

**Rules of North Plains
Groundwater Conservation
District**

TABLE OF CONTENTS

CHAPTER 1 – DEFINITIONS.....	1
RULE 1 - DEFINITIONS	1
CHAPTER 2 – CLASSIFICATION, SPACING DENSITY, PRODUCTION, METERING, AND REPORTING	10
RULE 2 – CLASSIFICATION, SPACING, DENSITY, AND PRODUCTION PROVISIONS.....	10
RULE 3 – ALLOWABLE ANNUAL PRODUCTION, METERING.....	12
AND REPORTING OF PRODUCTION	12
RULE 4 – ACCEPTABLE DECLINE RATE.....	15
RULE 5 – STRATEGIC CONSERVATION AREA	15
CHAPTER 3 – PERMITS AND REGISTRATION	16
RULE 6 – PERMIT OR WELL REGISTRATION REQUIRED.....	16
RULE 7 - REGISTRATION OF WELLS	17
RULE 8 – ISSUANCE OF PERMITS.....	17
RULE 9 – TIME DURING WHICH A PERMIT SHALL REMAIN VALID	22
RULE 11 – LOCATION OF WELL	25
RULE 12 – REPLACING, REWORKING, RE-EQUIPPING A WELL, OR RETURNING AN UNUSED WELL INTO PRODUCTION	25
CHAPTER 4 – DEPOSITS AND FEES.....	27
RULE 13 – TEST HOLE AND WELL PERMITS AND EXPORT PERMITS	27
RULE 14 – SETTING AMOUNT OF DEPOSITS AND FEES.....	28
CHAPTER 5 – OMNIBUS RULES.....	30
RULE 15 – COUNTY COMMITTEES	30
RULE 16 – EXPORT OF WATER FROM THE DISTRICT.....	31
RULE 17 – POOLING.....	35
RULE 18 – PROPERTY LINE SPACING EASEMENT	37
CHAPTER 6 – WATER QUALITY AND WASTE	38
RULE 19 – POLLUTION OF GROUNDWATER.....	38
RULE 20 – REQUIRED EQUIPMENT ON WELLS FOR THE PROTECTION OF GROUNDWATER QUALITY	39
RULE 21 – COVERING OF WELLS.....	41
RULE 22 – WASTE.....	43
CHAPTER 7 – NOTICE AND HEARINGS	45
RULE 23 – EXCEPTION TO THE RULES.....	45
RULE 24 – PROCEDURES GOVERNING CONTESTED MATTERS	47
RULE 25 – RULEMAKING NOTICE AND HEARING PROCEDURES.....	62
RULE 26 – GENERAL PROCEDURES FOR ALL DISTRICT HEARINGS.....	64
RULE 27 – SHOW CAUSE ORDERS.....	67
CHAPTER 8 – RIGHT TO ENTER LAND AND ENFORCEMENT.....	67
RULE 28 – RIGHT TO ENTER LAND	67
RULE 29 – ENFORCEMENT OF RULES	68
RULE 30 – EFFECTIVE DATE OF THESE RULES	73

CHAPTER 1 – DEFINITIONS

RULE 1 - Definitions

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

- 1.1 **“Acre-foot”** means the amount of Water necessary to cover one acre of land to the depth of one foot, or 325,851 U.S. gallons of Water.
- 1.2 **“Administratively Complete”** is when all required information on a permit application has been provided by the Applicant, reviewed by the District staff and any necessary field visit(s) and site inspection(s) have been conducted.
- 1.3 **“Allowable Annual Production”** is an amount of Groundwater which may be produced from a Property under common ownership during a calendar year. This amount shall be expressed in acre-feet per acre and total acre-feet per Production Period for the Property.
- 1.4 **“Alternative Metering System”** means any metering method approved for use in the District, other than District approved flow meters, which are defined in the North Plains Groundwater Conservation District Metering and Production Reporting Manual.
- 1.5 **“Annual Production Report”** or **“Annual Export Production Report”** means the annual report of Water produced from a Property for the Year of the Report and submitted on forms prescribed by the District.
- 1.6 **“Applicant”** is a Person seeking action by the District such as requesting a permit or a hearing.
- 1.7 **“Authorized Well Site”** shall be:
 - A. The location of a permitted Well that is in compliance with all applicable Rules of the District; or
 - B. The location of a proposed Well as recorded on a duly filed District Well Permit application until such application is denied, canceled, or expired (An Authorized Well Site is not a permit to drill); or
 - C. The location of an existing Well when the Property was annexed into the

District, if that Well would have been permitted under the then existing District Rules, and there is a record of the exact location of the Well on file with the District.

- 1.8 **“Aquifer”** means a saturated geological formation or a part of a formation or a group of formations capable of storing and yielding fresh Water in economically usable quantities.
- 1.9 **“Allowable Annual Production”** means the total production measured in acre feet which may be produced from a Property in one year. This amount shall be expressed in acre-feet per acre and total acre-feet per Year for the Property.
- 1.10 **“Annual”, “Annually”, “Yearly” and/or “Per Year”** means a calendar year beginning on January 1 and ending on December 31 of the same year.
- 1.11 **“Beneficial Use”** means use for:
 - A. agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
 - B. exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
 - C. any other purpose that is useful and does not constitute Waste.
- 1.12 **“Board”** means the governing body of the District which shall not consist of less than five, or more than 11 Directors, elected for four-year terms. The number of Directors may be changed as determined by the Board when territory is annexed by the District. (TWC §36.051)
- 1.13 **“Central Collection Point”** means a structure or connection manifold on the Property such as a center pivot irrigation system or a Water storage structure. The Metering System shall be located where the total production from the Property will pass through the meter.
- 1.14 **“Chapter 36”** refers to the Chapter of the Texas Water Code which authorizes creation of Groundwater conservation districts and outlines the powers and duties of a Groundwater conservation district. A reference to a specific section or subsection may be identified using the symbol “§” or by using the abbreviation of “Sec.”
- 1.15 **“Chemigation”** means a process whereby pesticides, fertilizers or other chemicals, or effluents from animals and/or human effluent are added to irrigation

Water applied to real property or crops, or both, through an Irrigation Distribution System.

- 1.16 **“Conservation Reserve”** means a quantity of water reserved on a Property by a Water Right Owner from the current year’s (Reserve Year) Allowable Annual Production which may be utilized to permit production in excess of the Owner’s Allowable Annual Production for the two-year period immediately following the Reserve Year. The Conservation Reserve may be limited by these Rules.
- 1.17 **“Conveyance”** means any transfer of Water Rights by deed, lease, or assignment, whereby a right to capture Water is partially or completely severed from the surface of the Property.
- 1.18 **“County Committee”** means a committee of persons in each county of the District appointed by the Board to serve in such capacity as the Board may require.
- 1.19 **“Dam”** means any barrier across the bottom chord of the pipe that is of sufficient height to back water into the low-pressure drain outlet and prevent any backflow (check valve seepage) into the Water supply.
- 1.20 **“District”** means North Plains Groundwater Conservation District, maintaining its principal office in Moore County, Dumas, Texas. Where applications, reports and other papers are required to be filed or sent to “the District”, this means the District’s principal office at 603 East First, P. O. Box 795, Dumas, Moore County, Texas 79029-0795, Phone: 806-935-6401, Facsimile: 806-935-6633.
- 1.21 **“Export”** means the transfer of Groundwater outside the District’s boundaries.
- 1.22 **“Export Facility”** or **“Export Facilities”** means all Property and equipment utilized in the export process, including, without limitation, Water Rights, Wells, pipelines, meters, storage facilities and pumping stations.
- 1.23 **“Flapper”** means the clapper, closing, or checking device within the body of a check valve.
- 1.24 **“Foreign Substance”** means any element or combination of elements in excess of that naturally occurring in the Groundwater including: re-used or re-claimed Water, and tailwater, and may include instances where open-ditch Water is treated when a pump discharge pipe is submerged in the ditch.
- 1.25 **“General Manager”** means the employee hired by the Board to manage the administrative affairs of the District. The General Manager is responsible for

ensuring that the Rules, regulations, policies, and procedures adopted by the Board are implemented. Unless the context indicates different when the term General Manager or Manager is used, it shall also be understood that the General Manager may designate another staff member to carry out part or all of the duty identified. Additionally, in absence of the Secretary of the Board, the General Manager of the District may also act as Secretary to the Board and may attest on behalf of the District.

- 1.26 **“Groundwater”** means Water percolating below the surface of the earth.
- 1.27 **“Groundwater Reservoir”** means a specific subsurface Water-bearing geologic unit or units having ascertainable boundaries and containing Groundwater.
- 1.28 **“Interested Person”** means any Person whose rights, duties or obligations may be affected by the actions of the District.
- 1.29 **“Irrigation Distribution System”** means a device or combination of devices having a hose, pipe or other conduit which connects directly to any Water Well through which Water or a mixture of Water and chemicals is drawn and applied to real property.
- 1.30 **“Meter”, “Meters” or “Metering System”** mean a device or combination of devices or methods approved by the District used to account for a specified volume of water produced. The meter, device or method shall be included and described in the “NPWD Water Metering and Production Reporting Manual”.
- 1.31 The **“District Metering and Production Reporting Manual”** means a document developed by the District which lists approved metering devices and describes approved Water measuring methods for use within the District to comply with the metering Rules of the District. The document shall also prescribe approved Annual Production Reports and verification of Reports to comply with the Annual Production Report Rules of the District. The document shall set forth the Annual Production Report requirements and the means by which the Annual Production Report shall be verified to assure compliance. The document shall be developed and may be amended only by action of the Board of Directors at a properly posted Board Meeting and shall be an item on the agenda of that meeting.
- 1.32 **“Owner”** means and includes any Person or other entity, public or private, which has the legal right to capture and produce Water from a Property either by ownership, contract, lease, easement or any other estate in the Water.
- 1.33 **“Person”** means any individual, partnership, trust, state agency, political subdivision, cooperative, corporation, limited liability company, or any other

similar type entity.

- 1.34 **“Pooling”** means the act of joining Water Rights from different contiguous Sections or different portions of the same Section to form a single Property for determining “Water Rights” within these Rules.
- 1.35 **“Pollution”** means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, Water in the District that renders the Water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the Water for any lawful purpose.
- 1.36 **“Pooled Water Rights”** means two or more separate, but contiguous, parcels of Property or Water Rights under common ownership, whose distant diagonal corners are not more than 15,000 feet apart, and which are located within the District that have been pooled by a Person executing a “Declaration of Pooled Groundwater Unit”. The Pooled Groundwater Unit shall not contain more than 1,600 acres.
- 1.37 **“Property”** means a defined area of Water Rights under common ownership and is limited to a Section, portion of a Section, or a Pooled Groundwater Unit as provided in these Rules. Provided, however, for purposes of these Rules, a Section shall never exceed 1600 acres regardless of the legally described acres in the county records.
- 1.38 **“Property Line”** means the outer boundary of Water Rights under common ownership.
- 1.39 **“Property Line Spacing Easement”** means an agreement between adjacent Property Owners which grants permission to drill and operate a Well closer to the Property Line than is provided in these Rules. The Property Line Spacing Easement is subject to the Rules of the District.
- 1.40 **“Reservation”** means the retaining of the right to capture Water by a Person Conveying the surface and/or a portion of the Water Rights to a Property.
- 1.41 **“Saturated Thickness”** means the vertical distance between the Water table and the base of the Groundwater Reservoir, where the pores between the solid particles are completely filled with Water.
- 1.42 **“Section”** means an area of real property defined as a Section by the legal survey maps of the county or counties in which the real property is located.

- 1.43 **“Test Hole Permit”** means a completed document furnished by the District providing information about a proposed Groundwater exploration activity or project.
- 1.44 **“Texas Water Code (TWC)”** refers to the laws which govern the use and disposition of Water in the state of Texas.
- 1.45 **“Underground Water”** is used synonymously with Groundwater.
- 1.46 **“Water”** is used synonymously with Groundwater and Underground Water.
- 1.47 **“Water Rights”** means the number of acres within each Section from which a Person has acquired the right to capture Groundwater.
- 1.48 **“Well”** or **“Water Well”** means any artificial excavation constructed for the purpose of exploring for or producing Groundwater that is in compliance with the District Rules. The term, however, shall not include any Test or blast holes in quarries or mines, or any Well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals unless the holes are used to produce Groundwater. The term shall not include any injection Water source Well regulated by the Railroad Commission of Texas.
- 1.49 **“Wells”** include, but are not limited to, the following:
- A. **“Abandoned Well”** means a Well that has been officially abandoned in accordance with the District’s Rules and in accordance with Chapter 1901 of the Texas Occupations Code. Once a Well is abandoned its permit and Well location are void.
 - B. **“Deteriorated Well”** means a Well the condition of which is causing, or may cause, Pollution of Groundwater in the District. A Deteriorated Well may also be a Well that is in a condition that could pose a significant hazard to human health or safety.
 - C. **“Dewatering Well”** means a Well constructed to temporarily lower the Water table. The term shall not include any Dewatering Well which is used for the production of, or to facilitate the production of, any mineral under a state regulatory program.
 - D. **“Domestic Well”** means a Well used solely for meeting the domestic needs of the residents and/or providing Water for livestock or poultry that is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of Groundwater a day. A Well used to provide Water

for livestock located on the Property of Confined Animal Feeding Operations (CAFO[s]) is not a Domestic Well.

- E. **“Illegal Well”** means a Well not in compliance with the Rules of the District.
- F. **“Industrial Well”** means a Well used by a commercial business, enterprise or agri-business.
- G. **“Injection Well”** means:
 - 1. an air conditioning return flow Well used to return Water used for heating or cooling in a heat pump (or similar equipment) to the Aquifer that supplied the Water;
 - 2. a cooling-Water return-flow Well used to inject Water previously used for cooling;
 - 3. a drainage Well used to drain surface fluid into a subsurface formation;
 - 4. a Recharge Well used to replenish the Water in an Aquifer;
 - 5. a saltwater intrusion barrier Well used to inject Water into a freshwater Aquifer to prevent the intrusion saltwater into the freshwater;
 - 6. a sand back-fill Well used to inject a mixture of Water and sand, mill tailings, or other solids into subsurface mines;
 - 7. a subsidence control Well used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;
 - 8. a closed-system geothermal Well used to circulate Water, other fluids, or gases through the earth as a heat source or heat sink.
- H. **“Irrigation Well”** means a Well used to apply Water to real property for the purpose of providing Water to vegetation.
- I. **“Monitoring Well or “Observation Well”** means a Well used to measure or monitor the quality or quantity or movement of Groundwater or

substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any Monitoring Well which is used in conjunction with the production of oil, gas, or any other minerals.

- J. **“Municipal Well”** means a Well used to meet the Water needs of a city.
- K. **“Public Water Supply Well”** means a Well used to provide Water to twenty-five (25) or more Persons on a regular basis that is not a part of a municipal Water supply.
- L. **“Public Water System”** means a system supplying Water to a number of connections or individuals, as defined by current rules and regulations of the Texas Commission on Environmental Quality, 30 TAC Chapter 290.
- M. **“Recharge Well”** means a Well used to allow or cause Water to flow out of the Well into the Aquifer either under a gravity head or a head maintained by an injection pump in order to replenish the Groundwater.
- N. **“Stock Well, “Livestock Well” or “Windmill”** means a Well used to provide Water for livestock under “open range” conditions that is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of Groundwater a day. A Well used to provide Water for livestock located on the property of Confined Animal Feeding Operations (CAFO’s) is not a Livestock Well.
- O. **“Test Hole or Exploratory Well”** means any uncased hole drilled deeper than the top of any stratum containing Groundwater for the purpose of securing geological, hydrological or other information which may be obtained by penetrating the earth with a drill bit, and includes but is not limited to: “Water Well Test Holes”, “slim hole test” or “seismograph Test Holes”.
- P. **“Unused Well”** means a non-Deteriorated Well which may contain the casing, gearhead, pump base, pump, pump column and/or a power unit in good condition that has not been operated for three (3) or more years; or a non-Deteriorated Well which has been capped. The term does include a Well(s) 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(s) in which any or all of the equipment has been removed for a reasonable amount of time for repair to the equipment.

- 1.50 **Well Permit**” means a completed form prescribed by the District authorizing a Well in accordance with these Rules. (TWC §§36.113 and 36.1131)
- 1.51 **“Well Registration”** shall mean a completed form prescribed by the District which provides minimum information either about an existing Well or a proposed Well that does not require a Well Permit.

CHAPTER 2 – CLASSIFICATION, SPACING DENSITY, PRODUCTION, METERING, AND REPORTING

RULE 2 – Classification, Spacing, Density, and Production Provisions

2.1 Wells will be subject to the following classifications and spacing based on actual production capacity of the Well. All Wells will be classified according to actual production capacity in gallons per minute (GPM) under normal operating conditions. Pump column size, bowl size or casing size is not considered when determining the pumping capacity; however, the casing size must be of a sufficient diameter to accommodate a pump column size and bowl size for the production capacity proposed.

Example: A Well proposed to produce 800 GPM would need a casing size in excess of twelve inches (12”) in diameter.

A. If a proposed Well is of the same or larger classification as the nearest existing Well, or Authorized Well Site, the proposed Well shall be located according to its permitted pumping capacity and spaced away from the nearest Well and Property Line as follows:

Pumping Capacity of Proposed Well (GPM)	Classification of Proposed Well	Minimum Distance From Nearest Well or Authorized Well Site	Minimum Distance from Property Line
018 – 0100 GPM	A	150 Yards	100 Yards
101 – 0400 GPM	B	250 Yards	100 Yards
401 – 0800 GPM	C	400 Yards	100 Yards
801 – 1800 GPM	D	500 Yards	100 Yards

The Maximum production from any single Well shall not exceed 1,800 GPM.

1. **Wells of Smaller Classifications:** If the proposed Well is of a smaller classification than the classification of the nearest existing permitted Well, or Authorized Well Site, the Well shall not be drilled closer than the average distance calculated by combining the minimum distance specified for each classification and dividing the sum by two (2).

Example: A proposed Class A Well could not be placed closer than 325 yards from an existing Class D Well or Authorized Well Site and must be placed 100 yards or more away from the nearest Property Line.

2. **Property Line Spacing Easement:** A new Well may be spaced less than the minimum distance from the Property Line provided in this Paragraph A if a Property Line Spacing Easement is filed in accordance with Rule 18.

B. **Well Density:** The maximum Well density shall be no greater than:

1. One (1) Well for each eighty (80) acres of Water Rights under common ownership within the Property.
2. For a Property of less than eighty (80) acres of Water Rights under separate ownership (other than a Domestic or Exempt Well), a single Well may be drilled.
 - (a) The maximum pumping capacity of the Well may be no greater than four (4) gallons per minute (GPM) per acre.
 - (b) The Well shall be equipped with a District approved flow Meter.
 - (c) The Owner shall report production Annually from the Well.

C. All new Wells are required to be spaced at least fifty (50) yards away from an existing Domestic Well.

D. A Person's right to continue to produce a Well or Wells under this Rule is dependent upon maintaining the Ownership of contiguous acres of Water Rights sufficient: to support the Well Density for the Property; to produce the Allowable Annual Production for the Property as defined in Rule 3; and to comply with other Rules of the District. A Conveyance of any portion of the Water Rights could result in non-compliance with Rules of the District. The District shall be notified by the grantee of any Conveyance of, or the Person reserving Water Rights separate from the surface of the Property, within 30 days from the date of the Conveyance or Reservation by providing a copy of the recorded document of Conveyance or Reservation to the District.

- E. If any Person exceeds their Allowable Annual Production, the Board may, if flow Meters are not installed, immediately require metering with District approved Water flow Meters of all or a part of the Wells owned by that Person within the District; and/or assess civil penalties; and/or seek an injunction as provided in these Rules. Provided further, if any Person exceeds their Annual Allowable Production, the Board may, in addition to the foregoing, reduce the violating Person's Allowable Annual Production.

RULE 3 – Allowable Annual Production, Metering and Reporting of Production

Metering of Water production shall be in accordance with these Rules and the District Metering and Production Reporting Manual.

- 3.1 Water Right Owners shall install a flow Meter or use an Alternative Metering System and report Annual Water production to the District.
- 3.2 All Owners of Wells drilled after October 14, 2003 shall:
 - A. Install a District approved flow Meter on the new Well, or at a central collection point on a closed system (an Alternative Metering System is not acceptable for Wells drilled after October 14, 2003);
 - B. Report Annual Production of the new Well on the Property in accordance with these Rules and the District Metering and Production Reporting Manual; and,
 - C. Reclassify all Wells on the same Property according to production capacity under normal operating conditions.
- 3.3 **Allowable Annual Production:** Allowable Annual Production (“Allowable Annual Production”) shall be set by the Board.
 - A. Through December 31, 2010, the Allowable Annual Production shall not be greater than two (2) acre-feet per acre, nor less than one (1) acre foot per acre.
 - B. For the calendar year 2011, the Allowable Annual Production shall be One and three-quarter (1.75) acre-feet per acre.
 - C. Beginning January 1, 2012, the Allowable Annual Production shall be one and one-half (1.5) acre-feet per acre.

- D. Failure to timely install District approved flow meters or provide groundwater management plans, as herein required, shall be a violation of these Rules and subject the violating Water Right Owner to enforcement by the District under the Enforcement provisions of these Rules.
- E. Production limitations and pumping capacity limitations on all existing Well Permits, and Well Permits hereafter issued by the District, shall be considered provisional and subject to recalculation and possible reduction in production limits and/or pumping capacity limits based upon the recalculation of the Allowable Production of a Well or Property by the District.

3.4 Conservation Reserve: An Owner may accumulate a Conservation Reserve by reserving all, or a portion of, the current year's (Reserve Year) Allowable Annual Production on a Property. Thereafter, the Owner may apply the Property's Conservation Reserve, not to exceed 0.50 acre-feet per acre per Year, to increase the Property's Allowable Annual Production. If the Conservation Reserve is not utilized within the two-year period following the Reserve Year, any accumulated Conservation Reserve terminates for the Reserve Year. The Conservation Reserve may only be used on the Property on which the Allowable Annual Production was reserved. The Property must be in production for a full year before it qualifies for the Conservation Reserve. An Owner may not reserve from a future year's Allowable Annual Production to increase the current year's Allowable Annual Production. The Conservation Reserve shall only be available to an Owner if Annual Production Reports for the Property have been timely filed.

3.5 Metering System:

- A. Any Well in existence prior to October 14, 2003 which is reworked to increase production, and all Wells drilled after October 14, 2003 the Owner shall be required to install a District approved flow Meter as described in the District Metering and Production Reporting Manual. An Alternative Metering System will not satisfy the Metering requirement for this Subparagraph 3.5A.
- B. If an Alternative Metering System is authorized by these Rules, any Person electing to use an Alternative Metering System shall agree in writing to be bound by the results of the Water production measurements as calculated under the Alternative Metering System.
- C. The Metering System shall remain on the Well, or on a central collection point, and be in proper operating condition at all times when Water is being produced. If the Metering System ceases to operate correctly and/or it

becomes necessary to remove the Metering System to make repairs and the Well is in operation, the Owner or operator within 30 days shall:

1. Inform the District of the date the Metering System ceased to operate, the date the Metering System will be removed, and the totalizer reading of the Meter or the calculated Water usage at the time the Metering System is removed, and
 2. Inform the District of the date the Metering System was replaced and the totalizer reading of the Meter at the time the Meter was replaced, if the Metering System utilizes an hour meter, the number of hours on the Meter at the time of replacement, and
 3. Make a determination of the amount of Water, which was produced during the time the Metering System was not in operation. This determination will be calculated by multiplying the gallons per minute the Well produces times 60 minutes times the number of hours the Well was operated, but the Metering System was not in operation.
- D. Any Owner, or operator, who willfully bypasses, disables, tampers with, or through other actions prevents a Metering System from accounting for, measuring and/or recording the volume of Water within the accuracy limits specified by the District Metering and Production Reporting Manual, is in violation of the District Rules. The Board may enjoin the usage of any Well or Wells on the Property and/or assess civil penalties as provided in these Rules.

3.6 Annual Production Reports. Property Owners and/or Water Right Owners shall report Annual Production to the District as follows:

- A. The Annual Production Report shall be in accordance with the District Metering and Production Reporting Manual. The first Annual Production Report will be due on March 1, 2007 and on March 1st of each year thereafter.
- B. The Annual Production Report shall be filed with the District at 603 East First, P. O. Box 795, Dumas, Moore County, Texas 79029-0795.
- C. The Annual Production Report shall be filed not later than March 1st of each year and shall be on forms and in the format specified in the District Metering and Production Reporting Manual.

- D. The Annual Production Report shall provide the total production in acre feet for each individual Property and shall be for a period of time beginning on January 1 and ending on December 31 of the same calendar year.
 - E. The Annual Production Report shall be in writing and under oath.
 - F. The District shall verify Annual Production Reports in accordance with the District Metering and Production Reporting Manual.
- 3.7 It shall be considered fraudulent upon the District, the public and on the adjacent real Property Owners and/or Owners of Water Rights, for any Person to willfully give erroneous information concerning the production of a Well or Property on an Annual Production Report.

RULE 4 – Acceptable Decline Rate

(Repealed in its entirety.)

RULE 5 – Strategic Conservation Area

(Repealed in its entirety.)

CHAPTER 3 – PERMITS AND REGISTRATION

RULE 6 – Permit or Well Registration Required

- 6.1 All Wells must be registered with the District or have a Test Hole Permit or Well Permit issued by the District. No Person shall hereafter drill a Well, or increase the size of a Well or Well pump above the original or amended permitted capacity, without having first registered the Well or applied to the District and received a permit or amended permit to do so, unless the drilling and operation of the Well is exempt by law or by these Rules. A copy of a Domestic Well Registration, Test Hole Permit, or Well Permit approved by the General Manager shall be displayed on the drilling rig at all times during which the rig is drilling a Well and shall also be so displayed by any pump installer or other Person completing or equipping a Well.
- 6.2 **Well Registration:** A Domestic Well shall be registered with the District.
- 6.3 **Test Hole Permit:** A Person exploring for Groundwater shall file an application and receive a Test Hole Permit prior to commencing the Test-Hole operation.
- 6.4 **Well Permit:** Regardless of the pumping capacity of a Well, all Wells, except Domestic Wells and exempt Wells must be permitted.
- 6.5 **Exempt Wells:** A Well used solely to supply Water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas (RRC) is exempt by law from permitting under TWC § 36.117, provided the Person holding the RRC permit is responsible for drilling and operating the Water Well, and provided that the Well is located on the same lease or field associated with the drilling rig. Even though exempt by law from permitting under TWC § 36.117, such Wells must be registered with the District. All such Wells shall be equipped and maintained in accordance with these Rules as to drilling, installation of casing, completion, pipe and fittings to prevent the escape of Groundwater from a Groundwater Reservoir to any reservoir not containing Groundwater and to prevent the Pollution or harmful alteration of the character of the Water in any Groundwater Reservoir.
- A. If a Well exempted under this Rule is no longer used solely to supply Water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well, and if the Well is, or is reworked to become, capable of producing more than 25,000 gallons of Groundwater a day, the Owner shall file an application with the District for a permit and comply with all District Rules.

1. If the Well does not meet the Classification and Spacing Density Provisions of Rule 2, the Well shall be equipped to meet those requirements.
 2. If the Well cannot be equipped to meet the Classification and Spacing Density Provisions of Rule 2 of the District, the Well shall be plugged or capped in accordance with the Rules of the District and Chapter 1901 of the Texas Occupations Code.
- B. An Owner of a proposed Well exempted under this Rule 6 may file an application with the District for a permit prior to drilling the Well. If an application is filed with the District, the Well must comply with all Rules of the District.

RULE 7 - Registration of Wells

- 7.1 The District shall prepare and issue a Well Registration form. This form must be executed by the Owner, or the Owner's authorized representative, and filed with the District. The District shall date-stamp and assign a serial number to each registration when it is received. Domestic Wells in existence prior to the effective date of these Rules are also required to be registered with the District. A Well Registration shall be in writing on the form prescribed by the District and shall provide the following information:
- A. The name and mailing address of the Owner of the Well; and
 - B. The name and address of the driller or contractor; and
 - C. The exact location of the Well to be drilled, including the Section, block, survey, league, or other recorded legal description, the county in which the real property is located, and/or a Global Positioning System (GPS) longitude and latitude reading; and
 - D. Records and reports on the drilling, equipping, and completing of the Water Well, including, without limitation: driller's logs, casing length, perforation depth, gravel packing, depth of pump, pump size, power unit requirements, and horsepower (TWC §§ 36.111 and 36.112).

RULE 8 – Issuance of Permits

- 8.1 The Board shall issue, or cause to be issued, Test Hole Permits, Well Permits, Export Permits (see Rule 16), and other Well permits. Individual permit applications shall be executed by the Owner, or by the Owner's authorized

representative, and filed with the District. All permit applications and/or other documents required to accompany a permit application shall be filed at the District's principal office, 603 East First, P. O. Box 795, Dumas, Moore County, Texas 79029-0795.

- 8.2 **Test Hole Permits:** When the District receives an application for a Test Hole Permit, the application shall be date and time-stamped and assigned a serial number indicating its relative priority in time with respect to later filed applications. A Test Hole Permit may be approved by the General Manager of the District. The application shall be certified in writing. The Applicant shall provide the following information on forms prescribed by the District:
- A. The name, mailing address and telephone number of the Applicant and the Owner of the real property on which the Test Hole(s) will be drilled.
 - B. The Section, block, survey, league or other recorded legal description, and the county in which the real property is located.
 - C. The name, mailing address and telephone number of the driller or contractor and the date drilling operations will begin.
 - D. An agreement by the Applicant that the location of the Test Hole(s) and driller's logs will be furnished to the District by the Applicant, or by the Applicant's authorized representative, upon completion of the Test Hole operation. The location of the Test Hole(s) shall be identified by a metes and bounds description or by a Global Positioning System (GPS) longitude and latitude reading (TWC § 36.112).
 - E. A declaration that the Test Hole(s) will be plugged and logs and plugging reports will be furnished to the District upon completion of the Test Hole operation.
 - F. Any other information deemed necessary by the General Manager of the District, subject to the approval of the Board.
- 8.3 A Test Hole Permit entitles the Applicant to file an application for Well Permits on a single Property subject to this Rule, other Rules of the District and any other Test Hole Permits and/or applications for a Well Permit on adjacent Property, so long as the application for a Well Permit is made prior to the final expiration date of the Test Hole Permit. The Test Hole Permit can be for any defined area of real Property within the same Property. However, no more than one Test Hole Permit may be in effect within the same Property.

8.4 Test Hole Permits may be issued to adjacent Property Owners at any time; however, the Test Hole Permit which was issued first in time will have the first right to select a Well location along an adjacent Property Line. Adjacent Property Owner(s) may then make application for a Well Permit along a shared adjacent Property Line in the order of time in which the Test Hole Permits were issued. If necessary, this process shall be repeated until all adjacent Test Hole Permits issued during a consecutive time period have expired. The fact that a Test Hole Permit issued first in time has expired will not eliminate the Applicant from this selection process.

8.5 **Well Permit:** Regardless of the pumping capacity of a Well, a Well Permit shall be required for all Wells drilled in the District (except Domestic and Exempt Wells), including, without limitation, Recharge Wells, Injection Wells, Dewatering Wells and Monitoring Wells. The Well permitting process involves two (2) approval procedures. The first procedure is the approval for drilling activities to be commenced. The second approval procedure is the approval for the Well to be operated. These two procedures are as follows:

A. Requirements before Drilling Operations may be Commenced:

1. To receive a Well Permit, an Applicant shall provide the following information on forms prescribed by the District:
 - (a) The name and mailing address of the Applicant and the Owner of the real property on which the Well will be located. If the Applicant is not the Owner of the Property, the Applicant must furnish satisfactory documentation evidencing the Applicant's authority to construct and operate a Well for the proposed use on behalf of the Owner.
 - (b) The exact location of the Well to be drilled, including the Section, block, survey, league and/or other recorded legal description, the county in which the real property is located, and/or a Global Positioning System (GPS) longitude and latitude reading and the exact number of yards from the two nearest Section lines, and a statement as to the proposed use of the Well.
 - (c) The name and address of the driller, contractor and/or pump installer, and the date drilling operations are to begin.
 - (d) A statement as to the exact location of the three closest Wells and/or Well Permit applications within one-half (1/2) mile of

the proposed Well location, together with the legal description of each location, or permit application number or District Well number. (District staff may assist in providing this information.)

(e) An agreement that all required information will be furnished to the District upon completion and prior to production of Water from the Well, including without limitation:

i. Driller's logs in accordance with TWC §36.112; and

ii. Records and reports on the drilling, equipping, and completing of Water Wells in accordance with TWC §36.111, including, without limitation: casing length, perforation depth, gravel packing, depth of pump, bowl sizes, number of stages, pump size, power unit requirements, horsepower, GPM test pumping and pumping level.

(f) A declaration that the integrity of the Well will be maintained and if it becomes deteriorated or is abandoned, the Well will be repaired, plugged or capped in accordance with the Rules of the District, Chapter 1901 of the Texas Occupations Code and the Texas Department of Licensing and Regulations.

(g) Any other information deemed necessary by the General Manager of the District, subject to the approval of the Board.

2. The Well Permit application shall be certified in writing.

3. An application for a Well Permit is subject to any approved Well Permit and/or any active Test Hole Permit on adjacent Property. However, a permit application for a Well spaced at least four hundred (400) yards inside the Property Lines and not in conflict with any other Rules of the District will not be considered in conflict with an active Test Hole Permit on adjacent Property.

4. The District shall, immediately upon receipt, note the date and time of day each application for a Well Permit is received and shall identify each application with a serial number.

5. When the District staff determines that the Well Permit application is Administratively Complete, the application will be submitted to the General Manager for review.
6. The General Manager shall within seven (7) days review the Well Permit application and other documents included with the application.
 - (a) If the General Manager determines that the application is complete and complies with the Rules of the District and no protest or conflicting Well Permit application has been filed, the General Manager shall approve the Well Permit application and shall notify the Applicant that the Well Permit is approved solely for drilling operations.
 - (b) If the General Manager determines that the application is incomplete, or does not comply with the Rules of the District, or a protest or a conflicting Well Permit has been filed, the General Manager shall so notify the Applicant, protestant, and/or conflicting permit Applicant.
 - i. The General Manager shall try to resolve any disputed issue with the Applicant and any other Person involved.
 - ii. If the dispute cannot be peaceably resolved, the General Manager shall schedule the Well Permit application as an agenda item at the next Board meeting. The Manager shall also notify the Applicant and any other Person involved of the date and time the application will be considered by the Board.
 - iii. Under this provision, drilling and/or production activities shall be suspended until the issue has been resolved by the Board.
7. If the disputed issue cannot be peaceably resolved by the Board, the matter shall be deemed contested and shall be resolved in accordance with Chapter 7 of these Rules.

B. Requirements Before the Well may be Operated:

1. The Well Owner shall notify the District when the Well is complete, including all equipping of the Well and any necessary testing.
2. Within seven (7) days after the Well Owner has notified the District of the Well completion, the General Manager shall conduct a site inspection of the Well location to determine that the Well has been drilled and equipped in accordance with the Rules of the District and the Well Permit application.
3. After the site inspection is complete and it is determined that the Well is in compliance with the Rules of the District and the Well Permit application, the General Manager shall notify the Applicant that the Well may be operated and the Well Permit will be submitted to the Board for formal and final approval.

8.6 **Expedited Permitting:** If an Applicant determines that the routine permitting procedure set forth within these Rules will place undue hardship on the Applicant's operation, the Applicant may request an Expedited Permit from the General Manager and shall pay an Expedited Permitting administrative fee.

- A. Under this permitting procedure, the General Manager will work closely with the Applicant to complete the requirements of these Rules to permit the Applicant to begin drilling and producing the Well as soon as physically possible.
- B. If during this process an issue arises involving the permitting requirements of these Rules which cannot be peaceably resolved between the General Manager and the Applicant, the General Manager shall suspend the process. The General Manager shall contact the President of the Board of Directors and the Director from the precinct in which the Well is proposed and request a "Special" Board Meeting to consider the Well Permit. Under this provision, drilling and/or production activities shall be suspended until the issue has been resolved by the Board. In this instance, the Board may consider a partial or full refund of the Expedited Permitting administrative fee.

8.7 **Re-classification of Permitted Well:** The Owner of a District Permitted Well shall notify the District and amend the Well Permit if the use of the Well changes. If the Well is an Unused Well it may be reclassified in accordance with Rule 9.7.

RULE 9 – Time During Which a Permit Shall Remain Valid

9.1 The Applicant shall comply with the following time-lines.

9.2 **Test Hole Permits:**

- A. A Test Hole Permit shall be in effect for sixty (60) days from date of application.
- B. Any request for an extension of a Test Hole Permit for a period of time in excess of sixty (60) days shall be submitted to the Board for the Board's consideration.
- C. No Test Hole shall be spudded until a Test Hole Permit is issued by the District.

9.3 **Well Permits:**

- A. Any Well Permit granted hereunder shall remain valid if the Well is completed within one hundred-fifty (150) days from the filing date of the application. It shall thereafter be void unless an extension is granted by the Board.
- B. The Board, for good cause, may extend the duration of a Well Permit for up to a maximum of one hundred-twenty (120) days, from the original termination date of the permit. An application for an extension must be filed with the District before the expiration of the Well Permit to be considered by the Board. Applications for an extension of more than one hundred-twenty (120) days shall be construed as an application for an exception to the Rules of the District.

9.4 **Extended Time Permit:** If an Applicant knows that a proposed project will take more time to complete than a normal Well Permit application, including the maximum number of extension days allowed (total of 270 days), an Applicant may file for an extended time permit. After the application has been determined Administratively Complete by the General Manager, it may be presented to the Board and the General Manager shall notify the Applicant of the date and time the application will be considered by the Board.

9.5 After a Well Permit is formally approved by the Board, it shall remain valid and effective unless it is reclassified or abandoned by the Owner, or it is determined by the Board to be in violation of the Rules of the District. Provided, however, all existing Well Permits and Well Permits issued by the District shall be provisional and subject to reduction in production limits as the result of the reduction of Allowable Annual Production limits under Rule 3.

9.6 **Early Expiration of Test-Hole and Well Permit:**

- A. A Test Hole Permit application will be considered null and void if the District does not receive the required deposit(s), any applicable fee(s), and the information required to be furnished by the Applicant within seven (7) days from the date of the application. The District will notify the Applicant that the application is null and void.
- B. A Well Permit application will be considered null and void if the District does not receive the required deposit(s) within seven (7) days from the date of the application. The District will notify the Applicant that the application is null and void.
- C. A Well Permit application will be considered null and void if the information required to be furnished by the Applicant is not provided to the District within fourteen (14) days from the date of the application. If the information required is not provided, the Applicant will be notified by the District that the application is null and void and the deposit will be returned to the Applicant.

9.7 **Unused Well Classification:** A Well may be reclassified as an Unused Well by the Owner if the Well is to be taken out of production for a period of more than three (3) years and is not a Deteriorated Well.

- A. The Well may contain the casing, gearhead, pump base, pump, and pump column in which case the discharge opening shall be closed. The Well may be capped with a covering capable of sustaining weight of at least 400 pounds in accordance with the Rules of the District, Chapter 1901 of the Texas Occupations Code and the Texas Department of Licensing and Regulations.
- B. A Well classified as an Unused Well is not required to be in compliance with Rule 20.1 - Required Equipment on Wells for The Protection of Groundwater Quality.
- C. A Well that has been classified as an Unused Well may be returned to production in accordance with Rule 12 – Replacing, Reworking, Re-equipping a Well or Returning an Unused Well into Production.
- D. A Well that has been classified as an Unused Well for fifteen (15) years or longer is subject to the loss of an Authorized Well Site status if an adjacent Property Owner applies for a Well Permit within less than the required spacing distance between Wells. In such case, the Owner of the Unused Well shall be notified by the District of the Permit Application and provided the opportunity to bring the Well back into production in accordance with the Rules of the District.

RULE 10 – Requirements for Drilling, Completing and Equipping Wells

- 10.1 All Wells shall be completed, equipped and maintained in such a manner as to protect human life and prevent Pollution. A copy of a Domestic Well registration, Test Hole Permit, or a Well Permit approved by the General Manager shall be displayed at all times at the Well site by all drillers, pump installers, or any other person drilling or equipping a Well.
- A. Complete records shall be kept and filed with the District as provided in these Rules. Such records shall be filed with the District on forms prescribed by the District within thirty (30) days after completion of the Well.
 - B. No Person shall produce Water from any Well drilled and equipped within the District after the adoption of these Rules, except for any Water production that is necessary to test such Well and equipment, until the District has been provided the information required by these Rules.
 - C. No Person shall drill, complete, or equip a Well without having a current Texas Water Well Driller's license, Texas Pump Installer's license, and without complying with the Rules and Regulations of the District, state or federal agencies or political subdivisions having jurisdiction, which Rules and Regulations are all incorporated herein by reference.

RULE 11 – Location of Well

- 11.1 After the application for a Well Permit has been granted, the Well, if drilled, must be drilled within ten (10) yards of the location specified in the permit, and not elsewhere. If the Well is drilled more than ten (10) yards from the location specified in the permit, it will be an Illegal Well. The District may enjoin the drilling or operation of an Illegal Well and/or assess civil penalties as provided in these Rules.

RULE 12 – Replacing, Reworking, Re-equipping a Well, or Returning an Unused Well into Production

- 12.1 No Person shall rework, re-drill or re-equip a Well in such a manner that would increase the rate of production from such Well above the original or amended permitted capacity without first having made an application to the District, and having been granted the required permits from the District to do so.
- A. **Replacement Well:** A replacement Well, in order to be considered as such, must be drilled within fifty (50) yards of the old Well and not

elsewhere. It must not be located toward any other Well or Authorized Well Site unless the new location complies with the spacing requirements in effect on the date the Well being replaced was drilled. The replacement Well is considered to be a new Well for which application must be made under Rule 8 and must comply with the requirements of Rule 3. Immediately upon completion of a replacement Well, the Well being replaced shall be:

1. plugged and abandoned; or
2. properly equipped as a domestic or livestock well in such a manner that it cannot produce more than 25,000 gallons of Water per day; or
3. closed in accordance with District Rule 21.

B. Reworking or Re-equipping a Well: The size or actual pumping capacity of a Well shall not be changed to a larger capacity to increase the rate of production of a Well above the maximum pumping capacity for which the Well was permitted without having been granted a permit or an amendment to the existing permit. If the Well is a sufficient distance from other Wells to comply with spacing regulations for new Wells of the desired capacity, and meets other Rules of the District, the Board may consider the application.

C. Returning an Unused Well into Production: If an Unused Well, as defined by these Rules, is returned to production, the Well must be brought into compliance with the current Rules of the District, and the Owner shall make application to the District for an amended permit for the Well. If the Well is a sufficient distance from other Wells to comply with spacing Rules for new Wells of the desired capacity, and complies with all other Rules of the District, the Board may consider the application. If the Well is not a sufficient distance from other Wells to comply with spacing Rules for new Wells, or does not comply with all other Rules of the District, the Applicant may request an exception to the Rules in accordance with Chapter 7.

CHAPTER 4 – DEPOSITS AND FEES

RULE 13 – Test Hole and Well Permits and Export Permits

13.1 Test Hole Permits:

- A. A deposit and a non-refundable administrative fee shall accompany each application for a Test Hole Permit. The Test Hole Permit deposit may be applied toward the deposit required for a Well Permit application made prior to the final expiration date of the Test Hole Permit. If a Well Permit is not applied for prior to the final expiration date of the Test Hole Permit, the Test Hole deposit will be refunded subject to the District being provided the location and log for each Test Hole drilled and a copy of each plugging report.
- B. The Applicant, or the Applicant’s agent, shall file the location and log for each Test Hole drilled, and a copy of each plugging report with the District no later than thirty (30) days after the expiration of the Test Hole Permit. If no Test Hole was drilled the Applicant or driller shall so notify the District and request cancellation of the Test Hole Permit.
- C. If copies of the log and location for each Test Hole drilled and a copy of each plugging report or notification that a Test Hole was not drilled are not received by the District within thirty (30) days following the date the Test Hole Permit has expired, the deposit will be forfeited.
- D. The failure to provide Test Hole logs and plugging reports is a violation of District Rules.

13.2 Well and Export Permits:

- A. Each application for a Well permit and/or an Export Permit filed by an Applicant, or the Applicant’s agent, shall be accompanied by a deposit and a non-refundable administrative fee. The deposit and administrative fee shall be sent to the principal office of the District. The deposit may be refunded to the Applicant by the District if:
 - 1. The application is denied;
 - 2. The application is granted, upon delivery to the District of all information required under Chapter 3 of the District Rules and/or Rule 16; or

3. If no Well is drilled and the Applicant requests cancellation of the Well Permit; or
 4. If the proposed Export facility is abandoned and the Applicant requests cancellation of the Export Permit.
- B. If the Applicant, or the Applicant's agent, does not submit all information required by these Rules to the District within thirty (30) days after the expiration date of the permit, any Well, if drilled, will be deemed an Illegal Well and any deposit shall be forfeited.
- C. If the Applicant elects not to drill the Well for which a Well permit has been issued and fails to request that the District cancel the Well Permit within thirty (30) days after the expiration date of the permit, the Applicant's deposit shall be forfeited and shall become the property of the District.
- D. If the Applicant elects not to develop the Export facility for which an Export Permit has been issued and fails to request that the District cancel the Export Permit within thirty (30) days after the expiration date of the initial term of the permit, the Applicant's deposit shall be forfeited.

RULE 14 – Setting Amount of Deposits and Fees

- 14.1 **Deposits and Administrative Fees:** The District may charge an administrative fee for the registration of Domestic and Exempt Wells and a deposit and an administrative application fee for a Test Hole Permit, Well Permit, Export Permit, Recharge Well Permit, Injection Well Permit, Dewatering Well Permit, or Monitoring Well Permit. The Board shall set the amount of deposits, administrative fees, and Expedited Permitting administrative fees and refund policies for deposits.
- A. An Administrative fee and/or deposit shall be the same amount per application regardless of the type of Well registration, Well Permit, export registration or Export Permit.
- B. An Expedited Permitting administrative fee may be charged for Well Permit applications in which the Applicant determines that the normal permitting procedures will cause undue hardship on the Applicant's operation and the Applicant elects to pay a significantly increased administrative fee.

- 14.2 **Fees for Administrative Services:** The Board may set the amount of fees to be charged for administrative services of the District, which include, but are not limited to: providing copies of documents, reports, records, and minutes or other information of the District, and for formal notices, including publication costs, required under Chapter 7.
- 14.3 **Fees for Field Services:** The District will not provide field services to Well Owners or operators of Wells within the District if the Wells are not in compliance with District Rules.
- A. The Board may adopt a fee schedule which sets the amount of fees to be charged for any services provided within the District.
 - B. The District shall charge fees for all services provided outside of the boundaries of the District.
- 14.4 **Amendment to Deposit and Fees:** Upon giving proper public notice, the Board may change the amount of deposits, administrative fees, and Expedited Permitting administrative fees, field service fees and change refund policies for deposits from time to time.

CHAPTER 5 – OMNIBUS RULES

RULE 15 – County Committees

- 15.1 Each County in the District shall have a County Committee consisting of no less than three (3) persons or more than seven (7) persons. Each area of the County is to be represented, if practicable. The Board shall appoint the County Committee members to a four (4) year term of office; provided, however, each County Committee member shall serve until the member is reappointed, or a successor is appointed.
- 15.2 The County Committee:
- A. shall hold meetings as necessary to carry on the County Committee’s business. The meetings may be held at any designated location within the District;
 - B. may recommend and encourage persons to become candidates for the office of Director for the District;
 - C. may recommend appointees for the office of a County Committee member;
 - D. may communicate to the District any information concerning the wishes of the people of the county;
 - E. shall report any known or suspected violations of the District Rules by any Person to the District;
 - F. may recommend specific action to be considered by the Board to eliminate any violation of the Rules of the District;
 - G. shall perform other duties as may be assigned by the Board, including the review of Well permits; and,
 - H. shall serve solely in an advisory capacity to the Board.

RULE 16 – Export of Water From The District

- 16.1 **Registration of Export Facility:** An Export Permit, as provided herein shall not be required if the exportation of Water began prior to March 2, 1997. However, the Owner or operator of the Export Facility is required to register the Export Facility with the District and provide all applicable information required in Paragraph 16.2. Any increase in the volume of Water exported, or a change to the Export Facility through Conveyance, acquisition of Property, or sale of the Export Facility requires the Export Facility to apply for, and receive a permit, and comply with the Export Rules, including, if applicable, a fee on any increase above the stated amount in the registration of the Facility.
- 16.2 **Export Permit:** To receive an Export Permit, an Applicant shall provide the following information on forms prescribed by the District:
- A. The name and mailing address of the Applicant. If the Applicant is not the Owner of the Export Facility exporting the Water, the Applicant must furnish satisfactory documentation evidencing the Applicant's authority to file an application for an Export Permit on behalf of the Owner.
 - B. The exact location of all existing Wells to be used for production of Water for export and any proposed new Wells to be drilled prior to the commencement of export. Existing Well data shall include a copy of the Well Permit for the existing Well. All existing Wells must be in compliance with the Rules of the District. Applications for any proposed Well(s) must comply with Rule 8.
 - C. Copies of all existing "Declaration of Pooled Groundwater Units" and/or an application for any new Pooling units necessary under Rule 17.
 - D. The name and address of the fee Owner(s) of the Property and/or Water Right holder from which the Water is to be produced if it is other than the Applicant and a copy of a document committing Water to the Export Facility.
 - E. The names and addresses of the Property Owners and/or Water Right Owners adjoining the Property or proposed Property where the Well(s) to be used for the export production are or will be located.
 - F. The time schedule for construction and/or operation of the Export Facility.
 - G. A complete construction and operation plan certified by an engineer licensed in the State of Texas that will include, but is not limited to:

1. A technical description of the proposed Wells, including the estimated production for each Well in gallons per minute and acre-feet Per Year;
 2. Any scheduled production times and/or rotation of production from Wells proposed to be used;
 3. A technical description of the facilities to be used for exportation of Water including the location of Meters, valves, gathering lines, pump stations, export lines and any other information about other equipment used in the Export Facility; and,
 4. A map or maps on a scale suitable to adequately depict the location of all the components of the Export Facility.
- H. The use of the Water to be exported and the location of the entity receiving the Water.
- I. The volume of Water (in U.S. gallons and acre-feet) proposed to be exported Annually.
- J. The period of time (“term”) for which export operations are proposed.
- K. A declaration that any change or modification to the information provided in the application shall immediately be provided to the District. Any change or modification may require the Applicant to amend the permit application.
- L. Any other information deemed necessary by the Board.
- 16.3 In reviewing a proposed transfer of groundwater out of the District and in addition to the information required in Paragraph 16.2 the Board shall consider:
- A. the availability of Water in the District and in the proposed receiving area during the period for which the Water supply is requested;
 - B. the projected effect of the proposed transfer on Aquifer conditions, depletion, subsidence, or effects on existing permit holders or other Groundwater users within the District; and
 - C. the approved regional Water plan and certified District management plan.

16.4 **Allowable Annual Production:** The export of Water shall be subject to the provisions of Rule 3.

16.5 **Contiguous Water Rights:** The continued right to export the amount of Water specified in the Export Permit is dependent upon maintaining the ownership of contiguous Water Rights within each individual Property sufficient to comply with Rule 3 and maintaining ownership of sufficient Property to remain in compliance with this Rule. A Conveyance, or an acquisition, of any portion of the Water Rights within any individual Property or Conveyance or acquisition of an entire Property requires an amendment to the Export Permit to avoid non-compliance with this Rule and other District Rules. The District shall be notified by the grantee of any Conveyance, or the Person reserving Water Rights separate from the surface of the Property, within 30 days from the date of the Conveyance or Reservation by providing a copy of the recorded document of Conveyance or Reservation to the District.

16.6 In addition to the requirements of Rule 3, the Owner or operator of all Export Facilities subject to registration or permitting shall equip all Wells with a District approved flow Meter and shall install a District approved flow Meter at any point Water exits the District. The flow Meters shall be available at all reasonable times for inspection by District personnel.

16.7 All Export Facilities shall, on or before March 1st of the ensuing Year, provide the District with an Annual Export Production Report on forms prescribed by the District which shall include:

- A. the total amount of Water the Export Facility produced within the District;
- B. the amount of Water exported out of the District by the Export Facility;
- C. the amount of Water entering the Export Facility's conveyance system from any sources outside of the District;
- D. the amount of Water actually delivered to the receiving entity by the Export Facility; and,
- E. The monthly reports to the District and the Annual Export Production Report shall set forth the total volume of exported Water for each respective period in acre-feet and in U.S. gallons.

16.8 As provided under Paragraph 16.12, a Person exporting Water, but also transporting Water primarily within the District, may be exempt from paying export fees. However, the Export Facility must be permitted with the District and must operate in accordance with these Rules.

16.9 Duration of Export Permit:

- A. The initial term for an Export Permit shall be three (3) years if construction of a conveyance system has not been initiated prior to the issuance of the permit. If construction of a conveyance system is not initiated upon the expiration of the initial term, the Applicant shall reapply for an Export Permit. The application will be considered as a new application and subject to any amendments to the Rules or new rules that may be in effect at that time [TWC §36.122i(1)].
- B. The initial term will convert to the term approved in the Export Permit application or a thirty (30) year permit if construction of a conveyance system has been initiated prior to the expiration of the initial term permit [TWC §§36.122i(2) and 36.122j].
- C. No later than one year prior to the expiration of the Export Permit the Owner or agent of the Export Facility shall notify the District about the future of the Export Facility.
 - 1. If it is proposed that the Export Facility will continue to export Water the Owner or operator shall so inform the District and provide the following:
 - (a) A completed application for an Export Permit amendment identifying the new term to begin at the end of the existing permit term, and
 - (b) A document describing the integrity of the Export Facility, including the expected life of the existing Export Facility, and/or a proposed plan and schedule of repairs, and/or upgrades to the Export Facility to insure its integrity for the duration of the new term.
 - 2. If it is proposed that the Export Facility will not continue to export Water, the Owner or operator shall provide the District with a “closure plan” designed to prevent Waste, Pollution and/or hazard to health and human safety.
- D. In its determination of whether to renew an Export Permit issued under this Rule, the District shall consider relevant and current data for the conservation of Groundwater resources and shall consider the permit in the

same manner it would consider any other permit in the District under the then current Rules.

- 16.10 **Export Fees:** A fee shall be charged for Water produced within the District and exported to an area outside of the boundaries of the District. The Annual fee shall be:
- A. a fee negotiated between the District and the Person owning the facility, or
 - B. a rate equivalent to the District's tax rate per hundred dollars of valuation multiplied by each thousand gallons of Water exported out of the District. The rate will be adjusted each year based on the adopted tax rate of the District for the previous year.
 - C. The fee will be calculated using the sum of the production amount from the Meters located on each Well.
 - D. The fee may be paid on a monthly or an Annual basis as determined by the Board.
 - E. Water produced and used in the District for operation of the Export Facility, or Water delivered to and used within the District, will not be assessed a fee, provided that an Annual accounting of production and use of any Water exported by the Export Facility is provided to the District. This provision is applicable if 90% of the total Annual Water volume produced is delivered and used within the boundaries of the District.

RULE 17 – Pooling

- 17.1 Two or more separate, but contiguous, parcels of Property and/or Water Rights under common ownership located within the District may be pooled to form a Pooled Groundwater Unit.
- 17.2 A document prescribed by the District committing contiguous parcels to a unit shall be identified as a "Declaration of Pooled Groundwater Unit". The declaration shall set forth the description of the contiguous parcels of Groundwater committed to the pooled unit and shall clearly identify the name of the pooled unit and must contain a map or a plat of the pooled unit. The pooled Groundwater acreage shall thereafter be allocated to a Well or Wells located within the pooled unit.
- 17.3 The declaration shall be signed by a Person having ownership of the Water Rights or a Person who has legal authority to pool the Water Rights.

- 17.4 The most distant diagonal corners of the pooled unit shall not be more than 15,000 feet apart and shall contain no more than 1,600 acres.
- 17.5 The declaration must state the number of surface acres and the number of acres of Water Rights owned in the pooled unit.
- 17.6 The Pooling shall be binding upon and shall inure to the benefit of the Owner or other authorized Person.
- 17.7 The Owner or other authorized Person must agree that no changes in the ownership or boundaries of the Pooled Groundwater Unit shall be made without the prior written approval of the District and the issuance of an amended Annual Allowable Production Notice.
- 17.8 The declaration shall become effective only when it is filed in the office of the county clerk of the county or counties in which the Groundwater rights are located and a certified copy thereof is filed at the principal office of the District.
- 17.9 The Owner of the Property to be pooled, or the Owner's legal representative, shall provide:
 - A. The name, mailing address and telephone number of the Owner, and
 - B. The county, block, survey and Section number of each Section or portion of a Section involved in the Pooling, and
 - C. The legal description or a metes and bounds description of each tract of the Property to be pooled, and
 - D. The number of acres in each tract to be pooled, and
 - E. A map of the proposed pooled Property, and
 - F. An identifying name and/or number for the proposed pooled Property.

Rule 18 – Property Line Spacing Easement

- 18.1 A Property Owner may grant permission to an adjacent Property Owner to drill and operate a Well within a distance less than the required Property Line spacing distance set forth in Rule 2.
- 18.2 A document prescribed by the District granting a spacing easement to the adjacent Property Owner shall be identified as a “Property Line Spacing Easement”. The easement shall set forth the description of the adjacent Properties committed to the easement and shall clearly identify the adjacent Properties and must contain a map or a plat of the Properties. The easement shall thereafter be attributable to a Well or Wells located or to be located within the Property Line Spacing Easement.
- 18.3 The easement shall be signed by a Person having ownership of the Property, or having legal authority to grant and execute such easement.
- 18.4 The easement must state the distance in yards (if any) that adjacent Property Owners may drill and operate a Well or Wells away from the Property Line and the total distance along the adjacent Property Line which the easement extends.
- 18.5 The easement shall be binding upon and shall inure to the benefit of the Owners or other authorized Persons included in the easement.
- 18.6 The Owners or other authorized Persons must agree that no changes in the Property Line Spacing Easement shall be made without the prior written approval of the District.
- 18.7 The easement shall become effective only when it is filed in the office of the county clerk of the county or counties in which the Groundwater Rights are located and a certified copy thereof is filed at the principal office of the District.
- 18.8 The Owners of the Property included in the easement, or the Owner’s legal representative, shall provide:
 - A. the name, mailing address and telephone number of the Owners, and
 - B. the county, block, survey and Section number of each Section or portion of a Section involved in the easement, and
 - C. the legal description, or a metes and bounds description, of each tract of Property to be included in the easement.

CHAPTER 6 – WATER QUALITY AND WASTE

RULE 19 – Pollution of Groundwater

- 19.1 The District is aware that at times there are activities and/or conditions which could cause significant Pollution or harmful alteration of the Groundwater. The District realizes and supports the fact that the state of Texas and the federal government have regulatory agencies to protect the Groundwater and surface Water from both point source and non-point source Pollution. These agencies include, but are not limited to, Groundwater conservation districts, the Texas Commission on Environmental Quality, Texas Department of Agriculture, Texas State Soil and Water Conservation Board, Railroad Commission of Texas, and the United States Environmental Protection Agency. The North Plains Groundwater Conservation District has in the past, and intends to continue to work with the other agencies created by the state of Texas and the federal government to protect the Groundwater within the District from Pollution.
- A. When the District becomes aware of an existing or proposed activity or condition which is causing, or may cause, significant Pollution of Groundwater, the District will:
1. Contact the responsible Person or entity and investigate the activity or condition, and
 2. Make a determination as to the impact the activity or condition has, or may have, in regard to the Pollution of Groundwater, and
 3. Determine if the activity or condition is regulated by a local, state or federal agency.
- B. If it is a regulated activity or condition the District will:
1. Notify the responsible agency or agencies and report the findings, and
 2. Work with the agency or agencies in an effort to protect the Groundwater from Pollution.
- C. If the activity or condition is not regulated by another agency, the District will:

1. Work with the Person or entity responsible for the activity or condition which has caused, or may cause, Pollution of the Groundwater in an effort to reach an acceptable agreement to protect the Groundwater from Pollution.
2. If the District and the Person cannot resolve the Pollution dispute, the District will use whatever legal remedy is available through its Enabling Legislation, Chapter 36 of the Texas Water Code, and any other laws of this State or the Federal Government to protect the Groundwater from Pollution.

RULE 20 – Required Equipment on Wells for the Protection of Groundwater Quality

- 20.1 Unless otherwise determined by the District that a superior check valve system is installed, the following equipment must be installed on all Wells with the exception of a Well that has been reclassified as an Unused Well, or a Domestic Well which does not have a chemical injection, Chemigation or Foreign Substance unit in the Water delivery system:
- A. The type of check valve installed shall meet the following minimum specifications:
 1. The body of the check valve shall be constructed of cast iron, stainless steel, cast aluminum, cast steel, steel, or of a material and design that provides a sturdy integrity to the unit and is resistant to the Foreign Substance being injected. All materials shall be corrosion resistant or coated to prevent corrosion. The valve working pressure rating shall exceed the highest pressure to which the valve will be subjected.
 2. The check valve shall contain a suitable automatic, quick-closing and tight-sealing mechanism designed to close at the moment Water ceases to flow in the downstream direction. The device shall, by a mechanical force greater than the weight of the closing device, provide drip-tight closure against reverse flow. Hydraulic backpressure from the system does not satisfy this requirement.
 3. The check valve construction should allow for easy access for internal and external inspection and maintenance. All internal parts shall be corrosion resistant. All moving parts shall be designed to operate without binding, distortion, or misalignment.

4. The check valve shall be installed in accordance with the manufacturer's specifications and maintained in a working condition during all times in which the Well is in operation. The check valve shall be installed on the pump discharge pipe of the Well. If fertilizer, pesticide, chemical, animal or human Waste or other Foreign Substance is injected into the Water system it shall be injected downstream of the check valve. If the check valve is a Chemigation valve it may be injected through the Chemigation valve port.
5. A vacuum-relief device shall be installed between the pump discharge and the check valve in such a position and in such a manner that insects, animals, floodwater, or other pollutants cannot enter the Well through the vacuum-relief device. The vacuum-relief device may be mounted on the inspection port if it does not interfere with the inspection of other anti-Pollution devices.
6. An automatic low-pressure drain shall also be installed between the pump discharge and the check valve in such a position and manner that any fluid which may seep toward the Well around the Flapper will automatically drain out of the pipe. The drain must discharge away from, rather than flow toward, the Well. The drainage must not collect on the ground surface or seep into the soil around the Well casing.
 - (a) The drain shall be at least three-fourths of an inch (3/4") in diameter and located on the bottom of the horizontal pipe between the pump discharge and the check valve.
 - (b) The drain must not extend beyond the inside surface of the bottom of the pipe unless special provisions, such as a Dam located upstream of the drain, forces seepage to flow into the drain.
 - (c) The outside opening of the drain shall be at least two inches above the grade.
7. An easily accessible inspection port shall be located between the pump discharge and the check valve, and situated so the automatic low-pressure drain can be observed through the port and the Flapper can be physically manipulated.

8. The port shall allow for visual inspection to determine if leakage occurs past the Flapper, seal, seat, and/or any other components of the checking device.
9. The port shall have a minimum four-inch diameter orifice or viewing area. For Irrigation Distribution Systems with pipe lines too small to install a four-inch diameter inspection port, the check valve and other anti-Pollution devices shall be mounted with quick disconnects, flange fittings, dresser couplings, or other fittings that allow for easy removal of these devices.

RULE 21 – Covering of Wells

21.1 Every Owner or operator of any real Property within the District, upon which any open or uncovered Well is located shall be required to close or cap the same permanently or temporarily as set forth below and in accordance with Chapter 36 of the Texas Water Code as now, or hereafter amended.

- A. As used in this section, (“open or uncovered Well”) means an artificial excavation that is dug or drilled for the purpose of exploring for or producing Water from the Underground Water reservoir and is not capped or covered as required.
- B. The District may require the Owner or lessee of real Property on which an open or uncovered Well is located to keep the Well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the Well is in actual use.
- C. If the Owner or lessee fails or refuses to close or cap the Well in compliance with this Rule within 10 days after being notified to do so in writing by the District, then any Person, firm, or corporation employed by the District may go on the real Property and close or cap the Well safely and securely.
- D. Any expense incurred by the District in closing or capping a Well shall constitute a lien on the real Property on which the Well is located.
- E. The lien is perfected by filing an affidavit in the deed records of the county where the Well is located, executed by any Person conversant with the facts, stating the following:
 1. the existence of the Well;
 2. the legal description of the Property on which the Well is located;

3. the approximate location of the Well on the Property;
4. the failure or refusal of the Owner or lessee, after notification, to close the Well within 10 days after the notification;
5. the closing of the Well by the District, or by an authorized agent, representative, or employee of the District; and,
6. the expense incurred by the District in closing the Well.

21.2 A Well may be abandoned by the District, after proper notification to the Well Owner, if the Well is not brought into compliance with the applicable District Rules.

A. For a Well to be considered by the Board for “Abandonment” one or more of the following conditions must exist:

1. the physical condition of the Well is causing, or is likely to cause, Pollution of the Groundwater in the District; or
2. the Well is not in use and does not contain any pumping equipment and has not been in use for ten (10) or more years and the real Property is not, or has not been, enrolled in any state or federal conservation program such as the Conservation Reserve Program (CRP); or
3. the Well is in use and does contain pumping equipment but the physical condition of the Well is not in compliance with applicable law, including the Rules of the District, and Chapter 1901 of the Texas Occupations Code.

B. When the General Manager of the District is informed that a Well should be considered for Abandonment, the General Manager shall notify the Owner of the Well of the condition of the Well. The notification to the Owner shall include:

1. the conditions under which the Well may be considered for abandonment through action of the Board,
2. any corrective action the Well Owner may take to prevent the Well abandonment, and,

3. the date, time and location of the meeting at which the Board will consider the abandonment of the Well.
- C. After being notified by the District the Well Owner or representative of the Owner may meet with the General Manager to discuss corrective actions necessary to prevent Well abandonment.
1. If the Owner has met the requirements necessary to bring the Well into compliance with the Rules of the District, and Chapter 1901 of the Texas Occupations Code before the Board Meeting, the General Manager will report this to the Board.
 2. If the Owner decides to abandon the Well in accordance with the Rules of the District and Chapter 1901 of the Texas Occupations Code before the Board Meeting, the General Manager will report this to the Board.
- 21.3 Nothing in this Rule affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

RULE 22 – Waste

- 22.1 Water shall not be produced or used within the District in such a manner or under such conditions as to constitute Waste. Water shall not be produced from an abandoned or Deteriorated Well. “Waste” means any one or more of the following:
- A. withdrawal of Groundwater from a Groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of Water unsuitable for agricultural, gardening, domestic, or stock-raising purposes;
 - B. the flowing or producing of Wells from a Groundwater reservoir if the Water produced is not used for a beneficial purpose;
 - C. escape of Groundwater from a Groundwater reservoir to any other reservoir or geologic strata that does not contain Groundwater;
 - D. Pollution or harmful alteration of Groundwater in a Groundwater Reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

- E. willfully or negligently causing, suffering, or allowing Groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the Owner of the Well unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality (TCEQ) under Chapter 26;
 - 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; and,
 - G. for Water produced from an artesian Well, “waste” has the meaning assigned by Section 11.205 of the Water Code; or,
 - H. an unaccounted loss of Water in excess of ten percent (10%) between the volume of Water entering a distribution or conveyance system and the amount of Water discharged at the termination point of the system.
- 22.2 Waste of Groundwater shall be a violation of these Rules and the violation will be subject to injunction or civil penalties as provided herein.
- 22.3 A Well identified as an abandoned or Deteriorated Well, or a borehole, must be plugged, capped or re-completed in accordance with the requirements of the District and any statewide law, agency or political subdivision having jurisdiction including, but not limited to, Chapter 1901 of the Texas Occupations Code, and the Texas Commission on Environmental Quality.

CHAPTER 7 – NOTICE AND HEARINGS

Commentary to Chapter 7

The District conducts three general types of hearings: hearings on applications for exception to the District's Rules; hearings involving contested matters in which the rights, duties, or privileges of a Person are determined after an opportunity for an adjudicative hearing; and rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law, or that describe the procedure or practice requirements of the District. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearings Examiner.

RULE 23 – Exception to the Rules

23.1 Application Procedure for Exception to the Rules:

- A. Any Applicant desiring an exception to any Rule shall file a written application under oath with the District at its principal office stating:
1. the nature of the exception requested; and
 2. the Rule number(s) and Paragraph(s) or sub-paragraph(s); and
 3. the justification for granting the exception; and
 4. any information that the Applicant deems appropriate in support of the application.
- B. Ten copies of any application for an exception shall be submitted to the District at its principal office:

**North Plains Groundwater Conservation District
603 East First Street
P. O. Box 795
Dumas, Texas 79029-0795
Telephone: (806) 935-6401
Facsimile: (806) 935-6633.**

- C. All applications for exceptions shall be heard and considered by the Board at a Board meeting, within sixty (60) days after submittal. At least ten (10) days prior to the hearing, the General Manager shall:
1. post the notice in a place readily accessible to the public in the principal office of the District;

2. provide the notice to the county clerk of each county in the District for public posting in each respective courthouse;
 3. publish notice to the public in a newspaper in general circulation within the District; and,
 4. provide the notice by regular mail to:
 - (a) the Applicant; and,
 - (b) known Interested Persons whose rights may be affected by the exception requested, including all governmental agencies having concurrent jurisdiction.
- D. Each Person who attends a hearing wherein a Rule exception request is to be heard shall submit a hearing registration form stating:
1. the Person's name;
 2. the Person's address;
 3. whom the Person represents, if the Person is not there in the Person's individual capacity; and,
 4. whether the Person wishes to testify.
- E. The presiding officer shall conduct the exception request hearing in the manner the presiding officer determines to be most appropriate to obtain information and testimony relating to the exception request as conveniently and expeditiously as possible without prejudicing the rights of any Person at the hearing. The presiding officer may limit the number of witnesses and may limit the time witnesses may testify at an exception request hearing.
- F. The Board shall enter an order granting or denying an application for exception, with such conditions as it shall deem proper not later than the 35th day after the date the hearing on the application for exception is concluded.
- G. If the application for exception to the Rules is denied or modified by the Board, the Applicant may request a rehearing as provided in these Rules.

RULE 24 – Procedures Governing Contested Matters

- 24.1 **Applicability:** This Rule applies to the notice and hearing process used by the District for all contested hearings, including contested permit applications, contested permit amendment applications, contested Allowable Annual Production Notices, contested Allowable Annual Production Notice amendments, and challenges to the assessment of civil penalties for Rule violations.
- 24.2 **Notice of Protest:** If a Person should desire to contest or oppose any pending matter before the Board, ten copies of a written notice of protest shall be filed with the District at its principal office. Any protest must be filed with the Board either prior to, or within 30 days after, the Board has issued a final decision, ruling, or order on the matter being protested.
- 24.3 **Protest Requirements:** Protests shall be verified and submitted in writing with a duplicate copy to any opposing party or parties and shall comply in substance with the following requirements:
- A. Each protest shall show the name and address of the protestant.
 - B. Each protest must set forth all allegations of injury to the protestant which may result from: a proposed action or matter to be considered by the Board; or the Board’s final decision, ruling, or order on a matter.
 - C. If a protest is based upon a claim of interference with some present right of the protestant, it shall state the basis of the protestant’s claim.
 - D. Each protest shall identify any resolution that would result in withdrawal of the protest.
 - E. Each protest shall be verified by affidavit.
- 24.4 **Contested Applications or Proceedings Defined:** An application, appeal, motion or proceeding pending before the Board is considered contested when a notice of protest is filed and the dispute cannot be peacefully resolved by the General Manager or the Board. The application or proceeding shall then be deemed a contested matter. In a contested case hearing any Applicant, intervenor, or protestant shall be a party provided each is determined by the Board to have a justiciable interest in the contested matter as hereinafter provided.

24.5 Evaluation of Protests:

- A. Except as provided in subsection E, the General Manager will schedule the contested case hearing request for evaluation by the Board. At least 30 days prior to the Board evaluation hearing, the General Manager will provide notice to the protestant and other Persons who have timely requested notice of the evaluation hearing. The Board may receive relevant oral testimony or documentary evidence at the Board evaluation hearing.
- B. Persons may submit a written response to the contested hearing request no later than 10 days before the date at which the Board will evaluate the request. Responses shall be filed with and served on the General Manager, the protestants and any other Persons who have timely requested notice of the evaluation hearing. The response should address the question of whether the Person/Persons requesting the contested case hearing has/have a personal justiciable interest related to the matter at issue.
- C. The Board will evaluate the contested hearing request at the scheduled Board evaluation hearing and will determine if any party appearing in, and/or requesting, the contested case hearing:
 - 1. has a personal justiciable interest relating to the matters at issue, refer the application to a contested case hearing, and admit the Person as a party to the hearing; or
 - 2. does not have a personal justiciable interest related to the proposed action or matter, deny the hearing request, and/or not admit the Person as a party to the hearing.
- D. By way of example and not exclusion, a Person shall be deemed to have a justiciable interest if that Person owns Water Rights within the District which rights may be directly affected by the decision of the Board on the contested matter.
- E. The Board may delegate to a judge the evaluation of protests.

24.6 Authority to Conduct Contested Case Hearings; Delegation; Applicable Procedural Rules; Presiding Officer:

- A. The Board may conduct any contested case hearing.

- B. By order, the Board may also delegate the authority to conduct a hearing and refer the matter to a judge, including a State Office of Administrative Hearings (SOAH) administrative law judge.
- C. Except for a hearing referred to the SOAH, the procedures provided in this Chapter 7 apply to contested case hearings. If the Board refers a contested case hearing to SOAH, then the applicable rules of practice and procedure of SOAH (Title 1, Chapter 155, Tex. Admin. Code) govern any contested case hearing of the District conducted by SOAH, as supplemented by these Rules.
- D. In contested case hearings before the Board, the President shall be the presiding officer. The President of the Board may delegate this function to another Board member, or the District's legal counsel. In hearings referred to a judge, the judge shall be the presiding officer.
- E. If a contested case hearing is referred by the Board to a judge, the General Manager will prepare all documents necessary to assist the judge in preparing for the hearing.

24.7 **Authority of Presiding Officer:** The presiding officer may conduct a contested case hearing proceeding in the manner the presiding officer deems most appropriate for that particular proceeding. The presiding officer has the authority to:

- A. set hearing dates;
- B. convene the hearing at the time and place specified in the notice for hearing;
- C. establish the jurisdiction of the District concerning the subject matter under consideration;
- D. rule on motions and on the admissibility of evidence and amendments to pleadings;
- E. designate and align parties and establish the order for presentation of evidence;
- F. refer parties to an alternative dispute resolution procedure on any matter at issue in the hearing;
- G. administer oaths to all Persons presenting testimony;

- H. examine witnesses;
 - I. issue subpoenas in accordance with Rule 24, Paragraph 24.15, when required to compel the attendance of witnesses or the production of papers and documents;
 - J. compel discovery under these Rules;
 - K. ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 - L. conduct public hearings in an orderly manner, in accordance with these Rules;
 - M. recess any hearing from time to time and place to place;
 - N. re-open the record of a hearing for additional evidence, when necessary to make the record more complete; and,
 - O. exercise any other appropriate powers necessary or convenient, to effectively carry out the responsibilities of the presiding officer.
- 24.8 A pre-hearing conference may be convened as provided in these Rules and be held at a date, time and place stated in the notice given in accordance with Rule 24, Paragraph 24.10, and may be continued from time to time and place to place, at the discretion of the presiding officer.
- 24.9 Action taken at a pre-hearing conference may be reduced to writing and made a part of the record, or may be stated on the record at the close of the conference.
- 24.10 **Notice of Contested Case Hearing:** The General Manager shall give notice of each hearing.
- A. The notice must include:
 - 1. the names of the parties;
 - 2. the address or approximate location of any Wells or proposed Wells involved in the dispute;
 - 3. a brief explanation of the contested matter;
 - 4. the time, date, and location of the hearing; and,

5. any other information the General Manager or Board considers relevant and appropriate.
- B. Not later than the 10th day before the date of a hearing, the General Manager shall:
1. post the notice in a place readily accessible to the public in the principal office of the District;
 2. provide the notice to the county clerk of each county in the District for public posting in each respective courthouse;
 3. publish notice to the public in a newspaper in general circulation within the District; and,
 4. provide the notice by regular mail to:
 - (a) all parties in the contested case; and,
 - (b) any other Person entitled to receive notice under the Rules of the District.

24.11 Time and Place of Hearing: A contested case hearing may be held in conjunction with any meeting of the Board, or a separate proceeding may be convened apart from a Board meeting for the purpose of holding a hearing.

24.12 Hearing Registration: Each Person who attends a contested hearing shall submit a hearing registration form stating:

- A. the Person's name;
- B. the Person's address;
- C. whom the Person represents, if the Person is not there in the Person's individual capacity; and,
- D. whether the Person wishes to testify.

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

- 24.14 **Discovery:** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the presiding officer. Unless specifically modified by this Chapter 7, or by order of the presiding officer, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the presiding officer.
- 24.15 **Subpoenas.**
- A. Requests for issuance of subpoenas in a contested case shall be in writing and directed to the presiding officer.
 - B. A party requesting the issuance of a subpoena shall file an original and one copy of the request with the presiding officer.
 - C. If good cause is shown for the issuance of a subpoena, the presiding officer shall issue the subpoena in accordance with §2001.089 of the Texas Government Code.
- 24.16 **Ex Parte Communications:** Neither the presiding officer nor the Board may communicate, directly or indirectly, in connection with any issue of fact or law with any party, or their representative, except on notice and opportunity for all parties to participate.
- 24.17 **Evidence:** Except as modified by this Chapter 7, the Texas Rules of Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
- 24.18 **Written Testimony:** When a proceeding will be expedited and the interests of the parties not substantially prejudiced, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being placed under oath and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- 24.19 **Requirements for Exhibits:** Exhibits of a documentary character must be of a size that will not unduly encumber the files and records of the District. All exhibits

must be numbered and, except for maps and drawings, may not exceed 8½ by 11 inches in size.

- 24.20 **Abstracts of Documents:** When documents are numerous, the presiding officer may receive in evidence only those that are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties shall have the right to examine the documents from which the abstracts are made.
- 24.21 **Introduction and Copies of Exhibits:** Each exhibit offered shall be tendered for identification and placed in the record. Copies must be furnished to the presiding officer and to each of the parties, unless the presiding officer rules otherwise.
- 24.22 **Excluding Exhibits:** If an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to excluding the exhibit.
- 24.23 **Official Notice:** The presiding officer may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- 24.24 **Documents in District Files:** Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.
- 24.25 **Oral Argument:** At the discretion of the presiding officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The presiding officer may require or accept written briefs in lieu of, or in addition to, oral arguments. For a contested case conducted under Rule 24, Paragraph 24.6B, when the matter is presented to the Board for final decision, further oral arguments may be heard by the Board.
- 24.26 **Reporting.**
- A. Contested case hearings, and associated proceedings, will be recorded by the District on audio cassette tape or, at the discretion of the presiding officer, may be recorded by a certified shorthand or court reporter. The District will not prepare transcriptions of hearings recorded on audio cassette tape on District equipment for the public, but will arrange for a party to have access to the recording.

- B. Subject to availability of space, any party may, at its own expense, arrange for a reporter to transcribe or record the hearing.
- C. Upon the timely request of any party, or at the discretion of the presiding officer, the presiding officer may assess reporting and transcription costs to one or more of the parties. The presiding officer will consider the following factors in assessing reporting and transcription cost:
 - 1. the party who requested the transcript;
 - 2. the financial ability of the party to pay the costs;
 - 3. the extent to which the party participated in the hearing;
 - 4. the relative benefits to the various parties of having a transcript;
 - 5. the budgetary constraints of a governmental entity participating in the proceedings; and,
 - 6. any other factor that is relevant to a just and reasonable assessment of costs.
- D. In any proceeding where the assessment of reporting or transcription cost is at issue, the presiding officer will provide the parties an opportunity to present evidence and argument on the matter. A recommendation regarding the assessment of costs will be included in the presiding officer's report to the Board.
- E. If a proceeding other than a contested case hearing is recorded by a reporter and a copy of the transcript of testimony is requested by any Person, the testimony will be transcribed and the original transcript filed with the papers of the proceeding at the expense of the Person requesting the transcript of testimony.
- F. Copies of the transcript of testimony of any hearing, or other proceeding may be purchased from the reporter.

24.27 **Informal Hearings:** Contested case hearings may be conducted informally when, in the judgment of the presiding officer, the conduct of a proceeding under informal procedures will result in a savings of time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, not prejudice the rights of any party, and is not objected to by any party. The procedures to be used during such informal hearing shall be established in an order of the presiding

officer and the agreement of each party shall be indicated on the order. If during an informal proceeding, all parties do not reach a settlement to resolve the matters in controversy, the proceeding may be referred to alternative dispute resolution by the presiding officer. A party may present evidence or arguments for the presiding officer to consider as to why alternative dispute resolution is not appropriate.

24.28 **Decision to Proceed to Formal Hearing:** If the parties do not reach a settlement to resolve the matters in controversy, and the presiding officer determines that settlement is not likely, then the presiding officer may void the order to proceed under informal procedures and order the case to proceed under the formal procedural Rules provided in this Chapter.

24.29 **Agreement of Parties; Remand to Board.**

- A. No agreement between parties or their representatives affecting any pending matter will be considered by the presiding officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered of record.
- B. An agreed disposition of a contested case may be made by stipulation, settlement, consent order, or the withdrawal of all requests for a contested case hearing so that no facts or issues remain controverted. Except for contested cases conducted under Rule 24, Paragraph 24.6A, upon settlement of a matter, the presiding officer shall remand the matter to the Board. If the Person requesting the contested case hearing defaults, then the presiding officer may also deem the request for a contested case hearing to have been withdrawn by the Person and remand the case to the Board. Applications remanded under this section will be considered to be an uncontested application. The presiding officer will summarize the evidence, including findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing. Any stipulations, settlements, consent orders, withdrawals of requests for contested case hearing, orders, findings of default, presiding officer summary of the proceedings, and other relevant documents will be presented to the Board for its consideration.

24.30 **Alternative Dispute Resolution.**

- A. **Policy:** It is the District's policy to encourage the resolution and early settlement of all contested matters through voluntary settlement procedures.
- B. **Participants:** The following may be participants in any mediation of a contested-case:

1. the General Manager,
2. the Applicant, and,
3. the Persons who timely filed contested-case hearing requests which gave rise to the dispute, or
4. if parties have been named, the named parties.

C. Conduct of Mediation:

1. Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the participants to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the participants. The mediator must be acceptable to all participants.
2. The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009, as amended. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.
3. To facilitate a meaningful opportunity for settlement, the participants shall, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

D. Arrangements for Mediation.

1. Any Board or presiding officer referral of a disputed matter to mediation or any agreement by the participants to mediate should include consideration of the following factors:
 - (a) the source of the mediator;
 - (b) the time period for the mediation. The participants should allow enough time in which to make arrangements with the mediator and attending participants to schedule the mediation, to attend and participate in the mediation, and to complete

any settlement approval procedures necessary to achieve final settlement;

- (c) the location of the mediation;
- (d) allocation of costs of the mediator;
- (e) the identification of representatives who will attend the mediation on behalf of the participants; and,
- (f) the settlement approval process in the event the participants reach agreement at the mediation.

E. Confidentiality of Mediation and Final Settlement Agreement:

1. A mediation conducted under this Rule is confidential in accordance with Government Code, §2009.054.
2. The confidentiality of a final settlement agreement to which a governmental body is a signatory that is reached as a result of the mediation is governed by Government Code, Chapter 552.

F. Costs of Mediation: Unless the participants agree otherwise, each participant shall be responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such participant, attorney's fees, and consultant or expert fees. In addition, unless the participants agree otherwise, the costs of the mediation process itself shall be divided equally between the participants.

G. Initial Settlement Agreement: Any settlement agreement reached during the mediation shall be signed by the participants, and shall describe any procedures required to be followed by the participants in connection with final approval of the agreement.

H. Final Settlement Agreement: A final settlement agreement reached during, or as a result of mediation, that resolves the disputed issues or any portion of the disputed issues shall be in writing and signed by representatives of the participants who have authority to bind each respective participant. Agreements of the participants reached as a result of alternative dispute resolution are enforceable in the same manner as any other written contract.

1. If the final settlement agreement does not resolve all disputed issues regarding the permit application at issue, the agreement shall identify the issues that are not resolved.
2. As part of a final settlement agreement, the Persons requesting a contested-case hearing may agree to submit a letter to the Board stating that their hearing request will be withdrawn subject to the Board including in the proposed permits certain provisions or modifications agreed upon by the participants.
3. If the Applicants and all Persons requesting a hearing reach a negotiated or agreed settlement, that settles all the facts or issues in controversy, the proceeding will be considered an uncontested case and the General Manager will summarize the evidence for the Board, including findings of fact and conclusions of law based on the existing record and any other evidence that may have been submitted by the parties at the hearing. The General Manager may request that the Applicants provide an initial draft of the findings of fact and conclusions of law.
4. The Board is not bound by any agreement entered into by the parties and has discretion to accept, reject, or require modifications as a condition of approval of any final agreement of the parties that concerns a matter under the District's authority. In the event that the Board rejects an agreement or requires certain modifications as a condition of approval, the Board may refer the case for further mediation or an informal process guided by the General Manger. The parties, in the instance of rejection or suggested modification by the Board, may also elect to resolve unsettled issues through the contested-case process.

24.31 Remaining Issues:

- A. If mediation does not resolve all issues raised by the parties requesting a contested-case hearing, then the Board will conduct a contested-case hearing on any remaining issues.
- B. When alternative dispute resolution procedures do not result in the full settlement of a contested matter, the parties are encouraged to use the mediation process to identify resolved issues, unresolved issues and develop stipulations. The parties shall attempt to limit contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the Board or a Hearings Examiner

assigned to conduct the hearing on the merits and shall be included in the hearing record.

24.32 **Pre-hearing Conference:** A pre-hearing conference may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process.

A. **Matters Considered.** Matters that may be considered at a pre-hearing conference include, but are not limited to: (1) designation of parties; (2) additional formulation and simplification of issues; (3) referral of parties to an alternative dispute resolution procedure; (4) necessity or desirability of amending applications or other pleadings; (5) possibility of making admissions or stipulations; (6) establishing a discovery control plan; (7) identification of and specification of the number of witnesses; (8) filing and exchange of prepared testimony and exhibits; and (9) establishing procedure at the hearing.

B. **Notice.** A pre-hearing conference may be held at a date, time, and place stated in the notice provided to those Persons entitled to notice pursuant to Rule 24, Paragraph 24.10 and may be continued from time to time and place to place, at the discretion of the presiding officer.

C. **Conference Action.** Action taken at a pre-hearing conference may be reduced to writing and made a part of the record, or may be stated on the record at the close of the conference.

24.33 **Designation of Parties.** Parties to a hearing may be designated on the first day of hearing, or at such other time as the presiding officer determines. The General Manager and any Person specifically named in a matter are automatically designated parties. Persons determined to have a justiciable interest by Board order in a determination of a contested-case hearing request pursuant to Rule 24, Paragraph 24.5 are also automatically designated as parties. After parties are designated, no other Person may be admitted as a party unless, in the judgment of the presiding officer, good cause exists and the hearing will not be unreasonably delayed.

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

24.35 **Persons Not Designated Parties.** At the discretion of the presiding officer, Persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record to inform the Board regarding various concerns or issues related to the proceeding and may be considered as evidence if corroborated by sworn testimony or exhibits properly admitted into evidence by a party.

24.36 **Furnishing Copies of Pleadings.** After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or the party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.

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

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

24.39 **Conclusion of the Hearing:**

A. **Hearings Before the Board.**

1. **Closing the Record.** At the conclusion of the presentation of evidence and any oral argument, the presiding officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer.
2. **Time for Board Action.** In the case of hearings before the Board, the Board must act by issuing a written order, within 35 calendar days after the close of the hearing record. This time limitation may be extended by the

Board if permitted by Chapter 36 of the Texas Water Code. B.
Hearings Before a Hearings Examiner.

1. **Closing the Record; Final Report.** At the conclusion of the presentation of evidence, and any oral argument, the presiding officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the presiding officer. After the record is closed, the hearings examiner shall prepare a report to the Board. The report will include a summary of the evidence, together with the hearings examiner's findings and conclusions and recommendations for action. Upon completion and issuance of the hearings examiner's report, a copy will be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties will be by certified mail with return receipt requested.
2. **Exceptions to the Hearings Examiner's Report; Reopening the Record.** Prior to Board action, any party in a contested case heard by a hearings examiner may file written exceptions to the hearings examiner's report, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board. Upon review of the report and exceptions, the hearings examiner may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the report and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the hearings examiner for further proceedings.
3. **Time for Board Action.** In the case of hearings before a hearings examiner, the hearing examiner's report will be submitted to the Board and delivered to all parties. Thereupon, the Board shall declare that all proceedings involving the hearings examiner have been concluded, subject to the exception provision of the foregoing subparagraph. The Board must act by written order within 35 days after the Board declares that all proceedings involving the hearings examiner have been concluded.

24.40 **Request for Rehearing:** An Applicant may request a rehearing before the Board not later than 30 days after the date of the Board's order on any application for exception to the Rules or on a contested matter.

- A. Ten copies of a request for rehearing must be filed in the principal office of the District and must state the grounds for the request.
- B. If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- C. The failure of the Board to grant or deny a request for rehearing before the 45th day after the date the request is submitted constitutes a denial of the request.

24.41 **Decision; When Final:** A decision by the Board on an application for exception to the Rules or a contested matter hearing is final:

- A. on the expiration of the period for filing a request for rehearing, if a request for rehearing is not timely filed; or
- B. if a request for rehearing is timely filed, on the date:
 - 1. the Board denies the request for rehearing; or
 - 2. the Board renders a decision after rehearing.

RULE 25 – Rulemaking Notice and Hearing Procedures

25.1 Not later than the 20th day before the date of a rulemaking hearing, the General Manager shall:

- A. post notice in a place readily accessible to the public in the principal office of the District;
- B. provide notice to the county clerk of each county in the District for public posting in each respective courthouse; and
- C. publish notice of the proposed rules or the proposed rule revisions and the public hearing thereon in a newspaper of general circulation in the District once a week for two (2) consecutive weeks, with the first publication of notice being at least 20 days before the rulemaking hearing.
- D. provide notice by mail, facsimile, or electronic mail to any person who has requested such notice under Chapter 36;

- E. make available a copy of all proposed rules, or proposed rule revisions, at a place accessible to the public during normal business hours and post the proposed rules on the District's website.
- 25.2 The notice provided under this Rule must include:
- A. a statement of the intent of the District to adopt rules;
 - B. a statement of intent to conduct a public hearing to present the proposed rules and to receive public comment;
 - C. notice of the date, time, and place for the public hearing;
 - D. a summary of the content of the proposed rules or the proposed rule revisions;
 - E. the procedures for obtaining a copy of the rules or the location or website at which the rules can be reviewed and copied; and,
 - F. the procedures for the submission of written or oral comments.
- 25.3 In rulemaking hearings before the Board, the President shall be the presiding officer. The President of the Board may delegate this function to another Board member, or the District's legal counsel.
- 25.4 Each Person who attends a rulemaking hearing shall submit a hearing registration form stating:
- A. the Person's name;
 - B. the Person's address;
 - C. whom the Person represents, if the Person is not there in the Person's individual capacity; and,
 - D. whether the Person wishes to testify.
- 25.5 The presiding officer shall conduct the rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and testimony relating to the proposed rule or rules as conveniently and expeditiously as possible without prejudicing the rights of any Person at the hearing. The presiding officer may limit the number of witnesses and may limit the time

witnesses may testify at a rulemaking hearing. Comments may be submitted orally or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the rulemaking hearing to receive additional written comments.

- 25.6 The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

RULE 26 – General Procedures for all District Hearings

- 26.1 **Continuances:** The presiding officer may continue hearings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing any new notices. If a hearing or other proceeding is continued and a time and place (other than the District's business office) for the hearing to reconvene are not publicly announced at the hearing by the presiding officer before it is recessed, a notice of any further setting of the hearing or other proceeding must be served at a reasonable time to all parties and any other Person the presiding officer deems appropriate. It is not necessary to post notice of the new setting at the county courthouses or to publish such notice in a newspaper.
- 26.2 **Conduct and Decorum:** Every Person participating in or observing a meeting of the Board of Directors, a hearing, or other associated proceeding, must conform to ethical standards of conduct and exhibit courtesy and respect for all other participants or observers. No Person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If, in the judgment of the presiding officer, a Person is acting in violation of this provision, the presiding officer will first warn the Person to refrain from engaging in such conduct. Upon further violation by the same Person, the presiding officer may exclude that Person from the proceeding for such time and under such conditions as the presiding officer deems necessary.
- 26.3 **Alignment of Parties; Number of Representatives Heard.** Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The presiding officer may require the participants of an aligned class to select one or more Persons to represent them in the proceeding, or on any particular matter or ruling, and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding, or on any particular matter or ruling.
- 26.4 **Appearance:** The Applicant, protestant, or any party requesting the hearing, or a representative, should be present at the hearing. Failure to appear may be grounds for withholding consideration of a matter and dismissal without prejudice, or may

require the rescheduling or continuance of the hearing, if the presiding officer deems it necessary in order to fully develop the record.

26.5 Filing of Documents; Time Limit: Applications, motions, exceptions, communications, requests, briefs, or other papers and documents required to be filed under these Rules, or by law, must be received in hand at the District's office within the time limit, if any, set by these Rules, or by the presiding officer for filing. Mailing within the time period is insufficient, if the submissions are not actually received by the District within the time limit.

26.6 Broadening the Issues: No Person will be allowed to appear in any hearing or other proceeding that, in the opinion of the presiding officer, is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding to matters that are not material or relevant to the matter that is the subject of the hearing.

26.7 Certified Questions:

A. In hearings before a hearings examiner, at any time during the contested case proceeding, on a motion by a party or on the hearing examiners' own motion, the hearing examiner may certify a question to the Board.

B. Issues regarding District policy, jurisdiction or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present its case are appropriate for certification. Policy questions for certification purposes include, but are not limited to:

1. the Board's interpretation of its Rules and applicable statutes;
2. the rules or statutes which are applicable to a proceeding; and
3. the Board's policy or whether a Board policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

C. If a question is certified, the hearings examiner shall submit the certified issue to the General Manager. The General Manager shall place the certified issue on the agenda of the earliest possible meeting of the Board that is not earlier than 20 days after its submission, in compliance with the Open Meetings Act and other applicable law. The General Manager shall give the hearings examiner and parties' notice of the meeting at which the certified question will be considered. Within ten days after the certified question is filed, parties to the proceeding may file briefs on the certified

question. Within ten days of the filing of such briefs, parties may file responses to such brief. Briefs and responses shall be filed with the docket clerk with copies served on the hearings examiner. The General Manager shall provide copies of the certified questions and any briefs and responses to the general counsel and to each Board member. The hearings examiner may abate the hearing until the Board answers the certified question, or continue with the hearing if the hearings examiner determines that no party will be substantially harmed. The process for seeking Board answers to certified questions shall be considered as part of the contested-case hearing process.

D. The Board shall issue a written decision on the certified issue within 30 days following the meeting at which the certified issue is considered. A decision on a certified issue is not subject to a motion for rehearing, appeal or judicial review prior to the issuance of the Board's final decision in the proceeding.

26.8 **Changed Conditions:** The decision of the Board on any matter contained herein may be reconsidered by it on its own motion or upon motion showing changed conditions, or upon the discovery of new or different conditions or facts after the hearing or decision on such matter. If the Board should decide to reconsider a matter after having announced a ruling or decision, or after having finally granted or denied the application, it shall give notice to Persons who were proper parties to the original action, and such Persons shall be entitled to a hearing thereon if they file a request therefor within fifteen (15) days from the date of the mailing of such notice.

26.9 **Methods of Service Under the Rules:** Except as otherwise expressly provided in these Rules, any notice or documents required by these Rules to be served or delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by facsimile ("fax") document transfer to the recipient's current fax number. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by fax is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three days will be added to the prescribed period. Where service by one or more methods has been attempted and failed, the service is complete upon publication of notice in a newspaper having general circulation in the District.

26.10 **Computing Time:** In computing any period of time prescribed or allowed by these Rules, by Order of the Board, or by any applicable statute, the day of the act, or event of default from which the designated period of time begins to run, is not to be included, but the last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

RULE 27 – Show Cause Orders

27.1 The Board, either on its own motion or upon receipt of written protests or complaints, may at any time, after due notice to all interested parties, cite any Person operating within the District to appear before it and require that Person to show cause why such Person’s operating authority or permit should not be suspended, canceled or otherwise restricted and limited, and/or why such Person should not be subject to an injunction or civil penalties as set forth in these Rules for failure to comply with the Rules, Orders or regulations of the Board or the relevant statutes of the State of Texas. Evidentiary and procedural matters at any such hearing will be conducted in accordance with these Rules.

CHAPTER 8 – RIGHT TO ENTER LAND AND ENFORCEMENT

RULE 28 – Right to Enter Land

28.1 Chapter 36 of the Texas Water Code grants the District the authority to enter real Property at reasonable times for the purpose of inspecting and investigating conditions relating to compliance with any Rule, regulation, permit, or other Order of the District including, but not limited to:

- A. Inspecting a proposed Well site, and any existing Well or Wells.
- B. Determining the pumping capacity of any Well or Wells.
- C. Reading or interpreting any meter, weir box or other instrument used to measure production of Water from any Well or Wells.
- D. Collecting samples to be used in Groundwater quality programs.
- E. Testing the pump and the power unit of any Well or Wells.
- F. Inspecting real Property for sources of potential or actual Pollution.
- G. Performing any other reasonable and necessary inspections and/or tests that may be required to collect Groundwater information.

H. Enforcing the Rules of the District.

- 28.2 Employees or agents acting under this authority who need to enter “restricted access” real property or structures shall observe the establishment’s rules and regulations concerning safety, biological security, internal security, and fire protection, and shall notify any occupant or other Person having apparent legal authority of their presence.
- 28.3 An application for a permit may be suspended or canceled by the Board if the Applicant refuses to grant the District’s employees access to real property to gather information necessary to complete an application.
- 28.4 The operation of any Well may be enjoined by the District immediately upon refusal to grant the District permission to access the real property as provided above.
- 28.5 District employees or agents of the District entering real property pursuant to this Rule shall exhibit proper identification upon request.

RULE 29 – Enforcement of Rules

- 29.1 All Rules duly adopted, promulgated and published by this District shall be enforced as provided under Chapter 36, Texas Water Code as now, or hereafter amended.
- 29.2 The District may enforce this Section and its Rules by injunction, mandatory injunction, reduction of a Person’s Allowable Annual Production, or other appropriate remedy in a court of competent jurisdiction.
- 29.3 The Board may set reasonable civil penalties for breach of any Rule of the District that shall not exceed the limitations set forth in Chapter 36 of the Texas Water Code.
- 29.4 A penalty under this Chapter 8 is in addition to any other penalty provided by the laws of this State and may be enforced by a complaint filed in a court of competent jurisdiction.
- 29.5 **Civil Penalties:** Civil penalties for violation of the Rules of the District are divided into two classes: Class One and Class Two.

A. **Penalty Schedule:**

1. **Class One:** The penalty for violation of each of the following Rules shall not be less than \$50, nor more than \$10,000, per violation and each day of a continuing violation shall be deemed a separate violation.

<u>Rule</u>	<u>Violation</u>
28	Failing to grant entry to real Property to an authorized officer, employee, agent or representative of the District to inspect, or for other authorized purposes.
17	Providing incorrect pooling information or failing to notify and obtain written approval from the District of ownership or boundary changes of a Pooled Groundwater Unit pursuant to Rule 17, Paragraph 17.7.
6	Drilling a Well or increasing the size of a Well without filing an application with the District to register the Well or applying to the District and receiving a permit.
6, 7	Failure to register a Well that is exempt under Texas Water Code §36.117, or to properly equip and maintain such Well.
7	Failure to register a Well.
6, 8	Failure to apply for a Test Hole Permit.
8	Failure to apply for a Well Permit.
16	Failure to apply for an Export Permit.
8	Willfully giving erroneous information on a Well Permit application or willfully producing a Well at a higher rate than represented in an application or as approved in a permit, or operating a Well prior to final approval by the District.

- 8** Failure to apply for a permit to drill a Recharge, Injection, Dewatering or Monitoring Well, or to file a completion report for such Well.
- 6, 7, 8, 10, 16** Withdrawing Groundwater from a Well without having furnished information about the Well on a form required by the District.
- 8, 10, 16** Failure to keep records, including driller's and/or electric logs, and file such logs and reports of drilling, equipping and completion of Wells with the District as required by District Rules and the regulations of the Texas Department of Licensing and Regulation.
- 19** Failure to complete or equip a Well to protect human life and prevent Pollution as required by District Rules and the regulations of the Texas Department of Licensing and Regulation.
- 10** Drilling, completing or reworking a Well without having a current Texas Water Well Driller's license, Texas Pump Installer's license, or failure to comply with the Rules of the District, State of Texas, federal or other political subdivision, including the Texas Department of Licensing and Regulation.
- 11** Drilling a Well at a location other than a location approved by the District.
- 12** Reworking, re-drilling or re-equipping a Well, or returning an Unused Well into production to increase production to raise the Well classification without obtaining a permit to do so, or drilling a replacement Well without a permit.
- 16** The failure to pay Export fee(s) to the District as required.
- 3, 16** Failure to install a flow Meter(s) on any Well as required by District Rules.

- 3 Tampering with a Metering System for purposes of reporting less than actual Well production from a Well
- 3, 16 Failure to report Water production as required by these Rules.
- 2, 16 Failure to report any Conveyance or Reservation of Water Rights separate from the surface of the property pursuant to Rule 2, Paragraph 2.1D and Rule 16.5.
- 3 Exceeding the Allowable Production limit.
- 16 Failure of a Water Exporter to provide required reports to the District.
- 3, 16 Failure of a Person to provide management plans, selection of a metering method, or other required reports to the District.
- 19 Failure to protect the Groundwater from Pollution.
- 20 Failure to install equipment for the protection of Groundwater quality as required by the District's Rules.
- 21 Failing to properly close or cap an open or uncovered Well.
- 22 Waste of Groundwater.
- 22 The production of Water from any Abandoned or Deteriorated Well as defined by Rule 1.

2. **Class Two:** The civil penalty for violation of any of the remaining Rules of the District, as may be supplemented or amended from time to time, shall not be less than \$25, nor more than \$5,000 per violation, and each day of a continuing violation shall be deemed a separate violation.

RULE 30 – Effective Date of These Rules

30.1 On January 20, 2009 at 5:00 p.m., Rules 4 and 5 are repealed and all revised Rules adopted by the Board of Directors shall then be effective. Any Rules previously adopted by the Board of Directors that are not repealed or revised hereby shall remain in full force and effect.

North Plains Groundwater Conservation District

By: _____
Daniel L. Krienke, Chairman and President,
Board of Directors

ATTEST:

Bob Zimmer, Vice President and
Vice-Chairman, Board of Directors

Wesley Spurlock, Director

Gene Born, Secretary, Board of Directors

Brian Bezner, Director

Phil Haaland, Director

Harold Grall, Director