

Fort Bend Subsidence District

Rules

Amended 2019

FORT BEND SUBSIDENCE DISTRICT

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FORT BEND SUBSIDENCE DISTRICT

SECTION 1. DEFINITIONS AND CONCEPTS

RULE 1.1 DEFINITIONS OF TERMS: In the administration of its duties, the Fort Bend Subsidence District follows the definitions of terms set forth in Chapter 8834, Special District Local Laws Code (hereinafter “Chapter 8834”), and other definitions as follows:

- a. **“Agricultural crop”:**
 1. means food or fiber commodities grown for resale or commercial purposes that provide food, clothing, or animal feed; and
 2. includes nursery products and florist items that are in the possession of a nursery grower.

- b. **“Alternative Water Supply”** means metered water from any source that meets the regulatory requirements of the Regulatory Plan including but not limited to: surface water, reuse water, treated effluent, or water from a public water supply. Water obtained from any supplier that is in compliance with an approved groundwater reduction plan shall be considered an alternative water supply. Groundwater may only be utilized as an alternative water supply when it is provided as part of an approved groundwater reduction plan. Groundwater withdrawn from any county outside the District does not qualify as an alternative water supply unless the permittee can demonstrate that the groundwater withdrawals will not cause groundwater level declines or subsidence within the District.

- c. **“Available Alternative Water Supply”** means alternative water supply that can be utilized with the exercise of reasonable diligence within a reasonable time and at prices competitive with the prices charged by suppliers of alternative water supplies in the district.

- d. **“Beneficial use”** means any use that is useful or beneficial to the user, including:
 1. an agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, or recreational use, or a use for pleasure purposes; or
 2. exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals.

- e. **“Board”** means the Board of Directors of the District.

- f. **“Dewatering well”** means a well used to remove water from a construction site or excavation, or to relieve hydrostatic uplift on permanent structures.

- g. **“District”** means the Fort Bend Subsidence District.

- h. **“District office”** means the office of the District as established by resolution of the Board.

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- i. **“Extraction well”** means a well used to extract contaminated fluids from the subsurface for the purpose of conducting an environmental remediation.
- j. **“Florist item”** means a cut flower, a potted plant, a blooming plant, an inside foliage plant, a bedding plant, a corsage flower, cut foliage, a floral decoration, or live decorative material.
- k. **“Groundwater”** means water located beneath the earth’s surface in the District. The term does not include water produced with oil in the production of oil and gas.
- l. **“Groundwater reduction plan”** or **“GRP”** means a document created by a permittee and certified by the District that details the strategies and steps necessary for achieving the groundwater reduction requirements outlined for the regulatory area within which the permittee is located.
- m. **“Hearing body”** means the Board, any committee of the Board, or a Hearing Examiner at any hearing held under the authority of Chapter 8834.
- n. **“Hearings Examiner”** means a person appointed by the General Manager to conduct a hearing or other proceeding.
- o. **“Injection well”** means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well used for the injection of any other fluid; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.
- p. **“Leachate well”** means a well used to remove contaminants from soil or groundwater. For the purposes of this definition, “contaminants” means a liquid that has percolated through or drained from solid waste or hazardous waste and contains soluble, suspended, or miscible materials removed from such waste.
- q. **“Livestock”** means cattle, horses, mules, asses, sheep, goats, llamas, alpacas, exotic livestock, and hogs.
- r. **“Nursery grower”** means a person who grows, in any medium, more than 50 percent of the nursery products or florist items that the person sells or leases, regardless of the variety sold, leased, or grown. A person grows a nursery product or florist item if the person cultivates or propagates the product or item by engaging in activities associated with the production or multiplying of stock, including the development of new plants from cuttings, grafts, plugs, or seedlings. The term does not include a person who merely holds or maintains a nursery product or florist item before sale or lease.

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- s. “**Nursery product**” includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown or kept for, or capable of, propagation and distribution for sale or lease.
- t. “**Monitoring well**” means a well installed to measure some property of the groundwater or aquifer it penetrates, and does not produce more than 5,000 gallons per year.
- u. “**New well**” means a well that has not been drilled.
- v. “**Open Meetings Act**” means Chapter 551, Government Code.
- w. “**Over-Conversion Credit**” means a credit issued by the District to a permittee (or group of permittees) who reduces groundwater pumpage beyond District requirements, awarded and redeemable pursuant to District policy.
- x. “**Permit**” means a document issued or to be issued by the District allowing a water well to be drilled or operated.
- y. “**Permittee**” includes any person to whom the District issues a water well permit. Permittee may also include a group of individual entities, within the same regulatory area, who have contracted together to operate under a single permit in order to meet groundwater reduction requirements.
- z. “**Person**” includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- aa. “**Platted Subdivision**” means a tract of land divided in two or more parts to lay out lots of less than five acres where:
 - 1. a written depiction of the lots, blocks, and reserves created by the division of the property has been approved and recorded in the Official Public Records of Real Property of Fort Bend County; and
 - 2. the written depiction includes streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts.
- bb. “**Presiding officer**” means the Chair, Vice-Chair, Secretary, or other Board member presiding at any hearing or other proceeding or a Hearings Examiner conducting any hearing or other proceeding.
- cc. “**Public Information Act**” means Chapter 552, Government Code.

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- dd. "**Regional water supplier**" means a political subdivision of this state that has:
1. the authority to conserve, store, transport, treat, distribute, sell, and deliver water to any person; and
 2. an approved groundwater reduction plan.
- ee. "**Regulatory Area**" means a geographical area designated by the Board in which regulatory policy will be applied.
- ff. "**Retail public utility**" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.
- gg. "**Rules**" means the rules and regulations of the District compiled in this document and as may be supplemented or amended from time to time.
- hh. "**Subsidence**" means the lowering in elevation of the surface of land caused by the withdrawal of groundwater.
- ii. "**Surface water**" means the ordinary flow, underflow, and tides of every flowing river, natural stream, lake or ocean, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed.
- jj. "**Texas Rules of Civil Procedure**" and "**Texas Rules of Civil Evidence**" mean the civil procedure and evidence rules as amended and in effect at the time of the action or proceeding. Except as modified by the Rules of the District, the rights, duties, and responsibilities of the presiding officer acting under the Texas Rules of Civil Procedure or the Texas Rules of Evidence are the same as a court acting under those rules.
- kk. "**Total Water Demand**" means for permittees that select Option 1 (as defined by the District Regulatory Plan) for their Groundwater Reduction Plan, the amount of groundwater, surface water, and other alternative water supplies being utilized by a permittee to meet annual water needs, and for permittees that select Option 2 (as defined by the District Regulatory Plan) for their Groundwater Reduction Plan, the maximum amount of groundwater, surface water, and other alternative water supplies actually utilized by the permittee to meet annual water needs for a 12-month period between January 1, 2005 and December 31, 2008.
- ll. "**Water conservation**" means a measure that seeks to make a water supply available for alternative or future use. The term includes best management practices, improved efficiency or accountability, recycling, reuse, pollution prevention, and reduction in consumption, loss, or waste.

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- mm. **“Water Conservation Program Credit”** means a credit issued by the District for sponsorship of students in the District’s water conservation program, awarded and redeemable pursuant to District policies.
- nn. **“Water meter”** means a water flow measuring device capable of recording the actual volume of groundwater produced during a measured time period, and which meets the requirements of Section Eight of these Rules.
- oo. **“Well”** means any facility, device, or method used to withdraw groundwater.
- pp. **“Well owner”** means a person who has an ownership interest in a well, operates a well, owns land upon which a well is located, or owns the groundwater withdrawn or to be withdrawn from a well.
- qq. **“Withdraw”** means the act of extracting groundwater by any method.
- rr. **“Windmill”** means a wind-driven or hand-driven device that uses a piston pump to withdraw groundwater.

RULE 1.2 PURPOSE OF RULES: These Rules are adopted pursuant to the directive of Section 8834.112, Special District Local Laws Code, to effectuate the provisions of Chapter 8834 and accomplish its purposes.

RULE 1.3 USE AND EFFECT OF RULES: These Rules are used by the District as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of Chapter 8834. They may not be construed as a limitation or restriction on the exercise of any discretion nor may they be construed to deprive the District or Board of the exercise of any powers, duties, or jurisdiction conferred by law, nor may they be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of Chapter 8834.

RULE 1.4 AMENDING OF RULES: The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time.

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

RULE 1.6 CONSTRUCTION: A reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the Special District Local Laws Code. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Government Code.

RULE 1.7 METHODS OF SERVICE UNDER THE RULES: Except as otherwise expressly provided in these Rules, any notice or document required by these Rules to be served or delivered may be delivered to the recipient, or recipient’s authorized representative, in person, by

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agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopier number. Service by mail is complete upon deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 P.M. will be deemed complete the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed period of time after service, three days will be added to the prescribed period. Where service by other methods has proved unsuccessful, the service is complete upon publication of the notice in a newspaper with general circulation in Fort Bend County.

RULE 1.8 SEVERABILITY: If any one or more of the provisions contained in these Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability may not affect any other rules or provisions of these Rules, and these Rules must be construed as if such invalid, illegal, or unenforceable rule or provision had never been contained in these Rules.

SECTION 2. BOARD

RULE 2.1 PURPOSE OF BOARD: The Board was created to determine policy and regulate the withdrawal of groundwater within the boundaries of the District for the purpose of ending subsidence, which contributes to or precipitates flooding, inundation, or overflow in any area within the District, including, without limitation, rising water resulting from storms or hurricanes, and to exercise its rights, powers, and duties in a manner that will effectively and expeditiously accomplish the purposes of Chapter 8834. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules, regulations, and other orders.

RULE 2.2 BOARD STRUCTURE, OFFICERS: The Board consists of the members appointed and qualified as required by Chapter 8834. Each year at its regular February meeting, and if there is no February meeting, at its next regular meeting, the Board will select one of its members to serve as Chair to preside over Board meetings and proceedings, one to serve as Vice-Chair to preside in the absence of the Chair, and one to serve as Secretary to ensure that all records and books of the district are properly kept and attest to the chair's signature on all documents. The board may authorize another director, the general manager, or any employee or contractor to execute documents on behalf of the district and to certify the authenticity of any record of the district. Members and officers serve until their successors are appointed and sworn in accordance with Chapter 8834 and these Rules.

RULE 2.3 MEETINGS: The Board will hold a regular meeting at a time set by the Board. At the request of the Chair, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held in accordance with the Texas Open Meetings Act.

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RULE 2.4 COMMITTEES: The Chair may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees. Committee members serve at the pleasure of the Chair.

RULE 2.5 EX PARTE COMMUNICATIONS: Board members may not communicate, directly or indirectly, in connection with any issue of fact or law in any contested case before the Board, with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. A Board member may communicate ex parte with other members of the Board. This rule does not apply to a Board member who abstains from voting on any matter in which ex parte communications have occurred.

RULE 2.6 RULES OF PROCEDURE, CONDUCT, AND DECORUM AT MEETINGS OF THE BOARD OF DIRECTORS:

- a. All Regular, Special, and Emergency Board Meetings will be called and conducted in accordance with the provisions of the Texas Open Meetings Act, Chapter 551, Government Code.
- b. Regular, Special and Emergency Board Meetings are open to the public and to representatives of the press and media. Closed Board meetings (“Executive Sessions”) are not open to the public or the press and only those individuals expressly requested or ordered to be present are allowed to attend Executive Sessions.
- c. Public participation at Board meetings is limited to that of observers unless the Board requests that a member of the public to address the Board or unless the person who wishes to address the Board submits a completed Public Participation Form prior to the beginning of the meeting. The Public Participation Form must list each agenda item the person wishes to address or any item the person would like the Board to consider adding to a future agenda. A sample of the Public Participation Form is attached hereto as Exhibit "A."
- d. The Presiding Officer of the meeting may limit the total amount of time each member of the public has to address the Board. The time limit, if any, must be announced at the beginning of the meeting.
- e. Profane, insulting or threatening language directed toward any person or racial, ethnic, or gender slurs or epithets will not be tolerated during public comments. These Rules do not prohibit public criticism of the District, including criticism of any act, omission, policy, procedure, program, or service. Violation of these rules may result in the following sanctions:
 1. cancellation of a speaker's remaining time;
 2. removal from the Board meeting;
 3. such other civil or criminal sanctions as may be authorized under the Constitution, Statutes and Codes of the State of Texas.
- f. These rules of procedure, conduct and decorum shall also apply to public hearings.

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SECTION 3. GENERAL MANAGER

RULE 3.1 GENERAL MANAGER: The person employed by the Board as General Manager is the chief administrative officer of the District, pursuant to Chapter 8834, and has full authority to manage and operate the affairs of the District, subject only to Board orders. The General Manager is responsible for employing all persons necessary for the proper handling of the business and operation of the District and determining their compensation. The District may, through an interlocal agreement, contract with another governmental entity to perform the functions of General Manager, and all authority delegated to the General Manager in these rules is delegated to that governmental entity.

RULE 3.2 DELEGATION OF AUTHORITY: The General Manager may delegate duties as may be necessary to effectively and expeditiously accomplish those duties, provided, that no such delegation may ever relieve the General Manager from responsibilities under Chapter 8834 or Board orders.

SECTION 4. DISTRICT

RULE 4.1 MINUTES AND RECORDS OF THE DISTRICT: All documents, reports, records, and minutes of the District are available for public inspection and copying in accordance with the Texas Public Information Act. Upon written application of any person, the District will furnish copies of its public records. Persons who are furnished copies may be assessed a copying charge, pursuant to policies established by the General Manager. A list of the charges for copies will be furnished by the District.

RULE 4.2 CERTIFIED COPIES: Requests for certified copies must be in writing. Certified copies will be made under the direction of the General Manager and will be affixed with the seal of the District. Persons who are furnished certified copies may be assessed a certification charge, in addition to the copying charge, pursuant to policies established by the General Manager.

SECTION 5. PERMITS

RULE 5.1 REGISTRATION OF NEW WELLS

- a. It is a violation of these Rules for a well owner or water well driller to drill any well without the approved registration form filed with the District.
- b. New well registration may be by mail or telephonic document transfer, on a form provided by the District. The District staff will review the registration and make a preliminary determination on whether the well meets the exclusions or exemptions provided in Rule 5.8, and inform the registrant of their determination within five

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business days. If the preliminary determination is that the well is excluded or exempt, the registrant may begin drilling immediately upon receiving the approved registration. All new wells, except leachate wells, monitoring wells, and dewatering wells, must be registered by the well owner or water well driller prior to being drilled.

RULE 5.2 GENERAL PERMITTING POLICIES AND PROCEDURES

- a. **Permit Requirement:** The well owner or any other person acting on behalf of the well owner, must obtain a permit before a well may be drilled or operated. A well must be permitted prior to drilling and must remain permitted unless and until the well plumbing and power source are disconnected and the well casing or discharge pipe is capped.
- b. **Applications and Application Fees:** Each original application for a water well permit, emergency permit, permit renewal, or permit amendment requires a separate application. Application forms will be provided by the District and furnished to the applicant upon request. For permit renewals, the District will generally forward to the permittee an application for renewal prior to the expiration of the permit term. However, any failure by the District to forward a renewal application to a permittee will not relieve the permittee of the obligation to renew the permit. The appropriate application fee, established by Board resolution, must be paid by the applicant at the time the application is submitted to the District. After the application form and fee have been submitted, the District may request additional information to complete its review of the application. Any additional information received will become part of the application. An application is not complete until all requested information is submitted and the application fee paid.
- c. **Notice of Permit Hearing:** Once the District has received a completed original application for a water well permit, or application for a permit renewal or amendment, the General Manager will issue written notice indicating a date and time for a hearing on the application in accordance with these Rules, except that no notice or hearing is required for permit amendments granted by the General Manager in accordance with Rule 5.4, or emergency permits granted in accordance with Rule 5.5. The General Manager may schedule as many applications at one hearing as the General Manager deems necessary.
- d. **Decision and Issuance of Permit:** In deciding whether or not to issue a permit, and in setting the terms of the permit, the Board shall consider the purpose of Chapter 8834 and all other relevant factors, including, but not limited to, (1) the District Regulatory Plan; (2) the quality, quantity, and availability of alternative water supplies at prices competitive with those charged by suppliers of alternative water supplies within the District; (3) the economic impact on the applicant from grant or denial of the permit, or the terms prescribed by the permit, in relation to the effect on subsidence that would result; (4) the applicant's use of water conservation measures; and (5) the applicant's compliance with the requirements of Chapter 8834 or any rule, permit, or order of the District. The Board may grant an application for a permit to

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drill and operate a new well on property inside a platted subdivision if water service from a local retail public utility is available to the lot where the well is to be located, but the permit shall be limited to the amount authorized by the then current Regulatory Plan.

The Board must grant a permit to an applicant whenever it is found upon presentation of adequate proof that there is no other adequate and available substitute or supplemental source of an alternative water supply at prices competitive with those charged by suppliers of alternative water supplies within the District, and that compliance with any provision of Chapter 8834, or any rule of the District, will result in an arbitrary taking of property or in the closing and elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the people.

The Board may condition issuance of a permit on the resolution of a prior or continuing violation. The District may require an applicant to pay a civil penalty or settlement amount, or take other necessary action, to resolve a prior or continuing violation before consideration of an application.

- e. **Permit Term and Renewal:** Unless specified otherwise by the Board or these Rules, permits are effective for a term ending one year from the last day of the calendar month of issuance. The permit term will be shown on the permit. The Board may issue a permit for a term not to exceed five years. Permits may be renewed by the Board following application and hearing. Permits do not become vested rights in the permit holder, and there is no automatic right of renewal. Permits will not be renewed unless the well has been drilled at the time of the hearing for the renewal application.
- f. **Permit Provisions:** The permit will list the name of the permittee, the name of the owner of the well or wells included in the permit, the amount of groundwater authorized to be withdrawn under the permit and the term of the permit. The permit will contain the standard provisions listed in Rule 5.3 and any other special provisions or exemptions deemed appropriate. The permit may also contain provisions relating to water conservation or accountability.
- g. **Revocation or Modification of Permit:** A permit does not become a vested right in the holder, and the Board may revoke or suspend a permit, or modify or amend the terms of a permit, at any time after notice and hearing.
- h. **Aggregation of Withdrawal:** In issuing a permit, the authorized withdrawal for a given well may be aggregated, at the discretion of the District, with the authorized withdrawal from other permitted wells designated by the District. Geographic location of wells, operational or legal control of the wells, ownership or legal control of property where the wells are located, use of the wells for a common purpose, whether the wells are included in a regional water supplier's groundwater reduction plan, and integrated distribution systems will be considered in determining whether or

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not to require or allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well a pro rata share or estimated production. Although all wells included within an aggregate permit are subject to the groundwater reduction requirements set forth in the District Regulatory Plan, as long as the amount of alternative water supply utilized in connection with the aggregate permit is in compliance with such groundwater reduction requirements, then the wells within the aggregate permit are deemed to be in compliance with such groundwater reduction requirements.

i. **Payment of Permit Fee:**

1. The validity of any permit issued by the District is contingent upon payment by the permittee of the applicable permit fee. Payment must be made upon receipt of a permit fee statement.
2. If the permit fee is not received by the District within 45 calendar days of the date of the permit fee statement, the permit is null and void, and the District may proceed with enforcement action as provided in these Rules.
3. For permittees subject to payment of a disincentive permit fee, the Board may allow the permittee to pay the disincentive permit fee through a promissory note or other legally binding agreement. The permittee must execute a promissory note or other agreement and pay 25 percent of the full amount within 45 calendar days of the date of the disincentive permit fee statement. The promissory note or other agreement must provide for the remaining 75 percent of the disincentive permit fee to be paid in three equal installments as follows: 25 percent due and payable within 90 days of the beginning date of the permit, 25 percent due and payable within 180 days of the beginning date of the permit, and the final 25 percent due and payable within 270 days of the beginning date of the permit. If a permittee fails to abide by the terms of the promissory note or other payment agreement, the permit shall be null and void, and the District may proceed with enforcement action as provided in these Rules. Furthermore, failure to abide by the terms of the promissory note or other payment agreement shall be grounds for denial of future permits and shall be grounds for denial of this payment arrangement on future permits. This payment arrangement is not available for amendments.

- j. **Effect of Acceptance of Permit:** Acceptance of the permit by the person to whom it is issued constitutes 1) acknowledgement of, and 2) agreement to comply with all of the terms, provisions, conditions, limitations, and restrictions embodied in Chapter 8834, the permit, these Rules, the District Regulatory Plan and other Board orders. Failure to timely file a motion for rehearing constitutes acceptance of the permit.

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RULE 5.3 STANDARD PERMIT PROVISIONS: All permits are granted subject to Chapter 8834, these Rules and orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit, each permit issued must contain the following standard permit provisions:

- a. This permit is granted in accordance with the provisions of Chapter 8834, and the rules and orders of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with Chapter 8834, all the terms, provisions, conditions, requirements, limitations, and restrictions embodied in this permit and with the rules, regulations, and orders of the District.
- b. This permit confers no vested rights in the holder, and it may be revoked or suspended, or its terms may be modified or amended pursuant to the provisions of Chapter 8834. Any person who becomes the owner of a permitted well must notify the District of the name and contact information for the new owner within 90 calendar days from the date of the change in ownership.
- c. The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.
- d. Except as provided in Rule 8.2, a water meter must be installed and operated in accordance with Section Eight of the District's Rules.
- e. The permittee must keep accurate records, on a monthly basis, of the amount of groundwater withdrawn and the purpose of the withdrawal, and such records must be provided to the District and available for inspection by District representatives. If a meter is required, the meter must be read, and the meter reading and actual amount of pumpage recorded each month in accordance with Rule 8.7 of the District's rules. Immediate written notice must be given to the District in the event a withdrawal exceeds the quantity authorized by this permit.
- f. The well site must be accessible to District representatives for inspection, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site by the District representatives.
- g. The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application and in any amendments to the application. A finding that false information has been supplied is grounds for immediate revocation of the permit. In the event of conflict between the provisions of this permit and the contents of the application, the provisions of this permit shall control.
- h. Violation of this permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawal, is punishable by civil penalties as provided by Section 8834.252, Special District Local Laws Code.

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- i. Wherever special provisions are inconsistent with other provisions or rules of the District, the special provisions shall prevail.

RULE 5.4 PERMIT AMENDMENTS

- a. **Permit Amendment Increasing Authorized Withdrawal:** It is a violation of these Rules to pump any amount of water over the amount authorized by permit. Permit amendments to increase the authorized withdrawal must be filed before withdrawals exceed the permit limits.
 1. **Submission of Application:** An application by a permit holder for a permit amendment increasing maximum authorized withdrawal must be submitted prior to the withdrawal of the groundwater in excess of the amount currently permitted.
 2. **Basis for Amendment:** An applicant for a permit amendment increasing authorized withdrawal must present sufficient evidence that: (i) due to circumstances beyond the control of the applicant, the amount of withdrawal originally authorized is inadequate; and (ii) there is no available alternative water supply.
 3. **Action on Request:** The General Manager may rule on any application for increased withdrawal in an amount up to but not exceeding 20 million gallons or 25 percent of the initially authorized withdrawal, whichever is greater, without notice, hearing, or further action by the Board. Once a ruling is made by the General Manager, notice of the ruling shall be served upon the applicant. Any applicant may appeal the General Manager's ruling by filing a written request for hearing within ten business days of the date of service of the General Manager's decision. If a written request for hearing is filed, or if the application for increased withdrawal is for an amount greater than 20 million gallons and 25 percent of the initially authorized withdrawal, notice shall be issued and a hearing conducted in the manner prescribed for permit issuance.
 4. **Permit Fee:** The permit fee to be assessed for any additional withdrawal granted will be at the permit fee rate in effect at the time of issuance of the amended permit multiplied by the additional withdrawal amount granted.
- b. **Permit Amendment Decreasing Authorized Withdrawal:** An application by a permit holder for a permit amendment decreasing the authorized withdrawal must be made prior to payment, or to the due date for payment, of the current permit fee, whichever is earlier. The General Manager may grant such an amendment without notice, hearing, or further action by the Board.

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- c. **Permit Amendment to Transfer Ownership of the Permit:** An application to amend the permit to change the name of the permittee must be made within 90 calendar days of the change in ownership of the permitted well. The General Manager may grant such an amendment without notice, hearing, or further action by the Board.

RULE 5.5 EMERGENCY PERMITS

- a. **Basis for Emergency Permit:** Upon application, the General Manager may grant an Emergency Permit that authorizes the withdrawal of water from a well not currently drilled or permitted. An applicant for an Emergency Permit must present sufficient evidence that: (i) there is no available alternative water supply; and (ii) an emergency need for the groundwater exists.
- b. **Action on Requests:** The General Manager may rule on any application for an Emergency Permit authorizing the withdrawal of water without notice, hearing, or further action by the Board, or with such notice and hearing as the General Manager deems practical and necessary under the circumstances. The General Manager may deny an application for an Emergency Permit on any reasonable ground including, but not limited to, a determination that the applicant is currently in violation of Chapter 8834 or these Rules, or that the applicant has a previous unresolved violation on record with the District. Notice of the ruling will be served upon the applicant. The applicant may appeal the General Manager's ruling by filing, within ten business days of the General Manager's ruling, a written request for a hearing before the Board. The Board will hear the appeal at the next available regular Board meeting. The General Manager will inform the Board of any Emergency Permits granted. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager.
- c. **Permit Fee:** The Permit Fee assessed for an Emergency Permit under this Rule is the same as a permit issued under Rule 5.2.
- d. **Term of Emergency Permit:** No Emergency Permit may be issued unless an application for a permit issued under Rule 5.2 has been filed with the District. The term of any Emergency Permit granted by the General Manager under this Rule extends only until the Board makes a final decision on the application for the permit under Rule 5.2.

RULE 5.6 FEES AND PAYMENT OF FEES

- a. **Application, Registration, and other Administrative Fees:** The Board may establish a schedule of administrative fees. The Board will attempt to set fees at an amount that does not unreasonably exceed the cost to the District of performing the function for which the fees are charged. Payment of the appropriate fee according to the fee schedule is required before any administrative action is performed by the District.

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- b. **Permit Fees:** The Board may establish a fee based on the term of the permit and the maximum amount of groundwater that the Board authorizes to be withdrawn from the well under a permit issued by the District. Permit fees shall be paid within 45 days of the receipt of a fee statement from the District. Failure to pay the permit fees by the due date may result in suspension or revocation of the permit.
- c. **Disincentive Permit Fee:** The Board may establish a fee creating a disincentive to continued over-reliance on groundwater. In addition to the permit fee authorized by Rule 5.6(b), the disincentive permit fee shall be applied to groundwater withdrawals that exceed the applicable percentage of total water demand for the Regulatory Area where the well is located. The disincentive permit fee may not be assessed against groundwater withdrawn pursuant to permits included in and in compliance with a certified groundwater reduction plan. The disincentive permit fee is assessed for each year that groundwater reduction requirements are not met or will not be met in the permit as issued.
- d. **Returned Check Fee:** The Board may establish a fee rate for checks returned to the District for insufficient funds, account closed, signature missing, or any other problem causing a check to be returned by the District's depository.

RULE 5.7 PERMIT FEE REBATES

- a. **Submission of Application:** An application for a permit fee rebate must be filed within 90 calendar days of permit termination and must be for an amount equal to or greater than \$100.00. Any application filed later than 90 calendar days after permit termination, or for a rebate of less than \$100.00, will not be considered or granted. Rebate application forms will be provided by the District upon request. The appropriate application fee, established by the Board, shall be paid by the applicant at the time the application is submitted to the District.
- b. **Basis for Rebate:** An applicant for a permit fee rebate must present sufficient evidence that: (1) a water meter was installed and operating during the entire permit term; (2) the amount of actual withdrawal during the permit term was less than the amount of authorized withdrawal; (3) the permit fee originally paid for the amount by which authorized withdrawal exceeded actual withdrawal is equal to or greater than \$100.00; and (4) if the well is a public supply well, the ratio of water sold or otherwise accounted for to the total water produced is at least 85 percent. A rebate may also be granted if the well owner presents sufficient evidence that the well was never drilled.
- c. **Action on Application:** The General Manager may rule on applications for permit fee rebates without notice, hearing, or further action by the Board. Once a ruling is made by the General Manager, notice of the ruling shall be served upon the applicant. An applicant may appeal the General Manager's ruling by filing, within ten business days of the date of service of the General Manager's ruling, a written request for a

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hearing before the Board. The Board will hear the applicant's appeal at the next regular Board meeting.

RULE 5.8 EXCLUSIONS AND EXEMPTIONS

- a. **Single-Family Small Wells Excluded:** A well with a casing diameter of less than five inches that serves only a single-family dwelling is excluded from the permit requirements of these Rules. Serving only a single-family dwelling means the well supplies groundwater for domestic use inside one home located on property that does not have an available alternative water supply. Domestic use includes water used inside the home for any purpose and may also include use outside the home for landscape irrigation, irrigating a garden, or providing water to domestic livestock. A new well to be located on property that has an available alternative water supply and is located inside a platted subdivision does not qualify for this exemption and must obtain a drilling and operating permit in accordance with Rule 5.2.
- b. **Exemptions:** The permit requirements do not apply to a shallow well that:
 1. is not used to provide water for:
 - i. human consumption;
 - ii. agriculture;
 - iii. manufacturing or industry; or
 - iv. water injection; and
 2. withdraws water solely:
 - i. to prevent hazardous sand boils, dewater surface construction sites, or relieve hydrostatic uplift on permanent structures;
 - ii. for groundwater quality analysis and for monitoring migration of subsurface contaminants or pollution; or
 - iii. for recovery of contamination or pollution.
- c. **Exemptions:** The permit requirements do not apply to windmills with a casing diameter of five inches nominal or less.
- d. **Injection Wells Excluded:** The permit requirements do not apply to a well regulated under Chapter 27, Water Code.

SECTION 6. OTHER DISTRICT ACTIONS AND DUTIES

RULE 6.1 DISTRICT REGULATORY PLAN: The District Regulatory Plan specifies the acts, procedures, performance, and avoidance necessary to prevent subsidence, and forms the basis of permitting decisions and permit requirements imposed by the Board. If the Board considers a new plan necessary or desirable, based on evidence presented at hearing, a new plan will be adopted. A plan, once adopted, remains in effect until the adoption of a new plan.

RULE 6.2 ANNUAL GROUNDWATER PUMPAGE REPORTS: Before January 31 of each year, each well owner required to have a permit shall submit to the District or to the

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regional water supplier, if the well operates pursuant to that regional water supplier's aggregate permit, a report on a form provided by the District, stating the following: (1) name of the permittee and the name of the well owner(s); (2) the well number(s); (3) the total amount of groundwater produced by the well or aggregate system during the immediately preceding calendar year (January through December); (4) the total amount of groundwater produced by the well or aggregate system during each separate month of the immediately preceding calendar year; (5) the purpose for which the groundwater was used; (6) the amount and source of alternative water supply used; and (7) any other information requested by the District pursuant to the provisions of Chapter 8834.

SECTION 7. HEARINGS

RULE 7.1 TYPES OF HEARINGS: The District conducts two general types of hearings: hearings involving permit matters, in which the rights, duties, or privileges of a party 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 District policy, 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.

a. Permit Hearings:

1. **Permit Applications, Amendments, and Revocations:** The District will hold hearings on original permit applications, applications for permit renewals or amendments, and permit revocations or suspensions. Hearings involving permit matters are to be scheduled before a Hearings Examiner.
2. **Hearings on Motions for Rehearing:** Motions for Rehearing will be heard by the Board pursuant to Rule 7.8 (b).

b. Rulemaking Hearings:

1. **Annual Groundwater Hearing:** The Board will hold a hearing each year to determine the effects of groundwater withdrawal during the preceding groundwater-withdrawal year on the subsidence of land within the District.
2. **Permit Fee Hearing:** The Board will hold a hearing to determine the permit fee rate to be collected by the District, based on the amount of groundwater that a permittee is authorized to withdraw under a permit.
3. **District Rule or Regulatory Plan:** At its discretion, the Board may hold a hearing to consider adoption of rules or a new District Regulatory Plan.
4. **Other Matters:** A public hearing may be held on any matter within the jurisdiction of the Board if the Board or the General Manager, when authorized by the Board, deems a hearing to be in the public interest, or if the

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Board or the General Manager, when authorized by the Board, deems a hearing necessary to effectively carry out the duties and responsibilities of the District.

RULE 7.2 NOTICE AND SCHEDULING OF HEARING: The General Manager is responsible for giving notice of all hearings in the following manner:

- a. Written notice of a hearing other than a hearing on a permit application shall be given to each county, regional water supplier and municipal government within the District. Notice will also be given to each person who has previously requested copies of hearing notices pursuant to the procedures set forth in subsection (b), and any other person the General Manager deems appropriate. The date of delivery or mailing of notice may not be less than ten calendar days before the date set for the hearing.

Not later than the 10th day before the date set for a hearing, the district shall:

1. publish notice of the hearing once in a newspaper of general circulation in the county; and
2. provide a copy of the notice of the hearing to the county clerk to be posted at the county courthouse of each county in the district in the place where notices are usually posted.

In addition to the notices required above, where a hearing involves a permit matter, written notice of the date, time, and location of the hearing will be given to the applicant by regular mail or by certified mail, return receipt requested, at least ten calendar days before the day of the hearing. Notices of public hearings will inform persons when an order to convert to an alternative water supply is to be considered.

- b. Any person having an interest in the subject matter of a hearing or hearings may receive written notice of such hearing or hearings by submitting a request, in writing, addressed to the General Manager. The request will identify with as much specificity as possible the hearing or hearings of which written notice is requested. The request shall remain valid for a period of one year from the date of the request, after which time a new request must be submitted. Failure to provide written notice under this section does not invalidate any action taken by the Board.
- c. Hearings may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. All permit hearings will normally be held at the District Office; however, the Board may from time to time change or schedule dates, times, and places for hearings. The General Manager is authorized to schedule hearings involving permit matters at such dates, times, and places as the General Manager deems administratively feasible and appropriate. Other hearings will be scheduled at the dates, times, and locations set at a regular Board meeting.

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RULE 7.3 GENERAL PROCEDURES

- a. **Authority of Presiding Officer:** The presiding officer may conduct the hearing or other proceeding in the manner the presiding officer deems most appropriate for the particular proceeding. The presiding officer has the authority to:
1. set hearing dates, other than the initial hearing date for permit matters set by the General Manager in accordance with Rule 7.2 (c);
 2. convene the hearing at the time and place specified in the notice for public hearing;
 3. establish the jurisdiction of the District concerning the subject matter under consideration;
 4. rule on motions and on the admissibility of evidence and amendments to pleadings;
 5. designate and align parties and establish the order for presentation of evidence;
 6. administer oaths to all persons presenting testimony;
 7. examine witnesses;
 8. issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
 9. require the taking of depositions and compel other forms of discovery under these Rules;
 10. ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 11. conduct public hearings in an orderly manner in accordance with these Rules;
 12. recess any hearing from time to time and place to place;
 13. reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
 14. exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of presiding officer.

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- b. **Registration Forms:** Each individual attending a hearing or other proceeding of the District must submit a form giving the following information: name; address; whether the person plans to testify; and any other information relevant to the hearing or other proceeding.
- c. **Appearance; Representative Capacity:** Any interested person may appear in person or may be represented by counsel, engineer, or other representative, provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.
- d. **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.
- e. **Appearance by Applicant or Movant:** The applicant, movant, or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to so appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the presiding officer deems it necessary in order to fully develop the record.
- f. **Reporting:** Hearings and other proceedings will be recorded on audio cassette tape or, at the discretion of the presiding officer, may be recorded by a certified shorthand reporter. The District does not prepare transcripts of hearings or other proceedings recorded on audio cassette tape on District equipment, but will arrange for a party at interest to have access to the recording. Subject to availability of space, any party at interest may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 7.5 (b). If a proceeding other than a permit hearing is recorded by a reporter, and a copy of the transcript of testimony is ordered 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. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.

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- g. **Continuance:** The presiding officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District Office) for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the presiding officer before it is recessed, a notice of any further setting of the hearing or other proceeding will be delivered at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Rule 7.2 (b), and any other person the presiding officer deems appropriate, but it is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.
- h. **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.
- i. **Computing Time:** In computing any period of time specified by these Rules, by a presiding officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday as determined by the General Manager or the Board, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.
- j. **Affidavit:** 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.
- k. **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.
- l. **Conduct and Decorum:** Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. 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.

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RULE 7.4 UNCONTESTED PERMIT HEARINGS PROCEDURES

- a. **Informal Hearings:** Permit hearings may be conducted informally when, in the judgment of the Hearings Examiner, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- b. **Agreement of Parties:** If, during an informal proceeding, all parties reach a negotiated or agreed settlement which, in the judgment of the Hearings Examiner, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the Hearings Examiner will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.
- c. **Decision to Proceed as Uncontested or Contested Case:** If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Hearings Examiner determines these issues will require extensive discovery proceedings, the Hearings Examiner will declare the case to be contested and convene a prehearing conference as set forth in Rule 7.5. A request for a contested case hearing must be filed prior to the conclusion of the public hearing. The Hearings Examiner may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions that the Hearings Examiner deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the Hearings Examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.

RULE 7.5 CONTESTED PERMIT HEARINGS PROCEDURES

- a. **Prehearing Conference:** A prehearing conference may be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process.
 1. **Matters Considered:** Matters which may be considered at a prehearing conference include, but are not limited to: (1) the designation of parties; (2) the formulation and simplification of issues; (3) the necessity or desirability of amending applications or other pleadings; (4) the possibility of making admissions or stipulations; (5) the scheduling of discovery; (6) the identification of and specification of the number of witnesses; (7) the filing and exchange of prepared testimony and exhibits; and (8) the procedure at the hearing.
 2. **Notice:** A prehearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 7.2, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the Hearings Examiner.

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3. **Conference Action:** Action taken at a prehearing 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.
- b. **Assessing Reporting and Transcription Costs:** Upon the timely request of any party, or at the discretion of the Hearings Examiner, the Hearings Examiner may assess reporting and transcription costs to one or more of the parties. The Hearings Examiner must consider the following factors in assessing reporting and transcription costs:
 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 proceeding; and
 6. any other factor that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of reporting or transcription costs is an issue, the Hearings Examiner must provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs must be included in the Hearings Examiner's report to the Board.

- c. **Designation of Parties:** Parties to the hearing will be designated on the first day of hearing or at such other time as the Hearings Examiner determines. The General Manager and any person specifically named in a matter are automatically designated parties. Persons other than the General Manager or a person specifically named must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated as a party. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Hearings Examiner, there exists good cause and the hearing will not be unreasonably delayed.
- d. **Rights of Designated Parties:** Subject to the direction and orders of the Hearings Examiner, 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.

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- e. **Persons Not Designated Parties:** At the discretion of the Hearings Examiner, 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, but may not be considered by the Hearings Examiner as evidence.
- f. **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.
- g. **Interpreters for Deaf Parties and Witnesses:** If a party or subpoenaed witness in a contested case is deaf, the District must 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.
- h. **Agreements to be in Writing:** No agreement between parties or their representatives affecting any pending matter will be considered by the Hearings Examiner 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.
- i. **Discovery:** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Hearings Examiner. Unless specifically modified by these Rules or by order of the Hearings Examiner, 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 Hearings Examiner.
- j. **Discovery Sanctions:** If the Hearings Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Hearings Examiner may:
 - 1. suspend processing of the application for a permit if the applicant is the offending party;
 - 2. disallow any further discovery of any kind or a particular kind by the offending party;
 - 3. rule that particular facts shall be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;

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4. limit the offending party's participation in the proceeding;
 5. disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
 6. recommend to the Board that the hearing be dismissed with or without prejudice.
- k. **Ex Parte Communications:** The Hearings Examiner may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence.
- l. **Compelling Testimony; Swearing Witnesses and Subpoena Power:** The Hearings Examiner may compel the testimony of any person which is necessary, helpful, or appropriate to the hearing. The Hearings Examiner will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The Hearings Examiner may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.
- m. **Evidence:** Except as modified by these Rules, the Texas Rules of Civil Evidence shall govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil 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.
- n. **Written Testimony:** When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, 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 sworn 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.
- o. **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 8-1/2 by 11 inches in size.

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- p. **Abstracts of Documents:** When documents are numerous, the Hearings Examiner may receive in evidence only those which 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 have the right to examine the documents from which the abstracts are made.
- q. **Introduction and Copies of Exhibits:** Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Hearings Examiner and to each of the parties, unless the Hearings Examiner rules otherwise.
- r. **Excluding Exhibits:** In the event 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 will be included in the record for the purpose of preserving the objection to excluding the exhibit.
- s. **Official Notice:** The Hearings Examiner 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.
- t. **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.
- u. **Oral Argument:** At the discretion of the Hearings Examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Hearings Examiner may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, further oral arguments may be heard by the Board.

RULE 7.6 CONCLUSION OF THE HEARING; REPORT

- a. **Closing the Record; Final Report:** At the conclusion of the presentation of evidence and any oral argument, the Hearings Examiner 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 Hearings Examiner. After the record is closed, the Hearings Examiner will prepare a report to the Board. The report must 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 must be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties must be by certified mail.

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- b. **Exceptions to the Hearings Examiner's Report; Reopening the Record:** Prior to Board action any party in a contested case 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.
- c. **Time for Board Action on Certain Permit Matters:** In the case of hearings involving new permit applications, original applications for existing wells, or applications for permit renewals or amendments, the Hearings Examiner's report should be submitted, and the Board should act, within 60 calendar days after the close of the hearing record.

RULE 7.7 RULEMAKING HEARINGS PROCEDURES

- a. **General Procedures:** The presiding officer will conduct the rulemaking hearing in the manner the presiding officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible.
- b. **Submission of Documents:** Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 7.2; provided, however, that the presiding officer may grant additional time for the submission of documents.
- c. **Oral Presentations:** Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- d. **Conclusion of the Hearing; Closing the Record; Hearings Examiner's Report:** At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open to allow the submission of additional information. If the presiding officer is a Hearings Examiner, the Hearings Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject of the hearing and the public comments received, together with the Hearings Examiner's recommendations for action. Upon completion and issuance of the Hearings Examiner's report, a copy must be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.

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- e. **Exceptions to the Hearings Examiner's Report; Reopening the Record:** Any interested person may make exceptions to the Hearings Examiner's report, and the Board may reopen the record, in the manner prescribed in Rule 7.6 (b).

RULE 7.8 FINAL DECISION; APPEAL

- a. **Board Action:** After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.
- b. **Requests for Rehearing:** Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within 20 calendar days of the Board's decision. Such a rehearing request must be filed at the District office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought under Section 8834.251, Special District Local Laws Code. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the date of the rehearing will be within 45 calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny the request for rehearing within 90 calendar days of submission will be deemed to be a denial of the request.

SECTION 8. METERING

RULE 8.1 WATER METER REQUIRED: Except as provided in Rule 8.2, a water meter is required for all wells required to be permitted and at the point of connection for all alternative water supplies used to meet District regulatory requirements.

- a. **Approved Meters:** The meter must be mechanically driven or magnetic, and have a digital, totalizing register. The digital totalizer must not be resettable and must be capable of a maximum reading greater than the maximum expected pumpage or reuse discharge during the permit term. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for the type of meter installed.
- b. **Installation:** The water meter must be installed according to the manufacturer's published specifications in effect at the time of the meter installation, or its accuracy must be verified by the well owner in accordance with Rule 8.5. If no specifications

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are published, there must be a minimum length of five pipe diameters of straight pipe upstream of the water meter and one pipe diameter of straight pipe downstream of the water meter. These lengths of straight pipe must contain no check valves, tees, gate valves, back flow preventers, blow-off valves, or any other fixture other than those flanges or welds necessary to connect the straight pipe to the meter. In addition, the pipe must be completely full of water throughout the region.

- c. **Bypasses:** Bypasses must be separately metered.

RULE 8.2 WATER METER EXCEPTIONS

- a. Windmills are excepted from Rule 8.1.
- b. Wells five inches nominal or less in inside casing diameter where there is a reasonable basis to determine that pumpage will not exceed one million gallons per year, the well is not connected with any other well or aggregate system and the groundwater will not be used for any outdoor use or filling ponds are excepted from Rule 8.1.
- c. Alternative water supply connections that are metered pursuant to a retail or wholesale agreement, or a rate order duly adopted by a regional water supplier, that requires payment based on the total amount of water supplied through the meter, are excepted from Rule 8.1.

RULE 8.3 VERIFICATION OF WELL SIZE: In those cases where an accurate measure of inside casing diameter is required to determine whether a well may be exempted from metering or permitting, the District may require the well owner, at the well owner's expense, to remove any obstructions to accurate measurement. Such obstructions include, but are not limited to, well seals, electrical wire and conduit, pumps, and pump column.

RULE 8.4 METERING AGGREGATE WITHDRAWAL: Where wells are permitted in the aggregate, one or more water meters may be used for the aggregate well system if the water meter or meters are installed so as to measure the groundwater production from all wells covered by the aggregate permits.

RULE 8.5 ACCURACY VERIFICATION

- a. **Meter Accuracy to be Tested:** A well owner required to install a meter shall, at the well owner's expense, test the accuracy of each water meter as installed in place and submit a certificate of the test results. The certificate shall be on a form provided by the District. Meters shall be tested by a third party qualified to measure meter accuracy. The third party must be approved by the General Manager prior to the test. Except as otherwise provided herein, certification tests will be required for all meters as follows:

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Meter Diameter	Testing Interval
Less than 6 inches	every 3 years
6 inches and greater	every year

If the test results indicate meter accuracy outside the range of 97% to 103% of the actual flow, then appropriate steps must be taken by the well owner within 90 calendar days from the date of the test to recalibrate the meter to 100% of actual flow, or to repair or replace the meter. The General Manager may extend the 90-day deadline upon good cause shown. The District, at its own expense, may undertake random tests and other investigations at any time for the purpose of verifying water meter readings. If the District's tests or investigations reveal that a water meter is not registering within an accuracy of 97% to 103% of the actual flow, or is not properly recording the total flow, the well owner shall reimburse the District for the cost of those tests and investigations, and the well owner shall take appropriate steps to remedy the problem within 90 calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement accuracy is impaired, the District may require the well owner, at the well owner's expense, to take appropriate steps to remedy any problem, and to retest the water meter within 90 calendar days from the date the problem is discovered.

- b. **Meter Testing and Calibration Equipment:** Only equipment capable of accuracy results of plus or minus one percent of actual flow with repeatable accuracy of ½ of 1 percent may be used to calibrate or test meters.
- c. **Calibration of Testing Equipment:** All approved testing equipment must be calibrated annually by an independent testing laboratory or company capable of accuracy verification. A copy of the accuracy verification must be presented to the District before any further tests may be performed using that equipment.
- d. **Positive Displacement and Multijet Meters:** Positive displacement meters and multijet meters are not required to be tested but must be replaced within 90 days if the meter fails.

RULE 8.6 REMOVAL OF METER FOR REPAIRS: The water meter may be removed for repairs and the well kept operational provided that the District is notified prior to removal, and the repairs are completed on a timely basis. The readings on the meter must be recorded prior to removal and again upon reinstallation. The monthly record of pumpage will include an estimate of groundwater withdrawn during the period the meter was not installed and operating.

RULE 8.7 WATER-METER READINGS: The owner of a well required to be permitted must read each water meter and record the meter reading and the actual amount of pumpage in a log at least monthly. The logs containing the periodic recordings must be available for inspection by the District at reasonable business hours and copies of such logs must be furnished to the District upon request. The well owner shall read the meter within 15 days before or after

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the date the permit expires and shall within 30 days after the expiration of the permit, report the readings to either: 1) the regional water supplier, if the well is part of the regional water supplier's aggregate permit, or 2) the District, if the well is not part of a regional water supplier's aggregate permit.

SECTION 9. INVESTIGATIONS AND ENFORCEMENT

RULE 9.1 NOTICE AND ACCESS TO PROPERTY: Board Members, the General Manager, and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of Chapter 8834 and these Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member, the General Manager, or District agents or employees who are attempting to conduct an investigation under Chapter 8834 or these Rules constitutes a violation and subjects the person who is inhibiting or prohibiting access, as well as any other person who authorizes or allows such action, to the penalties set forth in Chapter 8834.

RULE 9.2 CONDUCT OF INVESTIGATION: Investigations or inspections that require entrance upon property must be conducted at reasonable times, and must be consistent with the establishment's rules and regulations concerning safety, internal security, and fire protection. The persons conducting such investigations must identify themselves and present credentials upon request of the owner, lessee, operator, or person in charge of the well.

RULE 9.3 SEALING OF WELLS: The District may seal wells that are prohibited from withdrawing groundwater within the District by the District Act, these Rules or Board orders when the General Manager, or a designated District employee, determines that such action is reasonable necessary to ensure that a well is not operated in violation of the District Act, these Rules or Board orders. A well may be sealed when: (1) a permit has been granted, but the permit fees have not been paid within the time period provided for payment; (2) representations have been made by the well owner or primary operator that no groundwater is to be withdrawn from a well during a particular period; (3) no application has been made for a permit to withdraw groundwater from an existing well which is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; or (4) the Board has denied, canceled or revoked a permit.

The well may be sealed by physical means, and tagged to indicate that the well has been sealed by the District, and other appropriate action may be taken as necessary to preclude operation of the well or to identify unauthorized operation of the well.

Tampering with, altering, damaging, or removing the seal of a sealed well, or in any other way violating the integrity of the seal, or pumping of groundwater from a well that has been sealed constitutes a violation of these Rules and subjects the person performing that action, as well as

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any well owner or primary operator who authorizes or allows that action, to such penalties as provided by the District Act and these Rules.

RULE 9.4 REQUEST FOR INJUNCTIVE RELIEF AND ASSESSMENT OF

PENALTIES: If it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 8834 or any Board order, other order of the District, rule or permit, the Board may authorize the General Manager to institute and conduct a suit in the name of the District for injunctive relief, or to recover a civil penalty of not less than fifty dollars nor more than five thousand dollars for each violation and for each day of violation, or for both injunctive relief and civil penalties.