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COMPLAINT OF CERTAIN	§	BEFORE THE STATE OFFICE
MEMBERS OF RIO ANCHO	§	OF
HOMEOWNERS ASSOCIATION	§	ADMINISTRATIVE HEARINGS
AGAINST AQUA TEXAS, INC.	§	

DIRECT TESTIMONY AND ATTACHMENTS

OF

SCOT W. FOLTZ

ON BEHALF OF

AQUA TEXAS, INC.

May 21, 2021

DIRECT TESTIMONY AND ATTACHMENTS OF

SCOT W. FOLTZ

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ATTACHMENTS:

SF-1	Resume of Scot W. Foltz
SF-2	Rio Ancho System Facility Schematic
SF-3	Chart – Required Capacities v. Supplied Capacities
SF-4	Central Texas Groundwater Conservation District Permits
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DIRECT TESTIMONY OF SCOT W. FOLTZ

ON BEHALF OF

AQUA TEXAS, INC.

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Scot W. Foltz. My business address is 1106 Clayton Lane, Suite 400W,
Austin, Texas 78723.

Q. What is your present position?

A. I am the Environmental Compliance Manager for the operations of Aqua Texas, Inc.
and its affiliates that operate in Texas as Aqua Texas (“Aqua”). I have held this
position since 2014.

**Q. What are some of the primary services you provide to Aqua as part of your job
responsibilities?**

A. I provide operational and compliance technical assistance and training to all Aqua
operations staff; track compliance with the Texas Commission on Environmental
Quality (“TCEQ”) requirements; work with Area Managers and Field Supervisors
to track and document improvement projects to meet timelines for outstanding
requirements in their areas; prepare quarterly reports to the TCEQ on compliance

1 status; and assist with review and oversight of all major engineering projects
2 performed for Aqua. I oversee preparation of permit applications for new
3 wastewater treatment plants and associated treated effluent discharges as well as
4 wastewater permit renewals. I also develop, review, and update Operational and
5 Compliance Standard Operating Procedures (“SOPs”) as necessary to ensure proper
6 operations and that Aqua maintains compliance with all applicable rules and
7 permits.
8

9 II. PROFESSIONAL TRAINING AND EXPERIENCE

10 **Q. Please describe your educational and professional background.**

11 **A.** I received a Bachelor of Science in Chemical Engineering from Ohio University.
12 Over the course of my professional career, I have attended several training classes
13 and seminars related to water and wastewater utility operations, rates and
14 management. I have also attended several training classes and seminars related to
15 operating water and sewer systems and environmental compliance.
16

17 **Q. Please further describe your professional experience.**

18 **A.** I have over twenty-five years of experience in water and wastewater compliance
19 and permitting working with Aqua Texas, the Texas Water Development Board and
20 Ohio EPA. A copy of my resume is attached as SF-1.

1 **Q. Have you previously testified as an expert witness in a regulatory or court**
2 **proceeding?**

3 **A.** I have testified as an expert witness in regulatory and court proceedings while
4 working with Ohio EPA and filed testimony in a TCEQ Texas Pollutant Discharge
5 Elimination System (“TPDES”) permit application matter, but I have not previously
6 testified as an expert witness in a Public Utility Commission of Texas (“PUC”)
7 administrative hearing.

8

9 **III. PURPOSE AND SUMMARY OF TESTIMONY**

10 **Q. What is the purpose of your testimony?**

11 **A.** The purpose of my testimony is to provide information for consideration in this
12 matter in response to certain issues raised by Complainants and included in the
13 issues referred by the PUC Commissioners in their November 5, 2020 Preliminary
14 Order in this docket. Specifically, I will discuss some of the information the
15 Preliminary Order specifies must be addressed in this hearing about Aqua’s Rio
16 Ancho Subdivision water system (PWS ID No. 0270141) (“Rio Ancho System” or
17 “System”) and Aqua’s water-use restrictions imposed for the Rio Ancho System
18 during the relevant time period (*i.e.*, July 20, 2018 through July 20, 2020). I will
19 also address some of the issues discussed by the Complainants’ witnesses in their
20 prefiled direct testimony and exhibits.

21 **Q. Are you providing any attachments with your testimony?**

1 **A.** Yes. Attached to my testimony are the following: **SF-1** - my current resume; **SF-2**
2 Rio Ancho System Facility Schematic; **SF-3** Chart – Required Capacities v.
3 Supplied Capacities; **SF-4** Central Texas Groundwater Conservation District
4 Permits; **SF-5** Current Rules of the Central Texas Groundwater Conservation
5 District; **SF-6** Aqua’s 2015 Drought Contingency Plan; **SF-7** Aqua’s 2020 Drought
6 Contingency Plan; **SF-8** Comparison of Rio Ancho System usage to Aqua’s SW
7 Region usage; **SF-9** Aqua’s Restriction Notices to Customers; **SF-10** Listing of
8 Aqua’s violations sent to customers; **SF-11** Rio Ancho Meter Read and
9 Consumption Data 2018-2020; **SF-12** Rio Ancho compliance correspondence with
10 TCEQ; **SF-13** Rio Ancho – Complaint Investigation (Pressure/Outage) – Confirmed
11 Issues; **SF-14** Boil Order Listing; **SF-15** TCEQ Approvals of Rio Ancho System
12 facilities.

13
14 **Q.** As an employee of Aqua Texas, Inc., are you familiar with the manner in which
15 **SF-2 through SF-7 and SF-9 through SF-15** were created and maintained?

16 **A.** Yes.

17
18 **Q.** Based on Aqua Texas, Inc.’s regular practices were the records made at or near
19 the time of each act, event, condition, opinion, or diagnosis set forth in the
20 records, made by, or from information transmitted by, persons with knowledge

1 **of the matters set forth, and kept in the course of regularly conducted business**
2 **activity?**

3 **A.** Yes.

4

5 **Q.** **Are SF-2 through SF-7 and SF-9 through SF-15 exact duplicates of the**
6 **original records?**

7 **A.** Yes.

8

9 **Q.** **Please summarize your testimony.**

10 **A.** The Rio Ancho System facilities were adequate to provide a continuous and
11 adequate supply of water to Rio Ancho System customers for all reasonable uses
12 from July 20, 2018 through July 20, 2020 and remain adequate today. Further, from
13 July 20, 2018 through July 20, 2020, Aqua reasonably, appropriately, and properly
14 imposed water-use restrictions on Rio Ancho System customers in accordance with
15 Aqua's TCEQ-approved drought contingency plan that applies to the Rio Ancho
16 System. Aqua continues that practice today. The Complainants' testimony and
17 evidence does not change my conclusions.

18

19 **Q.** **On what do you base the opinions in your testimony?**

20 **A.** I base the opinions expressed in this testimony on my knowledge and experience,
21 my personal knowledge of Aqua's Rio Ancho System, my review of documentation

1 related to the Rio Ancho System included as exhibits to my testimony and that of
2 other Aqua witnesses, my experience with water system and drought contingency
3 plan issues, interchanges with Aqua's Rio Ancho System operations team,
4 discussions with TCEQ and Central Texas Groundwater Conservation District
5 personnel, my knowledge of Aqua's management of the Rio Ancho System, and my
6 knowledge of the design plans and specifications for the Rio Ancho System
7 facilities. I have also considered the information produced by other parties during
8 discovery and the information included with the Complainants' prefiled direct
9 testimony and exhibits.
10

11 **IV. ISSUE NOS. 4 AND 5: RIO ANCHO SYSTEM WATER SUPPLY**

12 **Q. Would you please describe the facilities that comprise the Rio Ancho System?**

13 **A.** As shown in **SF-2**, the Rio Ancho System facilities currently include three water
14 supply wells located within the Rio Ancho Subdivision capable of supplying
15 approximately 125 gpm, two ground storage tanks each having a capacity of 42,000
16 gallons, three booster pumps capable of producing in excess of 600 gpm and two
17 hydropneumatic tanks with a total volume of 6000 gallons. The facilities currently
18 exceed and have historically exceeded the TCEQ minimum capacity requirements
19 with the exception of August 19, 2019 to January 20, 2020 when the
20 hydropneumatics tank capacity fell 4% short of the minimum requirements.
21 However, the capacity shortage did not affect Aqua's ability to supply water as the

1 tanks serve primarily as a pump control and pressure buffer for the system.
2 Additionally, Aqua was already working to expand the hydropneumatics tank
3 capacity to its current volume which as of December 31, 2020 exceeds the minimum
4 requirements established by TCEQ by 1.76 times (6,000 gallons supplied compared
5 to 3,400 gallons required). At the same time, the ground storage tanks are nearly
6 2.5 times the minimum required (84,000 gallons supplied compared to 34,000
7 gallons required), and the booster pumps are capable of delivering 1.76 times the
8 minimum required flow (600 gpm supplied compared to 340 gpm required). A
9 comparison chart of the required capacities based on monthly connections to the
10 supplied capacities is attached for reference. *See SF-3*. The TCEQ approval letters
11 for the Rio Ancho System facilities are included as **SF-15**.

12
13 **Q. Would you please describe the water sources Aqua uses for its Rio Ancho**
14 **System?**

15 **A.** There are a total of three water production Wells. Two are in Burnet County and
16 one in Williamson Co. The wells have historically produced on average about
17 40-45 gpm each. The production varies slightly based on aquifer conditions and
18 customer demand. The two Wells in Burnet County are regulated by the Central
19 Texas Groundwater Conservation District (CTGCD). These wells are permitted by
20 the CTGCD to pump a total 81.65 acre feet (26,605,730 gallons) annually, **SF-4**.
21 This represents ½ acre foot of production per acre of controlled area which is the

1 maximum allowable by the CTGCD Regulations, **SF-5**, and deemed by the CTGCD
2 as being “the amount of groundwater needed per surface acre of land to allow
3 reasonable beneficial use of groundwater without waste, encourage conservation,
4 and support continued economic growth in the District.”¹ The third well is within
5 Williamson County and is therefore outside the CTGCD jurisdiction but still pulls
6 water from the same aquifer and has similar hydrogeologic limitations.
7

8 **Q. Has Aqua ever violated the CTGCD permit by over pumping the permitted**
9 **amount?**

10 **A.** No. The permit is based on an annual withdrawal, and to date Aqua has not violated
11 the total permitted amount. *See BT-2* - Aqua’s CTGCD Annual Groundwater
12 Production Reports for Permitted Wells.
13

14 **Q Is it possible for Aqua to increase the permitted amount from the CTGCD?**

15 **A.** No. Aqua’s current permits are for the maximum amount allowable by CTGCD
16 Rules.
17

18 **Q. What was the daily and monthly peak demand for Rio Ancho System**
19 **customers from July 20, 2018 through July 20, 2020?**

¹ See **SF-5**, CTGCD Current Rules at p. 45.

1 **A.** Though the water plant is not checked daily we are able to provide reasonable
2 estimates from the weekly readings collected from the well meters. The peak
3 monthly demand was 4,319,000 gallons in July 2019, and the peak daily reading
4 based on weekly data averaged between readings was approximately 173,000
5 gallons during the period of August 5 to August 13, 2019.

6

7 **Q.** **What has the daily and monthly peak demand for Rio Ancho System customers**
8 **been since July 20, 2020?**

9 **A.** For the remainder of 2020, the peak monthly demand was 4,003,000 gallons in
10 August 2020, and the peak daily reading was approximately 135,270 gallons the
11 week of August 10-17, 2020.

12

13 **Q.** **What would you consider reasonable Rio Ancho System customer water uses?**

14 **A.** Any residential indoor water use for consumption or sanitation is considered
15 reasonable at any time. However, the amount of outdoor usage considered
16 reasonable depends on many factors including, but not limited to, regulatory
17 restrictions, climatic conditions (*i.e.* drought, extended wet, heat), resource
18 limitations (*i.e.* limitations of the aquifer) and operational capabilities of the water
19 system such as limitations needed during repairs or upgrades. Aqua, in not wanting
20 to limit customers, generally allows any outdoor usage (*i.e.* irrigation, washing of
21 cars, house cleaning, etc.) not otherwise restricted by a regulatory agency, such as a

1 groundwater conservation district (whether it be by specific use or total volume
2 permitted), and that does not adversely affect other customers or the safe operation
3 of the water system. When outdoor usage threatens or causes low water pressure or
4 outages, Aqua routinely implements water use restrictions and schedules to level
5 demand and ensure equitable distribution of available water resources. Excess
6 usage that results in low pressure or outages can create conditions that could
7 potentially contaminate the water system and adversely affect public health. Such
8 excess usage, if intentional by ignoring watering schedules or otherwise being
9 wasteful, is unreasonable and irresponsible.

10 The Average usage of Rio Ancho customers as measured by customer
11 monthly meter readings compared to other residential systems in Aqua Texas'
12 Central Texas Area, West Austin Division was 1.8 to 1.9 times the average during
13 the 2018-2020 timeframe, **SF-8**. Aqua acknowledges that not all customers are
14 using an unreasonable amount of water for outdoor purposes. Yet, a significant
15 number of System customers do water outdoors unreasonably at certain times of the
16 year in a manner that adversely affects System water pressure and safety of their
17 neighbors.

18 In 2020, due to ongoing low water pressure concerns, Aqua enhanced its
19 watering restrictions monitoring. Once increased oversight was initiated, and Aqua
20 issued violation notices to certain customers, low-pressure complaints decreased.
21 This leads me to believe that if customers follow the outdoor watering schedules

1 initiated by Aqua, then the water system will maintain pressure under normal
2 conditions.

3

4 **Q. Between July 20, 2018 and July 20, 2020, did Aqua's Rio Ancho System**
5 **customers ever experience low water pressure or loss of water service?**

6 **A.** Yes.

7

8 **Q. Would you please provide a description of each instance, and the date and**
9 **duration of each instance, in which Aqua Rio Ancho System customers**
10 **experienced low water pressure or loss of water service between July 20, 2018**
11 **and July 20, 2020?**

12 **A.** The state requirement for minimum pressure delivered to customers under normal
13 conditions is 35 psi. This is established in 30 TAC § 290.44. Some customers may
14 feel 35 psi is low due to some irrigations system requiring higher pressures to
15 operate properly. But the state does not require above 35 psi for public drinking
16 water systems even though Aqua's Rio Ancho System pressure is typically well
17 above 35 psi.

18 Yet, there were some instances documented by TCEQ and Aqua during 2018,
19 2019, and 2020 of low pressure, below 35 psi. Aqua confirmed low pressure on the
20 following dates: 10/4/2018, 7/8/2019, 7/17/2019, 8/26/2019 (booster pump failure),
21 9/3/2019, 9/23/2019 (pressure tank repairs), 2/24/2020 (planned outage-new

1 pressure tank connection), 6/11/2020, 7/14/2020 and 7/21/2020. All were due to
2 high demand except as otherwise noted. TCEQ documented periods of pressure
3 below 35 psi on the following dates: 7/17-7/22/2019, 9/22/2019, 9/27/2019,
4 9/30/2019, 7/16/2020, 7/17/2020, and 7/20/2021. *See SF-12, SF-13, and SF-14.*
5 All were attributed to high demand as no leaks or equipment failures were
6 discovered, unless otherwise noted.

7 Documented outages where complete pressure was lost in all or part of the
8 water distribution system are as follows:

9 Water Outages July 2018 – July 2020 (On or about)

- 10 i. October 4, 2018 – Reason unknown.
- 11 ii. September 3, 2019 – High demand resulted in low pressure/no water.
- 12 iii. September 23, 2019 – Due to repairs to the pressure tank for the water
13 system
- 14 iv. February 24, 2020 – Planned outage to tie in additional pressure tank.
- 15 v. June 11, 2020 – Excessive demand resulted in low pressure/no water
- 16 vi. July 14, 2020 – Excessive demand resulted in low pressure/no water
- 17 vii. July 21, 2020 – Excessive demand resulted in low pressure/no water
- 18

19 **Q. How do you know the causes for the events you just described?**

20 **A.** Operations staff investigated each complaint or observed low pressure/outage event.
21 If no equipment failures or water breaks are found, then the only other possibility

1 for the loss of pressure is system demand. On several occasions the booster pump
2 low tank level safety was engaged, which indicates the tanks were drained even
3 though all three wells were running. This is a safety feature that protects the pumps
4 from damage due to extremely low water level in the tanks.
5

6 **Q. What steps has Aqua taken since July 20, 2020 to prevent further low pressure**
7 **or water service outage events?**

8 **A.** Aqua decided it was necessary to more closely monitor its watering restrictions in
9 2020 to see if enhanced monitoring reduced the occurrence of low pressure/no water
10 events. Once increased oversight was initiated, and violations were issued to certain
11 customers, there was only one additional loss of service event due to high demand
12 on August 7, 2020. This leads me to believe that if customers follow the outdoor
13 watering schedules initiated by Aqua, then the water system will maintain pressure
14 under normal conditions. Additionally, Aqua completed booster pump upgrades in
15 October 2020 to increase the combined pumping capacity from an approximately
16 450 gpm to 600 gpm.
17

18 **Q. Have you formed an opinion about whether Aqua needs to add facilities or**
19 **water sources to its Rio Ancho System to make it adequate to supply continuous**
20 **and adequate water service to customers?**

21 **A.** Yes.

1 **Q. What is your opinion about whether Aqua needs to add facilities or water**
2 **sources to its Rio Ancho System to make it adequate to supply continuous and**
3 **adequate water service to customers?**

4 **A.** The Rio Ancho System facilities are adequate to supply continuous and adequate
5 water service to customers. As discussed, by William Peña, P.E., the System
6 facilities meet minimum requirements plus more, and enforcement of Aqua's
7 watering schedule seems to have resolved the issues that prompted the Complaint.
8 Aqua is looking for an additional water well site in Williamson County as a back-
9 up source of water supply, but we do not need it to meet TCEQ and PUC
10 requirements. Aqua is limited by its CTGCD permit which encompasses the Burnet
11 County side of the subdivision where two of Aqua's three current well sites are
12 located. Aqua believes any new well should be constructed on the Williamson
13 County side of the system to ensure maximum utilization and avoid potential
14 compliance issues with the CTGCD. No land has been identified yet for a potential
15 new well site. If a feasible well site can be found based on the engineering,
16 regulatory review, and construction time requirements, it would take about a year
17 to complete after property acquisition is finalized.

18 I will also note that, unlike other types of water providers, Aqua does not
19 enjoy eminent domain authority. Having such authority would greatly facilitate
20 land acquisition for well sites (even though cost would still be a factor), but Aqua
21 does not have that option.

1 **V. ISSUE NOS. 6, 7, and 8: WATER-USE RESTRICTIONS**

2 **Q. What is a drought contingency plan?**

3 **A.** Aqua has developed its Drought Contingency Plan (“DCP”) as required by TCEQ
4 rule 288.20 and the Texas Water Code § 11.1272 to enable it to manage its water
5 systems and water resources during drought conditions, periods of abnormally high
6 usage, system contamination, extended reduction in ability to supply water due to
7 equipment failure, or other situations.

8 Texas Water Code § 11.1272(a) states: “The commission shall by rule
9 require wholesale and retail public water suppliers and irrigation districts to develop
10 drought contingency plans consistent with the appropriate approved regional water
11 plan to be implemented during periods of water shortages and drought.” Though
12 the document is referred to as a Drought Contingency Plan, it covers situations
13 beyond declared drought and is further clarified in 30 TAC § 288.20(a)(1)(E).

14 (E) The drought contingency plan must include drought or
15 emergency response stages providing for the implementation
16 of measures in response to at least the following situations:

- 17 (i) reduction in available water supply up to a repeat of the
18 drought of record;
19 (ii) water production or distribution system limitations;
20 (iii) supply source contamination; or

1 (iv) system outage due to the failure or damage of major
2 water system components (e.g., pumps).

3 The DCP can be implemented in any situation that results in an emergency. Loss
4 of pressure and system outages are considered potential emergency situations due
5 to the possibility of contamination.

6

7 **Q. How does Aqua use its drought contingency plan?**

8 **A.** Aqua utilizes the DCP to maintain an adequate supply of water during the various
9 stages of drought conditions or other water supply emergencies, which may occur
10 from time to time, and to enable Aqua to comply with the requirements of a court,
11 government agency, ground water district, wholesale provider or other authority. In
12 particular to the Rio Ancho System, the DCP has been implemented to help level
13 demand to prevent low pressure and help ensure compliance with Aqua's CTGCD
14 withdraw permit limitations.

15

16 **Q. Did Aqua have a drought contingency plan in effect applicable to the Rio**
17 **Ancho System between July 20, 2018 and July 20, 2020?**

18 **A.** Yes. A copy of the Aqua drought contingency plans in effect for its Rio Ancho
19 System between July 20, 2018 and July 20, 2020 are included with my testimony as
20 **SF-7 and SF-8.** 30 TAC § 288.20(c) requires retail water suppliers to review and
21 update, as appropriate, the DCP at least every five years. Aqua's update was

1 completed in March 6, 2020 as part of our required review period and this is why
2 two versions are included in my testimony.

3

4 **Q. Did Aqua impose restrictions on water usage by Rio Ancho System customers**
5 **in the Rio Ancho subdivision between July 20, 2018 and July 20, 2020?**

6 **A.** Yes.

7

8 **Q. What restrictions did Aqua impose on water usage by Rio Ancho System**
9 **customers in the Rio Ancho subdivision between July 20, 2018 and July 20,**
10 **2020?**

11 **A.** Stage 2 (July 2017 – August 2019), Stage 3 (August 2019 – May 2020), Stage 1
12 (May 2020 – July 2020), and Stage 3 (July 2020-current). I have attached the
13 notices provided to customers by mail in **SF-9**.

14

15 **Q. What was the basis for imposing the water-use restrictions you just described?**

16 **A.** A combination of factors resulted in Aqua implementing water-use restrictions for
17 Rio Ancho System customers in accordance with its DCP. First, the CTGCD, which
18 administers the operating permits for two of Aqua's Rio Ancho System wells,
19 initiated drought stages which Aqua attempts to follow. Those were as follows:

20 July 2018 initiate Stage 2- Voluntary 10 % reductions

21 Oct 2018 revert to Stage 1 – Near Normal

1 August 2020 initiate Stage 2- Voluntary 10% reductions

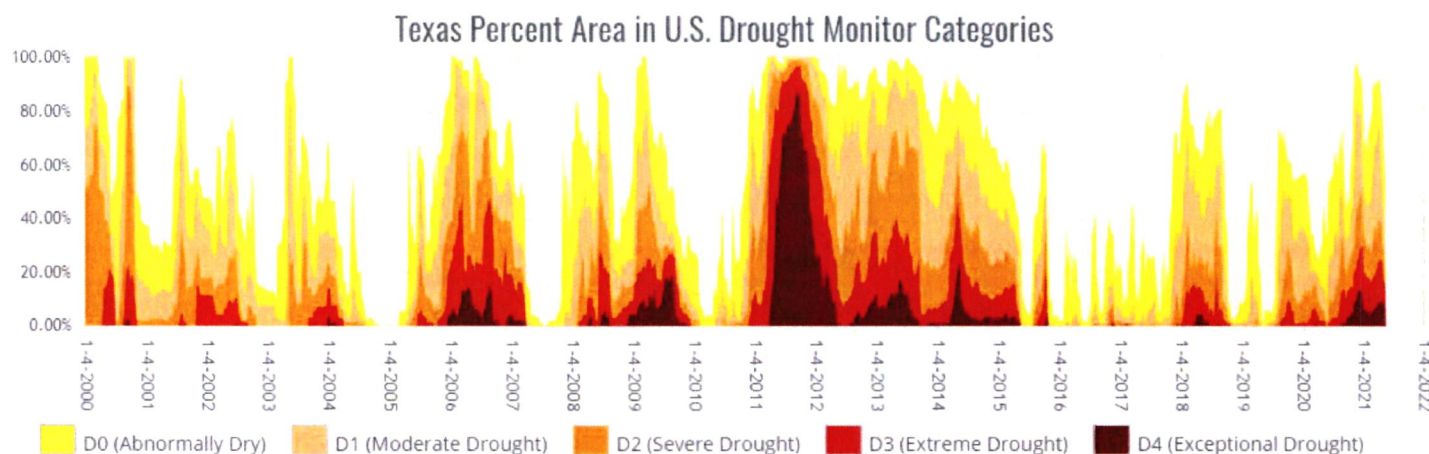
2 December 2020 initiate Stage 3 – Voluntary 20% reductions

3 Second, and more significantly, the Rio Ancho System was affected by excessive
4 use of water by some System customers for lawn watering particularly during hotter
5 and drier months. This usage created a period of reported low pressure or low level
6 lock out of the booster pumps, a trigger for water-use restrictions according to
7 Aqua's DCP.

8

9 **Q. Were there drought conditions in the Rio Ancho System area between July 20,**
10 **2018 and July 20, 2020?**

11 **A.** Yes. As indicated by the U.S. Drought Monitor, Texas experienced drought
12 conditions between July 20, 2018 and July 20, 2020. The Rio Ancho System area
13 was not excluded from those drought conditions. The U.S. Drought Monitor is
14 released every Thursday, showing parts of the U.S. that are in drought. The U.S.
15 Drought Monitor uses five classifications: abnormally dry (D0), showing areas that
16 may be going into or are coming out of drought, and four levels of drought: moderate
17 (D1), severe (D2), extreme (D3) and exceptional (D4).



The Drought Monitor is produced jointly by the National Drought Mitigation Center (NDMC) at the University of Nebraska-Lincoln, the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of Agriculture (USDA).²

Q. Were there periods of abnormally high usage between July 20, 2018 and July 20, 2020?

A. Yes. Based on my evaluation of monthly Aqua customer usage between 2018 and 2020, **SF-8**, Rio Ancho System customers' usage on a GPD/connection monthly average basis compared to other Aqua water systems within the region was more than twice the average in April – August 2018, April –August 2019, May – July 2020 and again in October 2020. This usage is predominately for irrigation and tends to occur for a few hours overnight and in the early morning, which compounds

² Graph is available at [Time Series | U.S. Drought Monitor \(unl.edu\)](https://www.unl.edu/time-series/u-s-drought-monitor) (last checked May 21, 2021).

1 the effect and results in low pressure. Additionally, I found the rate of seasonal
2 water consumption increase for the Rio Ancho System was much higher than
3 average and began earlier in the year than other Aqua Texas systems in the region.

4 The average usage within Rio Ancho was 465 gpd/connection over the 2018-
5 2020 time period. The TWDB 2022 draft State Water Plan reports median gallons
6 per capita per day (GPCD) in 2018 & 2019 to be 69 and 67 respectively.³ Data is
7 not yet available for 2020. Assuming an average of 68 GPCD and the typically
8 accepted average of three people per single family residence, the average statewide
9 median gpd/connection (residential) water consumption is 204 gpd/connection,
10 which is less than half that of the Rio Ancho System customers' water consumption.

11
12 **Q. Were Aqua's water-use restrictions needed to comply with a state agency or**
13 **court order on conservation between July 20, 2018 and July 20, 2020?**

14 **A.** No.
15

16 **Q. Were there any other reasons identified in Aqua's TCEQ-approved drought**
17 **contingency plan that water-use restrictions were needed between July 20,**
18 **2018 and July 20, 2020?**

19 **A.** Yes. Notices were sent each time changes were made to Aqua's water-use
20 restrictions via US mail to all customers. Each notice specifies the reason Aqua was

³ Draft 2022 State Water Plan, Texas Water Development Board at p. D-132. Available at: [2022 State Water Plan | Texas Water Development Board](#) (last checked May 21, 2021).

1 implementing the restrictions described. Specific notice dates were July 1, 2017,
2 August 12, 2019, September 23, 2019, May 26, 2020, and July 15, 2020. Copies
3 of the notices are attached as **SF-9**. As specified in Aqua's Stage 2 notices of July
4 1, 2017 and August 12, 2019, the reasons for the restrictions were: "This is a
5 reminder that Stage 2 conservation restrictions are in effect as a measure to ensure
6 compliance with all applicable regulations and permits, and to responsibly manage
7 the limited groundwater resources within the area."

8 As specified in Aqua's Stage 3 notice of September 23, 2019, the reasons
9 were: "Due to increasing drought conditions and heavy water demands, Aqua is
10 implementing Stage 3 watering restrictions in accordance with our TCEQ approved
11 User Drought Contingency Plan. According to the U.S. Drought Monitor
12 (www.droughtmonitor.unl.edu), most of Burnet and Williamson Counties are in
13 Moderate to Severe drought. Though the water wells are all still producing, the lack
14 of rain raises concern and high water demands for outdoor watering are resulting in
15 periods of low pressure which could create a health hazard."

16 As specified in Aqua's Stage 1 notice of May 26, 2020, the reasons were:
17 "Aqua has completed upgrades to the water plant by doubling the available storage
18 and are in the process of increasing booster pump capacity. Although we still have
19 maximum allowable withdraw limits from our wells this expanded storage allows
20 us to set watering restrictions at conservation levels. It is important for everyone to
21 follow the watering schedules contained in this notice to prevent increasing watering

1 restriction, particularly as average temperature increase. Due to governmental
2 restriction and the limited available water resources in the area it is important to
3 follow good irrigation practices.”

4 As specified in Aqua’s Stage 3 notice of July 15, 2020, the reasons were:
5 “Even with recent upgrades demand continues to significantly outpace production
6 capabilities at certain times. Additionally, Aqua’s Rio Ancho Water System
7 includes wells that are subject to maximum allowable withdrawal limits set by the
8 local groundwater conservation district. It is important for everyone to follow the
9 watering schedules contained in this notice to prevent interruptions in service.”

10 Additionally, the TCEQ initiated an enforcement investigation of Aqua in
11 2019 for failure to maintain 35 psi throughout the distribution system. During that
12 investigation, TCEQ personnel collected several pressure readings and reviewed the
13 water system facilities. No violations related to the system facilities’ capacity, or
14 implementation of the DCP were noted. TCEQ regional field staff agreed that
15 utilizing the DCP was an acceptable means to reduce peak demand, which TCEQ
16 personnel agreed was the cause of the low-pressure events investigated.

17

18 **Q. Was there an extended reduction in ability to supply water due to equipment**
19 **failure between July 20, 2018 and July 20, 2020?**

20 **A.** No.

1 **Q. When Aqua imposes water-use restrictions in accordance with its drought**
2 **contingency plan, what process does Aqua follow?**

3 **A.** Operations staff reviews records and assesses the water demand and supply for the
4 system. If, in their assessment, one or more of the trigger conditions are met (or an
5 acute emergency situation is discovered), the system operator or supervisor will
6 contact Aqua Compliance. The Compliance Specialist and Operations Staff review
7 the information and determine the appropriate level or “Stage” of restrictions to
8 implement. Aqua Compliance then prepares the appropriate notice for distribution.
9 Distribution of notices is typically performed by mail. Though it is preferred to
10 progress through the various stages for restrictions, it is common that a higher level
11 stage is generally implemented due to the demand for a system increasing rapidly
12 during peak irrigation season.

13
14 **Q. For each occasion or period that Aqua imposed water-use restrictions on Rio**
15 **Ancho System customers between July 20, 2018 and July 20, 2020, did Aqua**
16 **follow the process you just described?**

17 **A.** Yes.

18
19 **Q. For each occasion or period that Aqua imposed water-use restrictions on Rio**
20 **Ancho System customers between July 20, 2018 and July 20, 2020, did Aqua**
21 **enforce any penalty or consequence on any Rio Ancho System customer?**

1 **A.** No penalties or consequence to any residential customer was imposed. However,
2 Aqua did issue several notices of water schedule or restriction violations in 2020.
3 *See SF-10.* Generally, individuals were not found to be violating the restrictions
4 following the first violation notice, and no further action was necessary. The HOA
5 entrance fountain was turned off on or about August 7, 2020 until the HOA could
6 separate the plumbing of the fountain and the entrance irrigation. At that time,
7 fountain and outdoor water features using Aqua water were not permitted.

8

9 **Q.** **For each occasion or period that Aqua imposed water-use restrictions on Rio**
10 **Ancho System customers between July 20, 2018 and July 20, 2020, what**
11 **enforcement tools did Aqua have available?**

12 **A.** Aqua's effective DCPs for that period provided:

13 First violation:

14 The customer will be notified by written notice, hanging tag or letter, of their
15 specific violation of required restrictions, reductions or for excessive usage, and a
16 flow restrictor may be installed on the service. The customer will be provided a copy
17 of the User Drought Contingency Plan upon request.

18

19 Subsequent violations:

20 a. After the first written notice, Aqua Texas may install a flow-restricting
21 device in the line to limit the amount of water that will pass through the meter

1 in a 24-hour period. The flow restrictor may be left in the line for up to 60
2 days or until the wholesale provider or district requirements are ended. Aqua
3 Texas may charge the customer for the actual cost of installing and removing
4 the flow-restricting device, not to exceed \$50.00 for installation and \$50.00
5 for removal. The customer will be provided a copy of the User Drought
6 Contingency Plan.

7 b. If the customer violates the required reductions after installation of a flow
8 restrictor, Aqua Texas may discontinue service at the meter for up to 7 days.
9 The customer will be charged a \$50 reconnect fee for restoration of service.
10 Further violations will result in disconnection and additional reconnect fees.
11 When service is reconnected a flow restrictor may be installed.

12 c. If a customer violates the restrictions again after having a flow restrictor
13 installed and removed, Aqua Texas may either reinstall a flow restrictor as
14 described in (a) above or, at its option, disconnect service for up to 7 days.
15 When service is reconnected a flow restrictor may be installed.

16
17 I emphasize that Aqua has yet to use any of the more severe enforcement tools
18 available under Aqua's TCEQ-approved DCPs. Aqua prefers to encourage
19 voluntary customer compliance.
20

1 **Q. What efforts did Aqua make to try getting Rio Ancho System customers to**
2 **comply with the water-use restrictions Aqua imposed on Rio Ancho System**
3 **customers between July 20, 2018 and July 20, 2020?**

4 **A.** Aqua provided notices that explained the reason for the restrictions. Also, Brent
5 Reeh, Aqua's Central Texas Area Manager, attended a Rio Ancho Homeowners
6 Association meeting on August 15, 2019 to explain the challenges and Aqua's
7 intended upgrades that have since been completed. Operators issued violations of
8 the restrictions as issues were observed.

9 Aqua has since upgraded all electronic meter reading devices such that they record
10 daily water usage. Aqua now has the ability to obtain daily customer usage when
11 the meters are read each month. If necessary, this data can assist Aqua in
12 determining whether a customer is adhering to watering schedules.

13

14 **Q. How would you describe the results of those efforts?**

15 **A.** Frustrating. I have worked with Aqua since 2014. In no other situation where there
16 was a need for water use restrictions was there such resistance to water conservation.
17 This is even after residents knew that the high usage would result in low pressure
18 and possible system outages. We still had some customers using over 50,000
19 gallons a month with an occasional customer using over 100,000 gallons in a month.

20 **SF-11.** Typical indoor water usage is around 7000 gallons per month.

21

1 **Q. Has Aqua applied any different water-use restriction enforcement efforts since**
2 **July 20, 2020?**

3 **A.** Yes. Beginning June 2020, operators began randomly patrolling the system at night
4 and during early morning hours, when irrigation typically takes place, to determine
5 if customers were adhering to the watering schedule.

6

7 **Q. How would you describe the results of those efforts?**

8 **A.** Better. After issuing a few violations, the number of low-pressure complaints
9 dropped significantly and only one additional outage due to demand was recorded
10 on August 7, 2020.

11

12 **Q. Have you formed an opinion about whether Aqua has “used water-use**
13 **restrictions in lieu of providing facilities which meet the minimum capacity**
14 **requirements of 30 TAC §§ 290.38 through 290.275, or reasonable local**
15 **demand characteristics during normal use periods, or when Aqua Texas is not**
16 **making all immediate and necessary efforts to repair or replace malfunctioning**
17 **equipment under 16 TAC § 24.205(2)” as set forth in Preliminary Order Issue**
18 **No. 7?**

19 **A.** Yes.

20

1 **Q. What is your opinion about the question posed in Preliminary Order Issue**
2 **No. 7?**

3 **A.** Aqua has upgraded the Rio Ancho System facilities as the subdivision has grown
4 and System facilities exceed the minimum requirements set forth by 30 TAC
5 § 290.38. Based on Aqua’s experience owning and operating over 370 public water
6 systems in the state of Texas, the System facilities are also more than sufficient for
7 “reasonable” local demand during both normal and excess demand periods.
8 However, there is a limit on what Aqua’s System facilities can do. Aqua’s water-
9 use restrictions are used for those situations and not in lieu of what is needed to meet
10 minimum requirements or “reasonable local demand characteristics during normal
11 use periods.” Further, Aqua has made all immediate and necessary repairs and
12 replacements as needed.

13

14 **Q. Have you formed an opinion about whether Aqua has “directly or indirectly**
15 **demand, charged, or collected any rate or charge, or imposed any**
16 **classifications, practices, rules, or regulations different from those prescribed**
17 **in Aqua’s approved tariff filed with the Commission under 16 TAC § 24.25(a)”**
18 **as set forth in Preliminary Order Issue No. 8?**

19 **A.** Yes.

20

1 **Q. What is your opinion about the question posed in Preliminary Order Issue**
2 **No. 8?**

3 **A.** Aqua has properly followed the rules and regulations applicable to the Rio Ancho
4 System and its approved tariff. TCEQ has investigated low pressure and outage
5 complaints and conducted regular compliance inspections during the 2018-2020
6 time period and issued no violations for the use of the Drought Contingency Plan or
7 the restrictions issued under it. **SF-12.**

8

9 **Q. Have you formed an opinion about whether the PUC should take any action in**
10 **response to the Complaint at issue in this docket?**

11 **A.** Yes.

12

13 **Q. What is your opinion about whether the PUC should take any action in**
14 **response to the Complaint at issue in this docket?**

15 **A.** The PUC should take no action in response to the Complaint. Aqua's Rio Ancho
16 System has facilities that are entirely adequate to comply with minimum TCEQ
17 requirements, while also meeting "reasonable local demand characteristics of the
18 service area, including reasonable quantities of water for outside usage" per 16 TAC
19 § 24.205(1). Aqua has not used its drought contingency plan to impose water-use
20 restrictions as a substitute for that responsibility. Aqua is not required to provide
21 unlimited quantities of water for outside usage even though such sales would

1 financially benefit Aqua. Aqua is required to do what it can to promote water
2 conservation and that is accomplished primarily through its inclining block rate
3 structure and drought contingency plan. Aqua has followed its drought contingency
4 plan to the letter and used it as necessary to comply with groundwater conservation
5 district requirements, local aquifer conditions, and reasonable Rio Ancho System
6 limitations to try to prevent low pressure and outages situations. When Rio Ancho
7 System customers follow the watering schedule Aqua has implemented for the
8 system, problems subside because outside water use is reduced to a reasonable level.
9 For all these reasons, the Commission should not require any Aqua actions in
10 response to the Complaint.

11

12 **Q. Does this conclude your prefiled direct testimony?**

13 **A.** Yes, it does. However, I reserve the right to supplement my prefiled direct
14 testimony with additional information as it may become available.

Scot W. Foltz

EMPLOYMENT

Environmental Compliance Manager

March 2014 - Current

Aqua Texas Inc.

Austin, Texas – (512) 990-4400

- Provide operational and compliance technical assistance and training to all Aqua Texas Operations staff.
- Tracks compliance with the TCEQ; works with Area Managers (AM's) and Field Supervisors (FS's) to track and document improvement projects to meet timelines for outstanding requirements in their areas; and, prepares quarterly reports to the TCEQ on compliance status.
- Assists the Director Operations and State Engineer in review and oversight of all major engineering projects to assure contractual obligations are being met and agreed upon engineering specifications are being followed.
- Tracks status of outstanding NOV's; works with AMs and FSs to track and document improvement projects necessary to comply with outstanding NOV critical timelines; keeps the Regional Manager (RM) apprised in advance of any deadlines that cannot be met; and prepares correspondence to TCEQ.
- Oversees preparation and distribution of annual CCRs and other notices as necessary to Aqua Texas' customers.
- Oversees preparation of permit applications for new wastewater plants and water plant discharges as well as wastewater permit renewals.
- Develop, review and update Operational and Compliance SOPs as necessary to ensure proper operations and maintain compliance with all applicable rules and permits.

Business Continuity Manager

November 2013-March 2014

Texas Water Development Board

Advancement Opportunity

Austin, Texas - (512) 463-7847

Responsible for development and maintenance of the agency business continuity plan in accordance with the Texas Department of Public Safety and Department of Homeland Security Guidelines and Procedures. Includes ensuring all staff receives training as it relates to the business continuity plan and conducting annual emergency response exercises.

Responsible for the business integration of the agency primary data management system ensuring policies and procedures are adequate to ensure accurate data capture. Develop effective and efficient processes in the utilization and maintenance of critical data.

Director of Project Oversight

April 2012 – November 2013

Texas Water Development Board

Reassigned

Austin, Texas - (512) 463-7847

Provided management and support for the Project Oversight Division. Provided direction and oversight for infrastructure projects of the Texas Water Development Board to ensure progress on projects is achieved from the pre-application phase through construction and final close-out. Included coordinating with local, state and federal officials on various issues related to water and wastewater utilities and the available funding programs offered by the Board. Provided solutions for difficult technical and policy issues both within the agency as well as for utilities. Coordinated the office's oversight directives across all offices involved in infrastructure financing

Attachment

SF-1

EMPLOYMENT

Systems Analyst V
Texas Water Development Board
Austin, Texas - (512) 463-7847

July 2010 – April 2012
Promoted

- Responsible for the integration of technology into work processes and procedures to increase accountability and efficiency wherever possible.
- Assist in the development, implementation and maintenance of the TxWISE and IFSS databases, SQL report writing and the development of other Access database applications to manage data and improve communication among Agency staff.
- Conduct training on agency software and assist in development of new procedures.
- This position requires effective communication, resource management, and problem solving skills.

Engineering Specialist VI
Texas Water Development Board
Austin, Texas - (512) 463-7847

December 2009 – June 2010
Reclassified

- Review engineering plans and specifications, project budgets and contract documents to ensure compliance with state and federal regulations and program requirements.
- Assisted in the implementation of TxWISE and development of reports from the various agency databases.
- Worked to standardize project budget formats and integrate paper checklist in the TxWISE data system.
- Reviewed existing processes to develop recommendations for improvements and the integration of various data management tools.

Enforcement Analyst
Public Utility Commission of Texas
Austin, Texas - (512) 936-7000

October 2009 – December 2009
Advancement Opportunity

- Responsible for conducting investigations and enforcement actions to ensure compliance with the Public Utility Regulatory Act, Public Utility Commission Substantive Rules and Electric Reliability Council of Texas Protocols.
- Develop and review Public Utility Commission rules, policies and procedures to facilitate enforcement activities.
- Developed procedures and report application to conduct analysis of Consumer Protection Complaint Data for Retail Electric Providers and established criteria by which to initiate enforcement actions.

Environmental Manager
Ohio EPA, Division of Drinking and Ground Waters,
Central District Office
Columbus, Ohio - (614)728-3863

July 2001-September 2009
Relocated to Texas

- Manage the program and staff in coordination with district and statewide program policies and directives.
- Development of divisional and district office policies, procedures and guidance.
- Manage section budget and expenditures.
- Supervise and perform public water system evaluations, technical reviews and special investigations.
- Implement and assist in the development of the division and district strategic plan.
- Serve as a liaison between local, state and federal agencies.
- Serve as Ohio EPA administrator for the Drinking Water Electronic Sanitary Survey software.

EMPLOYMENT

Data Administration Manager

September 2000-July 2001

Temporary Work Level

Promoted

**Ohio EPA, Division of Drinking and Ground Waters,
Central Office**

Columbus, Ohio

- Responsible for administration, development and management of Ohio EPA Drinking and Ground Water Information Network (DRINK).
- Coordination with contractors on the maintenance and upgrades to the DRINK system.
- Coordinated and conducted staff training and provided software support.
- Served as the primary liaison with internal and external software users.
- Develop and write reports to perform data analysis.

Environmental Specialist 2

September 1993-July 2001

**Ohio EPA, Division of Drinking and Ground Waters,
Southeast District Office**

Promoted

Logan, Ohio

- Performed technical reviews and evaluations of engineering plans for public drinking water system facilities.
- Conducted evaluations of public drinking water systems (e.g. field inspections, interviews with owner/operators, preparation of reports/letters outlining findings and establishing recommendations/requirements.)
- Assembled and analyzed operational and technical data to determine public water system compliance with Ohio EPA regulation
- Initiated enforcement actions against significant noncompliant water systems, identify corrective actions, and track compliance schedules to return system to compliance.
- Coordinated with other local and state agencies on facilities of common interest.

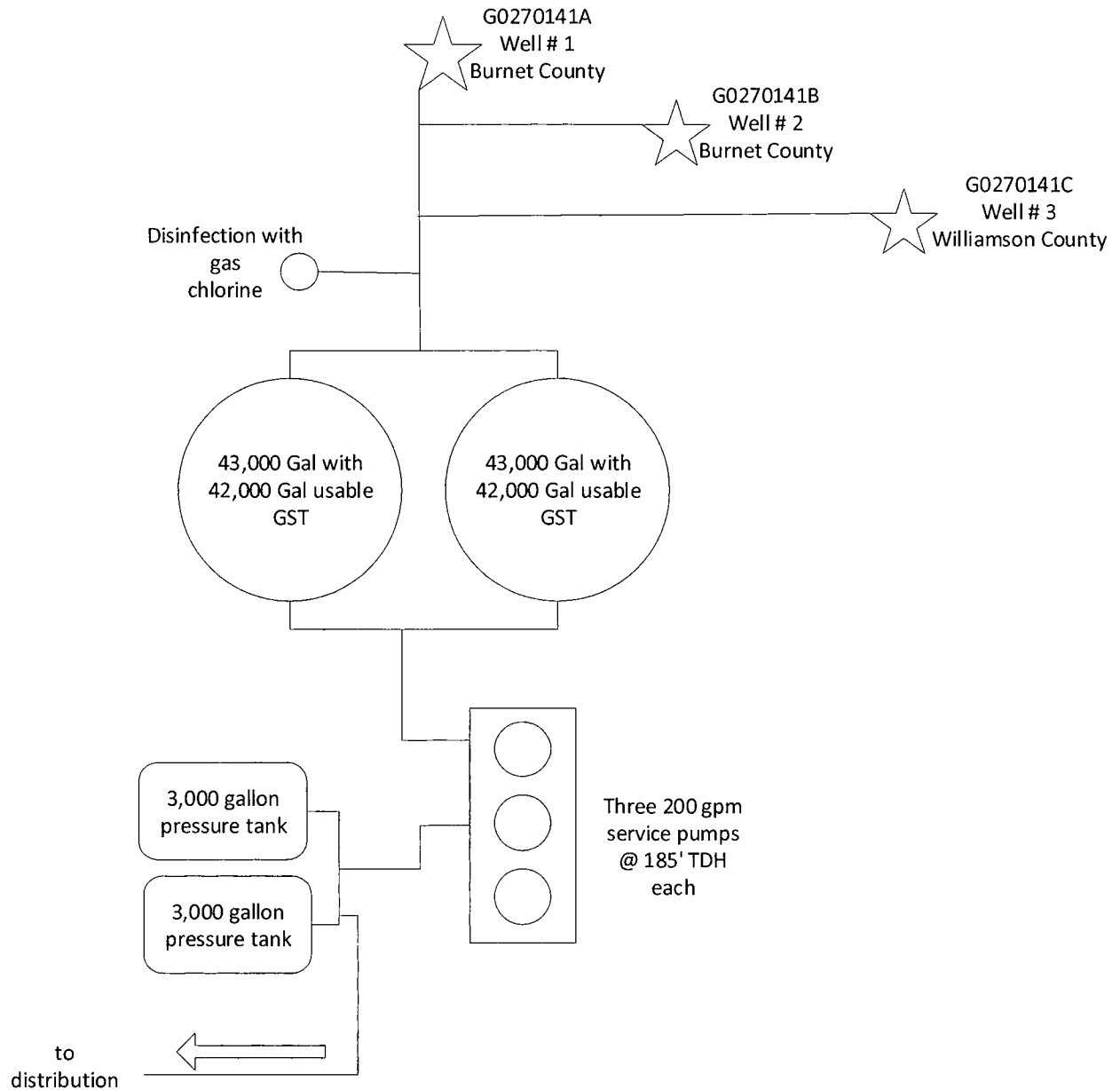
EDUCATION

Bachelor of Science in Chemical Engineering

Ohio University, Athens, Ohio

Rio Ancho Water System
PWS ID#0270141
Burnet County, Texas

Entry Point 001



Attachment

SF-2

2018-2020 Required vs Supplied Capacity.

Month	# Active Customers	TCEQ Capacity Requirements by Rule				Rio Ancho Supplied Capacity			
		Well (gpm)	GST (gal)	HPT (gal)	Booster (gpm)	Well ¹ (gpm)	GST (gal)	HPT (gal)	Booster (gpm)
Jan-18	130	78	26,000	2,600	260	135	42,000	3,000	450
Feb-18	130	78	26,000	2,600	260	135	42,000	3,000	450
Mar-18	133	79.8	26,600	2,660	266	135	42,000	3,000	450
Apr-18	134	80.4	26,800	2,680	268	135	42,000	3,000	450
May-18	137	82.2	27,400	2,740	274	135	42,000	3,000	450
Jun-18	137	82.2	27,400	2,740	274	135	42,000	3,000	450
Jul-18	137	82.2	27,400	2,740	274	135	42,000	3,000	450
Aug-18	140	84	28,000	2,800	280	135	42,000	3,000	450
Sep-18	143	85.8	28,600	2,860	286	135	42,000	3,000	450
Oct-18	144	86.4	28,800	2,880	288	135	42,000	3,000	450
Nov-18	146	87.6	29,200	2,920	292	135	42,000	3,000	450
Dec-18	146	87.6	29,200	2,920	292	135	42,000	3,000	450
Jan-19	146	87.6	29,200	2,920	292	135	42,000	3,000	450
Feb-19	147	88.2	29,400	2,940	294	135	42,000	3,000	450
Mar-19	148	88.8	29,600	2,960	296	135	42,000	3,000	450
Apr-19	149	89.4	29,800	2,980	298	135	42,000	3,000	450
May-19	149	89.4	29,800	2,980	298	135	42,000	3,000	450
Jun-19	149	89.4	29,800	2,980	298	135	42,000	3,000	450
Jul-19	150	90	30,000	3,000	300	135	42,000	3,000	450
Aug-19	152	91.2	30,400	3,040	304	135	42,000	3,000	450
Sep-19	155	93	31,000	3,100	310	135	42,000	3,000	450
Oct-19	156	93.6	31,200	3,120	312	135	42,000	3,000	450
Nov-19	156	93.6	31,200	3,120	312	135	42,000	3,000	450
Dec-19	156	93.6	31,200	3,120	312	135	42,000	3,000	450
Jan-20	156	93.6	31,200	3,120	312	141	42,000	3,000	450
Feb-20	156	93.6	31,200	3,120	312	140	42,000	6,000	450
Mar-20	156	93.6	31,200	3,120	312	142	42,000	6,000	450
Apr-20	157	94.2	31,400	3,140	314	141	84,000	6,000	450
May-20	157	94.2	31,400	3,140	314	140	84,000	6,000	450
Jun-20	163	97.8	32,600	3,260	326	134	84,000	6,000	450
Jul-20	164	98.4	32,800	3,280	328	134	84,000	6,000	450
Aug-20	166	99.6	33,200	3,320	332	136	84,000	6,000	450
Sep-20	166	99.6	33,200	3,320	332	135	84,000	6,000	450
Oct-20	167	100.2	33,400	3,340	334	134	84,000	6,000	600
Nov-20	167	100.2	33,400	3,340	334	133	84,000	6,000	600
Dec-20	170	102	34,000	3,400	340	126	84,000	6,000	600

¹ Well capacities based on operational records for 2018 -2020

Attachment
SF-3



3-9-18

Central Texas Groundwater Conservation District

Operating Permit for Existing Well

I. Permittee:

Rio Ancho Water System
3209 Hillbilly Lane
Austin, TX 78746
(512) 990-4400

Contact Person if different from Permittee:

Brent Reeh
1106 Clayton Lane, Suite 400 W
Austin, TX 78723-
(512) 990-4400

** The Permittee shall advise the District of any change in contact information and shall ensure that a current emergency contact telephone number is on file with the District.

II. Permit No.: OP-13042403

III. Number of Well(s) associated: 2

IV. Well Registration Number(s) and Location of Well(s):

Well #	Physical Location, City, State	Precinct
2079	2801 CR 322, Bertram, TX	3
6202	2801 CR 322, Bertram, TX	3

V. Purpose of Use: Public Water Supply

VI. Location of Water Use:

2801 CR 322, Bertram, TX

VII. Aquifer: Trinity-Hensell

VIII. Permit Term:

Date Issued: 2015-09-11

Expiration Date: 2020-09-11

§ 3.05 Permit Terms and Renewal. Except as otherwise provided by the District's Rules, this permit will be renewed by the General Manager at the end of its term unless the Board acts to amend, cancel, or revoke the permit at the end of its term to accomplish the purposes of Chapter 4 of the District's rules, unresolved rules violations, or as otherwise authorized under the District's Rules.

IX. Annual Production: 81.65 Acre Feet **26,605,734.15**

**Annual Production is the maximum annual amount of groundwater withdrawal authorized to be produced from the well(s), subject to limitation by the District and the conditions set forth below.

**Immediate written notice shall be given by Permittee to the District when the Permittee recognizes that its annual groundwater withdrawal may exceed the quantity authorized by this permit or in the event a withdrawal exceeds the quantity authorized by this permit. Such excess withdrawal is not authorized and may result in an enforcement action by the District against the Permittee unless appropriate authorization is granted in advance by the District through issuance of an Operating Permit, a permit amendment, or otherwise.

Attachment

SF-4

P.O. Box 870 • 225 South Pierce, Suite 104 • Burnet, Texas 78611
Phone: (512) 756-4900 • Fax: (512) 756-4997 • Website: www.centraltexasgcd.org
district@centraltexasgcd.org



Central Texas Groundwater Conservation District

X. Terms and Conditions:

1. This permit confers no vested rights in the holder, and it may be revoked or suspended, and/or its terms may be modified or amended pursuant to the provisions of the District's rules (hereinafter, the "Rules"), management plan, regulatory plan, and/or enabling act, Chapter 36 of the Texas Water Code, and/or other applicable law, as such Rules, plans, and laws may be amended from time to time.
2. This permit is issued in accordance with the provisions of the Rules, as may be amended from time to time, and acceptance of this permit constitutes an acknowledgement and agreement that the Permittee will comply with the Rules and the terms and conditions of this permit and that the Permittee is bound by the Rules and permit terms and conditions; such acknowledgement and agreement by the Permittee is a condition precedent to the granting and issuance of this permit. Regulations governing the issuance and use of this permit are set forth in the Rules and applicable law but have not necessarily been specifically set forth in these "Terms and Conditions."
3. This Permit is issued under the requirements of Chapter 3, Subchapter F, of the Rules relating to Authorization for Production from New Wells.
4. This permit confers only the right to use the permit in accordance with the terms of the permit and the Rules. The issuance of this permit does not grant to the Permittee the right to use private property, or public property, for the production or conveyance of water. Neither does this permit authorize the invasion of any personal rights nor the violation of federal, state, or local laws, or any regulations. This permit is transferable only upon compliance with the Rules governing transfers. Transfers of well ownership within the District are generally governed by Section 3.08 of the District Rules (relating to Transfer of Well Ownership). This permit is subject to the additional transfer requirements for Operating Permits in Section 3.56 of the District Rules (relating to Transfer of Grandfathered Use Permit or Operating Permit). The transfer of ownership of the well(s) designated by a permit is presumed to transfer ownership of this permit, absent an express reservation of rights in the transferor. The Permittee may transfer this permit separately from the ownership of the well(s) or place(s) of use designated by this permit only to the extent authorized by the District Rules and other applicable law.
5. All water withdrawn under this permit must be put to beneficial use at all times. The operation of the well for the authorized use shall be conducted in such a manner as to avoid waste, pollution, or harm to the aquifers.
6. The site of any well covered by this permit must be accessible to District representatives for inspection, and the Permittee agrees to cooperate fully in any reasonable inspection of any well or well site by District representatives.
7. The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is issued on the basis of and contingent upon the accuracy of the information supplied in that application. A finding that false information has been supplied in the application is grounds for immediate revocation of this permit.
8. Amendments to this Permit shall be made in accordance with Section 3.23 of the Rules.
9. The Permittee shall have a meter installed on each well authorized by this permit prior to issuance of this permit and shall thereafter comply with the metering requirements under the Rules.
10. No later than May 1 of each year, the Permittee of this permit must submit a report to the District in accordance with Chapter 11 of the Rules.
11. This permit is issued subject to: (1) the proportional adjustment regulations of the District; (2) exempt uses as provided by statutory law and the Rules; (3) the District's management plan; (4) the District's regulatory plan; (5) the Rules; (6) orders of the District entered in accordance with the Rules; (7) the continuing right of the District to supervise and regulate groundwater production from the aquifers within the District's boundaries, as authorized by the District's enabling act and Chapter 36 of the Texas Water Code; and (8) all applicable laws, as any of the authorities listed in this section currently exist and as they may be amended in the future. The District reserves the right to amend and implement the Rules to accomplish the purposes of the District's regulatory plan and/or allocate within a management zone water that is available for production under all Grandfathered Use Permits, Operating Permits, and other permits of the District, including reducing the amount of water that may be available or authorized for production under this Permit.
12. The District makes no representations and shall have no responsibility with respect to the availability or quality of water authorized to be produced under this permit.
13. No person shall drill, equip, complete, substantially alter, operate, or produce groundwater from a well in violation the Rules. A violation of the Rules occurs on the first day the unauthorized activity occurs and continues each day thereafter until the permit or amendment is issued, if any.
14. The issuance of this Permit does not prohibit the District from limiting production from a well in the future during drought conditions or otherwise to carry out the purposes of the District under Chapter 3, Subchapter A of the District Rules (relating to General Provisions Applicable to All Permits and Registrations), including Section 3.03 (relating to Permits Subject to Modification and Additional Production Limitations).
15. All other matters requested in the application, which are not specifically granted by this permit, are denied.



Central Texas Groundwater Conservation District

This Permit is issued in accordance with the Rules of the Central Texas Groundwater Conservation District. The Permit Application was determined to be administratively complete by the General Manager and proper notice and publication were provided in accordance with the Rules of the District. On 2015-09-11, at a properly noticed Public Hearing, the Board of Directors approved the Permit Applications and instructed the Manager to issue this Permit.

State of Texas §

§


County of Burnet §



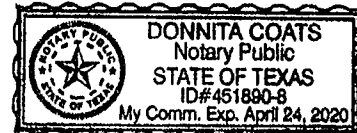
Mitchell Sodek
General Manager

This instrument was acknowledged before me on
this 9 day of March 2018 by Mitchell Sodek

Notary Public, State of Texas



Notary: Donnita Coats



Central Texas Groundwater Conservation District

District Rules

As Revised December 20, 2019

Central Texas Groundwater Conservation District District Rules

REVISION RECORD

<u>Date Adopted</u>	<u>Effective Date</u>	<u>General Comments</u>
08/31/09	09/01/09	Original Adoption
05/17/10	05/17/10	Revised
08/13/10	08/13/10	Revised
11/12/10	11/12/10	Revised
05/16/14	06/01/14	Revised
04/22/16	04/22/16	Revised
01/29/18	01/29/18	Revised
10/15/18	10/15/18	Revised
09/09/19	09/09/19	Revised
12/20/19	12/20/19	Revised

Central Texas Groundwater Conservation District

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CHAPTER 3
PERMITS AND REGISTRATIONS

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Central Texas Groundwater Conservation District

District Rules

PREAMBLE

The Central Texas Groundwater Conservation District ("District") was created in 2005 by the 79th Legislature with a directive to conserve, preserve, protect, and recharge the groundwater resources of Burnet County, and to prevent waste and degradation of quality of those groundwater resources. The boundaries of the District are coextensive with the boundaries of Burnet County. The citizens of Burnet County confirmed creation of the District by an election held on September 21, 2005.

The District is committed to manage and protect the groundwater resources of Burnet County and to work with others to ensure a sustainable, adequate, high-quality and cost-effective supply of water, now and in the future. The District will strive to develop, promote, and implement water conservation, augmentation, and management strategies to protect water resources for the benefit of the citizens, economy, and environment of Burnet County. The preservation of this most valuable resource can be managed in a prudent and cost-effective manner through conservation, education, management, and permitting. Any action taken by the District shall only be after full consideration and respect has been afforded to the individual property rights of the citizens of Burnet County.

Procedural History of Rules Adoption

These rules of the Central Texas Groundwater Conservation District were initially adopted by the Board of Directors on August 31, 2009, and made initially effective on September 1, 2009, after numerous properly noticed public meetings and hearings. The rules were subsequently revised after proper notice and hearing on May 17, 2010, on August 13, 2010, on November 12, 2010, on May 16, 2014 to be effective on June 1, 2014, on April 22, 2016, on January 29, 2018 on October 15, 2018, on September 9, 2019 and again on December 20, 2019. In accordance with Section 59, Article XVI of the Texas Constitution, the District Act, and Chapter 36 of the Texas Water Code, the following rules are hereby ratified and are effective as the rules of the District as of December 20, 2019.

CHAPTER 1
GENERAL PROVISIONS

SUBCHAPTER A.
DEFINITIONS

§ 1.01 Definition of Terms

In the administration of its duties, the District follows the definitions of terms set forth in Chapter 36 and other definitions as follows:

- (1) “Abandoned well” means a well that is not in use. A well is considered to be in use if:
 - (A) the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;
 - (B) the well is not a deteriorated well and has been capped;
 - (C) the water from the well is being put to a beneficial use;
 - (D) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or
 - (E) the landowner is participating in a federal conservation program as defined by Chapter 36, Texas Water Code.
- (2) “Acre-foot” means 325,851 U.S. gallons of water.
- (3) “Administrative Law Judge” or “ALJ” means a person from the State Office of Administrative Hearings assigned to preside over a contested case.
- (4) “Affected person” means, for any application, a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (5) “Aggregate Well System” two or more wells that are owned and operated by the same permittee that operate in such a manner that the wells’ combined production capacity is greater than 25,000 gallons per day and the wells are used to provide water to the same enterprise or operation such as a subdivision, facility, or irrigated acreage.
- (6) “Aquifer” means any water bearing geologic formation located in whole or in part within the boundaries of the District.
- (7) “Available Sustainable Yield” is calculated by subtracting Current Permitted Production from Sustainable Yield.

- (8) “Beneficial use” or “beneficial purpose” means use of groundwater for:
- (A) agricultural, gardening, domestic (including lawn-watering), stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational purposes;
 - (B) exploring for, producing, handling, or treating oil, gas, sulfur, lignite, or other minerals;
 - (C) or any other purpose that is useful and beneficial to the user that does not constitute waste.
- (9) “Board” means the Board of Directors of the District.
- (10) “Casing” means a tubular, watertight structure installed in the excavated or drilled hole to maintain the well opening and, along with cementing, to confine groundwater to its zone of origin and to prevent the entrance of surface pollutants.
- (11) “Cement” means a neat Portland or construction cement mixture of not more than 7 gallons of water per 94 pound sack of dry cement, creating a cement slurry in which bentonite, gypsum, or other additives may be included.
- (12) “Chapter 36” means Chapter 36, Texas Water Code.
- (13) “Contiguous Controlled Acre” means an acre of land upon which a well that is the subject of an Operating Permit or permit application is located, and each additional acre of land:
- (A) for which the applicant has a legal right to produce groundwater;
 - (B) believed to be located over the same aquifer as the aquifer from which the well will be producing groundwater, and
 - (C) either:
 - (i) located within the perimeter of the same surface estate plat, deed, or other legally recognized surface estate property description filed in the deed records of Burnet County as the acre on which the well is located (including tracts of land listed in a single deed all of which adjoin each other and are within the same perimeter);
 - (ii) located within the perimeter of a tract of land on which the well is located that is under the same right to produce and use groundwater, as established by deed, lease, or otherwise as the land upon which the well is located, although the property may be described in separate plats or deeds; or
 - (iii) contiguous to acreage described under (A) and (B), but on a different tract of land that does not meet the description of acreage under (C)(i) or (C)(ii).

Acreage on separate tracts of land that would otherwise be contiguous under this definition but for the need to cross over to the other side of a strip or easement for roads, railroads, pipelines, or utilities or similar long, but narrow, strips shall be considered contiguous for the purposes of this definition. Separate tracts of land must share a common boundary of at least one-eighth of the length of the total tract perimeter of the tract without the well or at least 500 linear feet, whichever is shorter, in order for the acreage on the separate tracts to be considered contiguous to the well. The acreage of the strip or easement for roads, railroads, pipelines, or utilities or similar long, but narrow, strips itself shall not be included for purposes of calculating the amount of total contiguous acreage unless the permit applicant has the right to produce groundwater from the strip or easement for roads, railroads, pipelines, or utilities or similar long, but narrow, strips. However, acreage on two otherwise non-contiguous tracts of land shall not be considered contiguous simply because they are joined by the length of a strip or easement for roads, railroads, pipelines, or utilities or similar long, but narrow, strips. An acre of land may not be assigned as Contiguous Controlled Acreage to more than one well, well system, or permit holder.

- (14) “Current Permitted Production” means the total volume of groundwater, expressed in terms of acre-feet per year, that the District has authorized through Operating Permits and Grandfathered Use Permits to be withdrawn from a single formation, or formation subdivision, within the management zone.
- (15) “Desired future condition” or “DFC” means a quantitative description of the desired condition of groundwater resources, developed for a specific aquifer or aquifers, at a specified time in the future, as defined by the groundwater conservation districts participating in Groundwater Management Area No. 8, including the District, as part of the joint planning process described under Chapter 36.
- (16) “Deteriorated well” means a well, the condition of which will cause or is likely to cause pollution of groundwater in the District.
- (17) “Dewatering well” means a well that is constructed to produce groundwater for the purpose of lowering the water table or potentiometric surface, or to relieve hydrostatic uplift, for mining, quarrying, or excavation purposes.
- (18) “Director” means a person who is elected and qualified to serve on the Board of Directors of the District as established by the District Act.
- (19) “District” means the Central Texas Groundwater Conservation District created in accordance with Section 59, Article XVI, Texas Constitution, Chapter 36, and the District Act.
- (20) “District Act” means Act of May 25, 2005, 79th Leg. R.S., ch. 855, 2005 Tex. Gen. Laws 2899 (now codified as Chapter 8810 Special District Local Laws Code), as may be amended from time to time.
- (21) “District office” means the office of the District located in Burnet, Burnet County, Texas. The location of the District office may be changed from time to time by the Board.

- (22) "Domestic use" means the use of groundwater by an individual, a household, a small business, a church, or any other user to support reasonable domestic-type beneficial use. For purposes of §3.52 and §3.66, use in excess of the reasonable volume of beneficial domestic-type use will not be considered domestic-type use entitling the well owner to the benefits of §3.52 and §3.66, and another permit will be required.
- (23) "Drilling Permit" means a permit required by the District prior to October 15, 2018 to drill a well to conduct a pumping test as set forth in District rules existing before October 15, 2018. Drilling Permits were required only for proposed wells with a maximum capacity as equipped of more than 50 gallons per minute or if the authorization to produce will be for 10 acre-feet or more per year.
- (24) "Emergency Permit" means a permit required by the District for emergency needs, as set forth under Section 3.65.
- (25) "Exempt well" means a new or an existing well that is exempt from permitting under Section 3.40.
- (26) "Existing well" means a well that was in existence or for which drilling commenced prior to September 1, 2009.
- (27) "Effective date" means the original effective date of these rules, September 1, 2009.
- (28) "General Manager" means the person employed by the Board to manage the employees and day-to-day operations and affairs of the District and whose title is "General Manager".
- (29) "Grandfathered Use Permit" means a permit issued by the District that authorizes, under certain conditions, groundwater production based on groundwater use during the Grandfathered Use Period.
- (30) "Grandfathered Use Period" means any time prior to September 1, 2009.
- (31) "Grandfathered Use Balance" is calculated by subtracting the annual amount of groundwater that a permittee is originally authorized by the District to produce from an existing well under the terms of an Operating Permit from the permittee's Maximum Grandfathered Use.
- (32) "Groundwater" means water percolating below the surface of the earth.
- (33) "Hearing Body" means the Board, a committee of the Board, and/or a Hearing Examiner serving in a quasi-judicial capacity at a hearing held under Chapter 36 and/or these Rules.
- (34) "Hearing Examiner" means a person appointed in writing by the Board to conduct a hearing or other proceeding and who has the authority granted to a Presiding Officer under these rules, except as that authority may be limited by the Board or pursuant to the appointment. The term also includes an administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH).

- (35) “Hydrogeologic Report” means a report detailing the results of a hydrogeologic investigation conducted pursuant to Section 3.63 that identifies the availability and quality of groundwater in a particular area and formation and the observed impacts of groundwater production on the surrounding environment, including impacts to nearby or adjacent wells.
- (36) “Landowner” means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on the land surface.
- (37) “Large Well” means a well that is proposed to produce or produces more than 10 acre-feet per year, or that will have a maximum capacity of more than 50 gallons per minute.
- (38) “Leachate well” means a well used to remove contamination from soil or groundwater. The term does not include a dewatering well.
- (39) “Livestock use” means the use of groundwater for the open-range watering of livestock, exotic livestock, game animals or fur-bearing animals. For purposes of this definition, the terms “livestock” and “exotic livestock” are to be used as defined in § 1.003 and § 142.001 of the Agriculture Code, respectively, and the terms “game animals” and “fur-bearing animals” are to be used as defined in §63.001 and §71.001, respectively, of the Parks and Wildlife Code. Livestock use does not include use by or for a public water system.
- (40) “Managed Available Groundwater” means, for purposes of the “Historical and Administrative Notes in Chapter 5 of these Rules, the amount of water that may, to the extent possible, be permitted by the District for beneficial use in accordance with the desired future conditions of the aquifers as determined under earlier versions of Section 36.108, Texas Water Code, after taking into consideration the amount of water used by exempt wells and other non-permitted discharges.
- (41) “Management Plan” means the District Management Plan required under Section 36.1071, Texas Water Code, and as further described in these rules.
- (42) “Management zone” means one or more of the zones into which the Board may divide the District, as set forth under Section 4 of these rules.
- (43) “Maximum Grandfathered Use” means the largest volume of groundwater produced from an aquifer and beneficially used for an existing well during a calendar year in the Grandfathered Use Period. Where the beneficial use of water did not commence until less than one calendar year before the end of the Grandfathered Use Period, the term means the calculated amount of groundwater that would in all reasonable likelihood have been beneficially used during the entire final calendar year of the Grandfathered Use Period for the applied-for purpose, had the activities that required the groundwater production commenced on the first day of the final calendar year of the Grandfathered Use Period.
- (44) “Meter” or “measurement device” means a water flow measuring device that can measure within +/- 5% of accuracy the instantaneous rate of flow and record the amount of groundwater produced or transferred from a well or well system during a measure of time.

- (45) "Modeled Available Groundwater" means the amount of water that the executive administrator of the Texas Water Development Board determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108 Texas Water Code.
- (46) "Monitoring well" means a well installed to measure some property of the groundwater or the aquifer that it penetrates, and does not produce more than 5,000 gallons per year.
- (47) "New well" means a well for which drilling commenced on or after September 1, 2009.
- (48) "Non-exempt well" means an existing or a new well that does not qualify for exempt well status under these Rules.
- (49) "Open Meetings Act" means Chapter 551, Texas Government Code, as it may be amended from time to time, also known as the "Texas Open Meetings Act".
- (50) "Operating Permit" means a permit that may be issued by the District for equipping, completing, substantially altering, operating, or producing groundwater from any new or existing non-exempt water well.
- (51) "Party" means a person who is an automatic participant in a proceeding before the District as set forth under Chapter 7 or a person who has been designated as an affected person and admitted to participate in a contested case before the Board, except where the usage of the term clearly suggests otherwise.
- (52) "Person" means an individual, corporation, limited liability company, organization, government, governmental subdivision, agency, business trust, estate, trust, partnership, association, or other legal entity.
- (53) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any groundwater in the District that renders the groundwater harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or public enjoyment of the water for any lawful or reasonable use.
- (54) "Presiding Officer" means the president, vice-president, secretary, or other Board member presiding at any hearing or other proceeding, a Hearing Examiner appointed by the Board, or a SOAH ALJ for hearings conducted by SOAH, to conduct or preside over any hearing or other proceeding.
- (55) "Production," "producing," or "produce" means the act of extracting groundwater from an aquifer by pumping or other method, or any act or activity that allows more than 25,000 gallons per day of groundwater to escape from an aquifer by any means.
- (56) "Proposal for Decision" has the meaning described in section 36.410, Texas Water Code.
- (57) "Public Information Act" means Chapter 552, Texas Government Code, as it may be amended from time to time.

- (58) “Public Water System” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for “drinking water” in 30 Texas Administrative Code, Section 290.38. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms “individual” or “served”, an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.
- (59) “Pump” means any facility, device, equipment, materials, or method used to obtain water from a well.
- (60) “Registration” means a well owner providing certain information about a well to the District for the District's records, as more particularly described under Section 3.30.
- (61) “Retail Public Utility” means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling in this state facilities, for providing potable water service or sewer service, or both, for compensation, as defined by Section 13.002 of the Texas Water Code.
- (62) “Rule” or “Rules” means these District Rules collectively or a particular rule contained within these District Rules, as determined by the context in which the term is used.
- (63) “Review period” means the period of time between the date of a Board order publishing a Sustainable Yield calculation and the time identified in the same order when the Board anticipates making a subsequent calculation for the same formation, or formation subdivision, within the same management zone.
- (64) “Small Well” means a well proposed to produce or produces 10 acre-feet of water per year or less, and that will have a maximum capacity of 50 gallons per minute or less.
- (65) “SOAH means the State Office of Administrative Hearings.
- (66) “Substantially alter” or “substantial alteration” 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, to alter or replace the pump to increase its designed production capacity in any way, or to otherwise increase the capacity of the well to produce groundwater so that the maximum production capacity is increased by a factor of five (5) percent or more over the pre-alteration capacity.

- (67) “Sustainable Yield” means a volume of water, expressed in terms of acre-feet per year, that, when factoring all current estimated exempt uses and additional exempt uses that are anticipated for the review period, can be withdrawn through permitted production within a management zone while achieving applicable desired future conditions within the zone.
- (68) “Test Hole” means a drilled hole used to obtain information on geologic and hydrologic conditions for groundwater exploration.
- (69) “Transfer” means a change in a permit or application for a permit or a change in a registration as follows, except that the term “transfer” shall have its ordinary meaning as read in context when used in other contexts:
- (A) ownership;
 - (B) the person authorized to exercise the right to make withdrawals and place the groundwater to beneficial use;
 - (C) point of withdrawal;
 - (D) purpose of use;
 - (E) place of use; or
 - (F) maximum rate of withdrawal.
- (70) “Unused well” means a well that has been registered with the District, is not a deteriorated well, and contains the casing, gearhead, pump base, pump, pump column in good condition, as well as if applicable, the power unit, and that:
- (A) has not been operated for three (3) or more years; or
 - (B) has been capped. The term includes a well that has not been operated for three (3) or more years while the real property on which the Well was located was enrolled in a state or federal conservation program such as the Conservation Reserve Program (CRP).
- The term does not include a well in which any or all of the equipment has been removed for a reasonable amount of time for repair to the equipment.
- (71) “Verification Period” means September 1, 2010, to September 1, 2011.
- (72) “Waste” means one or more of the following:
- (A) withdrawal of groundwater from an aquifer at a rate and in an amount that causes or threatens to cause an intrusion into the aquifer of water unsuitable for agriculture, gardening, domestic, or stock raising purposes;

- (B) the flowing or producing of wells from an aquifer if the water produced is not used for a beneficial purpose;
 - (C) escape of groundwater from an aquifer to any other reservoir or geologic stratum that does not contain groundwater;
 - (D) pollution or harmful alteration of groundwater in an aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
 - (E) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or other order issued by the Texas Commission on Environmental Quality under Chapter 26, Texas Water Code;
 - (F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge;
 - (G) for water produced from an artesian well, “waste” has the meaning assigned by Section 11.205, Texas Water Code;
 - (H) operating a deteriorated well;
 - (I) operating a nonexempt well within the boundaries of the District without a required permit;
 - (J) producing groundwater in violation of Chapter 5; or
 - (K) producing groundwater in violation of any District rule governing the withdrawal of groundwater through production limits on wells, managed depletion, or both.
- (73) “Well” means any artificial excavation located within the boundaries of the District dug or drilled for the purpose of exploring for or withdrawing groundwater from an aquifer. The term does not include an aggregate quarry; groundwater use by aggregate quarries is regulated under Chapter 13.
- (74) “Well owner” means the person who owns a possessory interest in: (1) the land upon which a well or well system is located or to be located; (2) the well or well system; or (3) the groundwater withdrawn from a well or well system.
- (75) “Well system” means a well or group of wells tied to the same distribution system.
- (76) “Withdraw” means the act of extracting or producing groundwater by pumping or other method.

- (77) “Year” means a calendar year (January 1 through December 31), except where the usage of the term clearly suggests otherwise.
- (78) “Zone” means a management zone, except as provided in the definition of “casing”.

SUBCHAPTER B

PURPOSE AND GENERAL PROVISIONS

§ 1.02 Authority of District

The Central Texas Groundwater Conservation District is a political subdivision of the State of Texas organized and existing under Section 59, Article XVI, Texas Constitution, Chapter 36, and the District Act.

§ 1.03 Purpose of Rules

These rules are adopted under the authority of Section 36.101, Texas Water Code, and the District Act for the purpose of conserving, preserving, protecting, and recharging groundwater in the District in order to prevent subsidence, prevent degradation of water quality, prevent waste of groundwater, and to carry out the powers and duties of the District Act and Chapter 36.

§ 1.04 Use and Effect of Rules

These Rules are used by the District in the exercise of the powers conferred on the District by law and in the accomplishment of the purposes of the law creating the District. These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case will they, or any part therein, be construed as a limitation or restriction upon the District to exercise powers, duties, and jurisdiction conferred by law.

§ 1.05 Purpose of District

The purpose of the District is to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by the withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution.

§ 1.06 Ownership of Groundwater

The ownership and rights of the owners of land within the District, and their lessees and assigns, in groundwater are hereby recognized, and nothing in Chapter 36 shall be construed as depriving or divesting those owners or their lessees and assigns of that ownership or those rights, except as those rights may be limited or altered by these Rules.

§ 1.07 Construction

A reference to a chapter, subchapter, section, or rule without further identification is a reference to a chapter, subchapter, section, or rule in these Rules, except that a reference to "Chapter 36" shall mean Chapter 36, Water Code. A reference to a subsection without further identification is a reference to a subsection in the same section. Construction of words and phrases is governed by the Code Construction Act, Subchapter B, Chapter 311, Texas Government Code. The singular includes the plural, and the plural includes the singular. The masculine includes the feminine, and the feminine includes the masculine.

§ 1.08 Methods of Service Under the Rules

Except as provided in these rules for notice of hearings on permit applications or otherwise, 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 sent to the recipients last known address, by email to the recipient's email address on file with the District if written consent is granted by the recipient, or by telephonic document transfer to the recipient's current telecopier number and shall be accomplished by 5:00 o'clock p.m. (as shown by the clock in District's office in Burnet, Texas) on the date which it is due. Service by mail is complete upon deposit in a post office depository box or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer commencing after 5:00 o'clock p.m. (as shown by the clock in the District's office in Burnet, Texas) shall be deemed complete the following business day. If service or delivery is by mail and the recipient has the right or is required to do some act within a prescribed period of time after service, three days will be added to the prescribed period. If service by other methods has proved unsuccessful, service will be deemed complete upon publication of the notice or document in a newspaper of general circulation in the District or by such other method approved by the General Manager.

§ 1.09 Severability

If a provision contained in these Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability does not affect any other Rules or provisions of these Rules, and these Rules shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in these Rules.

§ 1.10 Regulatory Compliance

All well owners, operators, permittees, and registrants of the District shall comply with all applicable rules and regulations of all governmental entities. If District Rules and regulations are more stringent than those of other governmental entities, the District Rules and regulations control.

§ 1.11 Computing Time

In computing any period of time prescribed or allowed by these Rules, order of the Board, or any applicable statute, the day of the act, event, or default from which the designated period of time begins to run is not included, but the last day of the period so computed is included, unless it

is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

§ 1.12 Time Limits

Applications, requests, or other papers or documents required or allowed to be filed under these Rules or by law must be received for filing in the District office within the time limit for filing, if any. The date of receipt, not the date of posting, is determinative of the time of filing. Time periods set forth in these rules shall be measured by calendar days, unless otherwise specified.

§ 1.13 Show Cause Orders and Complaints

The Board, on its own motion or upon receipt of sufficient written protest or complaint, may at any time, after due notice to all interested parties, cite a person operating within the District to appear before it at a public hearing and require the person to show cause why a suit should not be initiated against the person in a court of competent jurisdiction for failure to comply with the orders or Rules of the Board, the relevant statutes of the State, or failure to abide by the terms and provisions of a permit issued by the District or the operating authority of the District. A hearing under this Rule shall be conducted in accordance with the Chapter 7 rules of the District. Nothing in this rule shall be construed as a mandatory prerequisite to the District instituting a suit or other enforcement under Chapter 8 of these Rules.

§ 1.14 Notification of Rights of Well Owners

As soon as practicable after the effective date of these rules, September 1, 2009, the District shall publish notice to generally inform the well owners of the District's existence and the well owners' rights and duties under the rules.

§ 1.15 Amending of Rules

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

CHAPTER 2

DISTRICT MANAGEMENT PLAN

§ 2.01 District Management Plan

Following notice and hearing, the District adopted a comprehensive District Management Plan in accordance with Chapter 36. The Management Plan, as implemented by the District through these Rules, specifies the acts and procedures and performance and avoidance measures necessary to prevent waste, the reduction of artesian pressure, or the draw-down of the water table. The Board may review the plan annually and will review and readopt the Management Plan with or without changes at least every five years. A Management Plan, once adopted, remains in effect in accordance with Section 36.1072 Texas Water Code.

CHAPTER 3
PERMITS AND REGISTRATIONS

SUBCHAPTER A.
GENERAL PROVISIONS APPLICABLE TO ALL PERMITS AND REGISTRATIONS

§ 3.01 Activities Prohibited Without Prior Authorization

- (a) No person may:
 - (1) drill a well without first obtaining from the District express written authorization to drill a test hole, or unless otherwise expressly authorized by these Rules;
 - (2) alter the size of a well or pump such that it would bring that well into the jurisdiction of the District, or would disqualify the well from a permitting exemption, without first obtaining a permit from the District;
 - (3) substantially alter the size of a well or pump without first obtaining a permit, permit amendment, or other express written authorization from the District; or
 - (4) produce water from any non-exempt well after without first having obtained from the District a valid Operating Permit or amendment thereto, Grandfathered Use Permit, or Emergency Permit that authorizes the withdrawal of the amount produced.
- (b) No well may be operated unless the well is registered with the District, or unless otherwise expressly authorized in these Rules.
- (c) For existing wells, Subsections (a)(2) and (a)(3) are effective on September 1, 2009, and Subsection (a)(4) is effective on September 1, 2010. For new wells, Subsection (a) is effective in its entirety on September 1, 2009.
- (d) A violation of any of the prohibitions in Subsection (a) or (b) occurs on the first day that the prohibited drilling, alteration, operation or production begins, and continues each day thereafter as a separate violation until cessation of the prohibited conduct, or until the necessary authorization from the District is formally granted by the Board.

§ 3.02 Permits Issued by District

- (a) A permit is required for drilling, substantially altering, operating, or producing groundwater from any non-exempt well, except for the drilling of a test hole under Subchapter H.
- (b) The District must include the following in each permit it issues:
 - (1) the name of the person to whom the permit is issued;

- (2) the date the permit is issued;
- (3) the permit expiration date;
- (4) each applicable permit condition and restriction;
- (5) aquifer or management zone;
- (6) estimated reasonable beneficial domestic-type use based on the applicant's representations of use to the General Manager under §3.40, §3.52, or §3.66;
- (7) well location;
- (8) conditions and restrictions, if any, placed on the rate and amount of withdrawal;
- (9) purpose for which the water is to be used; and,
- (10) any other information the District determines appropriate and is included in District rules and reasonably related to an issue that the District by law is authorized to consider.

§ 3.03 Permits Subject to Modification and Additional Production Limitations

- (a) A permit issued by the District confers only the legal ability to undertake the activity specifically described in the terms of the permit. The terms of any permit issued by the District may be modified or amended pursuant to these Rules. A permit conveys no vested right, and itself is no vested right, of the permit holder. The board may revoke or amend a permit in accordance with these Rules when reasonably necessary to accomplish the purposes of the District, the District's rules, Management Plan, or Chapter 36.
- (b) All permits issued by the District are subject to the District's rules, proportional adjustment regulations, and Management Plan.
- (c) Each permit to produce groundwater issued by the District may be issued with special conditions and is at all times subject to additional production restrictions based on:
 - (1) the amount of calculated Sustainable Yield and Available Sustainable Yield in a formation, or formation subdivision, within a designated management zone;
 - (2) prohibiting unreasonable impacts to surrounding landowners;
 - (3) the proportional adjustment regulations of the District;
 - (4) the achievement of applicable desired future conditions;
 - (5) the accomplishment of the purposes of the District, the District's rules, Management Plan, or Chapter 36; and

- (6) any other applicable production limitations set forth in Chapter 5 of these rules.
- (d) By submitting an application for any permit issued by the District, the applicant acknowledges that any permit issued based on the submitted application does not guarantee the availability of any groundwater.
- (e) The Board may amend these Rules at any time to allocate water available for permitting within a management zone, after considering an estimate of total exempt use produced within the zone, based upon the surface acreage owned by the holder of an Operating Permit or the surface acreage for which the holder of an Operating Permit controls the right to produce groundwater within the same zone.
- (f) Any authorizations provided by these rules is subject to the right of the District, after notice and hearing, to modify or reduce the authorization allowed hereunder to protect the property rights of neighboring landowner.

§ 3.04 Compliance With Permit Terms

The terms, conditions, a new or existing well proposed in a permit application or permit amendment application that complies with the applicable production regulations under Sections 5.02(c)(2) or 5.02(i) and the spacing requirements, and special provisions of a permit issued by the District must be adhered to at all times. The failure of any person bound to comply with the terms, conditions, requirements, and special provisions of a permit is prohibited and is therefore grounds for enforcement as provided by these Rules and other applicable law.

§ 3.05 Permit Terms and Renewal

- (a) Grandfathered Use Permits and Operating Permits issued by the District will be valid only for the term set by the District, not to exceed five years from the date of issuance, or until revoked or amended.
- (b) Except as otherwise provided by these Rules, a permit will be renewed by the General Manager at the end of its term unless the Board acts to amend, cancel, or revoke the permit at the end of its term to accomplish the purposes of Chapter 4, unresolved rules violations, or as otherwise authorized under these Rules.
- (c) If the Board intends to amend on its own motion, cancel, or revoke a permit at the end of its term, the District under Chapter 6, the Board shall provide the permit holder with written notice of a hearing on the matter at least 90 calendar days before the expiration date of the permit. A hearing under this subsection shall be held using the permit hearing procedures set forth under Chapter 7. This provision shall not be construed to prohibit the District from amending, canceling, or revoking a permit prior to the expiration of its term as otherwise authorized by these Rules. A permit holder is authorized to continue operating under the conditions of the prior permit, subject to any changes necessary under proportional adjustment regulations, these Rules, or the Management Plan, for any period in which the permit is the subject of an amendment, cancellation, or revocation hearing. Only the Board may amend, cancel, or revoke a permit.

- (d) The General Manager shall approve automatic permit renewals under this Rule without notice, hearing, or further action by the Board provided that the permit holder is not requesting a change related to the renewal that would require a permit amendment. The General Manager is not required to renew a permit if the permittee is delinquent in paying a required fee; is subject to a pending enforcement action that has not been settled or finally adjudicated or has not paid an outstanding civil penalty or complied with an order resulting from a final adjudication of a violation of a district permit, order or rule.
- (e) This authorization is issued subject to the right of the District, after notice and hearing, to modify or reduce this permit in order to protect the property rights of neighboring landowners.

§ 3.06 Permit Revocation or Amendment for Nonuse

- (a) To prevent speculation in groundwater permits and the issuance of permits that are not being used, which may result in the denial of permits to other applicants where there is no available water, a permit holder must begin to produce and beneficially use groundwater in accordance with the terms and conditions of a permit within five years of the date of issuance of a permit or permit amendment. The District shall schedule a permit that fails to begin producing and using groundwater in accordance with the permit within five years of permit issuance for a permit revocation hearing, after providing written notice to the permittee, to determine whether to revoke the permit or whether good cause exists to continue authorizing production under the terms of the permit.
- (b) If the total annual groundwater authorization in a permit has been partially, but not fully, used beneficially in a calendar year within five years of permit issuance, the District may schedule a permit amendment or revocation hearing, after providing written notice to the permittee, to determine whether to:
 - (1) continue authorizing production under the terms of the permit;
 - (2) amend the permit to lower the groundwater production authorization to reflect the extent of annual beneficial use; or
 - (3) revoke the permit entirely.
- (c) The District shall not amend or revoke a permit for nonuse if the Board determines, based on evidence presented by the permittee, that:
 - (1) the permit was partially utilized within the initial five-year period; and
 - (2) the unused portion of the permit can be reasonably expected to be fully utilized within ten years of permit issuance based upon the nature of the project, including a demonstration:
 - (A) that reasonable progress has been made on the project since permit issuance; and

- (B) of the likelihood of continuing progress, based upon the nature of the project, so that full utilization of the total permitted amount before the end of the original ten-year period from permit issuance is probable.
- (d) In considering whether to revoke or amend a permit for full or partial nonuse under Subsection (c), the Board shall also consider, where applicable:
 - (1) whether the permit was obtained to meet a demonstrated long-term public water supply need, including the gradual addition of retail connections supplied by infrastructure associated with the well and permit;
 - (2) whether nonuse was the result of implementation of water conservation measures; and
 - (3) whether the nonuse is attributable to a public water supplier or other permittee who, although produced groundwater from the well covered by the permit at one time, has converted its water supply in whole or in part to surface water or other alternative supplies and no longer uses the well except for emergency or back-up purposes.
- (e) Any permit continued by the Board under this provision shall be scheduled for a review hearing at each time it is otherwise scheduled for automatic permit term renewal prior to the end of the original ten-year period from the date of issuance to determine the extent of progress since the last time it was considered by the Board and whether good cause exists to amend or revoke the permit.
- (f) Any person whose permit is revoked or amended may reapply for a new permit or permit amendment at a later date in the manner set forth in these rules for new permits or permit amendments generally. The application will be processed in the same manner and under the same criteria and rules applicable to other new permit or permit amendment applications at the time of such reapplication.
- (g) Acceptance of a permit constitutes an acknowledgment by the permit holder of receipt of the rules of the District and agreement that the permit holder will comply with all rules of the District.
- (h) The District may amend any permit, in accordance with these Rules, to accomplish the purposes of the District Rules, Management Plan, the District Act, or Chapter 36.

§ 3.07 Applications Incorporated Into Permits and Registrations

- (a) Each permit and well registration is issued by the District on the basis of, and contingent upon, the accuracy of the information supplied in the underlying applications. The information, statements and commitments contained in an application for a well registration, an Operating Permit, or a Grandfathered Use Permit is incorporated into the permit or registration as though the information was set forth in the permit or registration verbatim.

- (b) A finding that false information has been supplied in any application submitted to the District may be grounds to refuse or deny the application, or to immediately revoke the permit or registration, except as authorized under Section 3.53 to allow a permit applicant for an existing well to amend a permit application.

§ 3.08 Transfer of Well Ownership

- (a) Within 90 calendar days after the date of a change in ownership of a well, well system, or the right to produce water under a permit, the new owner (transferee) must file a notice of transfer of ownership of a well or other right to produce water under a permit with the District that includes the new owner's name and mailing address. The District staff shall develop a form for such purpose, and make the form available in the District office. Once the new owner files a completed notice of transfer of ownership with the District, the District will recognize the new owner as the applicable permit holder that will be authorized to produce groundwater from the applicable well or other right to produce water under a permit pursuant to the terms and conditions of the permit.
- (b) If a permittee conveys by any lawful and legally enforceable means to another person the real property interests in one or more wells or a well system that is recognized in the permit so that the transferring party (the transferor) is no longer the "well owner" as defined herein, and if notice of change of ownership under Subsection (a) has been filed with the District, the District shall recognize the person to whom such interests were conveyed (the transferee) as the legal holder of the permit, subject to the conditions and limitations of these District Rules, and the terms and conditions of each applicable permit.
- (c) Where more than one well is authorized under a single permit, but where not all permitted wells are included in a conveyance of real property interests in the wells to another person, the District may allocate the production authorization of the permit among the well owners pursuant to the terms of the conveyance, these Rules, and applicable law.
- (d) The burden of proof in any proceeding related to a question of well ownership or status as the legal holder of a permit issued by the District and the rights thereunder shall be on the person claiming such ownership or status.

SUBCHAPTER B. FILING AND PROCESSING PERMIT APPLICATIONS

§ 3.20 Processing Multiple Applications Concurrently

If a person has multiple applications pending before the District, and has requested in writing that the applications be processed concurrently, the District will process and the Board will consider the applications concurrently according to the standards and rules applicable to each, but only to the extent that concurrent processing is practicable under these Rules.

§ 3.21 Application Requirements for all Permits

- (a) All permits are granted in accordance with the provisions of the District Rules.
- (b) The application for a permit must be submitted to the District in writing and must be sworn to by the applicant.
- (c) Each application for a permit issued by the District must contain the following:
 - (1) the name and mailing address of the applicant and the owner of the land on which the well is or will be located;
 - (2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to file the application, hold the permit in lieu of the property owner, and construct and operate a well for the proposed use;
 - (3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
 - (4) a declaration that the applicant will comply with the District Management Plan;
 - (5) the location of each well and the estimated rate at which water will be withdrawn;
 - (6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;
 - (7) a drought contingency plan, if the applicant is required by law to have a drought contingency plan;
 - (8) a statement by the applicant that the water withdrawn under the permit will be put to beneficial use at all times;
 - (9) the location of the use of the water from the well;
 - (10) the name of the aquifer or subdivision thereof from which water will be produced by the well;
 - (11) legal description of the tract of land on which the well or well system is located;
 - (12) the number of Contiguous Controlled Acres, a legal description of all such surface acreage, and information demonstrating that the extent to which the surface acreage is located over the same aquifer as the aquifer from which the well will be producing.
 - (13) any additional information required for an Operating Permit under Section 3.50; and

- (14) any other information included in District rules in effect on the date the application is submitted that specifies what must be included in an application for a determination of administrative completeness and reasonably relates to an issue that the District by law is authorized to consider.
- (d) An application for a permit issued by the District cannot be deemed administratively complete until the applicant has submitted any administrative fees or well report deposits required by the District for permit applications under Chapter 12.
- (e) An application may be rejected as administratively incomplete if the District finds that substantive information required by the permit application is missing, false, or incorrect.
- (f) The General Manager must determine whether an application for a permit issued by the District is administratively complete within the later of 45 calendar days after: (1) the completed application is discussed in the “General Manager Meeting” (Appendix B), or (2) receipt of the applicant’s supplemental information to support the application that is provided in response to the General Manager’s written request for more information after the Permit Meeting (Appendix B). If, by end of said 45 calendar days, after the later of the General Manager’s Meeting or the last Permit Meeting, the General Manager fails to send a list of reasons why the application (as supplemented) is not administratively complete, then the application (as supplemented) is deemed to be administratively complete.

§ 3.22 Considerations for Granting or Denying a Permit Application

- (a) Before granting or denying a permit application, the Board shall consider whether the application conforms to the requirements prescribed by Chapter 36, the District Act, the Management Plan, and the District Rules, including without limitation:
 - (1) the criteria under Section 36.113, Water Code;
 - (2) whether the proposed use of water unreasonably affects surrounding landowners;
 - (3) whether the amount of groundwater requested in the application would exceed the Available Sustainable Yield of the formation, or formation subdivision, within any management zone in which the well will be completed;
 - (4) the amount of time expected to lapse, if any, between the application date and the date that the applicant can put the requested water to a beneficial use;
 - (5) whether the applicant commits to placing the water produced under the requested permit to a beneficial use;
 - (6) the spacing and completion requirements of Chapter 6;
 - (7) whether any special conditions should be included, as described under Section 3.03(c) or otherwise;

- (8) whether the application is submitted in conjunction with any request to transfer another permit;
 - (9) whether the issuance of the requested permit or permits would authorize the withdrawal of groundwater in amounts that are greater than necessary for the project proposed in the application; and
 - (10) the effect of the amount of groundwater requested in the application on achieving the applicable DFC.
- (b) In determining whether the applicant has demonstrated a need for the requested production authorization and the ability to produce the requested volumes in a manner that complies with the District Rules, the Board shall consider whether the applicant has demonstrated, by a preponderance of evidence, that the quantity of water requested in the application is reasonably needed by the applicant and that the applicant can feasibly begin production and beneficial use of the requested groundwater within three years of the date of permit issuance.
 - (c) The evidence required under Subsection (b) must include planning, design, and financing documents appropriate to the nature of the project.
 - (d) For each existing well proposed in a permit application, and each new well or substantial alteration to a new or existing well proposed in a permit application or permit amendment application that complies with the applicable production regulations under Sections 5.02(c)(2) or 5.02(i) and the spacing requirements under Chapter 6, the Board shall recognize a presumption that the proposed well will not unreasonably affect surrounding landowners under Subsection (a)(2) of this section. The presumption may be rebutted only by a preponderance of evidence to the contrary.

§ 3.23 Amendment of Permit

- (a) If a permit holder intends to undertake any action that would exceed the maximum amount of groundwater authorized to be produced from a well or operation requiring a permit, change the ownership of a well or operation requiring a permit, the purpose of or location of use of the groundwater produced, or any other applicable term, condition or restriction of an existing permit, the permit holder must first apply for and obtain an appropriate permit amendment.
- (b) A major amendment to a permit includes, but is not limited to: a change that would substantially alter the size or capacity of a well, an increase in the annual quantity of groundwater authorized to be withdrawn, a change in the purpose or place of use of the water produced, the addition of a new well to be included in an already permitted aggregate system, or a change of location of groundwater withdrawal, except for a replacement well authorized under Section 3.71, and any other change that is not a minor amendment.
- (c) A major amendment to a permit shall not be made prior to notice and hearing.

- (d) All applications for major amendments to any permit issued by the District shall be subject to the considerations in Section 3.22.
- (e) Amendments that are not major, such as a change in ownership of the land the well, well system or operation requiring a permit is located on; or, an amendment sought by the permittee for a decrease in the quantity of groundwater authorized for withdrawal and beneficial use, the removal of a well from an already permitted aggregate system, change of address of the well owner, changing of a well from nonexempt to exempt, or a non-substantive change in a permit language such as correcting a typographical error are minor amendments and may be approved by the General Manager.
- (f) The General Manager is authorized to approve a minor permit amendment and may approve such minor amendments without public notice and hearing. The General Manager may also send an application for a minor permit amendment to the Board for consideration, and must do so if the General Manager proposes to deny the application. Any minor amendment sent to the Board for consideration shall be set on the Board's agenda and shall comply with the notice requirements of the Texas Open Meetings Act.
- (g) Grandfathered Use Permits issued by the District may not be amended and retain status as a Grandfathered Use Permit to allow for:
 - (1) a purpose of use that is different than the purpose of use originally authorized; or
 - (2) use of any water produced under the terms of the applicable permit at any point outside of the District's boundaries, if no such out-of-District use was originally authorized.
- (h) A permit amendment is not required for any well, well pump, or pump motor maintenance or repair if the maintenance or repair does not substantially alter the well, well pump, or pump motor.

§ 3.24 Completion of Permit Application Required

- (a) The District may not act on any application it receives that is not administratively complete. Within 60 days of submission of an administratively complete application, the District shall promptly act on or set for hearing the application.
- (b) If a filed application is not administratively complete, the District shall notify the applicant in writing of the incomplete nature of the application and request the information needed to complete the application.
- (c) If the District does not receive the information requested pursuant to Subsection (b) within 45 calendar days after the request is tendered, unless good cause is shown the application will be deemed abandoned and shall be returned to the applicant, along with any applicable fees or deposits.

§ 3.25 Aggregation of Multiple Wells Under a Permit

- (a) Multiple wells that are part of an aggregate well system that are owned and operated by the same permit holder and serve the same subdivision, facility, or a certificated service area authorized by the Texas Commission on Environmental Quality may, at the sole discretion of the District, be authorized under a single permit. Multiple wells that are not part of an aggregate well system but that are located on a single tract of land and owned and operated by the same permit holder may be also authorized under a single permit at the sole discretion of the District.
- (b) For the purposes of categorizing wells by the amount of groundwater production, when wells are permitted with an aggregate withdrawal, the aggregate value shall be assigned to the group, rather than allocating to each well its prorated share of estimated production.
- (c) Operating Permits for existing wells and Grandfathered Use Permits issued to an aggregate system will be based upon a consideration of the combined Maximum Grandfathered Use of all wells within the aggregate system, rather than the historic average use of each individual well.
- (d) A well that is included in an aggregate well system is classified as a nonexempt well even if the production from the well is 25,000 gallons or less per day.

SUBCHAPTER C. WELL REGISTRATION REQUIREMENTS

§ 3.30 Registration Requirements Applicable to All Wells

- (a) Each application for well registration must include the following on a form provided by the District:
 - (1) the name and mailing address of the registrant and the owner of the land on which the well is or will be located;
 - (2) if the applicant is a person other than the owner of the property, documentation establishing the authority of the applicant to file the application for well registration, to serve as the registrant in lieu of the property owner, and to construct and operate the well for the proposed use;
 - (3) a statement of the nature and purpose of the existing or proposed use and the amount of water used or to be used for each purpose;
 - (4) the location of the well and the estimated rate at which water is or will be withdrawn;
 - (5) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the District;

- (6) a statement that the water withdrawn from the well will be put to beneficial use at all times;
 - (7) the location of the use of the water from the well;
 - (8) the maximum production capacity of the well as equipped for a 24-hour period; and
 - (9) any other information deemed necessary by the Board that relates to the purposes of the District.
- (b) For purposes of determining applicable well spacing and permitting requirements, the information included in a timely filed, administratively complete application for well registration may be used as evidence that the well existed before September 1, 2009.
 - (c) Upon receipt of the well report required by Section 3.70, a registration shall be perpetual in nature, subject to enforcement and/or cancellation for violation of these Rules.

§ 3.31 Well Registration

- (a) No new well may be drilled or completed until the proposed new well has first been registered with the District.
- (b) No enforcement action may be initiated by the District against any person who fails to register an existing, exempt well in accordance with this section. However, the failure to timely register an existing, exempt well will waive all protections against well interference that are provided in Chapter 6 for the period of time from September 1, 2010, and the date the well is finally registered with the District. A failure to timely register an existing, exempt well also waives the eligibility for any special notice afforded to registered well owners pursuant to these rules.

SUBCHAPTER D. EXEMPTIONS FROM PERMITTING

§ 3.40 Permitting Exemptions

No Permit is required for the following:

- (1) The operation of an existing well that is:

equipped so that it is incapable of producing more than 25,000 gallons per 24 hour period, regardless of tract size.
- (2) The operation of a well drilled between September 1, 2009 and October 15, 2018 which meets the tract size and spacing requirements found in Appendix A and is:
 - (A) equipped so that it is incapable of producing more than 25,000 gallons per 24 hour period; and,

- (B) if drilled on a tract smaller than 10 acres in size, the casing diameter is not larger than 5 inch inside diameter.
- (3) The operation of a well drilled between September 1, 2009 and October 15, 2018 on a tract of any size which was platted prior to September 1, 2009 and not subsequently divided into smaller tracts with a casing diameter of not more than 5 inch inside diameter and incapable of producing more than 25,000 gallons per 24 hour period.
- (4) The drilling and operation of a well drilled after October 15, 2018 located on a tract of land larger than ten (10) acres that:
 - (A) will be drilled, equipped, or completed so that it is incapable of producing more than 25,000 gallons of water per 24-hour interval; and,
 - (B) meets the spacing requirements found in Appendix A as modified by §6.03(f).
- (5) The drilling or operation of leachate wells and monitoring wells.
- (6) All wells must be registered with the District.

SUBCHAPTER E.
AUTHORIZATION FOR PRODUCTION FROM EXISTING WELLS

§ 3.50 Operating Permits

- (a) Each existing, non-exempt well that produced or beneficially used groundwater at any time prior to September 1, 2009, is required to have a permit under District rules originally adopted that authorizes groundwater production on or before September 1, 2010, and to continue operating the well after that date. A permit issued pursuant to this section could include an Operating Permit, a Grandfathered Use Permit, or both.

§ 3.51 (Reserved)

§ 3.52 Existing, Non-exempt Wells Used for Domestic, Livestock or Poultry Purposes

- (a) Notwithstanding anything to the contrary in these rules, an existing well used solely for domestic, livestock, or poultry use, but that is not exempt under Section 3.40 exemptions existing on September 1, 2009, was eligible for and the District issued a limited number of permits if the well owner complied with the District rules originally adopted under this section.
- (b) For each well permitted under Subsection (a), the District may limit production generally to only the amount of water that can be used beneficially for the specified purpose of use, instead of limiting production authorization to an express annual production volume.

- (c) This section does not prohibit the District from limiting production from such a well in the future during drought conditions, or otherwise to carry out the purposes of the District.
- (d) Applications for an Operating Permit described in this section must comply with all applicable provisions of this subchapter.

§ 3.53 Grandfathered Use Permits

- (a) Any existing, non-exempt well that was used to produce groundwater at any time during the Grandfathered Use Period was eligible for a Grandfathered Use Permit if the well owner complied with the District rules originally adopted under this section.

SUBCHAPTER F. AUTHORIZATION FOR PRODUCTION FROM NEW WELLS

§ 3.60 Construction of New Wells

- (a) Before any new well may be drilled or completed, the well owner, water well driller, or any other person acting on behalf of the well owner pursuant to written authority, must:
 - (1) submit an application in accordance with Section 3.30 for well registration with the District, using a form provided by the District; and
 - (2) receive specific authorization from the District to commence drilling of the well.
- (b) The General Manager shall review each application submitted pursuant to Subsection (a) and shall determine, based on the information provided by the applicant, whether the proposed well qualifies for a permitting exemption under Section 3.40 and whether it meets spacing and completion requirements under Chapter 6. The General Manager shall inform the applicant of this determination in writing within 15 calendar days of receipt of the completed registration application.
- (c) For proposed new wells that the General Manager determines qualify for a permitting exemption under Section 3.40 and that comply with Chapter 6, the applicant may begin drilling the well described in the application upon receipt of the approved registration.
- (d) For proposed wells that the General Manager determines do not qualify for an exemption under Section 3.40, application must be made for all appropriate permits and authorizations required by these rules, including an Operating Permit and, when applicable, a Test Hole Drilling Authorization. For proposed wells that the General Manager determines do not comply with Chapter 6, the application must be amended to comply with the requirements of Chapter 6 or the applicant must apply for and obtain a variance using the process set forth in Chapter 6. Any applicant may appeal a General Manager's determination under Subsection (b) by filing, within 30 calendar days of the date of the written determination, a written request for a hearing before the Board.

- (e) The registration requirements in this section do not apply to proposed leachate wells, monitoring wells, or wells described in Section 3.40(d).
- (f) A registrant for a well described in Subsection (c) has 120 calendar days from the date of the General Manager's written determination provided under Subsection (b) to drill and complete the well, and must file the well report within 60 calendar days of completion as required by Section 3.70.

§ 3.61 (Reserved)

§ 3.62 Operating Permits for New Wells

- (a) No new, non-exempt well may be operated without the issuance of an Operating Permit under this section that specifically authorizes the operation of, and production of water from, the well identified in the permit.
- (b) An application for an Operating Permit must be sworn-to and contain the following:
 - (1) all information requested in Section 3.21;
 - (2) notice, if any, of any application to the Texas Public Utility Commission to obtain or modify a Certificate of Convenience and Necessity to provide water or wastewater service with water obtained pursuant to the requested permit; and
 - (3) for a Large Well, a hydrogeologic report conducted in conformity with, and that otherwise complies with, Section 3.63.
- (c) The General Manager is authorized to act on an administratively complete Small Well application after notice and opportunity for hearing as described under Section 7.12.
- (d) For a Large Well, in addition to all other applicable considerations, the Board may not grant an application for an Operating Permit submitted under this section unless:
 - (1) within 15 calendar days following the date that the General Manager determined the application to be administratively complete, the Applicant mailed written notice of the application to the owner of each property located, in whole or in part, within 1/2 mile of the location of the proposed well or had posted notice of the application in 2 places legible from a public roadway. Such signs shall consist of a minimum size of not less than 4 square feet with letters a minimum of 1/2 inch wide by 3 inches high in a contrasting color with the signs background;
 - (2) notice of the application was published in a newspaper of general circulation in Burnet County within 20 calendar days following the date that the General Manager determined the application to be administratively complete; and,
 - (3) the General Manager receives proof from the applicant that notice was provided as required under Subsection (d)(1).

- (e) Subject to the considerations listed in Section 3.22, and any limitations imposed on the permit application pursuant to those considerations, an application for an Operating Permit submitted under this section may not be unreasonably denied by the District.
- (f) An Operating Permit authorizing a new Small Well, shall expire on the first anniversary of the date of permit issuance, unless the permit holder:
 - (1) has demonstrated to the District that it has completed the well in accordance with the well description in the applications, the District's well spacing, construction and completion requirements provided for in these rules, and all other standards required under other applicable law; or
 - (2) has applied for, and been granted, an extension. Such extensions shall only be granted once and shall not be valid for more than an additional one-year period. Thereafter, the applicant must file a new Operating Permit application.
- (g) If an application is submitted to the District for an Operating Permit for a new well with a proposed maximum designed production capacity of 50 gallons per minute or less, but the well as completed is capable of producing more than 50 gallons per minute, the permit holder must:
 - (1) equip the well so that it is incapable of producing more than the maximum designed production capacity described in the permit application; or
 - (2) apply for and obtain an amendment to the Operating Permit, and comply with the notice, aquifer test, and hydrogeologic reporting requirements of this chapter applicable to applications for wells of that production capacity.
- (h) An Operating Permit authorizes the permittee to produce water only in accordance with the terms of the permit and these Rules.
- (i) No water may be produced from any new, non-exempt well that is required to be metered under Section 11.1 unless the well is first:
 - (1) permitted by an Operating Permit issued pursuant to this section; and
 - (2) equipped with a properly installed, fully functional flow meter.

§ 3.63 Hydrogeologic Investigation and Reports

- (a) Following the completion of each Large Well the applicant must conduct a hydrogeologic investigation of each water bearing formation in which the well is completed to produce groundwater, or, if agreeable to the Board, a hydrogeologic investigation of the collective formations in which the well is completed to produce groundwater. In addition, the Board may order a hydrogeologic investigation be conducted under this section for any application where the Board determines that such report is warranted based on aquifer conditions, type of modification, status of adjacent wells, local water use trends, and other

aquifer management considerations, including when a permit application if granted would result in no Available Sustainable Yield in the formation or formation part.

- (b) The District shall adopt hydrogeologic investigation and reporting requirements as a component of these rules, which shall govern the procedure and protocol for conducting hydrogeologic investigations and for preparing hydrogeologic reports. The requirements shall be attached as an appendix to these rules, and a reference to this rule or section shall be construed also as a reference to such appendix. The requirements shall be designed to provide the District with information that is sufficient to assess the hydrogeologic impacts related to the proposed water production rate or to the transportation of water to a point or points outside of the District. Applicants may not rely solely on hydrogeologic reports previously filed with or prepared by the District.
- (c) Each hydrogeologic report conducted pursuant to this section must be completed in a manner that complies with the requirements adopted by the District for this purpose pursuant to Subsection (b).
- (d) Notwithstanding Section 3.62(a), the operation of a well for which the District has not issued a permit to produce groundwater, the production of water from the same well is authorized for the limited purpose of conducting a hydrogeologic investigation under this section.

§ 3.64 Reporting Requirements for Metered New Wells

Beginning no later than February 15, 2011, and no later than May 1 of each year thereafter, the holder of an Operating Permit for each new well that is required to be metered under Section 11.01 must, on a form provided by or otherwise acceptable to the District, submit a report to the District providing the information required under Section 11.05.

§ 3.65 Emergency

- (a) Upon application, the General Manager may grant an Emergency Permit that authorizes the drilling, equipping, completion, substantial altering with respect to size or capacity, or operation of a well and production from it as set forth under this Section.
- (b) An application for an Emergency Permit shall contain the information set forth in Section 3.21 and present sufficient evidence that:
 - (1) no suitable surface water or permitted groundwater is immediately available to the applicant; and
 - (2) an emergency need for the groundwater exists such that issuance of the permit is necessary to prevent the loss of life or to prevent severe, imminent threats to the public health or safety.
- (c) The General Manager may rule on any application for an Emergency Permit without notice, hearing, or further action by the Board, or with such notice and hearing as the General

Manager deems practical and necessary under the circumstances. Notice of the ruling shall be given to the applicant. Any applicant may appeal the General Manager's ruling by filing, within 15 calendar days of the General Manager's ruling, a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next available regular Board meeting or at a special Board meeting called for that purpose. The General Manager shall inform the Board of any Emergency Permits granted or denied. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager.

- (d) The administrative fees, if any, to be assessed for an Emergency Permit under this Rule shall be the same as a permit issued under Section 3.62.
- (e) Emergency Permits may be issued for a term determined by the General Manager based upon the nature and extent of the emergency, such term not to exceed 60 calendar days. Upon expiration of the term, the permit automatically expires and is cancelled.

§ 3.66 New, Non-exempt Wells Used for Domestic, Livestock or Poultry Purposes

- (a) This section applies to certain new wells drilled before October 15, 2018. The District issued a limited number of Operating Permits pursuant to this section for a new well drilled before October 15, 2018 that did not otherwise qualify for a permitting exemption existing on September 1, 2009 under Section 3.40, but that is used solely for domestic, livestock, or poultry use.
- (b) For Operating Permits issued pursuant to this section, the District may limit production generally to only the amount of water that can be used beneficially for the specified purpose of use, instead of limiting production authorization to an express annual production volume.
- (c) This section does not prohibit the District from limiting production from such a well in the future during drought conditions, or otherwise to carry out the purposes of the District.
- (d) An Operating Permit described in this section must comply with all applicable provisions of this subchapter.

§ 3.67 Permit by Rule for Certain Nonexempt Wells Located on a Tract of Land that is Ten Acres or Less

- (a) The purpose of this provision is to permit by rule the drilling, completion and production of certain nonexempt wells. Eligible wells are authorized to operate pursuant to this Section without an individual permit from the District.
- (b) To be eligible for authorization under this permit by rule, wells must:
 - (1) be drilled after October 15, 2018;
 - (2) be located on a tract of land that is ten acres or less;

- (3) meet spacing requirements found in Appendix A;
 - (4) be equipped so that it is incapable of producing more than 25,000 gallons per 24-hour period; and
 - (5) not be part of an Aggregate Well System.
- (c) Wells authorized by this Section shall be registered in accordance with Rule §3.31.
 - (d) Wells authorized by this Section are subject to the production limitations imposed by the District during drought conditions.

SUBCHAPTER G.

WELL REPORTS; WELL REPLACEMENT AND ALTERATION; UNUSED WELLS

§ 3.70 Reports of Drilling, Pump Installation and Alteration Activity

- (a) Each person who drills, deepens, completes or otherwise alters a well shall make, at the time of drilling, deepening, completing or otherwise altering the well, a legible and accurate Well Report recorded on forms provided by the District or by the Texas Department of Licensing and Regulation.
- (b) Each Well Report required by Subsection (a) must contain:
 - (1) the name and physical address of the well owner;
 - (2) the location of the drilled, deepened, completed or otherwise altered well, including the physical address of the property on which the well is or will be located, and the latitudinal and longitudinal coordinates of the wellhead location, as measured by a properly functioning and calibrated Global Positioning System unit;
 - (3) the type of work being undertaken on the well;
 - (4) the type of use or proposed use of water from the well;
 - (5) the diameter and total depth of the well bore;
 - (6) the date that drilling was commenced and completed, along with a description of the depth, thickness, and character of each strata penetrated;
 - (7) the drilling method used;
 - (8) the borehole completion method performed on the well, including the depth, size and character of the casing installed;
 - (9) a description of the annular seals installed in the well;

- (10) the surface completion method performed on the well;
 - (11) the location of water bearing strata, including the static level and the date the level was encountered, as well as the measured rate of any artesian flow encountered;
 - (12) the type and depth of any packers installed;
 - (13) a description of the plugging methods used, if plugging a well;
 - (14) the type of pump installed on the well, including the horsepower rating of the pump motor and the designed production capability of the pump, as assigned by the pump manufacturer;
 - (15) the type and results of any water test conducted on the well, including the yield, in gallons per minute, of the pump operated under optimal conditions in a pump test of the well;
 - (16) the actual production capacity of a well as equipped, stated in gallons per minute, as determined under Subsection (d);
 - (17) a description of the water quality encountered in the well;
 - (18) the Texas Water Development Board State Well Number Grid quadrangle in which the well is located; and
 - (19) an identification of the aquifer supplying water to the well.
- (c) If the well is constructed and completed to produce water from more than one aquifer, as authorized under Section 6.04, the Well Report submitted for the well shall also include the following:
- (1) a statement that the well is completed to produce water from more than one aquifer;
 - (2) an identification of each aquifer supplying water to the well; and
 - (3) an estimate in gallons per minute of the contribution of water from each aquifer supplying water to the well.
- (d) In determining the actual production capacity of the well for the information required under Subsection (b)(16), the person providing the information should consider all available information, including the pump column size, bowl size, casing size, horsepower, pumping level, pump tests, manufactures pump rating, or other information available to or provided by the pump installer or well driller. For the purpose of these rules, the production capacity shall be stated in gallons per minute produced by the well under normal operating conditions.

- (e) The person who drilled, deepened, completed, equipped or otherwise altered a well shall, within 60 calendar days after the date the well is completed or such other action is taken, file a Well Report described in this section with the District.

§ 3.71 Replacement Wells and Substantial Alteration of Completed Wells

- (a) No person may substantially alter a well or pump, or replace a well, without first having obtained authorization for such work from the District. Authorization for substantial alterations or replacement wells may only be granted following the submission of an application for such a request with the District.
- (b) Applications for replacement wells submitted under this subsection may be granted by the General Manager without notice or hearing if the replacement well will comply with each of the following conditions:
 - (1) the replacement well must be drilled within 50 feet of the location of the well being replaced;
 - (2) 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
 - (3) immediately upon commencing operation of the replacement well, the well owner will cease production and remove the pump from the well being replaced and will immediately undertake the plugging or capping of the well being replaced.
- (c) For the substantial alteration of existing wells, the applicant must obtain approval by the Board of a permit amendment application under Section 3.23 that provides all of the following information that applies:
 - (1) a description of the features of the well or pump that the applicant proposes to substantially alter, and a description of the same features of the well or pump as they currently exist;
 - (2) the extent of any recompletion or reworking proposed for the well, and the methods proposed to be used to accomplish such recompletion or reworking;
 - (3) for requests for the substantial alteration of a well with an outside casing diameter greater than 6 5/8 inches, if the proposed alteration will increase the capacity of the well to produce groundwater by more than 10 acre-feet per year than before the alteration, a hydrogeologic report conducted in accordance with Section 3.63; and
 - (4) the reasons for the proposed substantial alterations.
- (d) The Board may grant a variance to the 50-foot requirement under Subsection (b) only after notice and hearing on an amendment application.
- (e) The General Manager shall review applications for substantial alteration of existing wells submitted under Subsection (c) to determine whether the proposed substantial alteration

would constitute a major or minor permit amendment, or would disqualify an exempt well from the applicable permitting exemption under Section 3.40.

§ 3.72 Returning an Unused Well to Production

If an unused well, as defined in Section 1.01, is returned to production, the well must be brought into compliance with the current District Rules, and the owner shall obtain a permit or permit amendment for the well prior to operating the well. The rules relating to permit and permit amendment applications, including the spacing requirements applicable to new wells under Chapter 6, shall apply to the application for returning the unused well to production.

SUBCHAPTER H. TEST HOLES

§ 3.80 Authorized Test Hole Drilling

- (a) The District may authorize the drilling of test holes for groundwater exploration purposes through the issuance of a Test Hole Drilling Authorization.
- (b) A Test Hole Drilling Authorization issued by the District shall only authorize a person to drill one or more test holes for the limited purpose of obtaining necessary and reliable information regarding aquifer characteristics and other relevant subsurface conditions for use in locating groundwater, and potentially subsequently applying to the District to complete and permit a final producing groundwater well.

§ 3.81 Test Hole Drilling Authorization Applications

- (a) No Test Hole Drilling Authorizations shall be issued by the District until after it receives, and has reviewed, an administratively complete application filed pursuant to this Subchapter.
- (b) Applications described in subsection (a) shall be submitted using a form provided by the District and shall include, at a minimum, the following information:
 - (1) the name and physical address of the legal owner of the property on which the proposed production well is to be located;
 - (2) the name, mailing address, telephone number and license number of the well driller that will be responsible for drilling the proposed test holes;
 - (3) the legal description of the property on which all test wells will be drilled;
 - (4) the date that the exploratory drilling is estimated to begin;
 - (5) the drilling method proposed to be used;

- (6) a description of each water bearing formation that will be explored through test holes;
 - (7) a declaration that the test holes will be drilled and either completed or sealed in a manner that complies with the requirements of these Rules; and
 - (8) other pertinent information the District requests on a form approved by the District.
- (c) Applications filed pursuant to this subchapter shall be sworn-to by the applicant.
- (d) The General Manager may approve an administratively complete application for a Test Hole Drilling Authorization. The hearing procedures under Chapter 7 of these rules do not apply to an application for a Test Hole Drilling Authorization, unless the General Manager submits the application to the Board for consideration in lieu of approving it.
- (e) A Test Hole Drilling Authorization does not authorize any person to access or drill upon property that the person does not otherwise have an independent legal right to access or drill upon.

§ 3.82 Test Hole Drilling Authorization Term

- (a) Test Hole Drilling Authorizations shall be issued for a period of no more than 120 calendar days from the date of issuance.
- (b) Notwithstanding Subsection (a), a Test Hole Drilling Authorization term may be extended for a period of no more than 30 calendar days if, before the expiration of the 120 calendar day term, the authorization holder submits to the District a request for extension that includes a reasonably detailed description of why the test hole drilling could not be completed within the 120 calendar day term.

§ 3.83 Spacing

- (a) To the extent practicable, all test holes shall be drilled in a manner that complies with the spacing requirements set forth in Chapter 6.
- (b) Notwithstanding anything to the contrary in Subsection (a), production wells must satisfy, or qualify for an exception to, the District's spacing requirements provided for in Chapter 6 for purposes of applying for and obtaining an Operating Permit.

§ 3.84 Sealing Test Holes and Reporting Test Hole Decommissioning

- (a) Once a test hole has been selected for completion as a producing groundwater well, all remaining test holes drilled pursuant to the applicable Test Hole Drilling Authorization shall be sealed to eliminate physical hazards, prevent groundwater contamination, to prevent hydraulic communication between water-bearing formations, and to preserve aquifer pressure. This requirement shall not apply to a test hole selected for use as a monitoring well pursuant to an agreement with or authorization from the District.

- (b) All test holes that require sealing in Subsection (a) shall be sealed primarily with concrete, cement grout, bentonite, or sealing clay by placing the material into the test hole from the bottom up to the surface in a manner that avoids dilution or segregation of the material.
- (c) Complete and accurate records of the test hole decommissioning process must be maintained for each test hole that is required to be sealed pursuant to this section, including a record of:
 - (1) the depth of each layer of all sealing and backfilling materials used; and
 - (2) the quantity of sealing materials used.
- (d) For each test hole required to be sealed under this section, the authorization holder shall submit to the District within the time otherwise provided by District rules a compliant Well Report that includes all applicable information under Section 3.70, including the information required by Subsection (c) of this section.
- (e) For each test hole that is drilled pursuant to this subchapter that is selected for completion, the authorization holder must comply with all applicable well completion, spacing, registration and permitting requirements provided for in these rules.

CHAPTER 4

MANAGEMENT ZONES

§ 4.01 Management Zones

- (a) Using the best hydrogeologic and other relevant scientific data readily available, the Board by resolution may create certain management zones within the District based on geographically or hydrogeologically defined areas, aquifers, or aquifer subdivisions, in whole or in part, within which the District may:
 - (1) assess water availability;
 - (2) authorize total production and make proportional adjustments to permitted withdrawals;
 - (3) allow for the transfer of permits; and
 - (4) otherwise undertake efforts to manage the groundwater resources in a manner that is consistent with the District Act, Chapter 36, and that aids in the achievement of all applicable desired future conditions.
- (b) In creating zones pursuant to Subsection (a), the Board shall attempt to delineate zone boundaries that will promote fairness and efficiency by the District in its management of groundwater, while considering hydrogeologic conditions.
- (c) Where practicable, the Board may consider the ability of the public to readily identify the boundaries of designated zones based on features on the land surface.

§ 4.02 Calculation of Sustainable Yield Within Management Zones

- (a) Upon designating a management zone or no later than 24 months after such designation, the Board shall publish by order the calculated Sustainable Yield and review period for each formation, or formation subdivision, within each zone designated pursuant to Section 4.01.
- (b) In making each Sustainable Yield calculation, the Board must consider the most reliable, necessary scientific and economic information readily available to it regarding the hydrologic condition of the formation, or formation subdivision, within the zone and the current and anticipated demands on that formation or formation subdivision from exempt uses. Such information may include, without limitation:
 - (1) groundwater availability models made available by the Texas Water Development Board or other such models;
 - (2) relevant information from hydrogeologic reports conducted pursuant to Section 3.63 and submitted to the District by permit applicants;

- (3) information from monitoring wells;
 - (4) information in the District Management Plan;
 - (5) information in the approved state or regional water plan for the area;
 - (6) the applicable Modeled Available Groundwater number, if any;
 - (7) any well reports on file with the District;
 - (8) population counts, available population estimates, and available population growth forecasts for relevant areas within the zone from the state demographer, the Texas Water Development Board, or the United States Census Bureau; and
 - (9) information published by the United States Department of Agriculture, the Texas Department of Agriculture, and the Texas A&M Cooperative Extension Service regarding relevant trends in the livestock and poultry industries that may influence the volumes of water used for exempt livestock and poultry purposes during the review period.
- (c) Each Sustainable Yield calculation published by the District must be such that a calculation of zero (0) acre feet per year for the same formation within every designated zone would accommodate all estimated current exempt uses, plus the additional exempt uses anticipated during the review period, while allowing achievement of applicable desired future conditions.

§ 4.03 Consideration of Permit Applications in Formations or Management Zones With No Available Sustainable Yield

- (a) When considering any application for a permit in a formation, or formation subdivision, within a management zone that, if granted in the amount requested, would result in an Available Sustainable Yield for the formation or formation subdivision of zero (0) acre-feet per year or less, the Board shall order that production from any existing non-exempt well within the appropriate area of the proposed new well will be reduced proportionally as necessary to allow for the additional production and to achieve any applicable desired future conditions.
- (b) The provisions of this section do not apply to Grandfathered Use Permits issued in accordance with the Rules of the District.

§ 4.04 Proportional Adjustments of Permitted Production Authorization

- (a) If the Available Sustainable Yield for any formation, or formation subdivision, within a management zone reaches a volume that is less than zero (0), the Board may order that all permitted withdrawals authorized from the formation or formation subdivision within the zone be reduced proportionally so that the volume of Available Sustainable Yield will be equal to or greater than zero (0) acre-feet per year or as otherwise necessary to achieve the applicable desired future conditions.

- (b) When establishing proportional adjustment regulations for a zone that contemplate the reduction of authorized production, the Board may consider the time reasonably necessary for water users to secure alternate sources of water, including surface water, by economically feasible means and may incorporate those time considerations in the adoption and implementation of the proportional adjustment regulations. The Board may also include provisions in the proportional adjustment regulations that engender or facilitate cooperative arrangements between permittees within a zone to diminish the impacts to the permittees in complying with the regulations.

CHAPTER 5
REGULATION OF PRODUCTION

§ 5.01 Interim and Permanent Production Limits for Existing Wells Eligible for Operating and Grandfathered Use Permits

- (a) The maximum annual quantity of groundwater that may be withdrawn by an applicant for an Operating Permit for an existing non-exempt well, or withdrawn in total by an applicant for both an Operating Permit and a Grandfathered Use Permit, during the time between September 1, 2009, and the issuance or denial of the permit or permits shall be the amount specified in the applications or most recent amendment thereto as the Maximum Grandfathered Use.
- (b) The maximum annual quantity of groundwater that may be withdrawn under an Operating Permit for an existing non-exempt well or a Grandfathered Use Permit issued by the District shall be no greater than the amount specified in the terms of the permit, subject to any production restrictions ordered by the Board pursuant to Chapters 3 or 4 of these Rules. The Board shall limit the maximum annual quantity of groundwater that may be withdrawn under a Grandfathered Use Permit to an amount equal to or less than the amount determined by the board, after a hearing on the application, to be the Maximum Grandfathered Use, subject to the considerations set forth under Section 3.22 and Chapter 4 of these rules, including without limitation limiting the amount if the Board determines that the withdrawal would unreasonably affect surrounding landowners.

§ 5.02 Production Limitations for Operating Permits

- (a) In order to accomplish the purposes of Chapter 36 and these Rules, and achieve the goals of the Management Plan, including achievement of the desired future conditions of the aquifers, the District shall establish production limitations for all permits and may amend such limitations at some time before or after the Verification Period, as applicable, based upon the District's determination of claims of Maximum Grandfathered Use under Chapter 3 and water availability under Chapter 4 of these rules.
- (b) The maximum annual quantity of groundwater that may be withdrawn under an Operating Permit for a new well shall be no greater than the amount specified in the terms thereof, subject to any production restrictions ordered by the Board pursuant to Chapters 3 or 4.
- (c) Subject to subsections (i) and (j) below, No Operating Permit shall be issued by the Board that authorizes the production of groundwater in an annual amount that exceeds the lesser of the following:
 - (1) the amount of water determined by the Board after considering the factors enumerated in Section 3.22, and applicable considerations in Chapter 3, Subchapters E and F, and Chapter 4; or

- (2) except as provided for in Subsection (i), an annual amount of groundwater equal to:
 - (i) 1 acre-foot per Contiguous Controlled Acre for wells completed in the Ellenburger-San Saba Aquifer, or
 - (ii) 1/2 acre-foot per Contiguous Controlled Acre for wells completed in any aquifer other than the Ellenburger-San Saba Aquifer.
- (3) For purposes of Subsection (c)(2), the Ellenburger-San Saba Aquifer is the aquifer described in the District Management Plan.
- (d) Each Contiguous Controlled Acre is presumed to be located over the same aquifer from which the well is, or is proposed to be, producing.
- (e) The presumption in Subsection (d) may be rebutted only by a preponderance of evidence, admitted by the District or a person contesting the permit application.
- (f) The presumption in Subsection (d) does not apply to acreage that does not meet the definition of "Contiguous Controlled Acre" in Section 1.01. The applicant must, in such circumstances, demonstrate by a preponderance of evidence:
 - (1) that such acreage is located over the same aquifer from which the well is, or is proposed to be, producing; and
 - (2) that groundwater can be physically produced in substantially similar quantities as is produced, or is proposed to be produced, from the well site property.
- (g) In addition to all other applicable provisions, if an applicant for an Operating Permit seeks to produce an increased amount of groundwater from a well located on one tract of land based on surface acreage located on a different, but contiguous, tract of land, as specifically described under Subdivision (3)(C) of the definition of "Contiguous Controlled Acre" in Section 1.01, the applicant must demonstrate that groundwater could actually physically be produced from the different tract of land in the quantity claimed for that acreage on the different tract.
- (h) A surface acre of land may not be assigned as a Contiguous Controlled Acre to more than one well, well system, or permit holder.
- (i) The Board may establish aquifer-specific or management zone-specific production regulations or permits that allow more than the limit set forth under Subsection (c)(2) in an area or aquifer established as a management zone in accordance with the provisions of Chapter 4. If the Board undertakes a special production regulation, any such special production regulations shall be adopted in the manner and under the procedures applicable to the adoption of rules generally, and shall be attached as an Appendix to these rules.

- (j) Any person may petition the Board to establish a special production regulation or management zone pursuant to Subsection (i), or the Board may do so on its own initiative. A special production regulation or permit by petition may only be established within a Board-declared management zone. If the Board initiates or grants a hearing on such a petition, the Board may establish a zone and a special production regulation if the Board determines that there is clear and convincing evidence that:
 - (1) the special production regulation will not unreasonably impact registered wells hydrologically connected to the groundwater resource in question;
 - (2) the special production regulation will not unreasonably impact the goals and objectives of the District Management Plan, the achievement of the adopted desired future conditions of the aquifer, other groundwater production that is hydrologically connected to the proposed zone, or production for exempt use.
- (k) If the Board establishes special production regulations under Subsection (i), the Board may require permit applicants in the zone that are requesting more than the limit set forth under Subsection (c)(2) to:
 - (1) provide additional information to the District, in accordance with Section 3.63 and any hydrogeologic reporting requirements adopted by the Board, that is acceptable to the Board and could be used to support the establishment of a special production regulation for a proposed well;
 - (2) sign a written acknowledgement that any maximum annual quantity of groundwater that may be withdrawn under an Operating Permit in excess of the limit set forth under Subsection (c)(2) per Contiguous Controlled Acre shall be subject to future reductions and proportional adjustment regulations;
 - (3) agree to purchase or reimburse the District for the cost of drilling and equipping any monitoring wells adjacent to the applicant's property to monitor for any unreasonable effects on surrounding landowners due to the production of groundwater in excess the limit set forth under Subsection (c)(2); or
 - (4) sign a written acknowledgement that the District may reduce production based on criteria established by the District from data collected from the monitor wells if such data indicates unreasonable effects on surrounding landowners or the aquifer.
- (l) Notwithstanding anything to the contrary in these Rules, all permits issued by the District may be subject to future production limitation reductions or special conditions by the Board in the event that the Board adopts rules in the future creating interruptible permits or creating interruptibility conditions or groundwater withdrawal reduction conditions in previously issued permits due to drought conditions, aquifer conditions, or other criteria once total permitted production from an aquifer has reached the then desired future conditions or once there is no longer Available Sustainable Yield in a formation, or formation subdivision, in a management zone.

- (m) For any aquifer or zone including an aquifer for which no desired future condition has been adopted, the Board may utilize an expedited process to establish a zone and a special production regulation under Subsection (i) and begin studying and monitoring the formation to determine the reasonableness of the special regulation. The Board may immediately impose the requirements set forth under Subsection (k) on any permit applicants in the zone that are requesting more than the limit set forth under Subsection (c)(2).
- (n) Any water either (1) utilized to fight fires, or (2) produced under emergency declaration by the General Manager (as confirmed by the Board at its next meeting), is considered exempt from these Rules and does not count as production under any permit or registration. If the Board does not confirm, the General Manager's emergency declaration lapses. However, the quantity used shall be reported to the District.

Historical and Administrative Notes

The default production limit set forth under Subsection (c)(2) was established by the Board after careful deliberation using the best science and information presently available, as a reasonable balance between:

- (1) The amount of groundwater that could be expected to be assigned to each surface acre located over an aquifer under a modified correlative rights approach after considering the lateral extent of the surface area of the aquifers in the District and dividing that surface area by the availability of groundwater within each aquifer, as set forth in the District Management Plan and after considering estimates of exempt use and the available Managed Available Groundwater and desired future conditions for each aquifer, which results in an acre-foot per surface acre allocation that is only a small fraction of one acre-foot of groundwater per surface acre per year, even in areas of land overlying more than one aquifer, which fraction is so small that if adopted by the Board as a production limitation would prohibit virtually any reasonable use of groundwater by any landowner in the District. and the Board increased the production limit for the Ellenburger-San Saba Aquifer in recognition of the modelled available groundwater (MAG) for this aquifer differs from and is substantially greater than the MAG for other aquifers within the District; and
- (2) The amount of groundwater needed per surface acre of land to allow reasonable beneficial use of groundwater without waste, encourage conservation, and support continued economic growth in the District.

Thus, the limit set forth under Subsection (c)(2) is one determined by the Board in light of the best information presently available to be substantially greater than the actual amount of groundwater that a surface acre of land would be assigned under the modified correlative rights approach described above for each and every aquifer in the District for which a desired future condition has been established, but

nonetheless a reasonable amount to promote continued use and development of the groundwater resource while encouraging conservation and avoidance of waste.

In establishing this maximum production limitation, the Board carefully considered the diverse nature of the aquifers in the District and the wide discrepancies in the physical ability to produce groundwater from different areas and aquifers of the District, the limited groundwater availability nature has provided in this semi-arid region of Texas, the rights of property owners in the District, and the guarantees provided in these Rules to all property owners in the District that they are at least entitled to produce groundwater sufficient to support human and animal life on all tracts of land existing in the District as of the original date of adoption of these Rules. The Board recognizes that the water use in the Ellenburger-San Saba Aquifer differs from and is substantially greater than for the other aquifers in the District.

Notwithstanding the foregoing, the Board is committed to continue to develop and receive science, data, and information on the diverse groundwater resources in the District and pursue groundwater management strategies that are supported by such science, data, and information while carrying out the District's statutory obligations and pursuing the goals and objectives in the District Management Plan. In light of that commitment, the Board has adopted the process described under Subsections (i) and (j) to allow for the consideration by the Board of new science and data on particular aquifers or subdivisions thereof and the establishment of special production regulations in an aquifer or management zone where necessary and appropriate based upon such science and data.

§ 5.03 Production Capacity and Rate for Grandfathered and Operating Permits

A permittee may produce the total authorized annual groundwater production amount authorized in the permit at any rate deemed necessary by the permittee, including any rate necessary to comply with any applicable minimum water system capacity requirements of the Texas Commission on Environmental Quality, to the extent that the permittee can physically produce the groundwater at the well capacity recognized in the permit.

CHAPTER 6
WELL SPACING AND COMPLETION

§ 6.01 Spacing and Location of Existing Wells

- (a) Wells drilled prior to September 1, 2009, shall be drilled in accordance with state law in effect, if any, on the date such drilling commenced.
- (b) Existing wells are grandfathered from the spacing requirements established by these rules for the capacity of the well as it existed on September 1, 2009.
- (c) If a person wishes to substantially alter the size or capacity of the existing well, the well will become subject to the spacing requirements of these rules.

§ 6.02 Spacing and Location of New Wells

- (a) All new wells must comply with the spacing and location requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, unless a written variance is granted by the Texas Department of Licensing and Regulation and a copy of the variance is forwarded to the District by the applicant or registrant.
- (b) To prevent interference between wells and impacts to neighboring wells within the same aquifer, new wells must be drilled and completed at locations that comply with the minimum tract sizes requirements, the minimum distances from the nearest registered or permitted well or authorized well site that does or will produce from the same aquifer, and the minimum distances from the property lines for the land upon which the well is to be located, as provided in the appendices to these rules. An appendix with minimum tract sizes and spacing distances has been established for each aquifer located within the boundaries of the District and is attached to these rules and incorporated into them.
- (c) As used in this rule and the attached appendix on well spacing, "tract" shall mean a surface estate plat, surface estate deed, or other legally recognized surface estate property configuration recorded in the deed records of Burnet County as the well, and "property line" shall mean the property line of such tract.
- (d) After authorization to drill a well has been granted under the District's registration rules or through a permit, the well, if drilled, must be drilled within the area that extends no farther than 10 yards (30 feet) from the proposed location point specified in the permit, but that is nevertheless at a point that complies with the spacing and location requirements of these rules. If drilling of the well is initiated at a different location, the drilling or operation of such well may be enjoined by the Board pursuant to Chapter 36 and these Rules.

§ 6.03 Exceptions to Spacing Requirements

- (a) The Board may grant exceptions to the spacing requirements of the District only after considering an application requesting a spacing variance.
- (b) An application for spacing variance must be sworn-to, and must include the following:
 - (1) a description of the circumstances that justify the requested exception;
 - (2) a map accurately identifying the locations of all wells within a radius of 1/2 mile of the proposed well that, as of the date of filing of the application, are registered with the District;
 - (3) a tax plat map or other documentation from the tax appraisal district or other governmental office indicating the boundaries of the all properties within a radius of 1/2 mile of the proposed well;
 - (4) the names and addresses of all owners of property whose property adjoins the tract on which the well is to be located;
 - (5) the names and addresses of all owners of registered wells located within a radius of 1/2 mile of the proposed well site;
 - (6) each formation from which the applicant proposes to make withdrawals using the well that is the subject of the application;
 - (7) the formation from which each affected well located within the applicable spacing distance from the well that is the subject of the application is producing; and
 - (8) an affidavit certifying both the application and the plat by an individual with personal knowledge of facts presented in the application, that attests under oath that the facts contained in the application and plat are true and correct.
- (c) The Board may not grant an application filed pursuant to this Section unless it first:
 - (1) receives proof from the applicant that written notice of the application was submitted to:
 - (A) the owner of each property within a radius of 1/2 mile of the proposed well; and
 - (B) the owner of each registered well located within a radius of 1/2 mile of the proposed well site; and
 - (2) conducts a public hearing on the application where interested parties are given an opportunity to appear and be heard on the application.

- (d) Subsection (c) does not apply to an application that includes a written notarized acknowledgment, signed by the owner of each property and registered well whose property or wells would be located within the applicable minimum distance from the well that is the subject of the application, affirmatively stating the absence of any objection to the applicant's proposed well location.
- (e) If the Board grants an exception to its spacing requirements, the applicant must, within 60 calendar days of granting the variance, record the Board order granting the spacing variance in the real property records of Burnet County and provide the District with a copy of the recorded filing.
- (f) Notwithstanding anything to the contrary in this rule, upon application by a person, and without the need for written notice to other landowners or well owners, the Board shall grant an exception to its spacing requirements for a well that will be equipped so that it is incapable of producing more than 25,000 gallons of water per 24-hour interval and that will be used solely for domestic, livestock, or poultry use to:
 - (1) equip or operate a well that was previously a monitoring well of the District pursuant to a written agreement between the District and the owner; or
 - (2) to drill a well on a tract of land that was platted, meets an exception to platting, or was otherwise lawfully configured prior to September 1, 2009, as a tract that is too small to comply with the minimum tract size and spacing requirements set forth in these rules, only if such tract is not further subdivided into smaller tracts of land after September 1, 2009, and prior to the drilling, completion, or equipping of the well.
- (g) The burden of proof in any proceeding related to an application for an exception to a spacing requirement under this Section shall be on the applicant. The Board may impose additional restrictions on the exact location of a well to be drilled pursuant to an exception that it grants.

§ 6.04 Standards of Completion for All Wells

- (a) All wells must be completed in accordance with the well completion standards set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, and under these Rules.
- (b) In addition to the requirements under Subsection (a), all new wells, re-worked wells, and re-completed wells shall be equipped in such a manner as to allow the measurement of the water level in the aquifer supplying water to the well as follows:
 - (1) For all wells exempt under Section 3.40, domestic, livestock and poultry wells permitted under sections 3.52 and 3.66 and wells permitted by rule under section 3.67, the well head shall be equipped so that it will allow the introduction and unimpaired retrieval of a steel tape, e-line, or similar device of at least 3/8 inch in width or diameter in order to measure the aquifer level in the well.