the costs will be equally divided between all parties requesting a transcript. If the District desires a transcript it will bear the costs.

W) Reopening the Record. The Board, on the motion of any party to a contested case or on its own motion, may order the hearings examiner to reopen the record for further proceedings on specific issues in dispute. The order shall include instructions as to the subject matter of further proceedings and the hearings examiner's duties in preparing supplemental materials or revised proposals based upon those proceedings for the Board's adoption.

X) Hearing Examiner's Report. If a Hearing Examiner is to be the presiding officer at the hearing, the Hearing Examiner shall submit a report to the Board not later than thirty (30) days after the date the evidentiary hearing is concluded. A copy shall be provided to the Applicant and each party to the hearing. The Applicant and other parties to the evidentiary hearing may submit to the Board written exceptions to the report within ten (10) days of issuance of the report. The report shall include:

- 1) a summary of the subject matter of the hearing;
- 2) a summary of the evidence received; and
- 3) the Hearing Examiner's recommendations for Board action on the subject matter of the hearing.

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

Z) Request for Rehearing or Findings and Conclusions. Requests for rehearing or for findings and conclusions shall be considered in the manner provided below.

1) Time for Filing. Not later than twenty (20) days after the date the Board issues its written order or resolution, an Applicant or a party to a contested case hearing may administratively appeal a decision of the Board on an application by requesting written findings and conclusions of the Board.

2) Board Action. On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on an application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than thirty-five (35) days after the date the Board received the request. The Applicant or a party to the contested case hearing may request a rehearing before the Board not later than twenty (20) days after the date the Board issues the findings and conclusions.

3) Place of Filing; Required Information; Copies. 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 each of the other parties to the contested case hearing.

4) If Rehearing Granted. If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than forty-five (45) days after the date the request is granted. Any action by the Board on a request for rehearing shall be made at a Board meeting conducted in accordance with the Open Meetings Act.

AA) Final Decision. A decision by the Board on an application is final if:

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

2) a request for rehearing is filed on time, on the date:

a) the Board denies the request for rehearing; or

b) the Board renders a written decision after granting the rehearing; or

c) a request for rehearing is filed on time and the Board does not issue a written decision granting or denying the request for rehearing within ninety (90) days from the date of the Board's initial written order or resolution, on the ninety-first (91st) day after the Board issued its initial order or resolution.

BB) Appeal to District Court. A party to a contested case hearing may appeal the District's final decision under Section 36.251, Water Code, not later than the sixtieth (60th) day after the date on which the decision becomes final. A timely filed request for rehearing is a prerequisite to any such suit. No person may file a request for rehearing unless that person participated as an Applicant, protestant, or other party in the hearing that resulted in the decision challenged.

RULE 3.08 NEW REGULAR OR TRANSPORT PERMITS
ISSUED BY THE DISTRICT

A) Invoice for Fees. Upon the Board's granting of a permit application, and prior to the issuance of the permit, the Designated District Employee shall promptly provide an invoice to the Applicant for all water use fees and hearing fees due and owing to the District.

B) Payment of Fees Condition for Permit. The District will not issue a permit until all applicable fees have been paid.

C) Change of Ownership. Within ninety (90) days after the date of a change in ownership of the right to produce water under a permit or registration, the existing permit or registration holder must notify the District. Notification must be in writing and provide legal proof of ownership in the form of a recorded deed or other instrument of title.

D) Standard Permit Provisions. All permits issued by the District shall state the following:

- 1) the name of the person to whom the permit is issued and the owner of the groundwater estate;
- 2) the date the permit is issued;
- 3) the date the permit expires;
- 4) the amount of water permitted;
- 5) the type of permit;
- 6) any conditions and restrictions placed on the rate or amount of groundwater withdrawal;
- 7) any other conditions or restrictions the District prescribes;
- 8) the purpose of use for the groundwater withdrawn; and

- 9) any other information the District determines necessary.

SECTION 4 -- PERMIT REQUIREMENTS

RULE 4.01 PROHIBITION OF WASTE AND POLLUTION

- A) Prohibition of Waste.** No person shall intentionally or negligently commit waste. Groundwater produced from within the District shall not be used in such a manner or under such conditions as to constitute waste as defined in Chapter 36, Water Code.
- B) Prohibition of Pollution.** No person shall pollute or harmfully alter the character of the groundwater within the District by causing or allowing the introduction of pollutants or other deleterious matter from another stratum, from the surface, or from the operation of a well.

RULE 4.02 REQUIRED EQUIPMENT ON WELLS

- A) Equipment Required for the Protection of Groundwater.** Equipment must be installed on all wells having a chemical injection, chemigation or foreign substance unit in the water delivery system: an in-line, automatic quick-closing check valve capable of preventing pollution or harmful alteration of the groundwater. Such equipment must be installed on all new wells at the time of completion.
- B) Equipment Required for Establishing Quantity of Groundwater Produced.** All non-exempt use wells must have installed meters and monitoring equipment approved by the District from a list of approved vendors. Monitoring equipment may include real-time monitoring equipment installed at the District's office at the well owner's expense. The meter and monitoring equipment installation must be inspected by the District and schematic drawing of installation provided to the District. Metering Device failure must be reported to the District and the District must approve an appropriate measuring alternative. The purpose of the approved meter and monitoring equipment is to ensure that the District has the capability to promptly and accurately measure the amount of groundwater being transported out of the District.

RULE 4.03 LIMITATION ON PRODUCTION

- A) Limit Specified in Permit.** The maximum annual quantity of groundwater that may be withdrawn under an Existing Use Permit, Historic Use Permit or Regular Permit issued by the District shall be no greater than the amount specified in the permit.
- B) Aquifer-Based Production Limits.** Using the best available hydrogeologic and geographic data, the District will continue to study and accumulate data on the various aquifers located within the boundaries of the District and their subdivisions, and may amend from time to time the limit on total annual production either throughout the District or for a particular aquifer or its subdivision, as set forth under these Rules.

RULE 4.04 ANNUAL GROUNDWATER PUMPAGE REPORT

Before January 15th of each year, each permit holder must submit to the District a report on a form provided by the District, stating the following:

- 1) the name of the permit holder;
- 2) the well number(s);
- 3) the total amount of groundwater produced by the well or aggregate system during the immediately preceding calendar year (January through December);
- 4) the purpose for which the groundwater was used;
- 5) any other information requested by the District pursuant to the provisions of the District Act and Chapter 36, Water Code.

The District requires an annual pumping report that includes the amount of groundwater withdrawn each calendar month during that reporting period.

RULE 4.05 REPLACEMENT WELLS

A) Application. A well owner may apply to re-equip, re-drill, or replace a currently permitted or registered well by filing an application to amend such permit or registration and providing such information as may be required by the District under the following conditions:

- 1) the replacement well must be drilled within fifty (50) feet of the location of the well being replaced, unless otherwise determined by the District;
- 2) the replacement well shall remain subject to the same permit provisions and requirements as the well being replaced, including the amount of maximum authorized withdrawal;
- 3) the replacement well or pump shall not be larger in size or capacity than the well being replaced so as to substantially alter the size or capacity of the well; and
- 4) if a replacement well is drilled, the well owner ceases production from the well being replaced and begins pursuit of compliance with the well closure requirements of the District for the well being replaced.

B) No-Hearing Required. Applications for replacement wells may be granted without notice or hearing.

SECTION 5 -- PERMIT RENEWALS AND AMENDMENTS

RULE 5.01 PERMIT RENEWALS

Any permit, except for transport permits, will renew March 1 of each year if all requirements of the Rules in effect at the time the permit was issued have been met and there are no outstanding fees owed.

RULE 5.02 PERMIT AMENDMENTS

A) Permit Amendment: A permit owner is required to obtain a permit amendment prior to (i) any change in the maximum amount of groundwater to be produced from a well, (ii) the location of a proposed well, (iii) the purpose of use of the groundwater allowed to be pumped under the permit, (iv) the location of use of the groundwater allowed to be pumped under the permit, or (v) the drilling and operation of additional wells even if aggregate withdrawals remain the same. The Board will consider applications for permit amendments in the manner prescribed for Test Well Permit applications. The fee to be assessed for any additional withdrawal granted shall be the fee rate in effect at the time of issuance of the amended permit multiplied by the additional withdrawal granted. Only a permit owner may seek a permit amendment.

B) Administrative Permit Amendment.

1) Transfer of Wells. Absent an express reservation of rights of the transferor, the transfer of ownership of the well(s) designated by a permit is presumed to transfer ownership of the permit.

2) Administrative Permit Amendment. To bring about an Administrative Permit Amendment, the permit holder must file notice of the contemplated amendment with the District within ninety (90) days from the date of the change in ownership, along with any legal documents establishing the change in ownership. Upon receipt of the requisite notice, the District President or Office Staff, at the District President's direction, shall, upon determination that the proposed amendment is, in fact, a Ministerial Permit Amendment, grant the permit amendment and issue a revised permit. The District's issuance of a permit amendment shall be made within thirty (30) calendar days after receipt of the requisite notice and the documentation required.

C) Change in Purpose of Use or Place of Use. The scope of any review or hearing on an amendment to change the purpose of use or place of use authorized in the permit is limited to those elements that would have been different if the original permit application had included the provisions in the amendments related to the contemplated new purpose of use or place of use and may subject the permit holder to additional permitting hearings, including contested case hearings, as the Board may deem appropriate and as required by Chapter 36, Water Code.

- D) Application Fee and Other Fees.** Each application for a permit amendment must be accompanied by the appropriate fees, as established by the Board.

SECTION 6 -- WATER TRANSPORT AND ENHANCEMENT OF GROUNDWATER FOR THE DISTRICT

RULE 6.01 GENERAL PROVISIONS FOR TRANSPORT

- A) General Requirements for Transportation of Water.** A person who produces or wishes to produce groundwater from a permitted well or aggregate wells located or to be located within the District and transport such groundwater for use outside of the District must possess or obtain a Regular Permit. Any person or entity wishing to transport groundwater outside of the District boundaries must first file an application for and obtain a transport permit, pay all related fees, and cooperate with the District in establishing User/Purchaser fees and collection procedures to effect collection of the required charges imposed on water transported.
- B) Exceptions to Transport Permit Requirement.** A transport permit is not required if the groundwater is:
- 1) a part of a manufactured product (such as bottled water or any other final product) that is manufactured in Kinney County and transported outside Kinney County as a final product; or
 - 2) used on property that (i) straddles the District boundary line and (ii) is owned by the owner or operator of the well(s) that produce the groundwater.
- C) Processing Fee.** The District shall impose a fee for processing an application for a transport permit. The fee will be charged according to the current fee schedule as applicable to the required services or professional and legal fees that may be required to process the application. An application filed under this Rule shall be considered and processed under the same or similar procedures as other applications for other permits as the circumstances of a particular application may require.
- D) Use of Certain Revenues.** The District is prohibited from using revenues obtained under subsection C) to prohibit the transport of groundwater outside of the District. The District is authorized to use revenues obtained under subsection C) to pay any expenses related to enforcement of the Rules or for any other authorized purpose of the District.
- E) Conditions for Issuance of Transport Permit.** The District shall not issue a transport permit unless the following conditions are satisfied.

- 1) The Applicant must be the end user or be a party to a contract with the end user. The Applicant must have (a) secured via lease or purchase the right to a regular operating permit that authorizes the Applicant to produce the groundwater that is desired to be transported, and (b) the Applicant must prove, in aggregate, the amount of water available for transport via the pump test as approved by the Board.
- 2) The Applicant must submit a written agreement with the end user of the transported water for the District's review and approval to ensure proof of beneficial use and that the contract contains:
 - a) all the provisions of the District's Management Plan and Rules; and
 - b) a binding agreement on all parties to pay any and all taxes, fees, and assessments due and owing to the District.
- 3) The Applicant must submit a mitigation plan, previously approved by the District's Board, and specific to the Management Zone or Zones from which groundwater will be withdrawn under the transport permit. A certified copy of the approved mitigation plan must be filed with the District before issuance of the transport permit.

F) Factors to be Considered. In reviewing an application for transport permit, the District shall consider:

- 1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested, including any planned use;
- 2) the projected effect of the proposed transport on the aquifer conditions, depletion, and effects on existing permit holders or other groundwater users within the District;
- 3) the approved regional water plan and the District's Groundwater Management Plan;
- 4) if the Applicant has an underlying historic use or operating permit issued or being considered by the District, or a contract for the purchase of water from a person that has an operating permit.

G) Limitation of Volume of Groundwater Transported. The District may restrict a transport permit by limiting the volume of groundwater for transport depending on the pump test prescribed in these Rules. Each transport permit shall specify the amount of water that may be transported and the period of time for which the water may be transported.

H) Term of Transport Permit. The term of duration of a transport permit shall be:

- 1) at least three (3) years if construction of a conveyance system has not been initiated prior to the issuance of the transport permit; or
- 2) at least thirty (30) years if construction of a conveyance system has been initiated prior to the issuance of the transport permit; and
- 3) notwithstanding the period specified in subsections 1) and 2) above, during which water may be transferred under a permit, the District shall continuously monitor the amount of water that may be transferred under the permit and may limit that amount if additional factors considered in Section 36.122(f), Water Code, warrant the limitation, or if Production Limit Triggers established by the District's Drought Contingency Plan have been reached. The amount of water that may be transferred under the permit shall be subject to continuous review and adjustment based on the Drought Contingency Plan, the Desired Future Conditions, and available groundwater factors.

I) REPEALED.

J) Limitations on District Discretion. The District may not impose more restrictive permit conditions on the owner of a transport permit than the District imposes on existing in-district users of water; provided, however, the District may establish provisions for direct payments of certain water user fees from destination users and remittance of those fees by destination users directly to the District. Subject to other applicable provisions of these Rules, the District shall not deny a permit under this Rule based on the fact that the Applicant seeks to transport groundwater out of the District.

K) Construction of Rule. In applying this Rule, the District must be fair, impartial, and non-discriminatory.

RULE 6.02 APPLICATION FOR TRANSPORT PERMIT

A) Use of District Form. A transport permit application must be filed with the District on a form prescribed by the District.

B) Requisites of Administratively Complete Application. An application for a transport permit must:

- 1) be in writing and sworn to before a person authorized to administer oaths in the State of Texas;
- 2) contain the name, mailing address, and place of residence or principal office of the Applicant, contain the name and mailing address of any lessee of the Applicant,

and the name and mailing address of all landowners whose property interests in groundwater have been leased to the permittee;

- 3) contain the name and mailing address of the current fee simple owner or owners of the groundwater estate on the land on which the well or wells is to be located, supported by a run sheet from a title company duly licensed in the State of Texas;
- 4) identify the actual or anticipated location of the well from which the groundwater to be transported is produced or is proposed to be produced;
- 5) identify the pump size and production capacity of the well from which the groundwater to be transported is produced or is proposed to be produced;
- 6) describe the proposed transport facilities;
- 7) state the nature and purposes of the proposed use and the anticipated amount of groundwater to be used for each purpose, including any proposed conjunctive use of surface and groundwater;
- 8) state the anticipated time within which any proposed construction or alteration of the transport facilities is to begin;
- 9) state the presently anticipated duration for the proposed transport of groundwater;
- 10) provide information showing what water conservation measures the Applicant has adopted, what water conservation goals the Applicant has established, and what measures and time frames are necessary to achieve the Applicant's established water conservation goals;
- 11) if the water is to be resold to others, provide a description of the Applicant's service area, metering, leak detection and repair program for its water storage, delivery and distribution system, drought or emergency water management plan, and information on each subsequent customer's water demands, including population and customer data, water use data, water supply system data, alternative water supply, water conservation measures and goals, conjunctive use of surface and groundwater, and the means for implementation and enforcement of all applicable Rules, plans, and goals; and
- 12) contain an independent title opinion from an attorney duly licensed in the State of Texas that the proposed location of the wells and proposed use of the wells are not prohibited as a matter of restrictive covenants, easements, encumbrances, or other real covenants from withdrawing groundwater from the locations identified in the application.

C) Review for Administrative Completeness.

- 1) **Review by District President or Office Staff.** At the District President's direction, the President or the Office Staff shall determine whether the application complies with the requirements of this Rule and may require amendment of the application to achieve necessary compliance.
- 2) **Title Opinion from Independent Counsel.** The provision of a satisfactory title opinion described in 6.02.B.12 is conclusive evidence in any contested case hearing that the Applicant is not prohibited as a matter of restrictive covenants, easements, encumbrances, or other real covenants from withdrawing groundwater from the locations identified in the application, subject to an order declaring otherwise from the Kinney County District Court.

D) Payment of Fees. An application must be accompanied by the required application fee established by the Board.

RULE 6.03 HEARINGS FOR TRANSPORT PERMITS

- A) Declaration of Administratively Complete Application and Scheduling of Hearing.** Within thirty (30) days after receiving and declaring an application administratively complete, the District will schedule a public hearing on the application.
- B) Granting or Denying Permit.** On approval of the Applicant's transport permit application, the District shall issue a transport permit to the Applicant. The Applicant's right to transport groundwater shall be limited to the terms of the permit.

RULE 6.04 PERMIT INFORMATION FOR TRANSPORT PERMITS

Elements of Transport Permit. A transport permit issued by the District shall contain substantially the following information:

- 1) the name and mailing address of (a) the permittee, (b) any lessee of the permit, and (c) all landowners whose property interests in groundwater have been leased to the permittee;
- 2) the name and mailing address of the owner of the land from which the groundwater will be taken;
- 3) the date the permit is issued;
- 4) the period for which the groundwater may be transported;
- 5) the date the permit is to expire if no groundwater is transported;

- 6) the date the original application was filed;
- 7) a requirement that the groundwater withdrawn under the permit be put to beneficial use at all times;
- 8) the location of use of the transported groundwater;
- 9) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;
- 10) the use or purpose for which the water is to be transported;
- 11) the maximum quantity of water to be transported annually;
- 12) any other information the District finds reasonably useful and beneficial;
- 13) standard terms and conditions for payment of the District's transport fee and other fees authorized by the District;
- 14) terms of water use fees, collection, conditions, and fees to be paid if development or delay in actual use is sought and approved.

RULE 6.05 EXEMPT USE WELLS REQUIRING PERMIT; FEES AND DISCHARGES UNDER STATE PERMITS

- A) Exempt Use Wells Not Excused from Requirement to Obtain Transport Permit.** The owner of an exempt use well is not excused from the requirements to obtain a transport permit and paying groundwater transport fees if the groundwater produced from the exempt use well is transported outside of the District.
- B) State Water Discharge.** Groundwater that is discharged within the District pursuant to a permit issued by the Texas Railroad Commission or the Texas Commission on Environmental Quality is not considered to have been transported from the District unless the discharge is part of an overall water transfer for use outside the District.

RULE 6.06 REPORTING

On or before February 15th of each year, the owner of a transport permit shall file an annual report with the District describing the amount of water transported under the permit. The report shall be filed on a form provided by the District and will include the following:

- 1) the name and mailing address of (a) the permittee, (b) any lessee of the permit, and (c) all landowners whose property interests in groundwater have been leased to the permittee;
- 2) the well numbers of each well for which the permittee holds a transport permit;

- 3) the total amount of groundwater transported from each well and total well system during the immediately preceding calendar year;
- 4) the total amount of groundwater transported from each well or well system during each month of the immediately preceding calendar year;
- 5) the purposes for which the water was transported;
- 6) fees paid through the report period; and
- 7) any other information requested by the District.

RULE 6.07 EXTENSION OF TRANSPORT PERMIT

A permittee may apply for an extension of the term of a transport permit granted under this Section. The District shall consider and grant or deny each application for extension of a transport permit in the same manner as is provided herein for the application for an initial permit.

**RULE 6.08 REVOCATION OR MODIFICATION OF
TRANSPORT PERMIT**

A permit granted under this Section will be subject to review and modification as provided in these Rules. The permit shall also be subject to revocation for nonuse or waste by the permittee or for deviation from the purposes or other terms stated in the permit unless non-use has been specifically approved by the District and fees paid for such purpose. To revoke a permit for nonuse, the District must, at a public meeting, duly noticed under the Open Meetings Act and conducted not sooner than ten (10) days after the District has sent a copy of the Open Meetings Notice to the transport permit holder by certified mail, return receipt requested, determine that construction of a conveyance system has not been initiated within three (3) years after issuance of the transport permit or that other conditions of the permit have not been met and form adequate grounds for revocation or non-renewal.

SECTION 7 -- FEES AND DEPOSITS

**RULE 7.01 WATER USE AND OTHER DISTRICT FEES
AND CHARGES**

- A) Water Use Fee Exemption.** Except as otherwise provided in these Rules, exempt use wells are exempt from payment of water use fees.
- B) Schedule of Fees.** The water use, permitted production, transport, permits, administrative functions including legal fees incurred by the District pertaining to an Applicant's permit, and other fees heretofore adopted by the Board are hereby ratified,

confirmed and readopted by the Board and shall be enumerated. The Board shall, from time to time, adopt a schedule of fees for water use, non-use, production, transport, permits and administrative functions including professional fees to be paid by Applicants, and any other lawful purpose or business of the District. The fees, rates and charges will be established in a schedule of fees and charges adopted by the Board, and each such schedule of fees and charges shall thereafter be and remain in effect until amended by the Board.

- C) Authorized Production.** The water use fee rate schedule established by the Board shall be applied to the total authorized annual production for each historic use, existing use, and regular permit. As used in this Section, when applied to the holder of a permit issued by the District, the term “water used” shall mean the total annual production authorized in the permit whether pumped or not pumped.
- D) Water Use Fees.** Water use fees shall be paid to the District for water that is authorized to be pumped from wells that are not exempted by these Rules or state laws from the payment of such fees. The water use fees and rates shall be established by the Board. Except as otherwise provided by these Rules or state law, the rate will be initially applied to total volume authorized to be pumped for a period designated by the Board. Following issuance of permits, the rate shall be applied to the total authorized annual production for each permit, including permits and amendments issued during the fiscal year the rate is in effect. Such annualized fees shall be pro-rated for the remainder of the calendar year in which the permit is issued, and one-twelfth of the annualized fee will be paid by the permittee at the end of each month remaining in that calendar year after the issuance of the permit.
- E) Limit on Water Use Fees.** Pursuant to the District Act, the water use fee may not exceed:
- 1) \$1.00 per acre-foot for water used for agricultural use; or
 - 2) \$10.00 per acre foot for water permitted for any other purpose.
- F) Transport Fees.** The District may establish a reasonable fee for the transport of groundwater, using one of the following methods:
- 1) a fee negotiated between the District and the transport permit holder; or
 - 2) a fee rate not to exceed the equivalent of the district's tax rate per hundred dollars (\$100) of valuation for each thousand gallons of water transferred out of the district, or ten cents (\$0.10) per thousand gallons of groundwater if the district assesses a tax rate of \$0.10 per hundred dollars of valuation.

The District is prohibited from using revenues obtained from transport fees to prohibit the transfer of groundwater outside the District, but may use transport fees for paying

expenses related to any enforcement provisions of Chapter 36, Water Code, or the Rules, or for any other lawful purpose of the District.

All transport permits shall contain a condition that requires, as a condition to transporting water to a destination user, that the permit holder's contract with a destination user require the destination user to assume responsibility for payment to the District of all due and owing resource impact fees in the event (a) the permit holder refuses to pay all due and owing water fees, (b) the permit holder is unable, for financial reasons, to pay all due and owing resource impact fees, or (c) the permit holder files for protection under any chapter of the United States Bankruptcy Code.

RULE 7.02 APPLICATION FEES, REGISTRATION FEES, AND OTHER FEES

All fees, rates and charges provided for in these Rules shall be charged and collected pursuant to a schedule of fees, rates and charges adopted by the Board.

The Board shall establish a schedule of fees, rates and charges for permit applications and administrative functions that generally relate to the costs incurred by the District in performing the administrative functions for which the fees are charged.

Payment of the water use fees allows the permit holder to use the water or reserve that amount of water in the aquifer.

The District's monitor wells are exempt from all fees. At the District President's direction, the District President or Designated District Employee shall exempt monitoring wells from any other fees if the District President or Designated District Employee determines that the assessment of the fee would result in the District charging itself a fee.

RULE 7.03 PAYMENT OF FEES

All permit fees are due at the time of application or registration or other time designated by the District. The annual water use and transport fee for each permit shall be paid as directed by the District from time-to-time and as determined necessary and suitable to assure proper accounting and un-interrupted receipt of such funds. An amendment application must be accompanied by the appropriate annual water use fee for the amount of groundwater withdrawal authorized by the amendment.

RULE 7.04 TRANSPORT PERMIT PROCESSING

The Board may adopt an application processing fee schedule for transport permits to cover all reasonable and necessary costs to the District of processing the application. The permit processing fee for an application to transport groundwater out of the District may not exceed the fees that the District imposes for processing applications for the use of groundwater within the District.

RULE 7.05 INSPECTION AND PLAN REVIEW FEES

The Board may establish fees for the inspection of wells, all measuring, water control, delivery and containment facilities, meters, or other inspection activities, plan reviews, special inspection services requested by other entities, or other similar services that require involvement of District personnel or its agents. Fees may be based on the amount of the District's time and involvement, out-of-pocket costs, number of wells, well production, well bore, casing size, size of transporting facilities, or amounts of water transported.

RULE 7.06 EXCEPTIONS

If a regulated water utility or other entity is unable to pass through production fees due to delay in obtaining regulatory approval, or in other unusual instances of hardship, the Board may grant exceptions and establish a delay payment schedule. Such exceptions shall be applied consistently but shall consider the delay value of late receipt and the limited resource available to the District for use in accomplishing conservation and preservation activities of the District.

RULE 7.07 RECHARGE PROJECT

The District may undertake development of water resource conservation and recharge projects such as authorized by Public Law 83-566 for construction of recharge dams to impound less than two-hundred (200) acre-feet of water or cause water to be channeled into sink holes or openings that will ~~we~~ replenish or confine water by storage for future use within the Aquifer. The Board, if such projects are undertaken, shall consider the costs and benefits and establish a project budget and directions and enter into necessary contracts for accomplishment of such public purposes. The Board shall solicit advice, and permits if needed from the Texas Water Development Board, Texas Commission on Environmental Quality, the Soil and Water Conservation District, and the United States Department of Agriculture concerning the effectiveness of such measures and develop a cost and project fee or assessment program for such improvements to compare to the resources available to the District.

SECTION 8 -- MANAGEMENT ZONES

RULE 8.01 MANAGEMENT ZONES

Using the best available scientific, hydrogeologic and geographic data, the Board shall divide the District into zones for the administration of groundwater management and regulation in the District. These management zones shall serve as areas for which the District shall determine separate and distinct water availability, which will be part of the aggregate water availability of the aquifer in which the management zone lies. In establishing a management zone, the District will, in each case, authorize total production, special drought management tools, and apportion available water among competing permit Applicants, if applicable. The District shall attempt in defining management zones to

utilize boundaries that, to the extent practicable, will promote fairness and efficiency by the District in its management of groundwater, but with emphasis given to scientific, hydrogeologic and geographic data.

**RULE 8.02 ESTABLISHING AVAILABILITY OF GROUNDWATER
IN MANAGEMENT ZONE.**

Every five (5) years, or more frequently if the District is presented with significant new and credible information that justifies an earlier revision, the District shall use the best available scientific, hydrogeologic, and geographic information to determine or reevaluate the annual amount of groundwater available for withdrawal in each management zone, based upon the District Management Plan and the information available to the District. To aid in this determination the District may conduct studies and tests, alone or jointly with other persons, or governmental entities; review and accept third party studies; and establish a series of index or monitoring wells.

RULE 8.03 PROPORTIONAL ADJUSTMENT

The Board may establish proportional adjustment regulations to alter the amount of production allowed in a management zone, as set forth under these Rules, when available groundwater is less than known production. The Board must adhere to the following requirements when establishing proportional adjustment regulations:

- 1) The Board shall first set aside an amount of groundwater equal to an estimate of production from exempt use wells located in the management zone. After setting aside the amount above, to the extent of remaining groundwater availability, the Board shall allocate groundwater to issued Existing Use Permits, Historic Use Permits, and Regular Permits in that order of priority.
- 2) If there is insufficient groundwater availability to satisfy any class of permits during such allocation, then the lower priority permits will be curtailed completely and within the higher priority class of permits the District will allocate the groundwater availability among the classes by reducing the amount authorized under each permit pro rata, based on the percentage each permit's maximum permitted amount bears to the total permitted amount of all permits in that class. The priority of permits is established in the Groundwater Management Plan, Section 5.
- 3) If there is sufficient groundwater to satisfy all classes of permits in a management zone, the District will then allocate remaining groundwater availability to new or amended Regular Permits, if any, in accordance with these Rules.

- 4) If remaining available groundwater is less than the aggregate amounts of all new and amended Regular Permits in process at the District at the time of such determination, then the District will allocate such amount among the new and amended Regular Permits pro rata, based on the percentage each new or amended Regular Permit's maximum permitted amount bears to the total permitted amount of all new and amended Regular Permits. With respect to new or amended Regular Permits involved in this allocation, to the extent the intended beneficial use is municipal or industrial and the amount of intended withdrawal is greater than two-hundred fifty (250) acre feet, the District will require documentary evidence from the end user of the ability and present intent to use the intended amount for the use stated and within the five (5) year management zone adjustment cycle.

SECTION 9 -- ENFORCEMENT AND VARIANCES

RULE 9.01 COMPLAINT AND INVESTIGATION

- A) **Complaint Form.** All complaints shall be reflected on a District Complaint Form. These forms are available at the District office. If a complaint is made verbally, by telephone, or in person, District personnel will ensure that the information is memorialized on a District Complaint Form, but no action will be taken until the complainant signs the District Complaint Form. The complainant must inform the District if the complainant wants to qualify as an aggrieved party under the citizen suit provision of Section 36.119, Water Code.
- B) **Aggrieved Party.** For purposes of this Rule and Section 36.119, Water Code, an aggrieved party is a landowner or other person who has a right to produce groundwater from the land that is adjacent to the land on which the well subject to the complaint is located, or who owns or otherwise has a right to produce groundwater from land that lies within the same Groundwater Management Zone.
- C) **Investigation.** One or more District representatives will investigate the complaint promptly and will memorialize his or her findings in a written investigation report.
- D) **Resolution of Complaint.**
 - 1) **Informal Resolution.** Upon filing of a complaint, the District President or Office Staff, at the District President's direction, shall contact the alleged violator and attempt to resolve the complaint informally.
 - 2) **Formal Investigation.** If the complaint cannot be resolved informally, the District may enter onto any public or private property, pursuant to Section 36.123, Water Code, and inspect and investigate the circumstances surrounding the complaint, as they relate to water quality, well conditions, or compliance with these Rules, permit conditions, or other orders issued by the District.

- a) **Minimal Intrusion.** The District respects private property rights and shall endeavor to minimize any inconvenience to property owners while conducting District business. Whenever possible, the District shall notify, coordinate, and schedule well and property access in advance with the property owner, his agent, tenant, or other local contact. Notice is not required if prior permission to enter land or access wells has been granted by the property owner, his agent, tenant, or other local contact.
 - b) **Exhibit Credentials.** District employees or agents accessing public or private wells or property shall exhibit proper credentials upon request.
 - c) **Observe Rules and Regulations.** District employees or agents acting under this authority shall observe all posted Rules and regulation concerning safety, internal security, and fire protection.
 - d) **Immediate Inspections.** If unexpected, emergency, or critical conditions require the District to access public or private wells or property without prior access arrangements, the District shall, at the first reasonable opportunity, contact the property owner, his agent, tenant, or other local contact. The District shall inform him that the District accessed the well or property, the reasons for the District's access, and any pertinent information or action resulting from the District's access.
- 3) **Investigation Report.** The District shall memorialize its investigation in an Investigation Report. A copy of the Investigation Report will be sent to the person about whom the complaint was made and to the complainant.
- 4) **Board Consideration of Investigation Reports.**
- a) **Time for Presenting Investigation Report.** The investigation reports for all complaints must be presented to the Board for consideration not later than ninety (90) days from the date of the receipt of the complaint.
 - b) **Notice of Consideration of Investigation Report.** Notice of the date, time and location of the Board meeting at which the Investigation Report will be considered and a copy of the Investigation Report shall be mailed to the person about whom the complaint was made and to the aggrieved party by certified mail, return receipt requested, at least ten (10) days prior to the scheduled Board meeting.
 - c) **Action on Investigation Report.** At the Board meeting, the Board may decide that there was no violation and close the complainant file. If the Board decides that there has been a violation, it may direct the District staff to issue a Notice of Violation or initiate a civil enforcement under these Rules.

RULE 9.02 ENFORCEMENT

- A) Administrative Enforcement.** As authorized by Section 36.102(b), Water Code, the Board may adopt a schedule of penalties against any person for breach of any rule of the district not to exceed ten thousand dollars (\$10,000) per day per violation, and each day of a continuing violation constitutes a separate violation. Following notice and subject to the hearing provisions of Rule 9.04, the Board may suspend a permit until such time as all violations are cured and penalties paid.
- B) Civil Enforcement.** As authorized by Section 36.102, Water Code, the violation of any District Rule shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) per day per violation, and each day of a continuing violation constitutes a separate violation. The Board may seek enforcement of such civil penalties by injunction, mandatory injunction, or other appropriate remedy through a complaint filed in a court of competent jurisdiction. In addition, the District may seek and the court shall grant, recovery of attorney's fees, costs for expert witnesses, and any other costs incurred by the District before the court.
- C) Notice of Violation.** The District shall send a notice of violation to a person who is believed to be in violation of the law, including violation of a District Rule, Order, or permit. The notice shall include a copy of the investigation report. The notice may require remedial action and may assess a penalty. The notice must advise the person who is believed to be in violation that he or she has an opportunity for public hearing.
- D) Penalty Schedule.** The District may assess penalties for noncompliance with District Rules including failure to comply with conditions of a permit issued by the District. Penalties will be assessed in accordance with the District's Schedule of Fees and Fines. Penalties may be assessed per day per violation, with each day of a continuing violation constituting a separate violation.
- E) Enforcement Costs.** In addition to any penalty authorized by the District's Schedule of Penalties, the District is entitled to recover expenses, including attorney's fees, costs for expert witnesses, court costs and other costs incurred by the District to enforce District Rules.

RULE 9.03 VARIANCES

Any exceptions or variance to the requirements imposed by the District Rules shall be considered on a case-by-case basis. A request for variance shall be submitted in writing and include the reasons for the request. All requests will be considered fairly and without prejudice.

RULE 9.04 HEARINGS ON ENFORCEMENT ACTIONS

- A) Request for Hearing.** If the District receives a filed written request for hearing from a Respondent who has received a notice of violation from the District within thirty (30) days, the District shall decide at which Board meeting the enforcement action will be considered. The Board meeting which the enforcement action is considered under this Rule shall be considered the public hearing on the matter and fulfills the requirement, if any, for a public hearing.
- B) Open Meetings Notice.** Notice required by the Open Meetings Act shall be provided for the meeting.
- C) Notice of Hearing.** Notice of the hearing on the enforcement action shall be mailed to the Respondent by certified mail, return receipt requested, at least ten (10) days prior to the scheduled hearing date.
- D) Oath.** The Board will administer the oath to the staff, the Respondent, the Aggrieved Party, and anyone who makes oral comment on behalf of any Aggrieved Party in the enforcement action.
- E) Appointment of Hearings Officer or Committee.** The Board, in its sole discretion, may appoint a Hearings Officer or committee of the Board to conduct the hearing on the enforcement action. In this Rule, either procedure is referred to as a Hearing Body. Any hearing conducted by a Hearing Body shall be conducted in the same manner as provided under a Contested Case Hearing. At the close of the hearing, the Hearing Body, through the Hearings Officer or Presiding Officer, shall make a written recommendation to the Board. The recommendation shall become part of the record. The Board is not required to approve the recommendation of the Hearing Body.
- F) Board Action.** The Board shall issue a written order or resolution reflecting its decision.
- G) Order or Resolution.** The effective date of the written order shall be the date on which the District President signs the order or resolution. The order or resolution shall include a statement that the order or resolution becomes effective and final on that date. Any appeal authorized by Chapter 36, Water Code, shall run from the effective date, because it is the date on which all administrative appeals to the District are final.
- H) Costs of Hearing.** If the Respondent is proven to not be in compliance with the Rules of the District under which his permit was issued, the District and the Respondent will bear the costs of the hearing. If the Respondent is not proven to be in violation of the Rules of the District under which the permit was issued, the District and the Complainant will bear the costs of the hearing.

RULE 9.05 SEALING OF WELLS

Following public notice, the Board may order the sealing of a well that is in violation of District Rules or that has been prohibited from producing groundwater. The reasons for ordering the sealing of a well include, but are not limited to:

- 1) failure to apply for a test permit prior to drilling;
- 2) operating a well without the required permit; or
- 3) operating a well when the Board has denied, cancelled, or revoked a permit.

Once the Board has ordered a well sealed, the District, following the procedures in 9.01.D, shall seal the well by physical means, tag it to indicate that the well has been sealed by the District, or take any other appropriate action necessary to clearly indicate that the well has been sealed. The seal is intended to preclude operation of the well or identify unauthorized operation of the well.

Tampering with, altering, damaging, removing, or violating the seal of a sealed well in any way, or pumping groundwater from a well that has been sealed constitutes a violation of District Rules and subjects the person who performs that action, as well as the well owner, to enforcement and penalties pursuant to all applicable District Rules under which the permit was issued.

RULE 9.06 CAPPING OF WELLS AND CREATION OF LIENS

The District shall require an open uncovered well that is in a non-deteriorated condition to be capped to prevent waste, pollution, or prevent deterioration. The well shall remain capped until conditions that led to the capping are eliminated. The cap shall provide a sanitary seal to prevent the introduction of potential contaminants and shall be capable of sustaining a weight of at least four hundred (400) pounds. If the owner fails to close or cap the well in compliance with the District Rules, the District, following the procedures 9.01.D, shall cap the well. Reasonable expenses incurred by the District in capping a well shall constitute a lien on the land on which the well is located pursuant to Section 36.118, Water Code.

RULE 9.07 PLUGGING OF WELLS

The quality of our groundwater is important to the District. As such, it may be necessary to plug wells to protect the quality of our groundwater. If the condition of a well or the construction of a well causes contamination, the well shall be plugged or reconstructed to seal off the contaminating zone. All cost are the responsibility of the well owner.

The well owner may have up to one-hundred eighty (180) days to plug the well in accordance with TDLR, 16 TAC, Chapter 76, and seal off the contaminating zone within the well.

However, if the level of contamination is such that it becomes perilous to human or animal consumption, immediate action will be taken to seal off the contamination and if necessary, plug the well. Any costs incurred by the District in taking immediate action, if the well owner fails to take such action, shall create a lien upon and be assessed against the owner's land in accordance with Section 36.118, Water Code.

RULE 9.08 ARTESIAN WELLS

Artesian wells which are free flowing at the well head will be maintained in as good a condition as is practicably possible to limit leakage.

SECTION 10 -- REPEALED

SECTION 11 -- REPEALED

SECTION 12 -- RULES WITH PROCEDURES FOR RULEMAKING

RULE 12.01 CONSTRUCTION

Unless otherwise expressly provided for in these Rules, the past, present and future tense shall each include the other; the masculine, feminine and neutral gender shall each include the other; and the singular and plural number shall include the other.

RULE 12.02 USE AND EFFECT OF RULES

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

RULE 12.03 HEADINGS AND CAPTIONS

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

RULE 12.04 SEVERABILITY

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

RULE 12.05 DEFINITION OF TERMS AND PHRASES

Unless expressly stated otherwise in any Rule, all terms and phrases shall be given the meaning assigned to them in the Glossary contained in the Appendix to these Rules, and if not defined therein, the meaning given to them by Chapter 36, Water Code, and if not contained therein, according to their plain and ordinary meaning.

RULE 12.06 AMENDING OF RULES

The Board may, following notice and hearing, amend or repeal these Rules or adopt new Rules from time to time.

RULE 12.07 RULEMAKING HEARING

A) Rulemaking Hearing. Not later than the twentieth (20th) day before the date of a rulemaking hearing, the Board shall:

- 1) post notice in a place readily accessible to the public at the District office;
- 2) provide notice to the county clerk of each County in the District;
- 3) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located;
- 4) provide notice by mail, fax, or e-mail to any person who has requested notice under subsection E) below; and
- 5) make available a copy of all proposed Rules at a place accessible to the public during normal business hours.

B) Notice. The notice provided under subsection A) must include:

- 1) the time, date, and location of the rulemaking hearing;
- 2) a brief explanation of the subject of the rulemaking hearing; and
- 3) a location at which a copy of the proposed Rules may be reviewed or copied.

- C) Conduct of Rulemaking Hearing.** The District President or presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.
- D) Hearing Registration Form.** Each person who participates in a rulemaking hearing must 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 at the hearing in the person's individual capacity.
- E) Record of Hearing.** The District President or presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
- F) Request to Receive Notice.** Any person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District. Failure to provide notice under this subsection does not invalidate an action taken by the District at a rulemaking hearing.
- G) Consideration of Proposed Rules.** The District may use an informal conference or consultation to obtain the opinion and advice of interested persons about contemplated Rules and may appoint advisory committees of experts, interested person, or public representatives to advise the District about contemplated Rules.

RULE 12.08 EMERGENCY RULES

- A) Conditions for Adoption of Emergency Rules.** The Board may adopt an emergency Rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board:

- 1) finds 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 or less than twenty (20) days' notice; and
 - 2) prepares a written statement of the reasons for its finding under subsection A)1), above.
- B) Duration of Emergency Rules.** Except as provided by subsection C), a Rule adopted under this section may not be effective for longer than ninety (90) days, unless notice of a hearing on the final Rule is given not later than the ninetieth (90th) day after the date the emergency Rule is adopted, in which case the emergency Rule will be effective for an additional ninety (90) days.
- C) Open Meetings Act Compliance.** A Rule adopted under this section must be adopted at an open and public meeting, held in accordance with Texas Government Code, Chapter 551.

END OF RULES

APPENDIX: GLOSSARY

DEFINITIONS OF TERMS

In the administration of its duties the District defines terms as set forth in Chapter 36, Water Code, unless otherwise modified or defined herein as necessary to apply to unique attributes of the District. The specific terms hereinafter defined shall have the following meaning in these Rules:

“Abandoned Well” shall mean a well that has not been used for six (6) consecutive months. A well is considered to be “in use” if it is a non-deteriorated well (as per the requirements of 16 TAC 76, TDLR Rules) in the following cases:

- 1) a well that contains the casing, pump, and pump column in good condition; or
- 2) a well that has been capped; or
- 3) an artesian flowing well with casing and a flow control device in good condition.

“Acre-foot” shall mean the amount of groundwater necessary to cover one acre of land to a depth of one foot (approximately 325,851 gallons).

“Agent” shall mean the person authorized to act on behalf of the landowner with respect to transactions involving the District or someone who acts on behalf of the District in the conduct of its business.

“Aggregate Wells” shall mean a well system comprised of two or more wells that are owned and operated by the same person or entity.

“Aggregate Withdrawal” shall mean the amount of groundwater withdrawn from two (2) or more registered wells in a water system which is permitted under a single permit for a total pumpage volume of all wells in the aggregate.

“Aquifer” or **“Groundwater Reservoir”** shall mean a hydrogeologic unit or a group of saturated hydrogeologic units capable of storing and yielding groundwater in usable quantities or a geologic formation or a group of saturated geologic formations capable of storing and yielding groundwater in usable quantities.

“Annular Space” shall mean the space between two (2) concentric cylindrical objects, one of which surrounds the other, such as the space between the walls of a drilled hole and the installed casing.

“Artesian Well” shall mean a groundwater well completed in the confined portion of an aquifer such that, groundwater will rise in the well, by natural pressure, above an overlying impermeable stratum.

“Authorized Well Site” shall mean the location of a proposed well on a valid permit (an authorized well site is not a permit to drill).

“Bentonite” shall mean a sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which may be mixed with potable water and used to provide a seal in the annular space between the well casing and borehole wall or used in the plugging of wells.

“Board” shall mean the Board of Directors of the Kinney County Groundwater Conservation District.

“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 at least four-hundred (400) pounds and constructed in such a way that the covering cannot be easily removed by hand.

“Casing” shall mean a tubular watertight structure installed in the excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, and, along with cementing or bentonite grouting, to confine groundwater to its zone of origin and prevent surface contaminant infiltration. Casing diameter is the inside diameter of a well casing.

“Cement” shall mean a neat Portland construction cement mixture of not more than seven (7) gallons of water per ninety-four (94)-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum, or other additives. All manufacturer’s recommendations regarding water content for the mix must be strictly adhered to.

“Chemigation” shall mean a process whereby pesticides, fertilizers or other chemicals, or effluent from animal or human wastes are added to irrigation water applied to land or crops, or both, through an irrigation system.

“Completion” shall mean sealing off the access of undesirable water to the well bore by proper casing or cementing procedures and adherence to State standards for completion.

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

“Director” shall mean an elected or appointed member of the Board of Directors of the District.

“District” shall mean the Kinney County Groundwater Conservation District, with its principal office in Brackettville, Texas. Where applications, reports, and other papers are required to be filed with or sent to “the District,” this shall mean the District’s Office, the mailing address of which is Post Office Box 369, Brackettville, Texas 78832.

“District Act” shall mean Chapter 8846, Special District Local Laws Code, and the non-conflicting provisions of Chapter 36, Water Code.

“Domestic Use” shall mean use of groundwater to supply the needs of a typical household, such as for drinking, washing, cooking, landscape watering, family gardening and watering of domestic animals, for which no monetary consideration is given or received. This includes the use of groundwater for home landscapes and home gardening on no more than two (2) acres of land.

“Drought Contingency Plan” has the meaning set forth under 30 TAC, Section 288.1.

“Evidence of historic or existing use” shall mean evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by an Applicant during the relevant time period set by District Rule that regulates groundwater based on historic use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rule of Evidence may be admitted if is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

“Existing Use Period” shall mean the time period from January 1, 1992, through January 7, 2003.

“Existing and Historic Use Period” shall mean the time period that includes the Existing Use Period from January 1, 1992, through January 7, 2003, and the Historic Use Period from January 1, 1960, through December 31, 1991.

“Existing Use” shall mean production and beneficial, non-wasteful use of groundwater from an aquifer located within the District during the Existing Use Period.

“Federal Conservation Program” the Conservation Reserve Program of the United States Department of Agriculture”

“Fees” shall mean charges imposed by the District pursuant to District Rule, order, resolution, or the District Act.

“Fiscal Year” shall mean the business year of the District which shall be established by Resolution of the Board.

“Groundwater or Underground Water” shall mean water percolating beneath the earth’s surface but does not include water produced with oil and gas production.

“Groundwater Right” shall mean a legally-definable right to produce groundwater from a certain tract of land evidenced by a written agreement or agreements with the landowner(s) such as a lease agreement, contract for sale, deed, or non-compete agreement.

“Historic Use” shall mean production and beneficial, non-wasteful use of groundwater from an aquifer located within the District during the Historic Use Period.

“Historic Use Period” shall mean the time period from January 1, 1960, through December 31, 1991.

“Industrial Use” shall mean the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial fish and shellfish production and the development of power by means other than hydroelectric, but does not include agricultural use.

“Irrigation” shall mean the application of water to plants or land in order to promote growth of plants, turf, or trees, excluding water used for domestic use.

“Irrigation Distribution System” shall mean a device or combination of devices having a hose, pipe or other conduit which connects directly to any groundwater well through which groundwater or a mixture of groundwater and chemicals which is drawn and applied to land. The term also includes a canal system. The term does not include any hand held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

“Modeled Available Groundwater”(MAG) shall mean the amount of water that may be withdrawn within the District for beneficial use in accordance with the desired future condition of the aquifer as determined under Section 36.108, Water Code.

“Management Plan” shall mean a comprehensive groundwater conservation plan adopted by the District pursuant to Section 36.1071, Water Code.

“Maximum Historic Use” shall mean the amount of groundwater that a permittee for an Existing Use Permit or a Historic Use Permit is authorized to withdraw from a well or aggregate wells located within the District, subject to the District’s Rules and conditions imposed upon the Permit issued by the District. A permittee’s Maximum Historic Use will be determined by the District upon demonstration of beneficial use during the Existing Use Period or Historic Use Period by the Applicant, and is equal to the following, unless proportionately adjusted:

- 1) for an Applicant who demonstrates beneficial use during the Existing and Historic Use Period and does not qualify under Subsection (2) of this definition, the Applicant’s actual maximum beneficial use of groundwater from an aquifer excluding waste during any one (1) full calendar year of the Existing and Historic Use Period; or
- 2) for an Applicant who demonstrates beneficial use during the Existing Use Period, but, due to the Applicant’s groundwater production activities not having been commenced before January 7, 2002, and thus not in operation for the full three hundred and sixty-five (365) days of the final calendar year of the Existing Use Period, the Applicant does not have beneficial use for one (1) full calendar year, the Applicant’s extrapolated maximum beneficial use calculated as follows: the amount of groundwater that would normally have been placed to the same beneficial use without waste by the Applicant for the last full calendar year during the Existing Use Period for the applied-for purpose

had the Applicant's activities been commenced and in operation for the full final calendar year during the Existing Use Period.

"Meter" shall mean a water flow measurement device which meets American Water Works Association standards for the line size, pressures, and flows, and which is properly installed according to the manufacturer's specifications, or other, alternative measuring method approved by the District capable of accurately measuring the actual volume of groundwater pumped and maintaining a cumulative record of measured flows. If the District approves an alternative measuring method, then the term "meter," when used in these Rules, shall also apply to the alternative measuring method.

"Meter Reading" shall mean a written report of the readings taken from the meter installed on a permitted well, as required by the District.

"Ministerial Permit Amendment" shall mean solely an amendment to a permit to reflect a change in ownership of a well, permit, or land directly overlying a well.

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

"Operator" shall mean and includes any individual, firm, partnership, or corporation or other legal entity that has the right to produce groundwater from the land either by ownership, contract, lease, easement or any other estate in the land.

"Overpumpage" shall mean the withdrawal or aggregate withdrawal of groundwater from a well or aggregate wells in excess of the amount authorized to be withdrawn in accordance with these Rules or a permit issued by the District.

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

"Permit" shall mean an authorization issued by the District allowing the drilling, equipping, completion, or alteration of a specific, designated non-exempt use well or aggregate wells and withdrawal or aggregate withdrawal of a specific amount of groundwater from a non-exempt use well or aggregate wells for a designated purpose and period of time, subject to District Rules and conditions that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

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

"Plugging Authorization" shall mean an authorization issued by the District which defines the methods for the permanent closure of a well.

"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 or the public enjoyment of the water for any lawful or reasonable purpose.

“Presiding Officer” shall mean the District President, Vice-President, Secretary, or other Board Member presiding at any hearing or other proceeding or a hearing examiner conducting any hearing or other proceeding.

“Public Information Act” shall mean Chapter 552, Texas Government Code.

“Pump, Pumpage, Produce, or Production” shall mean groundwater withdrawn, measured at the wellhead.

“Pump Installation” shall mean the procedures employed in the placement, and preparation for operation, of equipment and materials used to obtain groundwater from a well, including construction involved in establishing seals and safeguards as necessary to protect the groundwater from contamination. The term includes repairs to an existing pump.

“Recharge” shall mean the amount of water that infiltrates to the water table of the aquifer.”

“Recharge Zone” shall mean the area of an aquifer in which water infiltrates the surface and enters permeable rock layers.

“Re-equip” shall mean to replace any portion of the water producing equipment in a well.

“Registration” shall mean a certificate issued by the District for wells.

“Rework” shall mean to accomplish by any mechanical or chemical means the alteration of a well.

“Rules” shall mean the Rules of the District compiled herein, as may be repealed, or amended from time to time.

“SOAH” shall mean the State Office of Administrative Hearings.

“Spring” shall mean a point of natural discharge from an aquifer.

“Substantially alter” with respect to the size or capacity of a well means to increase the inside diameter of the pump discharge column pipe size of the well in any way or to otherwise increase the capacity of the well to produce groundwater in an amount more than five (5) percent greater than the well had the capacity to produce before the alterations.

“Sustainable Yield” the amount of water that can be produced from a well or well field production unit without jeopardizing the water supply to base spring flow, urban center wells, exempt use wells, historic permit users or existing permit users. Reduced artesian well flow is not considered detrimental to aquifer.

“Transport of Groundwater” shall mean pumping, transferring, or moving groundwater out of the District, unless clearly indicated otherwise when read in context.

Types of Wells:

- 1) **“Deteriorated Well”** shall mean a well, the condition of which will cause, or is likely to cause, pollution of groundwater.
- 2) **“Dewatering Well”** shall mean a well used to remove groundwater from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.
- 3) **“Exempt Use Well”** shall mean a new or an existing well that is exempt from permitting under the laws of this State or these Rules and is not required to have a Regular, Existing Use, or Historic Use Permit to withdraw groundwater from an aquifer within the District.
- 4) **“Existing Well”** shall mean a well that was in existence or for which drilling commenced on or prior to January 7, 2003.
- 5) **“Leachate Well”** shall mean a well used to remove contamination from soil or groundwater.
- 6) **“Monitoring Well”** shall mean a well installed to measure some property of the groundwater or an aquifer that it penetrates, that does not produce more than five-thousand (5,000) gallons per year.
- 7) **“New Well”** shall mean a proposed well or a well for which drilling has commenced on or after January 8, 2003.
- 8) **“Non-exempt Use Well”** shall mean any well that does not fall within the exclusions or exemptions set forth in these Rules.
- 9) **“Public Water Supply Well”** shall mean a well that produces the majority of its water for use by a public water system or a well that produces water primarily for residential use, but may have incidental commercial, industrial or other use, and from which the water is sold or distributed to the users by the well owner or operator (may include non-profit public corporations or municipalities).

“Undesirable Water” shall mean water that is injurious to human health, to vegetation, to land, or to fresh water, or water that can cause pollution.

“Waste” shall have the meaning assigned by Chapter 36, Water Code, and in these Rules.

“Well” or **“Water Well”** shall mean and includes any artificial excavation constructed for the purpose of exploring for or producing or withdrawing groundwater, together with any device employed for such withdrawal.

“Well Operator” shall mean the person who operates a well or well system.

“Well Owner” shall mean the person who owns a possessory interest in: (1) the land upon which a well or well system is located; or (2) the well or well system.

“Well Log” or **“Well Report”** shall mean a record, made at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of any water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the State or this Board and recorded on forms prescribed either by the State regulatory agency with jurisdiction thereof or by this Board.

“Well System” shall mean a group of wells connected or tied together by a pipeline or storage facilities.

“Withdraw” shall mean an act that results in taking groundwater from an aquifer by or through manmade facilities or conduits, including pumping or diverting groundwater from beneath the land surface by pumping or some other method or allowing groundwater to escape through a hole or other conduit that was created or altered by a person.